Texas Consumer Law

Appendix

Texas Statutes

As amended by the 88th Legislature 2023, Regular Session and 1st Called Session and Texas Administrative Code updated through June 13, 2023.

1. Deceptive Trade Practices
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18. Consumer Credit Commissioner
    (Tex. Fin. Code, Chapter 14, §§ 14.001-14.303)
19. Texas Credit Title, Regulation of Interest, Loans, and Financial Transactions
    (Tex. Fin. Code §§ 301.001-354.007, 397.001-397.009)
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Federal Statutes

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1. Fair Credit Billing Act
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2. Federal Debt Collection Practices Act
   (15 U.S.C. §§ 1692-1692p)
3. Magnuson-Moss Warranty Act
   (15 U.S.C. §§ 2301-2312)
4. Magnuson-Moss Warranty Act Regulations
   (16 C.F.R. §§ 700.1-700.12)
5. FTC Rule 433—Preservation of Consumers' Claims and Defenses
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Tie-In Statutes

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      (Tex. Nat. Res. Code § 33.001 et seq.)
   d. Contest and Giveaway Act
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   e. Health Spa Act
      (Tex. Occ. Code §§ 702.001 et seq.)
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k. Credit Services Organizations
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m. Removal of Unauthorized Vehicles from Parking Facility or Public Roadway
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n. Rental-Purchase Agreements
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o. Representation as Attorney
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q. Sales of Certain Fuel
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r. Self-Service Storage Facility Liens
(Tex. Prop. Code § 59.001 et seq.)

s. Texas Manufactured Housing Standards Act
(Tex. Occ. Code § 1201.001 et seq.)

t. Texas Membership Camping Resort Act
(Tex. Prop. Code § 222.001 et seq.)

u. Texas Motor Vehicle Commission
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v. Texas Optometry Act
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w. Texas Timeshare Act
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x. Treatment Facilities Marketing Practices Act
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y. Disclosure to Purchaser of Property
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z. Motor Vehicle Installment Sales,
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(Tex. Fin. Code § 348.014)

aa. Commercial Vehicle Installment Sales,
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(Tex. Fin. Code § 353.017)

bb. Texas Controlled Substances Act,
Civil Liability for Engaging in or Aiding in Production, Distribution, Sale, or Provision of Synthetic Substances
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Texas Statutes

1. Deceptive Trade Practices

a. *Current Version*

Texas Business & Commerce Code

CHAPTER 17. DECEPTIVE TRADE PRACTICES

SUBCHAPTER A. GENERAL PROVISIONS

§ 17.01. Definitions.

In this chapter, unless the context requires a different definition,

(1) "container" includes bale, barrel, bottle, box, cask, keg, and package; and

(2) "proprietary mark" includes word, name, symbol, device, and any combination of them in any form or arrangement, used by a person to identify his tangible personal property and distinguish it from the tangible personal property of another.

Added by Acts 1967, 60th Leg., p. 2343, c. 785, § 1, eff Sept. 1, 1967.

[Sections 17.02 to 17.06 reserved for expansion]

SUBCHAPTER B. DECEPTIVE ADVERTISING, PACKING, SELLING, AND EXPORTING

§ 17.07. Repealed by Acts 1993, 73rd Leg., c. 300, § 43(5), eff. Aug. 30, 1993.

§ 17.08. Private Use of State Seal.

(a) In this section:

(1) "Commercial purpose" means a purpose that is intended to result in a profit or other tangible benefit but does not include:

(A) official use of the state seal or a representation of the state seal in a state function;

(B) use of the state seal or a representation of the state seal for a political purpose by an elected official of this state;

(C) use of the state seal or a representation of the state seal in an encyclopedia, dictionary, book, journal, pamphlet, periodical, magazine, or newspaper incident to a description or history of seals, coats of arms, heraldry, or this state;

(D) use of the state seal or a representation of the state seal in a library, museum, or educational facility incident to descriptions or exhibits relating to seals, coats of arms, heraldry, or this state;

(E) use of the state seal or a representation of the state seal in a theatrical, motion-picture, television, or similar production for a historical, educational, or newsworthy purpose; or

(F) use of the state seal or a representation of the state seal for another historical, educational, or newsworthy purpose if authorized in writing by the secretary of state.

(2) "Representation of the state seal " includes a nonexact representation that the secretary of state determines is deceptively similar to the state seal.

(3) "Official use" means the use of the state seal by an officer or employee of this state in performing a state function.

(4) "State function" means a state governmental activity authorized or required by law.

(5) "State seal" means the state seal, the reverse of the state seal, and the state arms as defined by Sections 3101.001 and 3101.002, Government Code.

(b) Except as otherwise provided by this section, a person may not use a representation of the state seal:

(1) to advertise or publicize tangible personal property or a commercial undertaking; or

(2) for another commercial purpose.

(c) A person may use a representation of the state seal for a commercial purpose if the person obtains a license from the secretary of state for that use. The secretary of state, under the authority vested in the secretary as custodian of the seal under Article IV, Section 19, of the Texas Constitution, shall issue a license to a person who applies for a license on a form provided by the secretary of state and who pays the fees required under this section if the secretary of state determines that the use is in the best interests of the state and not detrimental to the image of the state. A license issued under this section expires one year after the date of issuance and may be renewed.

(d) The secretary of state shall adopt rules relating to the use of the state seal by a person licensed under this section. The secretary of state shall adopt the rules in the manner provided by Chapter2001, Government Code.

(e) The application fee for a license under this section is $35. The license fee for an original or renewal license is $250. In addition to those fees, each licensee shall pay an amount equal to three percent of the licensee's annual gross receipts related to the licensed use in excess of $5,000 to the state as a royalty fee.

(f) A person licensed under this section shall maintain records relating to the licensee's use of the state seal in the manner required by the rules of the secretary of state. The secretary of state may examine the records during reasonable business hours to determine the licensee's compliance with this section. Each licensee shall display the license in a conspicuous manner in the licensee's office or place of business.

(g) The secretary of state may suspend or revoke a license issued under this section for failure to comply with this section or the rules adopted under this section. The secretary of state may bring a civil action to enjoin a violation of this section or the rules adopted under this section.

(h) A person who reproduces an official document bearing the state seal does not violate Subsection (b) of this section if the document is:

(1) reproduced in complete form; and

(2) used for a purpose related to the purpose for which the document was issued by the state.

(i) A person who violates a provision of Subsection (b) of this section commits an offense. An offense under this section is a Class C misdemeanor.

(j) A person who violates Subsection (b) of this section commits a separate offense each day that the person violates a provision of that subsection.

Added by Acts 1967, 60th Leg., p. 2343, c. 785, § 1, eff. Sept. 1, 1967. Amended by Acts 1985, 69th Leg., c. 811, § 10, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., c. 300, § 8, eff. Aug. 30, 1993; Acts 1995, 74th Leg., c. 76, § 5.95(49), eff. Sept. 1, 1995; Acts 2007, 80th Leg., c. 921, § 2A.001, eff. Sept. 1, 2007.

§ 17.09. Repealed by Acts 1973, 63rd Leg., p. 995, c. 399, §3(d), eff. Jan. 1, 1974.

§ 17.10. Repealed by Acts 1973, 63rd Leg., p. 995, c. 399, §3(d), eff. Jan. 1, 1974.

§ 17.11. Deceptive Wholesale and Going-Out-Of-Business Advertising.

(a) In Subsection (b) of this section, unless the context requires a different definition, "wholesaler" means a person who sells for the purpose of resale and not directly to a consuming purchaser.

(b) No person may wilfully misrepresent the nature of his business by using in selling or advertising the word manufacturer, wholesaler, retailer, or other word of similar meaning.

(c) No person may wilfully misrepresent the ownership of a business for the purpose of holding a liquidation sale, auction sale, or other sale which represents that the business is going out of business. A person who advertises a liquidation sale, auction sale, or going-out-of-business sale shall state the correct name and permanent address of the owner of the business in the advertising.

(d) A person who violates a provision of Subsection (b) or (c) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 nor more than $500.

Added by Acts 1967, 60th Leg., p. 2343, c. 785, § 1, eff. Sept. 1, 1967.

§ 17.12. Deceptive Advertising.

(a) No person may disseminate a statement he knows materially misrepresents the cost or character of tangible personal property, a security, service, or anything he may offer for the purpose of

(1) selling, contracting to sell, otherwise disposing of, or contracting to dispose of the tangible personal property, security, service, or anything he may offer; or

(2) inducing a person to contract with regard to the tangible personal property, security, service, or anything he may offer.

(b) No person may solicit advertising in the name of a club, association, or organization without the written permission of such club, association, or organization or distribute any publication purporting to represent officially a club, association, or organization without the written authority of or a contract with such club, association, or organization and without listing in such publication the complete name and address of the club, association, or organization endorsing it.

(c) A person's proprietary mark appearing on or in a statement described in Subsection (a) of this section is prima facie evidence that the person disseminated the statement.

(d) A person who violates a provision of Subsection (a) or (b) of this Section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $10 nor more than $200.

Added by Acts 1967, 60th Leg., p. 2343, c. 785, § 1, eff. Sept. 1, 1967. Amended by Acts 1969, 61st Leg., p. 2045, c. 701, § 1, eff. June 12, 1969.

[Sections 17.13 to 17.17 reserved for expansion]

SUBCHAPTER C. REGULATING THE SALE OR TRANSFER OF SECONDHAND WATCHES

§ 17.18 to § 17.22. Repealed by Acts 2017, 85th Leg., R.S., c. 157, § 1, eff. May 26, 2017. .

Section 2 of Acts 2017, 85th Leg., R.S., c. 157 provides:

An offense under Section 17.22, Business & Commerce Code, may not be prosecuted after the effective date of this Act. If on the effective date of this Act a criminal action is pending for an offense under Section 17.22, Business & Commerce Code, the action is dismissed on that date. However, a final conviction for an offense under Section 17.22, Business & Commerce Code, that exists on the effective date of this Act is unaffected by this Act.

[Sections 17.23 to 17.27 reserved for expansion]

SUBCHAPTER D. COUNTERFEITING OR CHANGING A REQUIRED MARK; MISUSE OF CONTAINER BEARING MARK

§ 17.28. Repealed by Acts 1973, 63rd Leg., p. 995, c. 399, § 3(d), eff. Jan. 1, 1974.

§ 17.29. Misusing Container; Evidence of Misuse and Container's Ownership.

(a) In this section, unless the context requires a different definition, "container" also includes drink-dispensing fountain.

(b) Unless the owner of a reusable container bearing a proprietary mark (or one acting with the owner's written permission) agrees, no person may

(1) fill the container for sale or other commercial purpose;

(2) deface, cover up, or remove the proprietary mark from the container; or

(3) refuse to return the container to the owner if he requests its return.

(c) A person's wilful

(1) possession of a full or empty reusable container without the owner's permission is prima facie evidence of his violating a provision of Subsection (b) of this section;

(2) use, purchase, sale, or other disposition of a full or empty reusable container without the owner's permission is prima facie evidence of his violating a provision of Subsection (b) of this section; and

(3) breaking, damaging, or destroying a full or empty reusable container is prima facie evidence of his violating a provision of Subsection (b) of this section.

(d) In an action in which the ownership of a reusable container is in issue, a person's proprietary mark on the container is prima facie evidence that the person or his licensee owns the container.

(e) A person who violates a provision of Subsection (b) of this section is guilty of a misdemeanor and upon conviction is punishable by

(1) a fine of not less than $25 nor more than $50 for each violation concerning a drink-dispensing fountain; or

(2) a fine of not less than $5 nor more than $10 for each violation concerning any other container.

Added by Acts 1967, 60th Leg., p. 2343, c. 785, § 1, eff. Sept. 1, 1967.

§ 17.30. Misusing Dairy Container Bearing Proprietary Mark.

(a) In this section, unless the context requires a different definition, "dairy container" includes butter box, ice cream can, ice cream tub, milk bottle, milk bottle case, milk can, and milk jar.

(b) Without the owner's consent, no person may

(1) fill with milk, cream, butter, or ice cream; damage; mutilate; or destroy a dairy container bearing the owner's commonly used proprietary mark; or

(2) wilfully refuse to return on request to the owner a dairy container bearing his commonly used proprietary mark.

(c) Without the owner's written consent, no person may

(1) deface or remove an owner's proprietary mark from a dairy container; or

(2) substitute on a dairy container his proprietary mark for that of the owner.

(d) A person's commonly used proprietary mark on a dairy container is prima facie evidence of that person's ownership of the container.

(e) A person who violates a provision of Subsection (b) or (c) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $10 nor more than $100.

Added by Acts 1967, 60th Leg., p. 2343, c. 785, § 1, eff. Sept. 1, 1967.

§ 17.31. Identification, Possession, and Use of Certain Containers.

(a) In this section:

(1) "Bakery basket or tray" means a wire or plastic container that holds bread or other baked goods and is used by a distributor or retailer or an agent of a distributor or retailer to transport, store, or carry bakery products.

(2) "Container" means a bakery basket or tray, dairy case, egg basket, poultry box, or other container used to transport, store, or carry a product.

(3) "Dairy case" means a wire or plastic container that holds 16 quarts or more of beverage and is used by a distributor or retailer or an agent of a distributor or retailer to transport, store, or carry dairy products.

(4) "Egg basket" means a permanent type of container that contains four dozen or more shell eggs and is used by a distributor or retailer or an agent of a distributor or retailer to transport, store, or carry eggs.

(5) "Laundry cart" means a basket that is mounted on wheels and used in a coin-operated laundry or dry cleaning establishment by a customer or an attendant to transport laundry and laundry supplies.

(6) "Name or mark" means any permanently affixed or permanently stamped name or mark that is used for the purpose of identifying the owner of a shopping cart, laundry cart, or container.

(7) "Parking area" means a lot or other property provided by a retail establishment for the use of customers to park automobiles or other vehicles while doing business in that establishment.

(8) "Poultry box" means a permanent type of container that is used by a processor, distributor, retailer, or food service establishment or an agent of one of those persons to transport, store, or carry poultry.

(9) "Shopping cart" means a basket that is mounted on wheels, or a similar device, generally used in a retail establishment by a customer to transport goods of any kind.

(b) A person owning a shopping cart, laundry cart, or container may adopt and use a name or mark on the carts or containers.

(c) A person may not:

(1) use for any purpose outside the premises of the owner or an adjacent parking area, a container of another that is identified with or by any name or mark unless the use is authorized by the owner;

(2) sell or offer for sale a container of another that is identified with or by a name or mark unless the sale is authorized by the owner; or

(3) deface, obliterate, destroy, cover up, or otherwise remove or conceal a name or mark on a container of another without the written consent of the owner.

(d) A common carrier or contract carrier, unless engaged in the transporting of dairy products, eggs, and poultry to and from farms where they are produced, may not receive or transport a container marked with a name or mark unless the carrier has in the carrier's possession a bill of lading or invoice for the container.

(e) A person may not remove a container from the premises, parking area, or any other area of a processor, distributor, or retail establishment or from a delivery vehicle unless the person is legally authorized to do so, if:

(1) the container is marked on at least one side with a name or mark; and

(2) a notice to the public, warning that unauthorized use by a person other than the owner is punishable by law, is visibly displayed on the container.

(f) A person may not:

(1) remove a shopping cart or laundry cart from the premises or parking area of a retail establishment with intent to temporarily or permanently deprive the owner of the cart or the retailer of possession of the cart;

(2) remove a shopping cart or laundry cart, without written authorization from the owner of the cart, from the premises or parking area of any retail establishment;

(3) possess, without the written permission of the owner or retailer in lawful possession of the cart, a shopping cart or laundry cart outside the premises or parking lot of the retailer whose name or mark appears on the cart; or

(4) remove, obliterate, or alter a serial number, name, or mark affixed to a shopping cart or laundry cart.

(g) The requiring, taking, or accepting of a deposit on delivery of a container, shopping cart, or laundry cart is not considered a sale of the container or cart.

(h) A person who violates this section commits an offense. An offense under this section is a Class C misdemeanor. Each violation constitutes a separate offense.

(i) This section does not apply to the owner of a shopping cart, laundry cart, or container or to a customer or any other person who has written consent from the owner of a shopping cart, laundry cart, or container or from a retailer in lawful possession of the cart or container to remove it from the premises or the parking area of the retail establishment. For the purposes of this section, the term "written consent" includes tokens and other indicia of consent established by the owner of the carts or the retailer.

Added by Acts 1989, 71st Leg., c. 724, § 1, eff. Sept. 1, 1989.

[Sections 17.32 to 17.40 reserved for expansion]

SUBCHAPTER E. DECEPTIVE TRADE PRACTICES AND CONSUMER PROTECTION

§ 17.41. Short Title.

This subchapter may be cited as the Deceptive Trade Practices-Consumer Protection Act.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1, eff. May 21, 1973.

§ 17.42. Waivers: Public Policy.

(a) Any waiver by a consumer of the provisions of this subchapter is contrary to public policy and is unenforceable and void; provided, however, that a waiver is valid and enforceable if:

(1) the waiver is in writing and is signed by the consumer;

(2) the consumer is not in a significantly disparate bargaining position; and

(3) the consumer is represented by legal counsel in seeking or acquiring the goods or services.

(b) A waiver under Subsection (a) is not effective if the consumer's legal counsel was directly or indirectly identified, suggested, or selected by a defendant or an agent of the defendant.

(c) A waiver under this section must be:

(1) conspicuous and in bold-face type of at least 10 points in size;

(2) identified by the heading "Waiver of Consumer Rights," or words of similar meaning; and

(3) in substantially the following form:

"I waive my rights under the Deceptive Trade Practices-Consumer Protection Act, Section 17.41 et seq., Business & Commerce Code, a law that gives consumers special rights and protections. After consultation with an attorney of my own selection, I voluntarily consent to this waiver."

(d) The waiver required by Subsection (c) may be modified to waive only specified rights under this subchapter.

(e) The fact that a consumer has signed a waiver under this section is not a defense to an action brought by the attorney general under Section 17.47.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1, eff. May 21, 1973. Amended by Acts 1981, 67th Leg., p. 863, c. 307, § 1, eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 4943, c. 883, § 1, eff. Aug. 29, 1983; Acts 1987, 70th Leg., c. 167, § 5.02(6), eff. Sept. 1, 1987; Acts 1989, 71st Leg., c. 380, § 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., c. 414, § 1, eff. Sept. 1, 1995.

§ 17.43. Cumulative Remedies.

The provisions of this subchapter are not exclusive. The remedies provided in this subchapter are in addition to any other procedures or remedies provided for in any other law; provided, however, that no recovery shall be permitted under both this subchapter and another law of both damages and penalties for the same act or practice. A violation of a provision of law other than this subchapter is not in and of itself a violation of this subchapter. An act or practice that is a violation of a provision of law other than this subchapter may be made the basis of an action under this subchapter if the act or practice is proscribed by a provision of this subchapter or is declared by such other law to be actionable under this subchapter. The provisions of this subchapter do not in any way preclude other political subdivisions of this state from dealing with deceptive trade practices.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1, eff. May 21, 1973. Amended by Acts 1979, 66th Leg., p. 1327, c. 603, § 1, eff. Aug. 27, 1979; Acts 1995, 74th Leg., c. 414, § 1, eff. Sept. 1, 1995.

§ 17.44. Construction and Application.

(a) This subchapter shall be liberally construed and applied to promote its underlying purposes, which are to protect consumers against false, misleading, and deceptive business practices, unconscionable actions, and breaches of warranty and to provide efficient and economical procedures to secure such protection.

(b) Chapter 27, Property Code, prevails over this subchapter to the extent of any conflict.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1, eff. May 21, 1973. Amended by Acts 1995, 74th Leg., c. 414, § 1, eff. Sept. 1, 1995.

§ 17.45. Definitions.

As used in this subchapter:

(1) “Goods” means tangible chattels or real property purchased or leased for use.

(2) “Services” means work, labor, or service purchased or leased for use, including services furnished in connection with the sale or repair of goods.

(3) “Person” means an individual, partnership, corporation, association, or other group, however organized.

(4) “Consumer” means an individual, partnership, corporation, this state, or a subdivision or agency of this state who seeks or acquires by purchase or lease, any goods or services, except that the term does not include a business consumer that has assets of $25 million or more, or that is owned or controlled by a corporation or entity with assets of $25 million or more.

(5) “Unconscionable action or course of action” means an act or practice which, to a consumer’s detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the consumer to a grossly unfair degree.

(6) “Trade” and “commerce” mean the advertising, offering for sale, sale, lease, or distribution of any good or service, of any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value, wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this state.

(7) “Documentary material” includes the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated.

(8) “Consumer protection division” means the consumer protection division of the attorney general’s office.

(9) “Knowingly” means actual awareness, at the time of the act or practice complained of, of the falsity, deception, or unfairness of the act or practice giving rise to the consumer’s claim or, in an action brought under Subdivision (2) of Subsection (a) of Section 17.50, actual awareness of the act, practice, condition, defect, or failure constituting the breach of warranty, but actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

(10) “Business consumer” means an individual, partnership, or corporation who seeks or acquires by purchase or lease, any goods or services for commercial or business use. The term does not include this state or a subdivision or agency of this state.

(11) “Economic damages” means compensatory damages for pecuniary loss, including costs of repair and replacement. The term does not include exemplary damages or damages for physical pain and mental anguish, loss of consortium, disfigurement, physical impairment, or loss of companionship and society.

(12) “Residence” means a building:

(A) that is a single-family house, duplex, triplex, or quadruplex or a unit in a multiunit residential structure in which title to the individual units is transferred to the owners under a condominium or cooperative system; and

(B) that is occupied or to be occupied as the consumer's residence.

(13) "Intentionally" means actual awareness of the falsity, deception, or unfairness of the act or practice, or the condition, defect, or failure constituting a breach of warranty giving rise to the consumer's claim, coupled with the specific intent that the consumer act in detrimental reliance on the falsity or deception or in detrimental ignorance of the unfairness. Intention may be inferred from objective manifestations that indicate that the person acted intentionally or from facts showing that a defendant acted with flagrant disregard of prudent and fair business practices to the extent that the defendant should be treated as having acted intentionally.

(14) "Vehicle protection product":

(A) means a product or system, including a written warranty:

(i) that is:

(a) installed on or applied to a vehicle; and

(b) designed to prevent loss of or damage to a vehicle from a specific cause; and

(ii) under which, after installation or application of the product or system described by Subparagraph (i), if loss or damage results from the failure of the product or system to perform as represented in the warranty, the warrantor, to the extent agreed on as part of the warranty, is required to pay expenses to the person in this state who purchases or otherwise possesses the product or system for the loss of or damage to the vehicle; and

(B) may also include identity recovery, as defined by Section 1304.003, Occupations Code, if the product or system described by Paragraph (A) is financed under Chapter 348 or 353, Finance Code.

(15) "Warrantor" means a person named under the terms of a vehicle protection product warranty as the contractual obligor to a person in this state who purchases or otherwise possesses a vehicle protection product.

(16) "Loss of or damage to the vehicle," for purposes of Subdivision (14)(A)(ii), may also include unreimbursed incidental expenses that may be incurred by the warrantor, including expenses for a replacement vehicle, temporary vehicle rental expenses, and registration expenses for replacement vehicles.

(17) "Building materials" includes lumber, windows, and other materials used in the construction or repair of improvements to real property.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1, eff. May 21, 1973. Amended by Acts 1975, 64th Leg., p. 149, c. 62, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 600, c. 216, § 1, eff. May 23, 1977; Acts 1979, 66th Leg., p. 1327, c. 603, § 2, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 4943, c. 883, §§ 2, 3, eff. Aug. 29, 1983; Acts 1995, 74th Leg., c. 414, § 2, eff. Sept. 1, 1995; Acts 2007, 80th Leg., c. 411, § 1, eff. Sept. 1, 2007; Acts 2017, 85th Leg., R.S., c. 967, § 1.001, eff. Sept. 1, 2017; Acts 2019, 86th Leg., c. 759, eff. Sept. 1, 2019.

§ 17.46. Deceptive Trade Practices Unlawful.

(a) False, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful and are subject to action by the consumer protection division under Sections 17.47, 17.58, 17.60, and 17.61 of this code.

(b) Except as provided in Subsection (d) of this section, the term "false, misleading, or deceptive acts or practices" includes, but is not limited to, the following acts:

(1) passing off goods or services as those of another;

(2) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(3) causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;

(4) using deceptive representations or designations of geographic origin in connection with goods or services;

(5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which the person does not;

(6) representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used, or secondhand;

(7) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(8) disparaging the goods, services, or business of another by false or misleading representation of facts;

(9) advertising goods or services with intent not to sell them as advertised;

(10) advertising goods or services with intent not to supply a reasonable expectable public demand, unless the advertisements disclosed a limitation of quantity;

(11) making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions;

(12) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;

(13) knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service;

(14) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;

(15) basing a charge for the repair of any item in whole or in part on a guaranty or warranty instead of on the value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the warranty or guaranty, if any;

(16) disconnecting, turning back, or resetting the odometer of any motor vehicle so as to reduce the number of miles indicated on the odometer gauge;

(17) advertising of any sale by fraudulently representing that a person is going out of business;

(18) advertising, selling, or distributing a card which purports to be a prescription drug identification card issued under Section 4151.152, Insurance Code, in accordance with rules adopted by the commissioner of insurance, which offers a discount on the purchase of health care goods or services from a third party provider, and which is not evidence of insurance coverage, unless:

(A) the discount is authorized under an agreement between the seller of the card and the provider of those goods and services or the discount or card is offered to members of the seller;

(B) the seller does not represent that the card provides insurance coverage of any kind; and

(C) the discount is not false, misleading, or deceptive;

(19) using or employing a chain referral sales plan in connection with the sale or offer to sell of goods, merchandise, or anything of value, which uses the sales technique, plan, arrangement, or agreement in which the buyer or prospective buyer is offered the opportunity to purchase merchandise or goods and in connection with the purchase receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller the names of other prospective buyers if receipt of the compensation or consideration is contingent upon the occurrence of an event subsequent to the time the buyer purchases the merchandise or goods;

(20) representing that a guaranty or warranty confers or involves rights or remedies which it does not have or involve, provided, however, that nothing in this subchapter shall be construed to expand the implied warranty of merchantability as defined in Sections 2.314 through 2.318 and Sections 2A.212 through 2A.216 to involve obligations in excess of those which are appropriate to the goods;

(21) promoting a pyramid promotional scheme, as defined by Section 17.461;

(22) representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts replaced;

(23) filing suit founded upon a written contractual obligation of and signed by the defendant to pay money arising out of or based on a consumer transaction for goods, services, loans, or extensions of credit intended primarily for personal, family, household, or agricultural use in any county other than in the county in which the defendant resides at the time of the commencement of the action or in the county in which the defendant in fact signed the contract; provided, however, that a violation of this subsection shall not occur where it is shown by the person filing such suit that the person neither knew or had reason to know that the county in which such suit was filed was neither the county in which the defendant resides at the commencement of the suit nor the county in which the defendant in fact signed the contract;

(24) failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed;

(25) using the term "corporation," "incorporated," or an abbreviation of either of those terms in the name of a business entity that is not incorporated under the laws of this state or another jurisdiction;

(26) selling, offering to sell, or illegally promoting an annuity contract under Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, Vernon's Texas Civil Statutes), with the intent that the annuity contract will be the subject of a salary reduction agreement, as defined by that Act, if the annuity contract is not an eligible qualified investment under that Act or is not registered with the Teacher Retirement System of Texas as required by Section 8A of that Act;

(27) subject to Section 17.4625, taking advantage of a disaster declared by the governor under Chapter 418, Government Code, or by the president of the United States by:

(A) selling or leasing fuel, food, medicine, lodging, building materials, construction tools, or another necessity at an exorbitant or excessive price; or

(B) demanding an exorbitant or excessive price in connection with the sale or lease of fuel, food, medicine, lodging, building materials, construction tools, or another necessity;

(28) using the translation into a foreign language of a title or other word, including "attorney," "immigration consultant," "immigration expert," "lawyer," "licensed," "notary," and "notary public," in any written or electronic material, including an advertisement, a business card, a letterhead, stationery, a website, or an online video, in reference to a person who is not an attorney in order to imply that the person is authorized to practice law in the United States;

(29) delivering or distributing a solicitation in connection with a good or service that:

(A) represents that the solicitation is sent on behalf of a governmental entity when it is not; or

(B) resembles a governmental notice or form that represents or implies that a criminal penalty may be imposed if the recipient does not remit payment for the good or service;

(30) delivering or distributing a solicitation in connection with a good or service that resembles a check or other negotiable instrument or invoice, unless the portion of the solicitation that resembles a check or other negotiable instrument or invoice includes the following notice, clearly and conspicuously printed in at least 18-point type:

"SPECIMEN-NON-NEGOTIABLE";

(31) in the production, sale, distribution, or promotion of a synthetic substance that produces and is intended to produce an effect when consumed or ingested similar to, or in excess of, the effect of a controlled substance or controlled substance analogue, as those terms are defined by Section 481.002, Health and Safety Code:

(A) making a deceptive representation or designation about the synthetic substance; or

(B) causing confusion or misunderstanding as to the effects the synthetic substance causes when consumed or ingested;

(32) a licensed public insurance adjuster directly or indirectly soliciting employment, as defined by Section 38.01, Penal Code, for an attorney, or a licensed public insurance adjuster entering into a contract with an insured for the primary purpose of referring the insured to an attorney without the intent to actually perform the services customarily provided by a licensed public insurance adjuster, provided that this subdivision may not be construed to prohibit a licensed public insurance adjuster from recommending a particular attorney to an insured;

(33) owning, operating, maintaining, or advertising a massage establishment, as defined by Section 455.001, Occupations Code, that:

(A) is not appropriately licensed under Chapter 455, Occupations Code, or is not in compliance with the applicable licensing and other requirements of that chapter; or

(B) is not in compliance with an applicable local ordinance relating to the licensing or regulation of massage establishments; or

(34) a warrantor of a vehicle protection product warranty using, in connection with the product, a name that includes "casualty," "urety," "insurance," "mutual," or any other word descriptive of an insurance business, including property or casualty insurance, or a surety business.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1, eff. May 21, 1973. Amended by Acts 1977, 65th Leg., p. 601, c. 216, § 2, 3, eff. May 23, 1977; Acts 1977, 65th Leg., p. 892, c. 336, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1327, c. 603, § 3, eff. Aug. 27, 1979; Acts 1987, 70th Leg., c. 280, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., c. 570, § 6, eff. Sept. 1, 1993; Acts 1995, 74th Leg., c. 414, § 3, eff. Sept. 1, 1995; Acts 1995, 74th Leg., c. 463, § 1, eff. Sept. 1, 1995; Acts 2001, 77th Leg., c. 962, § 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., c. 1229, § 27, eff. June 1, 2002; Acts 2003, 78th Leg., c. 1276, § 4.001(a), eff. Sept. 1, 2003; Acts 2005, 79th Leg., c. 728, § 11.101, eff. Sept. 1, 2005; Acts 2007, 80th Leg., R.S., Ch. 1230 (H.B. 2427), Sec. 26, eff. September 1, 2007; Acts 2015, 84th Leg., R.S., c. 1023, § 1, eff. Sept. 1, 2015; Acts 2015, 84th Leg., R.S., c. 1080, § 1, eff. Sept. 1, 2015; Acts 2017, 85th Leg., R.S., c. 324, § 3.001, eff. Sept. 1, 2017; Acts 2017, 85th Leg., R.S., c. 858, § 1, eff. Sept. 1, 2017; Acts 2017, 85th Leg., R.S., c. 967, § 1.002, eff. Sept. 1, 2017; Acts 2017, 85th Leg., R.S., c. 967, § 2.001, eff. Sept. 1, 2017; Acts 2019, 86th Leg., c. 467, § 3.001, eff. Sept. 1, 2019; Acts 2019, 86th Leg., c. 203, § 2.01, eff Sept. 1, 2019; Acts 2019, 86th Leg., c. 759, § 2, eff. Sept. 1, 2019.

Section 2 of Acts 2015, 84th Leg., c. 1023, provides:

The change in law made by this Act applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

Section 3 of Acts 2015, 84th Leg., c. 1080, provides:

The change in law made by this Act applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

Section 20 of Acts 2017, 85th Leg., R.S., c. 858, provides:

Section 17.46(b), Business & Commerce Code, as amended by this Act, applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

Section 1.007 of Acts 2017, 85th Leg., R.S., c. 967, provides:

Section 17.46(b), Business & Commerce Code, as amended by this Act, applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

Section 3.03 of Act 2019, 86th Leg., c. 467, provides:

Section 17.46(b), Business & Commerce Code, as amended by this Act, applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrues before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

Section 5 of Acts, 2019, 86th Leg., c. 759, provides:

The changes in law made by this Act apply only to an act or practice that occurs on or after the effective date of this Act. An act or practice that occurs before the effective date of this Act is governed by the law in effect on the date the act or practice occurred, and the former law is continued in effect for that purpose.

§ 17.461. Pyramid Promotional Scheme.

(a) In this section:

(1) "Compensation" means payment of money, a financial benefit, or another thing of value. The term does not include payment based on sale of a product to a person, including a participant, who purchases the product for actual use or consumption.

(2) "Consideration" means the payment of cash or the purchase of a product. The term does not include:

(A) a purchase of a product furnished at cost to be used in making a sale and not for resale;

(B) a purchase of a product subject to a repurchase agreement that complies with Subsection (b); or

(C) time and effort spent in pursuit of a sale or in a recruiting activity.

(3) "Participate" means to contribute money into a pyramid promotional scheme without promoting, organizing, or operating the scheme.

(4) "Product" means a good, a service, or intangible property of any kind.

(5) "Promoting a pyramid promotional scheme" means:

(A) inducing or attempting to induce one or more other persons to participate in a pyramid promotional scheme; or

(B) assisting another person in inducing or attempting to induce one or more other persons to participate in a pyramid promotional scheme, including by providing references.

(6) "Pyramid promotional scheme" means a plan or operation by which a person gives consideration for the opportunity to receive compensation that is derived primarily from a person's introduction of other persons to participate in the plan or operation rather than from the sale of a product by a person introduced into the plan or operation.

(b) To qualify as a repurchase agreement for the purposes of Subsection (a)(2)(B), an agreement must be an enforceable agreement by the seller to repurchase, on written request of the purchaser and not later than the first anniversary of the purchaser's date of purchase, all unencumbered products that are in an unused, commercially resalable condition at a price not less than 90 percent of the amount actually paid by the purchaser for the products being returned, less any consideration received by the purchaser for purchase of the products being returned. A product that is no longer marketed by the seller is considered resalable if the product is otherwise in an unused, commercially resalable condition and is returned to the seller not later than the first anniversary of the purchaser's date of purchase, except that the product is not considered resalable if before the purchaser purchased the product it was clearly disclosed to the purchaser that the product was sold as a nonreturnable, discontinued, seasonal, or special promotion item.

(c) A person commits an offense if the person contrives, prepares, establishes, operates, advertises, sells, or promotes a pyramid promotional scheme. An offense under this subsection is a state jail felony.

(d) It is not a defense to prosecution for an offense under this section that the pyramid promotional scheme involved both a franchise to sell a product and the authority to sell additional franchises if the emphasis of the scheme is on the sale of additional franchises.

Added by Acts 1995, 74th Leg., c. 463, § 2, eff. Sept. 1, 1995.

§ 17.462. Listing of Business Location of Certain Businesses.

(a) A person may not misrepresent the geographical location of a business that derives 50 percent or more of its gross income from the sale or arranging for the sale of flowers or floral arrangements in the listing of the business:

(1) in a telephone directory or other directory assistance database;

(2) on an Internet website; or

(3) in a print advertisement.

(b) A person is considered to misrepresent the geographical location of a business for purposes of Subsection (a) if the name of the business indicates that the business is located in a geographical area and:

(1) the business is not located within the geographical area indicated;

(2) the listing fails to identify the municipality and state of the business's geographical location; and

(3) a telephone call to the local telephone number:

(A) listed in the directory or database routinely is forwarded or transferred to a location that is outside the calling area covered by the directory or database in which the number is listed; or

(B) provided on the Internet website or in a print advertisement routinely is forwarded or transferred to a location that is outside the calling area of the geographical area as indicated by the name of the business.

(c) A person may place a listing for a business described by Subsection (a) the name of which indicates that it is located in a geographical area that is different from the geographical area in which the business is located if a conspicuous notice in the listing states the municipality and state in which the business is located.

(d) This section does not apply to:

(1) a publisher of a telephone directory or other publication or a provider of a directory assistance service publishing or providing information about another business;

(2) an Internet website that aggregates and provides information about other businesses;

(3) an owner or publisher of a print medium providing information about other businesses;

(4) an Internet service provider; or

(5) an Internet service that displays or distributes advertisements for other businesses.

Added by Acts 2003, 78th Leg., c. 138, § 1, eff. Sept. 1, 2003. Amended by Acts 2011, 82 Leg. R.S., c. 489, §§ 1 & 2, eff. Sept. 1, 2011.

Section 1 of Acts 2003, c. 138, provides:

This Act takes effect September 1, 2003, and applies only to a telephone directory published or directory assistance provided on or after that date. A telephone directory published or directory assistance provided before September 1, 2003, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

Section 3 of Acts 2011, 82nd Leg., R.S., c. 489, provides:

The change in law made by this Act to Section 17.462, Business & Commerce Code, applies only to a print advertisement disseminated or an Internet website posting available for viewing on or after the effective date of this Act. A print advertisement disseminated or an Internet website posting available for viewing before the effective date of this Act is governed by the law in effect when the advertisement was disseminated or the posting was available for viewing, and the former law is continued in effect for that purpose.

§ 17.4625. Price Gouging During Declared Disaster.

(a) In this section, "designated disaster period" means the period:

(1) beginning on the earliest of:

(A) the date the disaster occurs; or

(B) the date of:

(i) the proclamation or executive order of the governor declaring the disaster; or

(ii) the declaration of the disaster by the president of the United States, if any part of this state is named in the federally declared disaster area; and

(2) ending on the 30th day after the date the disaster declaration expires or is terminated.

(b) Notwithstanding any other provision of this subchapter, Section 17.46(b)(27) applies only to an act described by that subdivision that occurs during a designated disaster period in this state.

Added by Acts 2019, 86th Leg., c. 759, eff. Sept. 1, 2019.

Section 5 of Acts 2019, 86th Leg., c. 759, provides:

The changes in law made by this Act apply only to an act or practice that occurs on or after the effective date of this Act. An act or practice that occurs before the effective date of this Act is governed by the law in effect on the date the act or practice occurred, and the former law is continued in effect for that purpose.

§ 17.463. Production, Sale, Distribution, or Promotion of Certain Synthetic Substances.

(a) This section applies only to an act described by Section 17.46(b)(31).

(b) Subject to Subsection (e) and except as otherwise provided by this section, an act to which this section applies is subject to action by a district or county attorney under Sections 17.47, 17.58, 17.60, and 17.61 to the same extent as the act is subject to action by the consumer protection division under those sections.

(c) If a district or county attorney, under the authority of this section, accepts assurance of voluntary compliance under Section 17.58, the district or county attorney must file the assurance of voluntary compliance in the district court in the county in which the alleged violator resides or does business.

(d) If a district or county attorney, under the authority of this section, executes and serves a civil investigative demand and files a petition described by Section 17.61(g), the petition must be filed in the district court in the county where the parties reside.

(e) A district or county attorney may act under this section so long as the consumer protection division does not intend to act with respect to that matter. Further, consistent with Section 17.48(b) of this subchapter, the consumer protection division shall, upon request and to the extent it has the resources available, provide assistance to a district or county attorney in any action taken under this subchapter. A district or county attorney may institute a suit described

by this section on or after the 90th day after the date the attorney general receives the notice required by Section 17.48 unless before the 90th day after the date the notice is received the attorney general responds that it is actively investigating or litigating at least one of the alleged violations set forth in the notice. The consumer protection division shall notify the district or county attorney it no longer intends to actively investigate or litigate an alleged violation within a reasonable time of such determination.

(f) Notwithstanding any other law, in an action brought by a district or county attorney under this section, all settlements or penalties collected by the district or county attorney shall be divided between the state and the county in which the attorney brought suit, with:

(1) 50 percent of the amount collected paid to the comptroller for deposit to the credit of the basic civil legal services account established by Section 51.943, Government Code; and

(2) 50 percent of the amount collected paid to the county shall be deposited by the county in a segregated account and the funds shall be used only for law enforcement, public health programs, or drug abuse prevention programs.

Added by Acts 2017, 85th Leg., R.S., c. 861, § 2, eff. Sept. 1, 2017.

Section 3 of Acts 2017, 85th Leg., R.S., c. 861, § 2, provides:

This Act applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law applicable to the cause of action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 17. 464. Unconscionable Price for Care at Emergency Facility.

(a) In this section:

(1) "Emergency care" means health care services provided in an emergency facility to evaluate and stabilize medical conditions of a recent onset and severity, including severe pain, that would lead a prudent layperson possessing an average knowledge of medicine and health to believe that the individual's condition, sickness, or injury is of such a nature that failure to get immediate medical care could:

(A) place the individual's health in serious jeopardy;

(B) result in serious impairment to bodily functions;

(C) result in serious dysfunction of a bodily organ or part;

(D) result in serious disfigurement; or

(E) for a pregnant woman, result in serious jeopardy to the health of the fetus.

(2) "Emergency facility":

(A) means:

(i) a freestanding emergency medical care facility licensed under Chapter 254, Health and Safety Code; or

(ii) a hospital that does not meet the conditions of participation for certification under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.); and

(B) does not include a hospital that:

(i) has been operating as a hospital for less than one year;

(ii) has submitted an application to a federally recognized accreditation program for certification under Title XVIII of the Social Security Act (42 U.S.C. Section 1395 et seq.); and

(iii) has not failed an accreditation for certification.

(b) For purposes of Section 17.46(a), the term "false, misleading, or deceptive acts or practices" includes an emergency facility that:

(1) provides emergency care at an unconscionable price; or

(2) demands or charges an unconscionable price for or in connection with emergency care or other care at the facility.

(c) The consumer protection division may not bring an action under Section 17.47 for an act or practice described by Subsection (b) if the price alleged to be unconscionable is less than 200 percent of the average charge for the same or substantially similar care provided to other individuals by emergency rooms of hospitals located in the same county or nearest county in which the emergency facility is located, as applicable, according to data collected by the Department of State Health Services under Chapter 108, Health and Safety Code, and made available to the division, except as provided by Subsection (d). The consumer protection division may not use data that includes prices for care provided in an urgent care setting or physician practice to establish the division's authority to investigate and pursue an action under this subchapter.

(d) If the attorney general determines that the consumer protection division is unable to obtain the charge data described by Subsection (c), the attorney general may adopt rules designating another source of hospital charge data for use by the division in establishing the average charge for emergency care or other care provided by hospital emergency rooms for purposes of Subsection (c).

(e) In an action brought under Section 17.47 to enforce this section, the consumer protection division may request, and the trier of fact may award the recovery of:

(1) reasonable attorney's fees and court costs; and

(2) the reasonable expenses incurred by the division in obtaining any remedy available under Section 17.47, including the cost of investigation, witness fees, and deposition expenses.

(f) This section does not create a private cause of action for a false, misleading, or deceptive act or practice described by Subsection (b).

Added by Acts 2019, 86th Leg., c. 1090, § 1, eff Sept. 1, 2019.

§ 17.47. Restraining Orders.

(a) Whenever the consumer protection division has reason to believe that any person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this subchapter, and that proceedings would be in the public interest, the division may bring an action in the name of the state against the person to restrain by temporary restraining order, temporary injunction, or permanent injunction the use of such method, act, or practice.

Nothing herein shall require the consumer protection division to notify such person that court action is or may be under consideration. Provided, however, the consumer protection division shall, at least seven days prior to instituting such court action, contact such person to inform him in general of the alleged unlawful conduct. Cessation of unlawful conduct after such prior contact shall not render such court action moot under any circumstances, and such injunctive relief shall lie even if such person has ceased such unlawful conduct after such prior contact. Such prior contact shall not be required if, in the opinion of the consumer protection division, there is good cause to believe that such person would evade service of process if prior contact were made or that such person would destroy relevant records if prior contact were made, or that such an emergency exists that immediate and irreparable injury, loss, or damage would occur as a result of such delay in obtaining a temporary restraining order.

(b) An action brought under Subsection (a) of this section which alleges a claim to relief under this section may be commenced in the district court of the county in which the person against whom it is brought resides, has his principal place of business, has done business, or in the district court of the county where the transaction occurred, or, on the consent of the parties, in a district court of Travis County. The court may issue temporary restraining orders, temporary or permanent injunctions to restrain and prevent violations of this subchapter and such injunctive relief shall be issued without bond.

(c) In addition to the request for a temporary restraining order, or permanent injunction in a proceeding brought under Subsection (a) of this section, the consumer protection division may request, and the trier of fact may award, a civil penalty to be paid to the state in an amount of:

(1) not more than $10,000 per violation; and

(2) if the act or practice that is the subject of the proceeding was calculated to acquire or deprive money or other property from a consumer who was 65 years of age or older when the act or practice occurred, an additional amount of not more than $250,000.

(d) The court may make such additional orders or judgments as are necessary to compensate identifiable persons for actual damages or to restore money or property, real or personal, which may have been acquired by means of any unlawful act or practice. Damages may not include any damages incurred beyond a point two years prior to the institution of the action by the consumer protection division. Orders of the court may also include the appointment of a receiver or a sequestration of assets if a person who has been ordered by a court to make restitution under this section has failed to do so within three months after the order to make restitution has become final and nonappealable.

(e) Any person who violates the terms of an injunction under this section shall forfeit and pay to the state a civil penalty of not more than $10,000 per violation, not to exceed $50,000. In determining whether or not an injunction has been violated the court shall take into consideration the maintenance of procedures reasonably adapted to insure compliance with the injunction. For the purposes of this section, the district court issuing the injunction shall retain jurisdiction, and the cause shall be continued, and in these cases, the consumer protection division, or the district or county attorney with prior notice to the consumer protection division, acting in the name of the state, may petition for recovery of civil penalties under this section.

(f) An order of the court awarding civil penalties under Subsection (e) of this section applies only to violations of the injunction incurred prior to the awarding of the penalty order. Second or subsequent violations of an injunction issued under this section are subject to the same penalties set out in Subsection (e) of this section.

(g) In determining the amount of penalty imposed under Subsection (c), the trier of fact shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act or practice;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) the economic effect on the person against whom the penalty is to be assessed;

(5) knowledge of the illegality of the act or practice; and

(6) any other matter that justice may require.

(h) In bringing or participating in an action under this subchapter, the consumer protection division acts in the name of the state and does not establish an attorney-client relationship with another person, including a person to whom the consumer protection division requests that the court award relief.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1, eff. May 21, 1973. Amended by Acts 1977, 65th Leg., p. 602, c. 216, § 4, eff. May 23, 1977; Acts 1985, 69th Leg., c. 564, § 1, eff. Aug. 26, 1985; Acts 1989, 71st Leg., c. 1082, § 8.01, eff. Jan. 1, 1991; Acts 1991, 72nd Leg., c. 242, § 11.18, eff. Sept. 1, 1991; Acts 1997, 75th Leg., c. 388, § 1, eff. May 28, 1997; Acts 2003, 78th Leg., c. 360, § 1, eff. Sept. 1, 2003; Acts 2019, 86th Leg., c. 237, § 1, eff. Sept. 1, 2019.

Section 2 of Acts 2019, 86th Leg., c. 237, provides:

The changes in law made by this Act apply only to an action filed by the consumer protection division under Section 17.47, Business & Commerce Code, on or after the effective date of this Act. An action filed by the consumer protection division under Section 17.47, Business & Commerce Code, before the effective date of this Act is governed by the law in effect on the date the action is filed, and the former law is continued in effect for that purpose.

§ 17.48. Duty of District and County Attorney.

(a) It is the duty of the district and county attorneys to lend to the consumer protection division any assistance requested in the commencement and prosecutions of action under this subchapter.

(b) A district or county attorney, with prior written notice to the consumer protection division, may institute and prosecute actions seeking injunctive relief under this subchapter, after complying with the prior contact provisions of Subsection (a) of Section 17.47 of this subchapter. On request, the consumer protection division shall assist the district or county attorney in any action taken under this subchapter. If an action is prosecuted by a district or county attorney alone, he shall make a full report to the consumer protection division including the final disposition of the matter. No district or county attorney may bring an action under this section against any licensed insurer or licensed insurance agent transacting business under the authority and jurisdiction of the State Board of Insurance unless first requested in writing to do so by the State Board of Insurance, the commissioner of insurance, or the consumer protection division pursuant to a request by the State Board of Insurance or commissioner of insurance.

(c) In an action prosecuted by a district or county attorney under this subchapter for a violation of Section 17.46(b)(28), three-fourths of any civil penalty awarded by a court must be paid to the county where the court is located.

(d) A district or county attorney is not required to obtain the permission of the consumer protection division to prosecute an action under this subchapter for a violation of Section 17.46(b)(28), if the district or county attorney provides prior written notice to the division as required by Subsection (b).

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1, eff. May 21, 1973. Amended by Acts 2015, 84th Leg., c. 1080, eff. Sept. 1, 2015.

Section 3 of Acts 2015, 84th Leg., c. 1080, provides:

The change in law made by this Act applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 17.49. Exemptions.

(a) Nothing in this subchapter shall apply to the owner or employees of a regularly published newspaper, magazine, or telephone directory, or broadcast station, or billboard, wherein any advertisement in violation of this subchapter is published or disseminated, unless it is established that the owner or employees of the advertising medium have knowledge of the false, deceptive, or misleading acts or practices declared to be unlawful by this subchapter, or had a direct or substantial financial interest in the sale or distribution of the unlawfully advertised good or service. Financial interest as used in this section relates to an expectation which would be the direct result of such advertisement.

(b) Nothing in this subchapter shall apply to acts or practices authorized under specific rules or regulations promulgated by the Federal Trade Commission under Section 5(a)(1) of the Federal Trade Commission Act [15 U.S.C.A. 45(a)(1)]. The provisions of this subchapter do apply to any act or practice prohibited or not specifically authorized by a rule or regulation of the Federal Trade Commission. An act or practice is not specifically authorized if no rule or regulation has been issued on the act or practice.

(c) Nothing in this subchapter shall apply to a claim for damages based on the rendering of a professional service, the essence of which is the providing of advice, judgment, opinion, or similar professional skill. This exemption does not apply to:

(1) an express misrepresentation of a material fact that cannot be characterized as advice, judgment, or opinion;

(2) a failure to disclose information in violation of Section 17.46(b)(24);

(3) an unconscionable action or course of action that cannot be characterized as advice, judgment, or opinion;

(4) breach of an express warranty that cannot be characterized as advice, judgment, or opinion; or.

(5) a violation of Section 17.46(b)(26).

(d) Subsection (c) applies to a cause of action brought against the person who provided the professional service and a cause of action brought against any entity that could be found to be vicariously liable for the person's conduct.

(e) Except as specifically provided by Subsections (b) and (h), Section 17.50, nothing in this subchapter shall apply to a cause of action for bodily injury or death or for the infliction of mental anguish.

(f) Nothing in the subchapter shall apply to a claim arising out of a written contract if:

(1) the contract relates to a transaction, a project, or a set of transactions related to the same project involving total consideration by the consumer of more than $100,000;

(2) in negotiating the contract the consumer is represented by legal counsel who is not directly or indirectly identified, suggested, or selected by the defendant or an agent of the defendant; and

(3) the contract does not involve the consumer's residence.

(g) Nothing in this subchapter shall apply to a cause of action arising from a transaction, a project, or a set of transactions relating to the same project, involving total consideration by the consumer of more than $500,000, other than a cause of action involving a consumer's residence.

(h) A person who violates Section 17.46(b)(26) is jointly and severally liable under that subdivision for actual damages, court costs, and attorney's fees. Subject to Chapter 41, Civil Practice and Remedies Code, exemplary damages may be awarded in the event of fraud or malice.

(i) Nothing in this subchapter shall apply to a claim against a person licensed as a broker or salesperson under Chapter 1101, Occupations Code, arising from an act or omission by the person while acting as a broker or salesperson. This exemption does not apply to:

(1) an express misrepresentation of a material fact that cannot be characterized as advice, judgment, or opinion;

(2) a failure to disclose information in violation of Section 17.46(b)(24); or

(3) an unconscionable action or course of action that cannot be characterized as advice, judgment, or opinion.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1, eff. May 21, 1973. Amended by Acts 1995, 74th Leg., c. 414, § 4, eff. Sept. 1, 1995; Acts 2001, 77th Leg., c. 1229, § 28, eff. June 1, 2002; Acts 2003, 78th Leg., c. 1276, § 4.001(b), eff. Sept. 1, 2003; Acts 2011, 82nd Leg., R.S., c. 189, § 1, eff. May 28, 2011.

Section 2 of Acts 2011, 82nd Leg., R.S., c. 189 provides:

Subsection (i), Section 17.49, Business & Commerce Code, as added by this Act, applies only to a claim arising from an act or omission that occurs on or after the effective date of this Act. A claim arising from an act or omission that occurred before the effective date of this Act is governed by the law in effect on the date the act or omission occurred, and the former law is continued in effect for that purpose.

§ 17.50. Relief for Consumers.

(a) A consumer may maintain an action where any of the following constitute a producing cause of economic damages or damages for mental anguish:

(1) the use or employment by any person of a false, misleading, or deceptive act or practice that is:

(A) specifically enumerated in a subdivision of Subsection (b) of Section 17.46 of this subchapter; and

(B) relied on by a consumer to the consumer's detriment;

(2) breach of an express or implied warranty;

(3) any unconscionable action or course of action by any person; or

(4) the use or employment by any person of an act or practice in violation of Chapter 541, Insurance Code.

(b) In a suit filed under this section, each consumer who prevails may obtain:

(1) the amount of economic damages found by the trier of fact. If the trier of fact finds that the conduct of the defendant was committed knowingly, the consumer may also recover damages for mental anguish, as found by the trier of fact, and the trier of fact may award not more than three times the amount of economic damages; or if the trier of fact finds the conduct was committed intentionally, the consumer may recover damages for mental anguish, as found by the trier of fact, and the trier of fact may award not more than three times the amount of damages for mental anguish and economic damages;

(2) an order enjoining such acts or failure to act;

(3) orders necessary to restore to any party to the suit any money or property, real or personal, which may have been acquired in violation of this subchapter; and

(4) any other relief which the court deems proper, including the appointment of a receiver or the revocation of a license or certificate authorizing a person to engage in business in this state if the judgment has not been satisfied within three months of the date of the final judgment. The court may not revoke or suspend a license to do business in this state or appoint a receiver to take over the affairs of a person who has failed to satisfy a judgment if the person

is a licensee of or regulated by a state agency which has statutory authority to revoke or suspend a license or to appoint a receiver or trustee. Costs and fees of such receivership or other relief shall be assessed against the defendant.

(c) On a finding by the court that an action under this section was groundless in fact or law or brought in bad faith, or brought for the purpose of harassment, the court shall award to the defendant reasonable and necessary attorneys' fees and court costs.

(d) Each consumer who prevails shall be awarded court costs and reasonable and necessary attorneys' fees.

(e) In computing additional damages under Subsection (b), attorneys' fees, costs, and prejudgment interest may not be considered.

(f) A court may not award prejudgment interest applicable to:

(1) damages for future loss under this subchapter; or

(2) additional damages under Subsection (b).

(g) Chapter 41, Civil Practice and Remedies Code, does not apply to a cause of action brought under this subchapter.

(h) Notwithstanding any other provision of this subchapter, if a claimant is granted the right to bring a cause of action under this subchapter by another law, the claimant is not limited to recovery of economic damages only, but may recover any actual damages incurred by the claimant, without regard to whether the conduct of the defendant was committed intentionally. For the purpose of the recovery of damages for a cause of action described by this subsection only, a reference in this subchapter to economic damages means actual damages. In applying Subsection (b)(1) to an award of damages under this subsection, the trier of fact is authorized to award a total of not more than three times actual damages, in accordance with that subsection.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1, eff. May 21, 1973. Amended by Acts 1977, 65th Leg., p. 603, c. 216, § 5, eff. May 23, 1977; Acts 1979, 66th Leg., p. 1329, c. 603, § 4, eff. Aug. 27, 1979; Acts 1989, 71st Leg., c. 380, § 2, eff. Sept. 1, 1989; Acts 1995, 74th Leg., c. 414, § 5, eff. Sept. 1, 1995; Acts 2005, 79th Leg., c. 728, § 11.102, eff. Sept. 1, 2005.

§ 17.50A. Renumbered as § 17.505 by Acts 1987, 70th Leg., c. 167, §5.02(4), eff. Sept. 1, 1987.

§ 17.50B. Renumbered as § 17.505 by Acts 1987, 70th Leg., c. 167, §5.02(4), eff. Sept. 1, 1987.

§ 17.501. Consumer Protection Division Participation in Class Action.

(a) A consumer filing a action under Section 17.50 that is to be maintained as a class action shall send to the consumer protection division:

(1) a copy of the notice required by Section 17.505 (a), by registered or certified mail, at the same time the notice is given to the person complained against; and

(2) a copy of the petition in the action not later than the earlier of :

(A) the 30th day after the date the petition is filed; or

(B) the 10th day before any date of any hearing on class certification or a proposed settlement.

(b) The court shall abate the action for 60 days if the court finds that notice was not provided to the consumer protection division as required by Subsection (a).

(c) The court, on a showing of good cause, may allow the consumer protection division, as representative of the public, to intervene in an action to which this section applies. The consumer protection division shall file its motion for intervention with the court before which the action is pending and serve a copy of the motion on each party to the action.

Added by Acts 2003, 78th Leg., c. 360, § 2, eff. Sept. 1, 2003.

§ 17.505. Notice; Inspection.

(a) As a prerequisite to filing a suit seeking damages under Subdivision (1) of Subsection (b) of Section 17.50 of this subchapter against any person, a consumer shall give written notice to the person at least 60 days before filing the suit advising the person in reasonable detail of the consumer's specific complaint and the amount of economic damages, damages for mental anguish, and expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant. During the 60-day period a written request to inspect, in a reasonable manner and at a reasonable time and place, the goods that are the subject of the consumer's action or claim may be presented to the consumer.

(b) If the giving of 60 days' written notice is rendered impracticable by reason of the necessity of filing suit in order to prevent the expiration of the statute of limitations or if the consumer's claim is asserted by way of counterclaim,

the notice provided for in Subsection (a) of this section is not required, but the tender provided for by Subsection (d), Section 17.506 of this subchapter may be made within 60 days after service of the suit or counterclaim.

(c) A person against whom a suit is pending who does not receive written notice, as required by Subsection (a), may file a plea in abatement not later than the 30th day after the date the person files an original answer in the court in which the suit is pending. This subsection does not apply if Subsection (b) applies.

(d) The court shall abate the suit if the court, after a hearing, finds that the person is entitled to an abatement because notice was not provided as required by this section. A suit is automatically abated without the order of the court beginning on the 11th day after the date a plea in abatement is filed under Subsection (c) if the plea in abatement:

(1) is verified and alleges that the person against whom the suit is pending did not receive the written notice as required by Subsection (a); and

(2) is not controverted by an affidavit filed by the consumer before the 11th day after the date on which the plea in abatement is filed.

(e) An abatement under Subsection (d) continues until the 60th day after the date that written notice is served in compliance with Subsection (a).

Added by Acts 1977, 65th Leg., p. 604, c. 216, § 6, eff. May 23, 1977. Amended by Acts 1979, 66th Leg., p. 1330, c. 603, § 5, eff. Aug. 27, 1979. Renumbered from § 17.50A and amended by Acts 1987, 70th Leg., c. 167, § 5.02(4), (5), eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., c. 380, § 3, eff. Sept. 1, 1989; Acts 1995, 74th Leg., c. 414, § 6, eff. Sept. 1, 1995.

§ 17.5051. Mediation.

(a) A party may, not later than the 90th day after the date of service of a pleading in which relief under this subchapter is sought, file a motion to compel mediation of the dispute in the manner provided by this section.

(b) The court shall, not later than the 30th day after the date a motion under this section is filed, sign an order setting the time and place of the mediation.

(c) If the parties do not agree on a mediator, the court shall appoint the mediator.

(d) Mediation shall be held within 30 days after the date the order is signed, unless the parties agree otherwise or the court determines that additional time, not to exceed an additional 30 days, is warranted.

(e) Except as agreed to by all parties who have appeared in the action, each party who has appeared shall participate in the mediation and, except as provided by Subsection (f), shall share the mediation fee.

(f) A party may not compel mediation under this section if the amount of economic damages claimed is less than $15,000, unless the party seeking to compel mediation agrees to pay the costs of the mediation.

(g) Except as provided in this section, Section 154.023, Civil Practice and Remedies Code, and Subchapters C and D, Chapter 154, Civil Practice and Remedies Code, apply to the appointment of a mediator and to the mediation process provided by this section.

(h) This section does not apply to an action brought by the attorney general under Section 17.47.

Added by Acts 1995, 74th Leg., c. 414, § 7, eff. Sept. 1, 1995.

§ 17.5052. Offers of Settlement.

(a) A person who receives notice under Section 17.505 may tender an offer of settlement at any time during the period beginning on the date the notice is received and ending on the 60th day after that date.

(b) If a mediation under Section 17.5051 is not conducted, the person may tender an offer of settlement at any time during the period beginning on the date an original answer is filed and ending on the 90th day after that date.

(c) If a mediation under Section 17.5051 is conducted, a person against whom a claim under this subchapter is pending may tender an offer of settlement during the period beginning on the day after the date that the mediation ends and ending on the 20th day after that date.

(d) An offer of settlement tendered by a person against whom a claim under this subchapter is pending must include an offer to pay the following amounts of money, separately stated:

(1) an amount of money or other consideration, reduced to its cash value, as settlement of the consumer's claim for damages; and

(2) an amount of money to compensate the consumer for the consumer's reasonable and necessary attorneys' fees incurred as of the date of the offer.

(e) Unless both parts of an offer of settlement required under Subsection (d) are accepted by the consumer not later than the 30th day after the date the offer is made, the offer is rejected.

(f) A settlement offer tendered by a person against whom a claim under this subchapter is pending that complies with this section and that has been rejected by the consumer may be filed with the court with an affidavit certifying its rejection.

(g) If the court finds that the amount tendered in the settlement offer for damages under Subsection (d)(1) is the same as, substantially the same as, or more than the damages found by the trier of fact, the consumer may not recover as damages any amount in excess of the lesser of:

(1) the amount of damages tendered in the settlement offer; or

(2) the amount of damages found by the trier of fact.

(h) If the court makes the finding described by Subsection (g), the court shall determine reasonable and necessary attorneys' fees to compensate the consumer for attorneys' fees incurred before the date and time of the rejected settlement offer. If the court finds that the amount tendered in the settlement offer to compensate the consumer for attorneys' fees under Subsection (d)(2) is the same as, substantially the same as, or more than the amount of reasonable and necessary attorneys' fees incurred by the consumer as of the date of the offer, the consumer may not recover attorneys' fees greater than the amount of fees tendered in the settlement offer.

(i) If the court finds that the offering party could not perform the offer at the time the offer was made or that the offering party substantially misrepresented the cash value of the offer, Subsections (g) and (h) do not apply.

(j) If Subsection (g) does not apply, the court shall award as damages the amount of economic damages and damages for mental anguish found by the trier of fact, subject to Sections 17.50 and 17.501. If Subsection (h) does not apply, the court shall award attorneys' fees as provided by Section 17.50(d).

(k) An offer of settlement is not an admission of engaging in an unlawful act or practice or liability under this subchapter. Except as otherwise provided by this section, an offer or a rejection of an offer may not be offered in evidence at trial for any purpose.

Added by Acts 1995, 74th Leg., c. 414, § 7, eff. Sept. 1, 1995.

§ 17.506. Damages: Defenses.

(a) In an action brought under Section 17.50 of this subchapter, it is a defense to the award of any damages or attorneys' fees if the defendant proves that before consummation of the transaction he gave reasonable and timely written notice to the plaintiff of the defendant's reliance on:

(1) written information relating to the particular goods or service in question obtained from official government records if the written information was false or inaccurate and the defendant did not know and could not reasonably have known of the falsity or inaccuracy of the information;

(2) written information relating to the particular goods or service in question obtained from another source if the information was false or inaccurate and the defendant did not know and could not reasonably have known of the falsity or inaccuracy of the information; or

(3) written information concerning a test required or prescribed by a government agency if the information from the test was false or inaccurate and the defendant did not know and could not reasonably have known of the falsity or inaccuracy of the information.

(b) In asserting a defense under Subdivision (1), (2), or (3) of Subsection (a) of Section 17.506 above, the defendant shall prove the written information was a producing cause of the alleged damage. A finding of one producing cause does not bar recovery if other conduct of the defendant not the subject of a defensive finding under Subdivision (1), (2), or (3) of Subsection (a) of Section 17.506 above was a producing cause of damages of the plaintiff.

(c) In a suit where a defense is asserted under Subdivision (2) of Subsection (a) of Section 17.506 above, suit may be asserted against the third party supplying the written information without regard to privity where the third party knew or should have reasonably foreseen that the information would be provided to a consumer; provided no double recovery may result.

(d) In an action brought under Section 17.50 of this subchapter, it is a defense to a cause of action if the defendant proves that he received notice from the consumer advising the defendant of the nature of the consumer's specific complaint and of the amount of economic damages, damages for mental anguish, and expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant, and that within 30 days after the day on which the defendant received the notice the defendant tendered to the consumer:

(1) the amount of economic damages and damages for mental anguish claimed; and

(2) the expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant.

Added by Acts 1979, 66th Leg., p. 1331, c. 603, § 6, eff. Aug. 27, 1979. Renumbered from § 17.50B and amended by Acts 1987, 70th Leg., c. 167, § 5.02(5), eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., c. 414, § 8, eff. Sept. 1, 1995.

§§ 17.51 to 17.54. Repealed by Act 1977, 65th Leg., p. 605, c. 216, § 10, eff. May 23, 1977.

§ 17.55. Promotional Material.

If damages or civil penalties are assessed against the seller of goods or services for advertisements or promotional material in a suit filed under Section 17.47, 17.48, 17.50, or 17.51 [repealed] of this subchapter, the seller of the goods or services has a cause of action against a third party for the amount of damages or civil penalties assessed against the seller plus attorneys' fees on a showing that:

(1) the seller received the advertisements or promotional material from the third party;

(2) the seller's only action with regard to the advertisements or promotional material was to disseminate the material; and

(3) the seller has ceased disseminating the material.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1, eff. May 21, 1973.

§ 17.55A. Renumbered as § 17.555 by Acts 1987, 70th Leg., c. 167, § 5.02(6), eff. Sept. 1, 1987.

§ 17.555. Indemnity.

A person against whom an action has been brought under this subchapter may seek contribution or indemnity from one who, under the statute law or at common law, may have liability for the damaging event of which the consumer complains. A person seeking indemnity as provided by this section may recover all sums that he is required to pay as a result of the action, his attorney's fees reasonable in relation to the amount of work performed in maintaining his action for indemnity, and his costs.

Added by Acts 1977, 65th Leg., p. 604, c. 216, § 7, eff. May 23, 1977. Renumbered from § 17.55A by Acts 1987, 70th Leg., c. 167, § 5.02(6), eff. Sept. 1, 1987.

§ 17.56. Venue. [Version 1.].

Except as provided by Article 5.06-1(8), Insurance Code, an action brought which alleges a claim to relief under Section 17.50 of this subchapter shall be brought as provided by Chapter 15, Civil Practice and Remedies Code.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1, eff. May 21, 1973. Amended by Acts 1977, 65th Leg., p. 604, c. 216, § 8, eff. May 23, 1977; Acts 1979, 66th Leg., p. 1332, c. 603, § 7, eff. Aug. 27, 1979; Acts 1995, 74th Leg., c. 138, § 7, eff. Aug. 28, 1995.

§ 17.56. Venue. [Version 2.].

An action brought under this subchapter may be brought:

(1) in any county in which venue is proper under Chapter 15, Civil Practice and Remedies Code; or

(2) in a county in which the defendant or an authorized agent of the defendant solicited the transaction made the subject of the action at bar.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1, eff. May 21, 1973. Amended by Acts 1977, 65th Leg., p. 604, c. 216, § 8, eff. May 23, 1977; Acts 1979, 66th Leg., p. 1332, c. 603, § 7, eff. Aug. 27, 1979; Acts 1995, 74th Leg., c. 414, § 9, eff. Sept. 1, 1995.

§ 17.56A. Renumbered as § 17.565 by Acts 1987, 70th Leg., c. 167, § 5.02(7), eff. Sept. 1, 1987.

§ 17.565. Limitation.

All actions brought under this subchapter must be commenced within two years after the date on which the false, misleading, or deceptive act or practice occurred or within two years after the consumer discovered or in the exercise of reasonable diligence should have discovered the occurrence of the false, misleading, or deceptive act or practice. The period of limitation provided in this section may be extended for a period of 180 days if the plaintiff proves that failure timely to commence the action was caused by the defendant's knowingly engaging in conduct solely calculated to induce the plaintiff to refrain from or postpone the commencement of the action.

Added by Acts 1979, 66th Leg., p. 1332, c. 603, § 8, eff. Aug. 27, 1979. Renumbered from § 17.56A by Acts 1987, 70th Leg., c. 167, § 5.02(7), eff. Sept. 1, 1987.

§ 17.57. Subpoenas.

The clerk of a district court at the request of any party to a suit pending in his court which is brought under this subchapter shall issue a subpoena for any witness or witnesses who may be represented to reside within 100 miles of

the courthouse of the county in which the suit is pending or who may be found within such distance at the time of trial. The clerk shall issue a separate subpoena and a copy thereof for each witness subpoenaed. When an action is pending in Travis County on the consent of the parties a subpoena may be issued for any witness or witnesses who may be represented to reside within 100 miles of the courthouse of a county in which the suit could otherwise have been brought or who may be found within such distance at the time of the trial.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1, eff. May 21, 1973.

§ 17.58. Voluntary Compliance.

(a) In the administration of this subchapter the consumer protection division may accept assurance of voluntary compliance with respect to any act or practice which violates this subchapter from any person who is engaging in, has engaged in, or is about to engage in the act or practice. The assurance shall be in writing and shall be filed with and subject to the approval of the district court in the county in which the alleged violator resides or does business or in the district court of Travis County.

(b) The acceptance of an assurance of voluntary compliance may be conditioned on the stipulation that the person in violation of this subchapter restore to any person in interest any money or property, real or personal, which may have been acquired by means of acts or practices which violate this subchapter.

(c) An assurance of voluntary compliance shall not be considered an admission of prior violation of this subchapter. However, unless an assurance has been rescinded by agreement of the parties or voided by a court for good cause, subsequent failure to comply with the terms of an assurance is prima facie evidence of a violation of this subchapter.

(d) Matters closed by the filing of an assurance of voluntary compliance may be reopened at any time. Assurances of voluntary compliance shall in no way affect individual rights of action under this subchapter, except that the rights of individuals with regard to money or property received pursuant to a stipulation in the voluntary compliance under Subsection (b) of this section are governed by the terms of the voluntary compliance.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1, eff. May 21, 1973.

§ 17.59. Post Judgment Relief.

(a) If a money judgment entered under this subchapter is unsatisfied 30 days after it becomes final and if the prevailing party has made a good faith attempt to obtain satisfaction of the judgment, the following presumptions exist with respect to the party against whom the judgment was entered:

(1) that the defendant is insolvent or in danger of becoming insolvent; and

(2) that the defendant's property is in danger of being lost, removed, or otherwise exempted from collection on the judgment; and

(3) that the prevailing party will be materially injured unless a receiver is appointed over the defendant's business; and

(4) that there is no adequate remedy other than receivership available to the prevailing party.

(b) Subject to the provisions of Subsection (a) of this section, a prevailing party may move that the defendant show cause why a receiver should not be appointed. Upon adequate notice and hearing, the court shall appoint a receiver over the defendant's business unless the defendant proves that all of the presumptions set forth in Subsection (a) of this section are not applicable.

(c) The order appointing a receiver must clearly state whether the receiver will have general power to manage and operate the defendant's business or have power to manage only a defendant's finances. The order shall limit the duration of the receivership to such time as the judgment or judgments awarded under this subchapter are paid in full. Where there are judgments against a defendant which have been awarded to more than one plaintiff, the court shall have discretion to take any action necessary to efficiently operate a receivership in order to accomplish the purpose of collecting the judgments.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1, eff. May 21, 1973. Amended by Acts 1977, 65th Leg., p. 604, c. 216, § 9, eff. May 23, 1977.

§ 17.60. Reports and Examinations.

Whenever the consumer protection division has reason to believe that a person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this subchapter, or when it reasonably believes it to be in the public interest to conduct an investigation to ascertain whether any person is engaging in, has engaged in, or is about to engage in any such act or practice, an authorized member of the division may:

(1) require the person to file on the prescribed forms a statement or report in writing, under oath or otherwise, as to all the facts and circumstances concerning the alleged violation and such other data and information as the consumer protection division deems necessary;

(2) examine under oath any person in connection with this alleged violation;

(3) examine any merchandise or sample of merchandise deemed necessary and proper; and

(4) pursuant to an order of the appropriate court, impound any sample of merchandise that is produced in accordance with this subchapter and retain it in the possession of the division until the completion of all proceedings in connection with which the merchandise is produced.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1, eff. May 21, 1973. Amended by Acts 1989, 71st Leg., c. 1082, § 8.02, eff. Jan. 1, 1991; Acts 1991, 72nd Leg., c. 242, § 11.19, eff. Sept. 1, 1991.

§ 17.61. Civil Investigative Demand.

(a) Whenever the consumer protection division believes that any person may be in possession, custody, or control of the original copy of any documentary material relevant to the subject matter of an investigation of a possible violation of this subchapter, an authorized agent of the division may execute in writing and serve on the person a civil investigative demand requiring the person to produce the documentary material and permit inspection and copying.

(b) Each demand shall:

(1) state the statute and section under which the alleged violation is being investigated, and the general subject matter of the investigation;

(2) describe the class or classes of documentary material to be produced with reasonable specificity so as to fairly indicate the material demanded;

(3) prescribe a return date within which the documentary material is to be produced; and

(4) identify the persons authorized by the consumer protection division to whom the documentary material is to be made available for inspection and copying.

(c) A civil investigative demand may contain a requirement or disclosure of documentary material which would be discoverable under the Texas Rules of Civil Procedure.

(d) Service of any demand may be made by:

(1) delivering a duly executed copy of the demand to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of that person;

(2) delivering a duly executed copy of the demand to the principal place of business in the state of the person to be served;

(3) mailing by registered mail or certified mail a duly executed copy of the demand addressed to the person to be served at the principal place of business in this state, or if the person has no place of business in this state, to his principal office or place of business.

(e) Documentary material demanded pursuant to this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at other times and places as may be agreed on by the person served and the consumer protection division.

(f) No documentary material produced pursuant to a demand under this section, unless otherwise ordered by a court for good cause shown, shall be produced for inspection or copying by, nor shall its contents be disclosed to any person other than the authorized employee of the office of the attorney general without the consent of the person who produced the material. The office of the attorney general shall prescribe reasonable terms and conditions allowing the documentary material to be available for inspection and copying by the person who produced the material or any duly authorized representative of that person. The office of the attorney general may use the documentary material or copies of it as it determines necessary in the enforcement of this subchapter, including presentation before any court. Any material which contains trade secrets shall not be presented except with the approval of the court in which the action is pending after adequate notice to the person furnishing the material.

(g) At any time before the return date specified in the demand, or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date for, or to modify or set aside the demand, stating good cause, may be filed in the district court in the county where the parties reside, or a district court of Travis County.

(h) A person on whom a demand is served under this section shall comply with the terms of the demand unless otherwise provided by a court order.

(i) Personal service of a similar investigative demand under this section may be made on any person outside of this state if the person has engaged in conduct in violation of this subchapter. Such persons shall be deemed to have submitted themselves to the jurisdiction of this state within the meaning of this section.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1, eff. May 21, 1973. Amended by Acts 1989, 71st Leg., c. 1082, § 8.03, eff. Jan. 1, 1991; Acts 1991, 72nd Leg., c. 242, § 11.20, eff. Sept. 1, 1991; Acts 2007, 80th Leg., c. 411, § 2, eff. Sept. 1, 2007.

§ 17.62. Penalties.

(a) Any person who, with intent to avoid, evade, or prevent compliance, in whole or in part, with Section 17.60 or 17.61 of this subchapter, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any documentary material or merchandise or sample of merchandise is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $5,000 or by confinement in the county jail for not more than one year, or both.

(b) If a person fails to comply with a directive of the consumer protection division under Section 17.60 of this subchapter or with a civil investigative demand for documentary material served on him under Section 17.61 of this subchapter, or if satisfactory copying or reproduction of the material cannot be done and the person refuses to surrender the material, the consumer protection division may file in the district court in the county in which the person resides, is found, or transacts business, and serve on the person, a petition for an order of the court for enforcement of Sections 17.60 and 17.61 of this subchapter. If the person transacts business in more than one county, the petition shall be filed in the county in which the person maintains his principal place of business, or in another county agreed on by the parties to the petition.

(c) When a petition is filed in the district court in any county under this section, the court shall have jurisdiction to hear and determine the matter presented and to enter any order required to carry into effect the provisions of Sections 17.60 and 17.61 of this subchapter. Any final order entered is subject to appeal to the Texas Supreme Court. Failure to comply with any final order entered under this section is punishable by contempt.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1, eff. May 21, 1973.

§ 17.63. Application.

The provisions of this subchapter apply only to acts or practices occurring after the effective date of this subchapter, except a right of action or power granted to the attorney general under Chapter 10, Title 79, Revised Civil Statutes of Texas, 1925, as amended [R.C.S. art. 5069-10.01 et seq. (repealed)], prior to the effective date of this subchapter.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1, eff. May 21, 1973.

SUBCHAPTER F. GOING OUT OF BUSINESS SALES

§ 17.81. Definition.

In this chapter "going out of business sale" means an offer to sell to the public, or the sale to the public of, goods, wares, and merchandise on the implied or direct representation by written or oral advertising that the sale is in anticipation of the termination of all of the operations of a business at all of its locations in a county and in all of the counties immediately adjacent to that county.

Added by Acts 1985, 69th Leg., c. 172, § 1, eff. Sept. 1, 1985.

§ 17.82. Prohibited Conduct.

(a) A person may not conduct a sale advertised with the phrase "going out of business," "closing out," "shutting doors forever," or "bankruptcy sale"; the word "foreclosure" or "bankruptcy"; or a similar phrase or word indicating that an enterprise is ceasing business unless the business is closing all of its operations in a county and in all of the counties immediately adjacent to that county and follows the procedures required by this subchapter.

(b) A person may not fraudulently represent that the person is conducting a going out of business sale.

Added by Acts 1985, 69th Leg., c. 172, § 1, eff. Sept. 1, 1985.

§ 17.83. Original Inventory.

(a) To conduct a going out of business sale, a person must file an original inventory with the chief appraiser of the appraisal district in which the person's principal place of business in the state is located. The original inventory must be accompanied by a filing fee of $20.

(b) The original inventory must include:

(1) the name and address of the owner of the goods, wares, or merchandise to be sold;

(2) the name and address of the owner of the defunct business, the former stock in trade of which is to be offered for sale, and the full name of the defunct business;

(3) a description of the place where the liquidation sale is to be held;

(4) a statement of the beginning and ending dates of the sale;

(5) a complete and detailed inventory of the goods, wares, and merchandise to be offered on the beginning date of the sale and the total cost of those items; and

(6) a complete and detailed list of the goods, wares, and merchandise to be added to the inventory after the beginning date of the sale and the total cost of those items.

Added by Acts 1985, 69th Leg., c. 172, § 1, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., c. 291, § 1, eff. Sept. 1, 2001.

Section 2 of Acts 2001, 77th Leg., c. 291, provides:

This Act takes effect September 1, 2001, and applies only to a going out of business sale for which an original inventory is filed on or after the effective date of this Act. A going out of business sale for which original inventory is filed before the effective date of this Act is governed by the law in effect on the date that the inventory is filed, and the former law is continued in effect for that purpose.

§ 17.835. Notice of Filing of Original Inventory.

Not later the fifth business day after the date on which a person files an original inventory under Section 17.83, the chief appraiser shall send notice of the filing to the comptroller, the county clerk of the county in which the person's principal place of business in the state is located, and the tax collector for each of the taxing units that tax the property described in the original inventory.

Added by Acts 2001, 77th Leg., c. 291, § 2, eff. Sept. 1, 2001.

Section 2 of Acts 2001, 77th Leg., c. 291, provides:

This Act takes effect September 1, 2001, and applies only to a going out of business sale for which an original inventory is filed on or after the effective date of this Act. A going out of business sale for which original inventory is filed before the effective date of this Act is governed by the law in effect on the date that the inventory is filed, and the former law is continued in effect for that purpose.

§ 17.84. Permit.

(a) After receiving an original inventory, the chief appraiser shall issue to the applicant a permit for a going out of business sale. The permit is valid for 120 days after the day that it is issued and is not renewable.

(b) The permit holder must post the permit in a conspicuous place at the location of the going out of business sale.

(c) Before advertising a going out of business sale, the permit holder shall deliver a copy of the permit to the person publishing or broadcasting the advertisement.

Added by Acts 1985, 69th Leg., c. 172, § 1, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., c. 291, § 3, eff. Sept. 1, 2001.

Section 2 of Acts 2001, 77th Leg., c. 291, provides:

This Act takes effect September 1, 2001, and applies only to a going out of business sale for which an original inventory is filed on or after the effective date of this Act. A going out of business sale for which original inventory is filed before the effective date of this Act is governed by the law in effect on the date that the inventory is filed, and the former law is continued in effect for that purpose.

§ 17.85. Deadline for Orders.

A person may not sell an item at a going out of business sale if the person ordered the item after the beginning date of the sale.

Added by Acts 1985, 69th Leg., c. 172, § 1, eff. Sept. 1, 1985.

§ 17.86. Sale Inventory.

Before the end of each 30-day period during the going out of business sale the permit holder shall file with the chief appraiser a sale inventory containing a complete and detailed list of the goods, wares, and merchandise listed in the original inventory that have not been sold before the date that the sale inventory is filed. A sale inventory must list items offered on the beginning date of the sale separately from the items added to the sale inventory after that date.

Added by Acts 1985, 69th Leg., c. 172, § 1, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., c. 291, § 4, eff. Sept. 1, 2001.

Section 2 of Acts 2001, 77th Leg., c. 291, provides:

This Act takes effect September 1, 2001, and applies only to a going out of business sale for which an original inventory is filed on or after the effective date of this Act. A going out of business sale for which original inventory is filed before the effective date of this Act is governed by the law in effect on the date that the inventory is filed, and the former law is continued in effect for that purpose.

§ 17.87. Final Inventory.

Within 30 days after the day that the going out of business sale ends, the permit holder shall file with the chief appraiser a final inventory. The final inventory must include:

(1) The name and address of the permit holder;

(2) a statement of the disposition of the items listed in the original inventory that were not sold during the going out of business sale and the name and address of any person purchasing those items after the ending date of the sale; and

(3) a description of the place where the sale was held.

Added by Acts 1985, 69th Leg., c. 172, § 1, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., c. 291, § 5, eff. Sept. 1, 2001.

Section 2 of Acts 2001, 77th Leg., c. 291, provides:

This Act takes effect September 1, 2001, and applies only to a going out of business sale for which an original inventory is filed on or after the effective date of this Act. A going out of business sale for which original inventory is filed before the effective date of this Act is governed by the law in effect on the date that the inventory is filed, and the former law is continued in effect for that purpose.

§ 17.88. Disposition of Sale Items.

After a permit expires, the permit holder may not sell at retail an item offered at the sale covered by the permit.

Added by Acts 1985, 69th Leg., c. 172, § 1, eff. Sept. 1, 1985.

§ 17.89. Later Sales.

A person may not conduct a going out of business sale beginning within two years after the ending date of the most recent going out of business sale conducted by the person.

Added by Acts 1985, 69th Leg., c. 172, § 1, eff. Sept. 1, 1985.

§ 17.90. Form of Inventory.

An inventory filed under this subchapter must be in the form of a sworn affidavit.

Added by Acts 1985, 69th Leg., c. 172, § 1, eff. Sept. 1, 1985.

§ 17.91. Exceptions.

This subchapter does not apply to:

(1) a sale conducted by a public officer as part of the officer's official duties;

(2) a sale for which an accounting must be made to a court of law;

(3) a sale conducted pursuant to an order of a court; or

(4) a foreclosure sale pursuant to a deed of trust or other lien.

Added by Acts 1985, 69th Leg., c. 172, § 1, eff. Sept. 1, 1985.

§ 17.92. Penalty.

(a) A person commits an offense if the person:

(1) conducts a sale in violation of Section 17.82 of this code;

(2) conducts a going out of business sale without a valid permit issued under Section 17.84 of this code;

(3) sells an item at a going out of business sale in violation of Section 17.85 of this code;

(4) fails to file an inventory required by Section 17.86 or 17.87 of this code; or

(5) sells an item at retail in violation of Section 17.88 of this code.

(b) An offense under this section is a Class A misdemeanor.

(c) Each day of violation constitutes a separate offense.

Added by Acts 1985, 69th Leg., c. 172, § 1, eff. Sept. 1, 1985.

§ 17.93. Injunction.

The attorney general may bring an action to enjoin a violation of this subchapter.

Added by Acts 1985, 69th Leg., c. 172, § 1, eff. Sept. 1, 1985.

SUBCHAPTER G. LABELING, ADVERTISING, AND SALE OF KOSHER FOODS

§ 17.821. Definitions.

In this chapter:

(1) "Kosher food" means food prepared and served in conformity with orthodox Jewish religious requirements.

(2) "Label" means a display of written, printed, or graphic matter on the immediate article or container of any food product.

(3) "Person" includes an individual, corporation, or association.

(4) "Restaurant" means a place where food is sold for on-premises consumption.

(5) "Retail store" means any retail grocery store, delicatessen, butcher shop, or other place where food is sold for off-premises consumption.

(6) "Sell" means to offer for sale, expose for sale, have in possession for sale, convey, exchange, barter, or trade.

Added by Acts 1985, 69th Leg., c. 117, § 8(a), eff. Sept. 1, 1985.

§ 17.822. Meat Labeling.

(a) If a person sells both kosher meat and nonkosher meat in the same retail store, the person shall clearly label each portion of kosher meat with the word "kosher." If unwrapped or unpackaged meat products are displayed for sale, the display case or container in which the meat is displayed must be clearly labeled with the word "kosher" or "nonkosher," as applicable.

(b) A person commits an offense if the person is required to label meat in accordance with this section and the person knowingly sells meat that is not labeled as provided in this section.

Added by Acts 1985, 69th Leg., c. 117, § 8(a), eff. Sept. 1, 1985.

§ 17.823. Sale of Nonkosher Food.

A person commits an offense if the person knowingly or intentionally sells at a restaurant or a retail store a food product that is represented as kosher food and is not kosher food and the person either knows the food is not kosher food or was reckless about determining whether or not the food is kosher food.

Added by Acts 1985, 69th Leg., c. 117, § 8(a), eff. Sept. 1, 1985.

§ 17.824. Exception.

It is an exception to the application of Subsection (b) of Section 17.822 or Section 17.823 of this code that a person describes or labels food as "kosher-style," and, if the description is written, the words "kosher" and "style" are of the same size type or script.

Added by Acts 1985, 69th Leg., c. 117, § 8(a), eff. Sept. 1, 1985.

§ 17.825. Civil Remedy.

A consumer aggrieved by a violation of this chapter may maintain a cause of action for damages in accordance with Section 17.50 of this code.

Added by Acts 1985, 69th Leg., c. 117, § 8(a), eff. Sept. 1, 1985.

§ 17.826. Penalty.

An offense under this chapter is punishable by the fine imposed for an offense under Subsection (d) of Section 17.12 of this code.

Added by Acts 1985, 69th Leg., c. 117, § 8(a), eff. Sept. 1, 1985.

SUBCHAPTER H. SALE OF INDIAN ARTICLES

§ 17.851. Definitions.

In this subchapter:

(1) "American Indian" or "Indian" means an individual who is an enrolled member of a federally or state recognized American Indian tribe, band, nation, rancheria, or pueblo or who is an Alaska Native and a member of an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. § 1601 et seq.).

(2) "Authentic Indian arts and crafts" means any product that:

(A) is Indian handcrafted; and

(B) is not made by machine or from unnatural materials, except stabilized or treated turquoise.

(3) "Nonauthentic Indian arts and crafts" means any product that is made to imitate or resemble authentic Indian arts and crafts and that:

(A) is not Indian handcrafted; or

(B) is made by machine or from unnatural materials, except stabilized or treated turquoise.

(4) "Indian handcrafted" means the skillful and expert use of the hands in making products solely by Indians within the United States, including the use of findings and hand tools and equipment for buffing, polishing, grinding, drilling, or sewing.

(5) "Made by machine" means the producing or reproducing of a product in mass production by mechanically stamping, casting, blanking, or weaving.

(6) "Findings" means an ingredient that adapts the product of which it is a part for wearing or display, including ceramic, glass, or silver beads, leather backing, binding material, bolo tie clips, tie bar clips, tie tac pins, earring pins, earring clips, earring screw backs, cuff link toggles, money clips, pin stems, combs, and chains.

(7) "Turquoise" means a hydrous copper sulphate containing aluminum salts plus iron.

(8) "Natural turquoise" means turquoise, exclusive of any backing material, the composition of which has not been chemically or otherwise altered.

(9) "Stabilized turquoise" means turquoise, excluding any backing material, that has been chemically hardened, but not adulterated so as to change the color of the natural mineral.

(10) "Treated turquoise" means turquoise, excluding any backing material, that has been altered to produce a change in the coloration of the natural mineral.

(11) "Simulated turquoise" means:

(A) reconstituted turquoise, which is turquoise dust or particles that are mixed with plastic resins and are compressed into a solid form so as to resemble natural turquoise; or

(B) imitation turquoise, which is any compound or mineral that is manufactured or treated so as to closely approximate turquoise in appearance.

Added by Acts 1989, 71st Leg., c. 897, § 1, eff. Aug. 28, 1989.

§ 17.852. Inquiry as to Producer.

(a) Each person selling or offering for sale authentic or nonauthentic Indian arts and crafts shall request the suppliers of those arts and crafts to disclose the methods used in producing those arts and crafts and to determine whether those arts and crafts are in fact authentic Indian arts and crafts.

(b) Each person selling or offering for sale turquoise shall request the suppliers of the turquoise to disclose the true nature of the turquoise.

Added by Acts 1989, 71st Leg., c. 897, § 1, eff. Aug. 28, 1989.

§ 17.853. Unlawful Acts.

A person may not:

(1) sell or offer for sale a product represented to be authentic Indian arts and crafts unless the product is in fact authentic Indian arts and crafts;

(2) sell or offer for sale any authentic Indian arts and crafts or nonauthentic Indian arts and crafts represented to be made of silver unless the product is made of coin silver or sterling silver;

(3) sell or offer for sale a product that is nonauthentic Indian arts and crafts unless the product is clearly labeled as to any characteristics that make it nonauthentic;

(4) sell or offer for sale any turquoise, mounted or unmounted, without a disclosure of the true nature of the turquoise; or

(5) sell or offer for sale art represented to be by an American Indian unless it is in fact produced by an American Indian.

Added by Acts 1989, 71st Leg., c. 897, § 1, eff. Aug. 28, 1989.

§ 17.854. Penalty.

A person who violates this subchapter commits an offense. An offense under this section is a Class B misdemeanor.

Added by Acts 1989, 71st Leg., c. 897, § 1, eff. Aug. 28, 1989.

SUBCHAPTER I. LABELING, ADVERTISING, AND SALE OF HALAL FOODS

§ 17.881. Definitions.

(1) "Halal," as applied to food, means food prepared and served in conformity with Islamic religious requirements according to a recognized Islamic authority.

(2) "Label" means a display of written, printed, or graphic matter on the immediate article or container of any food product.

(3) "Person" includes an individual, corporation, or association.

(4) "Restaurant" means a place where food is sold for on-premise consumption.

(5) "Retail store" means a retail grocery store, delicatessen, butcher shop, or other place where food is sold for off-premises consumption.

(6) "Sell" means to offer for sale, expose for sale, have in possession for sale, convey, exchange, barter, or trade.

Added by Acts 2003, 78th Leg., c. 1013, § 1, eff. Sept. 1, 2003.

§ 17.882. Meat Labeling.

(a) If a person sells both halal meat and nonhalal meat in the same retail store, the person shall clearly label each portion of halal meat with the word "halal." If an unwrapped or unpackaged meat product is displayed for sale, the display case or container in which the meat is displayed must be clearly labeled with the word "halal" or "nonhalal," as applicable.

(b) A person commits an offense if the person is required to label meat in accordance with this section and the person knowingly sells the meat that is not labeled as provided in this section.

Added by Acts 2003, 78th Leg., c. 1013, § 1, eff. Sept. 1, 2003.

§ 17.883. Sale of Nonhalal Food.

A person commits an offense if the person knowingly or intentionally sells at a restaurant or a retail store a food product that is represented as halal food and is not halal food and the person either knows the food is not halal food or was reckless about determining whether or not the food is halal food.

Added by Acts 2003, 78th Leg., c. 1013, § 1, eff. Sept. 1, 2003.

§ 17.884. Civil Remedy.

A consumer aggrieved by a violation of this subchapter may maintain a cause of action for damages in accordance with Section 17.50.

Added by Acts 2003, 78th Leg., c. 1013, § 1, eff. Sept. 1, 2003.

§ 17.885. Criminal Penalty.

An offense under this subchapter is punishable by the fine imposed for an offense under Section 17.12(d).

Added by Acts 2003, 78th Leg., c. 1013, § 1, eff. Sept. 1, 2003.

SUBCHAPTER J. PROTECTION FROM MISLEADING OR DECEPTIVE LIVE MUSICAL PERFORMANCES

§ 17.901. Definitions.

In this subchapter:

(1) "Performing musical group" means a vocal or instrumental group seeking to engage in a live musical performance.

(2) "Recording group" means a vocal or instrumental group of which one or more members:

(A) has released a sound recording under that group's name for commercial purposes; and

(B) has a legal right to use or operate under the group's name without abandoning the name or affiliation with the group.

(3) "Sound recording" means musical, spoken, or other sounds recorded on a tangible medium, including a disc, tape, or phonograph record.

Added by Acts 2007, 80th Leg., c. 595, § 1, eff. Sept. 1, 2007.

§ 17.902. Unauthorized Advertisement, Promotion, or Conduction of Certain Live Musical Performances.

A person may not advertise, promote, or conduct a live musical performance in this state through the use of a false, deceptive, or misleading affiliation, connection, or association between a recording group and a performing musical group. An act is not considered a violation of this section if:

(1) the performing musical group is the authorized registrant and owner of a federal service mark for the recording group that is registered in the United States Patent and Trademark Office;

(2) at least one member of the performing musical group is or was a member of the recording group and that member has a legal right to use or operate under the name of the recording group without abandoning the name or affiliation with the recording group;

(3) the live musical performance is identified in all advertisements or other promotions for the event as being conducted as a "salute" or "tribute" to the recording group;

(4) the advertisement or promotion relates to a live musical performance that is to take place outside of this state; or

(5) the live musical performance is expressly authorized by each member of the recording group.

Added by Acts 2007, 80th Leg., c. 595, § 1, eff. Sept. 1, 2007.

§ 17.903. Injunction; Restitution.

(a) If the attorney general has reason to believe that a person is engaging in, has engaged in, or is about to engage in an act or practice that violates Section 17.902, and that proceedings would be in the public interest, the attorney general may bring an action in the name of the state against the person to restrain that act or practice by temporary or permanent injunction.

(b) The prosecuting attorney in the county in which a violation of Section 17.902 occurs, with prior written notice to the attorney general, may institute and prosecute an action seeking injunctive relief under this section. The prosecuting attorney shall make a full report to the attorney general regarding any action prosecuted by the prosecuting attorney under this subsection. The report must include a statement regarding the final disposition of the matter.

(c) When a court issues a permanent injunction to restrain and prevent a violation of Section 17.902, the court may make additional orders or judgments as necessary to restore money or other property that may have been acquired because of a violation of this subchapter.

Added by Acts 2007, 80th Leg., c. 595, § 1, eff. Sept. 1, 2007.

§ 17.904. Civil Penalty.

(a) A person who violates Section 17.902 is liable to the state for a civil penalty of not less than $5,000 or more than $15,000 for each violation. Each performance that violates Section 17.902 constitutes a separate violation.

(b) The attorney general or the prosecuting attorney in the county in which a violation occurs may bring suit to recover the civil penalty imposed under Subsection (a).

(c) The civil penalty provided by this section is in addition to injunctive relief or any other remedy that may be granted under Section 17.903.

Added by Acts 2007, 80th Leg., c. 595, § 1, eff. Sept. 1, 2007.

SUBCHAPTER K. REGULATING THE COLLECTION OR SOLICITATION BY FOR-PROFIT ENTITIES OF CERTAIN PUBLIC DONATIONS

§ 17.921. Defintions.

In this subchapter:

(1) "Charitable organization" means an organization that is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c) of that code.

(2) "For-profit entity" has the meaning assigned by Section 1.002, Business Organizations Code.

(3) "Household goods" mean furniture, furnishings, or personal effects used or for use in a dwelling.

(4) "Public donations receptacle" means a large container or bin in a parking lot or public place that is intended for use as a collection point for clothing or household goods donated by the public.

Added by Acts 2009, 81st Leg., R.S., c. 1368, § 1, eff. Sept. 1, 2009.

§ 17.922. Required Disclosure for Collections Through Public Receptacle.

(a) A for-profit entity or individual may not use a public donations receptacle to collect donated clothing or household goods and subsequently sell the donated items unless the for-profit entity or individual attaches to the receptacle a notice that:

(1) is permanently and prominently displayed on the front and at least one side of the receptacle;

(2) is in bold print, with letters at least two inches in height and one inch in width;

(3) contains the business address, other than a post office box number, and telephone number of the for-profit entity or individual; and

(4) contains the appropriate disclosure prescribed by this section in English and Spanish.

(b) If none of the proceeds from the sale of the donated items will be given to a charitable organization, the disclosure required by Subsection (a)(4) must state:

"DONATIONS ARE NOT FOR CHARITABLE ORGANIZATIONS AND WILL BE SOLD FOR PROFIT."

(c) If any of the proceeds from the sale of the donated items will be given to a charitable organization, the disclosure required by Subsection (a)(4) must state:

"DONATIONS ARE TO (NAME OF FOR-PROFIT ENTITY OR INDIVIDUAL) AND WILL BE SOLD FOR PROFIT. ____ PERCENT (INSERT PERCENTAGE) OF ALL PROCEEDS WILL BE DONATED TO (NAME OF CHARITABLE ORGANIZATION)."

(d) If the for-profit entity or individual pays to a charitable organization a flat fee that is not contingent on the proceeds generated from the sale of the donated items and the for-profit entity or individual retains a percentage of the proceeds from the sale, the disclosure required by Subsection (a)(4) must state:

"THIS DONATION RECEPTACLE IS OPERATED BY (NAME OF FOR-PROFIT ENTITY OR INDIVIDUAL) ON BEHALF OF (NAME OF CHARITABLE ORGANIZATION). Donations are sold for profit by (name of for-profit entity or individual) and a flat fee of (insert amount) is paid to (name of charitable organization)."

Added by Acts 2009, 81st Leg., R.S., c. 1368, § 1, eff. Sept. 1, 2009.

§ 17.923. Required Disclosures for Telephone or Door-to-Door Solicitations.

(a) A for-profit entity or individual who makes, or directs another person to make, a telephone or door-to-door solicitation requesting that the person solicited donate clothing or household goods may not subsequently sell the donated items unless the solicitor provides to each person solicited, before accepting a donation from the person, the appropriate disclaimer prescribed by this section.

(b) If none of the proceeds from the sale of the donated items will be given to a charitable organization, the solicitor must state:

"DONATIONS ARE NOT FOR CHARITABLE ORGANIZATIONS AND WILL BE SOLD FOR PROFIT."

(c) If any of the proceeds from the sale of the donated items will be given to a charitable organization, the solicitor must state:

"DONATIONS TO (NAME OF FOR-PROFIT ENTITY OR INDIVIDUAL) WILL BE SOLD FOR PROFIT AND ____ PERCENT (INSERT PERCENTAGE) OF ALL PROCEEDS WILL BE DONATED TO (NAME OF CHARITABLE ORGANIZATION)."

(d) If the for-profit entity or individual pays to a charitable organization a flat fee that is not contingent on the proceeds generated from the sale of the donated items and the for-profit entity or individual retains a percentage of the proceeds from the sale, the solicitor must state:

"SOLICITATIONS FOR DONATIONS ARE MADE BY (NAME OF FOR-PROFIT ENTITY OR INDIVIDUAL) ON BEHALF OF (NAME OF CHARITABLE ORGANIZATION). Donations will be sold for profit by (name of for-profit entity or individual) and a flat fee of (insert amount) is paid to (name of charitable organization)."

Added by Acts 2009, 81st Leg., R.S., c. 1368, § 1, eff. Sept. 1, 2009.

§ 17.924. Required Disclosures for Mail Solicitations.

(a) A for-profit entity or individual who mails, or directs another person to mail, a solicitation requesting that the recipient donate clothing or household goods may not subsequently sell the donated items unless the solicitor includes with the mailed solicitation the appropriate disclosure prescribed by this section, prominently displayed in boldfaced type or capital letters in English and Spanish.

(b) If none of the proceeds from the sale of the donated items will be given to a charitable organization, the disclosure required by Subsection (a) must state:

"DONATIONS ARE NOT FOR CHARITABLE ORGANIZATIONS AND WILL BE SOLD FOR PROFIT."

(c) If any of the proceeds from the sale of the donated items will be given to a charitable organization, the disclosure required by Subsection (a) must state:

"DONATIONS TO (NAME OF FOR-PROFIT ENTITY OR INDIVIDUAL) WILL BE SOLD FOR PROFIT AND _____ PERCENT (INSERT PERCENTAGE) OF ALL PROCEEDS WILL BE DONATED TO (NAME OF CHARITABLE ORGANIZATION)."

(d) If the for-profit entity or individual pays to a charitable organization a flat fee that is not contingent on the proceeds generated from the sale of the donated items and the for-profit entity or individual retains a percentage of the proceeds from the sale, the disclosure required by Subsection (a) must state:

"SOLICITATIONS FOR DONATIONS ARE MADE BY (NAME OF FOR-PROFIT ENTITY OR INDIVIDUAL) ON BEHALF OF (NAME OF CHARITABLE ORGANIZATION). Donations will be sold for profit by (name of for-profit entity or individual) and a flat fee of (insert amount) is paid to (name of charitable organization)."

Added by Acts 2009, 81st Leg., R.S., c. 1368, § 1, eff. Sept. 1, 2009.

§ 17.925. Local Ordinance or Regulation.

Nothing in this subchapter shall be construed to limit the authority of a local government to adopt an ordinance or regulation relating to the use of public donations receptacles as a collection point for donated clothing or household goods if the ordinance or regulation is compatible with and equal to or more stringent than a requirement prescribed by this subchapter.

Added by Acts 2009, 81st Leg., R.S., c. 1368, § 1, eff. Sept. 1, 2009.

§ 17.926. Civil Penalty.

(a) Except as provided by Subsection (b), a person who violates this subchapter is liable to this state for a civil penalty in an amount not to exceed $500 for each violation. Each sale of a donated item is considered a separate violation for purposes of this subsection.

(b) The total amount of penalties that may be imposed under Subsection (a) may not exceed $2,000 for donated items sold during a single transaction.

(c) In determining the amount of the civil penalty imposed under this section, the court shall consider the amount necessary to deter future violations.

(d) The attorney general or the prosecuting attorney in the county in which the violation occurs may bring an action to recover the civil penalty imposed under this section. In this subsection, "prosecuting attorney" has the meaning assigned by Section 41.101, Government Code.

Added by Acts 2009, 81st Leg., R.S., c. 1368, § 1, eff. Sept. 1, 2009.

b. Pre-1995 Version

Texas Business & Commerce Code

CHAPTER 17. DECEPTIVE TRADE PRACTICES—CONSUMER PROTECTION ACT

SUBCHAPTER E. DECEPTIVE TRADE PRACTICES AND CONSUMER PROTECTION

§ 17.41. Short Title.

This subchapter may be cited as the Deceptive Trade Practices—Consumer Protection Act.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1 eff. May 21, 1973.

Section 2 of Acts 1973, 63rd Leg., p. 322, c. 143 amended Tex. Ins. Code, article 21.21. § 3 repealed Vernon's Ann.Civ.St. arts. 5069-10.01 to 5069-10.08.

Section 4 of Acts 1973, 63rd Leg., p. 322, c. 143, provides:

If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

§ 17.42. Waivers: Public Policy.

(a) Any waiver by a consumer of the provisions of this subchapter is contrary to public policy and is unenforceable and void; provided, however, that a waiver is valid and enforceable if a defendant is an action or claim under this subchapter pleads and proves:

(1) the consumer is not in a significantly disparate bargaining position;

(2) the consumer is represented by legal counsel in seeking or acquiring goods or services, other than the purchase or lease of a family residence occupied as the consumer's residence, by a purchase or a lease for a consideration paid or to be paid that exceeds $500,000; and

(3) the consumer waives all or part of this subchapter, other than Section 17.555, by an express provision in a written contract signed by both the consumer and the consumer's legal counsel; and provided, however, that a business consumer with assets of $5 million or more according to the most recent financial statement of the business consumer prepared in accordance with generally accepted accounting principles that has knowledge and experience in financial and business matters that enable it to evaluate the merits and risks of a transaction and that is not in a significantly disparate bargaining position may by written contract waive the provisions of this subchapter, other than Section 17.555.

(b) The existence or absence of a disparate bargaining position may not be established as a matter of law solely by evidence of the consumer's financial position relative to other parties to the contract or by matters contained in a written contract relating to the relative bargaining position of the parties.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1 eff. May 21, 1973. Amended by Acts 1981, 67th Leg., p. 863, c. 307, § 1 eff. Aug. 31, 1981; Acts 1983, 68th Leg., p. 4943, c. 883, § 1 eff. Aug. 29, 1983; Acts 1987, 70th Leg., c. 167, § 5.02(6) eff. Sept. 1, 1987; Acts 1989, 71st Leg., c. 380, § 1 eff. Sept. 1, 1989.

Section 6 of Acts 1989, 71st Leg., c. 380, provides:

(a) This Act applies to all actions or claims commenced on or after the effective date of this Act.

(b) An action or claim commenced before the effective date of this Act is governed with respect to the specific subject matters of this Act by the applicable law in effect before the effective date of this Act, and that prior law is continued n effect only for that purpose."

(c) In an action, claim, or suit n which a statute requires written notice to be given before the filing or bringing of the action, claim, or suit, personally delivering or depositing the notice, postage prepaid, in the United States mail before the effective date of this Act is considered filing or bringing the action before the effective date of this Act, if the suit is formally filed or otherwise brought within 120 days after the date of the delivery or mailing.

§ 17.43. Cumulative Remedies.

The provisions of this subchapter are not exclusive. The remedies provided in this subchapter are in addition to any other procedures or remedies provided for in any other law; provided, however, that no recovery shall be permitted under both this subchapter and another law of both actual damages and penalties for the same act or practice. A violation of a provision of law other than this subchapter is not in and of itself a violation of this subchapter. An act or practice that is a violation of a provision of law other than this subchapter may be made the basis of an action under this subchapter if the act or practice is proscribed by a provision of this subchapter or is declared by such other law to

be actionable under this subchapter. The provisions of this subchapter do not in any way preclude other political subdivisions of this state from dealing with deceptive trade practices.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1 eff. May 21, 1973. Amended by Acts 1979, 66th Leg., p. 1327, c. 603, § 1 eff. Aug. 27, 1979.

§ 17.44. Construction and Application.

This subchapter shall be liberally construed and applied to promote its underlying purposes, which are to protect consumers against false, misleading, and deceptive business practices, unconscionable actions, and breaches of warranty and to provide efficient and economical procedures to secure such protection.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1 eff. May 21, 1973.

§ 17.45. Definitions.

As used in this subchapter:

(1) "Goods" means tangible chattels or real property purchased or leased for use.

(2) "Services" means work, labor, or service purchased or leased for use, including services furnished in connection with the sale or repair of goods.

(3) "Person" means an individual, partnership, corporation, association, or other group, however organized.

(4) "Consumer" means an individual, partnership, corporation, this state, or a subdivision or agency of this state who seeks or acquires by purchase or lease, any goods or services, except that the term does not include a business consumer that has assets of $25 million or more, or that is owned or controlled by a corporation or entity with assets of $25 million or more.

(5) "Unconscionable action or course of action" means an act or practice which, to a person's detriment:

(A) takes advantage of the lack of knowledge, ability, experience, or capacity of a person to a grossly unfair degree; or

(B) results in a gross disparity between the value received and consideration paid, in a transaction involving transfer of consideration.

(6) "Trade" and "commerce" mean the advertising, offering for sale, sale, lease, or distribution of any good or service, of any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value, wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this state.

(7) "Documentary material" includes the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated.

(8) "Consumer protection division" means the antitrust and consumer protection division of the attorney general's office.

(9) "Knowingly" means actual awareness of the falsity, deception, or unfairness of the act or practice giving rise to the consumer's claim or, in an action brought under Subdivision (2) of Subsection (a) of Section 17.50, actual awareness of the act or practice constituting the breach of warranty, but actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

(10) "Business consumer" means an individual, partnership, or corporation who seeks or acquires by purchase or lease, any goods or services for commercial or business use. The term does not include this state or a subdivision or agency of this state.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1 eff. May 21, 1973. Amended by Acts 1975, 64th Leg., p. 149, c. 62, § 1 eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 600, c. 216, § 1 eff. May 23, 1977; Acts 1979, 66th Leg., p. 1327, c. 603, § 2 eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 4943, c. 883, §§ 2, 3 eff. Aug. 29, 1983.

§ 17.46. Deceptive Trade Practices Unlawful.

(a) False, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful and are subject to action by the consumer protection division under Sections 17.47, 17.58, 17.60, and 17.61 of this code.

(b) Except as provided in Subsection (d) of this section, the term "false, misleading, or deceptive acts or practices" includes, but is not limited to, the following acts:

(1) passing off goods or services as those of another;

(2) causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(3) causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another;

(4) using deceptive representations or designations of geographic origin in connection with goods or services;

(5) representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he does not;

(6) representing that goods are original or new if they are deteriorated, reconditioned, reclaimed, used, or secondhand;

(7) representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(8) disparaging the goods, services, or business of another by false or misleading representation of facts;

(9) advertising goods or services with intent not to sell them as advertised;

(10) advertising goods or services with intent not to supply a reasonable expectable public demand, unless the advertisements disclosed a limitation of quantity;

(11) making false or misleading statements of fact concerning the reasons for, existence of, or amount of price reductions;

(12) representing that an agreement confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;

(13) knowingly making false or misleading statements of fact concerning the need for parts, replacement, or repair service;

(14) misrepresenting the authority of a salesman, representative or agent to negotiate the final terms of a consumer transaction;

(15) basing a charge for the repair of any item in whole or in part on a guaranty or warranty instead of on the value of the actual repairs made or work to be performed on the item without stating separately the charges for the work and the charge for the warranty or guaranty, if any;

(16) disconnecting, turning back, or resetting the odometer of any motor vehicle so as to reduce the number of miles indicated on the odometer gauge;

(17) advertising of any sale by fraudulently representing that a person is going out of business;

(18) using or employing a chain referral sales plan in connection with the sale or offer to sell of goods, merchandise, or anything of value, which uses the sales technique, plan, arrangement, or agreement in which the buyer or prospective buyer is offered the opportunity to purchase merchandise or goods and in connection with the purchase receives the seller's promise or representation that the buyer shall have the right to receive compensation or consideration in any form for furnishing to the seller the names of other prospective buyers if receipt of the compensation or consideration is contingent upon the occurrence of an event subsequent to the time the buyer purchases the merchandise or goods;

(19) representing that a guarantee or warranty confers or involves rights or remedies which it does not have or involve, provided, however, that nothing in this subchapter shall be construed to expand the implied warranty of merchantability as defined in Sections 2.314 through 2.318 and Sections 2A.212 through 2A.216 of the Business & Commerce Code to involve obligations in excess of those which are appropriate to the goods;

(20) selling or offering to sell, either directly or associated with the sale of goods or services, a right of participation in a multi-level distributorship. As used herein, "multi-level distributorship" means a sales plan for the distribution of goods or services in which promises of rebate or payment are made to individuals, conditioned upon those individuals recommending or securing additional individuals to assume positions in the sales operation, and where the rebate or payment is not exclusively conditioned on or in relation to proceeds from the retail sales of goods;

(21) representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts replaced;

(22) filing suit founded upon a written contractual obligation of and signed by the defendant to pay money arising out of or based on a consumer transaction for goods, services, loans, or extensions of credit intended primarily for personal, family, household, or agricultural use in any county other than in the county in which the defendant resides at the time of the commencement of the action or in the county in which the defendant in fact signed the contract; provided, however, that a violation of this subsection shall not occur where it is shown by the person filing such suit he neither knew or had reason to know that the county in which such suit was filed was neither the county in which the defendant resides at the commencement of the suit nor the county in which the defendant in fact signed the contract;

(23) the failure to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction into which the consumer would not have entered had the information been disclosed; or

(24) using the term "corporation," "incorporated," or an abbreviation of either of those terms in the name of a business entity that is not incorporated under the laws of this state or another jurisdiction.

(c)(1) It is the intent of the legislature that in construing Subsection (a) of this section in suits brought under Section 17.47 of this subchapter the courts to the extent possible will be guided by Subsection (b) of this section and the interpretations given by the Federal Trade Commission and federal courts to Section 5(a)(1) of the Federal Trade Commission Act [15 U.S.C.A. § 45(a)(1)].

(2) In construing this subchapter the court shall not be prohibited from considering relevant and pertinent decisions of courts in other jurisdictions.

(d) For the purposes of the relief authorized in Subdivision (1) of Subsection (a) of Section 17.50 of this subchapter, the term "false, misleading, or deceptive acts or practices" is limited to the acts enumerated in specific subdivisions of Subsection (b) of this section.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1 eff. May 21, 1973. Amended by Acts 1977, 65th Leg., p. 601, c. 216, §§ 2, 3 eff. May 23, 1977; Acts 1977, 65th Leg., R. S., p. 892, c. 336, § 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1327, c. 603, § 3 eff. Aug. 27, 1979; Acts 1987, 70th Leg., c. 280, § 1 eff. Sept. 1, 1987. Acts 1993, 73rd Leg., c. 570, § 6 eff. Sept. 1, 1993.

§ 17.47. Restraining Orders.

(a) Whenever the consumer protection division has reason to believe that any person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this subchapter, and that proceedings would be in the public interest, the division may bring an action in the name of the state against the person to restrain by temporary restraining order, temporary injunction, or permanent injunction the use of such method, act, or practice.

Nothing herein shall require the consumer protection division to notify such person that court action is or may be under consideration. Provided, however, the consumer protection division shall, at least seven days prior to instituting such court action, contact such person to inform him in general of the alleged unlawful conduct. Cessation of unlawful conduct after such prior contact shall not render such court action moot under any circumstances, and such injunctive relief shall lie even if such person has ceased such unlawful conduct after such prior contact. Such prior contact shall not be required if, in the opinion of the consumer protection division, there is good cause to believe that such person would evade service of process if prior contact were made or that such person would destroy relevant records if prior contact were made, or that such an emergency exists that immediate and irreparable injury, loss, or damage would occur as a result of such delay in obtaining a temporary restraining order.

(b) An action brought under Subsection (a) of this section which alleges a claim to relief under this section may be commenced in the district court of the county in which the person against whom it is brought resides, has his principal place of business, has done business, or in the district court of the county where the transaction occurred, or, on the consent of the parties, in a district court of Travis County. The court may issue temporary restraining orders, temporary or permanent injunctions to restrain and prevent violations of this subchapter and such injunctive relief shall be issued without bond.

(c) In addition to the request for a temporary restraining order, or permanent injunction in a proceeding brought under Subsection (a) of this section, the consumer protection division may request a civil penalty of not more than $2,000 per violation, not to exceed a total of $10,000, to be paid to the state.

(d) The court may make such additional orders or judgments as are necessary to compensate identifiable persons for actual damages or to restore money or property, real or personal, which may have been acquired by means of any unlawful act or practice. Damages may not include any damages incurred beyond a point two years prior to the institution of the action by the consumer protection division. Orders of the court may also include the appointment of a receiver or a sequestration of assets if a person who has been ordered by a court to make restitution under this section has failed to do so within three months after the order to make restitution has become final and nonappealable.

(e) Any person who violates the terms of an injunction under this section shall forfeit and pay to the state a civil penalty of not more than $10,000 per violation, not to exceed $50,000. In determining whether or not an injunction has been violated the court shall take into consideration the maintenance of procedures reasonably adapted to insure compliance with the injunction. For the purposes of this section, the district court issuing the injunction shall retain jurisdiction, and the cause shall be continued, and in these cases, the consumer protection division, or the district or county attorney with prior notice to the consumer protection division, acting in the name of the state, may petition for recovery of civil penalties under this section.

(f) An order of the court awarding civil penalties under Subsection (e) of this section applies only to violations of the injunction incurred prior to the awarding of the penalty order. Second or subsequent violations of an injunction issued under this section are subject to the same penalties set out in Subsection (e) of this section.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1 eff. May 21, 1973. Amended by Acts 1977, 65th Leg., p. 602, c. 216, § 4 eff. May 23, 1977; Acts 1985, 69th Leg., c. 564, § 1 eff. Aug. 26, 1985. Acts 1989, 71st Leg., c. 1082, § 8.01 eff. Jan. 1, 1991; Acts 1991, 72nd Leg., c. 242, § 11.18, eff. Sept. 1, 1991.

§ 17.48. Duty of District and County Attorney.

(a) It is the duty of the district and county attorneys to lend to the consumer protection division any assistance requested in the commencement and prosecutions of action under this subchapter.

(b) A district or county attorney, with prior written notice to the consumer protection division, may institute and prosecute actions seeking injunctive relief under this subchapter, after complying with the prior contact provisions of Subsection (a) of Section 17.47 of this subchapter. On request, the consumer protection division shall assist the district or county attorney in any action taken under this subchapter. If an action is prosecuted by a district or county attorney alone, he shall make a full report to the consumer protection division including the final disposition of the matter. No district or county attorney may bring an action under this section against any licensed insurer or licensed insurance agent transacting business under the authority and jurisdiction of the State Board of Insurance unless first requested in writing to do so by the State Board of Insurance, the commissioner of insurance, or the consumer protection division pursuant to a request by the State Board of Insurance or commissioner of insurance.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1 eff. May 21, 1973.

§ 17.49. Exemptions.

(a) Nothing in this subchapter shall apply to the owner or employees of a regularly published newspaper, magazine, or telephone directory, or broadcast station, or billboard, wherein any advertisement in violation of this subchapter is published or disseminated, unless it is established that the owner or employees of the advertising medium have knowledge of the false, deceptive, or misleading acts or practices declared to be unlawful by this subchapter, or had a direct or substantial financial interest in the sale or distribution of the unlawfully advertised good or service. Financial interest as used in this section relates to an expectation which would be the direct result of such advertisement.

(b) Nothing in this subchapter shall apply to acts or practices authorized under specific rules or regulations promulgated by the Federal Trade Commission under Section 5(a)(1) of the Federal Trade Commission Act [15 U.S.C.A. 45(a)(1)]. The provisions of this subchapter do apply to any act or practice prohibited or not specifically authorized by a rule or regulation of the Federal Trade Commission. An act or practice is not specifically authorized if no rule or regulation has been issued on the act or practice.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1 eff. May 21, 1973.

§ 17.50. Relief for Consumers.

(a) A consumer may maintain an action where any of the following constitute a producing cause of actual damages:

(1) the use or employment by any person of a false, misleading, or deceptive act or practice that is specifically enumerated in a subdivision of Subsection (b) of Section 17.46 of this subchapter;

(2) breach of an express or implied warranty;

(3) any unconscionable action or course of action by any person; or

(4) the use or employment by any person of an act or practice in violation of Article 21.21, Insurance Code, as amended, or rules or regulations issued by the State Board of Insurance under Article 21.21, Texas Insurance Code, as amended.

(b) In a suit filed under this section, each consumer who prevails may obtain:

(1) the amount of actual damages found by the trier of fact. In addition the court shall award two times that portion of the actual damages that does not exceed $1,000. If the trier of fact finds that the conduct of the defendant was committed knowingly, the trier of fact may award not more than three times the amount of actual damages in excess of $1,000, provided that:

(A) the provisions of Chapters 33 and 41, Civil Practice and Remedies Code, shall govern the determination of the consumer's right under this subchapter to recover actual and other damages, including exemplary damages, and the amount of those damages that may be recovered by the consumer under this subchapter, in an action seeking damages for (i) death; (ii) personal injury other than mental anguish or distress associated with a violation of this subchapter that does not involve death or bodily injury; or (iii) damage to property other than the goods acquired by the purchase or lease that is involved in the consumer's action or claim if that damage arises out of an occurrence that involves death or bodily injury; and

(B) only in an action under this subchapter that is subject to Paragraph (A) of this subdivision, the consumer's right to recover damages shall be subject to any defense or defensive matter that could be considered by the trier of fact in an action subject to Chapter 33, Civil Practice and Remedies Code, in determining the percentage of responsibility attributable to the consumer claimant under that chapter;

(2) an order enjoining such acts or failure to act;

(3) orders necessary to restore to any party to the suit any money or property, real or personal, which may have been acquired in violation of this subchapter; and

(4) any other relief which the court deems proper, including the appointment of a receiver or the revocation of a license or certificate authorizing a person to engage in business in this state if the judgment has not been satisfied within three months of the date of the final judgment. The court may not revoke or suspend a license to do business in this state or appoint a receiver to take over the affairs of a person who has failed to satisfy a judgment if the person is a licensee of or regulated by a state agency which has statutory authority to revoke or suspend a license or to appoint a receiver or trustee. Costs and fees of such receivership or other relief shall be assessed against the defendant.

(c) On a finding by the court that an action under this section was groundless and brought in bad faith, or brought for the purpose of harassment, the court shall award to the defendant reasonable and necessary attorneys' fees and court costs.

(d) Each consumer who prevails shall be awarded court costs and reasonable and necessary attorneys' fees.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1 eff. May 21, 1973. Amended by Acts 1977, 65th Leg., p. 603, c. 216, § 5 eff. May 23, 1977; Acts1979, 66th Leg., p. 1329, c. 603, § 4 eff. Aug. 27, 1979; Acts 1989, 71st Leg., c. 380, § 2 eff. Sept. 1, 1989.

Section 6 of Acts 1989, 71st Leg., c. 380, provides:

(a) This Act applies to all actions or claims commenced on or after the effective date of this Act.

(b) An action or claim commenced before the effective date of this Act is governed with respect to the specific subject matters of this Act by the applicable law in effect before the effective date of this Act, and that prior law is continued n effect only for that purpose."

(c) In an action, claim, or suit n which a statute requires written notice to be given before the filing or bringing of the action, claim, or suit, personally delivering or depositing the notice, postage prepaid, in the United States mail before the effective date of this Act is considered filing or bringing the action before the effective date of this Act, if the suit is formally filed or otherwise brought within 120 days after the date of the delivery or mailing.

§ 17.50A. Renumbered as § 17.505 by Acts 1987, 70th Leg., c. 167, § 5.02(4) eff. Sept. 1, 1987.

§ 17.50B. Renumbered as § 17.506 by Acts 1987, 70th Leg., c. 167, § 5.02(5) eff. Sept. 1, 1987.

§ 17.505. Notice; Inspection.

(a) As a prerequisite to filing a suit seeking damages under Subdivision (1) of Subsection (b) of Section 17.50 of this subchapter against any person, a consumer shall give written notice to the person at least 60 days before filing the suit advising the person in reasonable detail of the consumer's specific complaint and the amount of actual damages and expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant. During the 60-day period a written request to inspect, in a reasonable manner and at a reasonable time and place, the goods that are the subject of the consumer's action or claim may be presented to the consumer. If the consumer unreasonably refuses to permit the inspection, the court shall not award the two times actual damages not exceeding $1,000, as provided in Subsection (b) of Section 17.50 of this subchapter.

(b) If the giving of 60 days' written notice is rendered impracticable by reason of the necessity of filing suit in order to prevent the expiration of the statute of limitations or if the consumer's claim is asserted by way of counterclaim, the notice provided for in Subsection (a) of this section is not required, but the tender provided for by Subsection (c) of this section and Subsection (d), Section 17.506 of this subchapter may be made within 60 days after the filing of the suit or counterclaim.

(c) Any person who receives the written notice provided by Subsection (a) of this section may, within 60 days after the receipt of the notice, tender to the consumer a written offer of settlement, including an agreement to reimburse the consumer for attorneys' fees, if any, reasonably incurred by the consumer in asserting his claim up to the date of the written notice. A person who does not receive such a written notice due to the consumer's suit or counterclaim being filed as provided for by Subsection (b) of this section may, within 60 days after the filing of such suit or counterclaim, tender to the consumer a written offer of settlement, including an agreement to reimburse the consumer for the attorneys' fees, if any, reasonable incurred by the consumer in asserting his claim up to the date the suit or counterclaim was filed. Any offer of settlement not accepted within 30 days of receipt by the consumer shall be deemed to have been rejected by the consumer.

(d) A settlement offer made in compliance with Subsection (c) of this section, if rejected by the consumer, may be filed with the court together with an affidavit certifying its rejection. If the amount tendered in the settlement offer is the same as or more than, or if the court finds that amount to be substantially the same as, the actual damages found by the trier of fact, the consumer may not recover an amount in excess of the amount tendered in the settlement offer or the amount of actual damages found by the trier of fact, whichever is less. Such settlement offer shall not be admissible as evidence before a jury.

(e) The tender of an offer of settlement is not an admission of engaging is an unlawful act or practice or of liability under this Act. Evidence of a settlement offer may be introduced only to determine the reasonableness of the settlement offer as provided for by Subsection (d) of this section.

Added by Acts 1977, 65th Leg., p. 604, c. 216, § 6 eff. May 23, 1977. Amended by Acts 1979, 66th Leg., p. 1330, c. 603, § 5 eff. Aug. 27, 1979. Renumbered from § 17.50A and amended by Acts 1987, 70th Leg., c. 167, § 5.02(4), (5) eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., c. 380, § 3 eff. Sept. 1, 1989.

Section 6 of Acts 1989, 71st Leg., c. 380, provides:

(a) This Act applies to all actions or claims commenced on or after the effective date of this Act.

(b) An action or claim commenced before the effective date of this Act is governed with respect to the specific subject matters of this Act by the applicable law in effect before the effective date of this Act, and that prior law is continued n effect only for that purpose."

(c) In an action, claim, or suit n which a statute requires written notice to be given before the filing or bringing of the action, claim, or suit, personally delivering or depositing the notice, postage prepaid, in the United States mail before the effective date of this Act is considered filing or bringing the action before the effective date of this Act, if the suit is formally filed or otherwise brought within 120 days after the date of the delivery or mailing.

§ 17.506. Damages: Defenses.

(a) In an action brought under Section 17.50 of this subchapter, it is a defense to the award of any damages or attorneys' fees if the defendant proves that before consummation of the transaction he gave reasonable and timely written notice to the plaintiff of the defendant's reliance on:

(1) written information relating to the particular goods or service in question obtained from official government records if the written information was false or inaccurate and the defendant did not know and could not reasonably have known of the falsity or inaccuracy of the information;

(2) written information relating to the particular goods or service in question obtained from another source if the information was false or inaccurate and the defendant did not know and could not reasonably have known of the falsity or inaccuracy of the information; or

(3) written information concerning a test required or prescribed by a government agency if the information from the test was false or inaccurate and the defendant did not know and could not reasonably have known of the falsity or inaccuracy of the information.

(b) In asserting a defense under Subdivision (1), (2), or (3) of Subsection (a) of Section 17.506 above, the defendant shall prove the written information was a producing cause of the alleged damage. A finding of one producing cause does not bar recovery if other conduct of the defendant not the subject of a defensive finding under Subdivision (1), (2), or (3) of Subsection (a) of Section 17.506 above was a producing cause of damages of the plaintiff.

(c) In a suit where a defense is asserted under Subdivision (2) of Subsection (a) of Section 17.506 above, suit may be asserted against the third party supplying the written information without regard to privity where the third party knew or should have reasonably foreseen that the information would be provided to a consumer; provided no double recovery may result.

(d) In an action brought under Section 17.50 of this subchapter, it is a defense to a cause of action if the defendant proves that he received notice from the consumer advising the defendant of the nature of the consumer's specific complaint and of the amount of actual damages and expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant, and that within 30 days after the day on which the defendant received the notice the defendant tendered to the consumer:

(1) the amount of actual damages claimed; and

(2) the expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant.

Added by Acts 1979, 66th Leg., p. 1331, c. 603, § 6 eff. Aug. 27, 1979. Renumbered from § 17.50B and amended by Acts 1987, 70th Leg., c. 167, § 5.02(5) eff. Sept. 1, 1987.

§§ 17.51 to 17.54. Repealed by Acts 1977, 65th Leg., p. 605, c. 216, §§ 10 to 13 eff. May 23, 1977.

§ 17.55. Promotional Material.

If damages or civil penalties are assessed against the seller of goods or services for advertisements or promotional material in a suit filed under Section 17.47, 17.48, 17.50, or 17.51 of this subchapter, the seller of the goods or services has a cause of action against a third party for the amount of damages or civil penalties assessed against the seller plus attorneys' fees on a showing that:

(1) the seller received the advertisements or promotional material from the third party;

(2) the seller's only action with regard to the advertisements or promotional material was to disseminate the material; and

(3) the seller has ceased disseminating the material.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1 eff. May 21, 1973.

§ 17.55A. Renumbered as § 17.555 by Acts 1987, 70th Leg., R.S. (1987), c. 167, § 5.02(6) eff. Sept. 1, 1987.

§ 17.555. Indemnity.

A person against whom an action has been brought under this subchapter may seek contribution or indemnity from one who, under the statute law or at common law, may have liability for the damaging event of which the consumer complains. A person seeking indemnity as provided by this section may recover all sums that he is required to pay as a result of the action, his attorney's fees reasonable in relation to the amount of work performed in maintaining his action for indemnity, and his costs.

Added by Acts 1977, 65th Leg., p. 604, c. 216, § 7 eff. May 23, 1977. Renumbered from § 17.55A by Acts 1987, 70th Leg., c. 167, § 5.02(6) eff. Sept. 1, 1987.

§ 17.56. Venue.

An action brought which alleges a claim to relief under Section 17.50 of this subchapter may be commenced in the county in which the person against whom the suit is brought resides, has his principal place of business, or has a fixed and established place of business at the time the suit is brought or in the county in which the alleged act or practice occurred or in a county in which the defendant or an authorized agent of the defendant solicited the transaction made the subject of the action at bar.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1 eff. May 21, 1973. Amended by Acts 1977, 65th Leg., p. 604, c. 216, § 8 eff. May 23, 1977; Acts 1979, 66th Leg., p. 1332, c. 603, § 7 eff. Aug. 27, 1979.

§ 17.56A. Renumbered as § 17.565 by Acts 1987, 70th Leg., R.S. (1987), c. 167, § 5.02(7) eff. Sept. 1, 1987.

§ 17.565. Limitation.

All actions brought under this subchapter must be commenced within two years after the date on which the false, misleading, or deceptive act or practice occurred or within two years after the consumer discovered or in the exercise of reasonable diligence should have discovered the occurrence of the false, misleading, or deceptive act or practice. The period of limitation provided in this section may be extended for a period of 180 days if the plaintiff proves that failure timely to commence the action was caused by the defendant's knowingly engaging in conduct solely calculated to induce the plaintiff to refrain from or postpone the commencement of the action.

Added by Acts 1979, 66th Leg., p. 1332, c. 603, § 8 eff. Aug. 27, 1979. Renumbered from § 17.56A by Acts 1987, 70th Leg., c. 167, § 5.02(7) eff. Sept. 1, 1987.

§ 17.57. Subpoenas.

The clerk of a district court at the request of any party to a suit pending in his court which is brought under this subchapter shall issue a subpoena for any witness or witnesses who may be represented to reside within 100 miles of the courthouse of the county in which the suit is pending or who may be found within such distance at the time of trial. The clerk shall issue a separate subpoena and a copy thereof for each witness subpoenaed. When an action is pending in Travis County on the consent of the parties a subpoena may be issued for any witness or witnesses who may be represented to reside within 100 miles of the courthouse of a county in which the suit could otherwise have been brought or who may be found within such distance at the time of the trial.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1 eff. May 21, 1973.

§ 17.58. Voluntary Compliance.

(a) In the administration of this subchapter the consumer protection division may accept assurance of voluntary compliance with respect to any act or practice which violates this subchapter from any person who is engaging in, has engaged in, or is about to engage in the act or practice. The assurance shall be in writing and shall be filed with and subject to the approval of the district court in the county in which the alleged violator resides or does business or in the district court of Travis County.

(b) The acceptance of an assurance of voluntary compliance may be conditioned on the stipulation that the person in violation of this subchapter restore to any person in interest any money or property, real or personal, which may have been acquired by means of acts or practices which violate this subchapter.

(c) An assurance of voluntary compliance shall not be considered an admission of prior violation of this subchapter.

However, unless an assurance has been rescinded by agreement of the parties or voided by a court for good cause, subsequent failure to comply with the terms of an assurance is prima facie evidence of a violation of this subchapter.

(d) Matters closed by the filing of an assurance of voluntary compliance may be reopened at any time. Assurances of voluntary compliance shall in no way affect individual rights of action under this subchapter, except that the rights of individuals with regard to money or property received pursuant to a stipulation in the voluntary compliance under Subsection (b) of this section are governed by the terms of the voluntary compliance.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1 eff. May 21, 1973.

§ 17.59. Post Judgment Relief.

(a) If a money judgment entered under this subchapter is unsatisfied 30 days after it becomes final and if the prevailing party has made a good faith attempt to obtain satisfaction of the judgment, the following presumptions exist with respect to the party against whom the judgment was entered:

(1) that the defendant is insolvent or in danger of becoming insolvent; and

(2) that the defendant's property is in danger of being lost, removed, or otherwise exempted from collection on the judgment; and

(3) that the prevailing party will be materially injured unless a receiver is appointed over the defendant's business; and

(4) that there is no adequate remedy other than receivership available to the prevailing party.

(b) Subject to the provisions of Subsection (a) of this section, a prevailing party may move that the defendant show cause why a receiver should not be appointed. Upon adequate notice and hearing, the court shall appoint a receiver over the defendant's business unless the defendant proves that all of the presumptions set forth in Subsection (a) of this section are not applicable.

(c) The order appointing a receiver must clearly state whether the receiver will have general power to manage and operate the defendant's business or have power to manage only a defendant's finances. The order shall limit the duration of the receivership to such time as the judgment or judgments awarded under this subchapter are paid in full. Where there are judgments against a defendant which have been awarded to more than one plaintiff, the court shall have discretion to take any action necessary to efficiently operate a receivership in order to accomplish the purpose of collecting the judgments.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1 eff. May 21, 1973. Amended by Acts 1977, 65th Leg., p. 604, c. 216, § 9 eff. May 23, 1977.

§ 17.60. Reports and Examinations.

Whenever the consumer protection division has reason to believe that a person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this subchapter, or when it reasonably believes it to be in the public interest to conduct an investigation to ascertain whether any person is engaging in, has engaged in, or is about to engage in any such act or practice, an authorized member of the division may:

(1) require the person to file on the prescribed forms a statement or report in writing, under oath or otherwise, as to all the facts and circumstances concerning the alleged violation and such other data and information as the consumer protection division deems necessary;

(2) examine under oath any person in connection with this alleged violation;

(3) examine any merchandise or sample of merchandise deemed necessary and proper; and

(4) pursuant to an order of the appropriate court, impound any sample of merchandise that is produced in accordance with this subchapter and retain it in the possession of the division until the completion of all proceedings in connection with which the merchandise is produced.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1 eff. May 21, 1973. Amended by Acts 1989, 71st Leg., c. 1082, § 8.02 eff. Jan. 1, 1991; Acts 1991, 72nd Leg., c. 242, § 11.19 eff. Sept. 1, 1991.

§ 17.61. Civil Investigative Demand.

(a) Whenever the consumer protection division believes that any person may be in possession, custody, or control of the original copy of any documentary material relevant to the subject matter of an investigation of a possible violation of this subchapter, an authorized agent of the division may execute in writing and serve on the person a civil investigative demand requiring the person to produce the documentary material and permit inspection and copying.

(b) Each demand shall:

(1) state the statute and section under which the alleged violation is being investigated, and the general subject matter of the investigation;

(2) describe the class or classes of documentary material to be produced with reasonable specificity so as to fairly indicate the material demanded;

(3) prescribe a return date within which the documentary material is to be produced; and

(4) identify the members of the consumer protection division to whom the documentary material is to be made available for inspection and copying.

(c) A civil investigative demand may contain a requirement or disclosure of documentary material which would be discoverable under the Texas Rules of Civil Procedure.

(d) Service of any demand may be made by:

(1) delivering a duly executed copy of the demand to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of that person;

(2) delivering a duly executed copy of the demand to the principal place of business in the state of the person to be served;

(3) mailing by registered mail or certified mail a duly executed copy of the demand addressed to the person to be served at the principal place of business in this state, or if the person has no place of business in this state, to his principal office or place of business.

(e) Documentary material demanded pursuant to this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at other times and places as may be agreed on by the person served and the consumer protection division.

(f) No documentary material produced pursuant to a demand under this section, unless otherwise ordered by a court for good cause shown, shall be produced for inspection or copying by, nor shall its contents be disclosed to any person other than the authorized employee of the consumer protection division without the consent of the person who produced the material. The consumer protection division shall prescribe reasonable terms and conditions allowing the documentary material to be available for inspection and copying by the person who produced the material or any duly authorized representative of that person. The consumer protection division may use the documentary material or copies of it as it determines necessary in the enforcement of this subchapter, including presentation before any court. Any material which contains trade secrets shall not be presented except with the approval of the court in which the action is pending after adequate notice to the person furnishing the material.

(g) At any time before the return date specified in the demand, or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date for, or to modify or set aside the demand, stating good cause, may be filed in the district court in the county where the parties reside, or a district court of Travis County.

(h) A person on whom a demand is served under this section shall comply with the terms of the demand unless otherwise provided by a court order.

(i) Personal service of a similar investigative demand under this section may be made on any person outside of this state if the person has engaged in conduct in violation of this subchapter. Such persons shall be deemed to have submitted themselves to the jurisdiction of this state within the meaning of this section.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1 eff. May 21, 1973. Amended by Acts 1989, 71st Leg., c. 1082, § 8.03 eff. Jan. 1, 1991; Acts 1991, 72nd Leg., c. 242, § 11.20 eff. Sept. 1, 1991.

§ 17.62. Penalties.

(a) Any person who, with intent to avoid, evade, or prevent compliance, in whole or in part, with Section 17.60 or 17.61 of this subchapter, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any documentary material or merchandise or sample of merchandise is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $5,000 or by confinement in the county jail for not more than one year, or both.

(b) If a person fails to comply with a directive of the consumer protection division under Section 17.60 of this subchapter or with a civil investigative demand for documentary material served on him under Section 17.61 of this subchapter, or if satisfactory copying or reproduction of the material cannot be done and the person refuses to surrender the material, the consumer protection division may file in the district court in the county in which the person resides, is found, or transacts business, and serve on the person, a petition for an order of the court for enforcement of Sections 17.60 and 17.61 of this subchapter. If the person transacts business in more than one county, the petition shall be filed in the county in which the person maintains his principal place of business, or in another county agreed on by the parties to the petition.

(c) When a petition is filed in the district court in any county under this section, the court shall have jurisdiction to hear and determine the matter presented and to enter any order required to carry into effect the provisions of Sections 17.60 and 17.61 of this subchapter. Any final order entered is subject to appeal to the Texas Supreme Court. Failure to comply with any final order entered under this section is punishable by contempt.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1 eff. May 21, 1973.

§ 17.63. Application.

The provisions of this subchapter apply only to acts or practices occurring after the effective date of this subchapter, except a right of action or power granted to the attorney general under Chapter 10, Title 79, Revised Civil Statutes of Texas, 1925, as amended, prior to the effective date of this subchapter.

Added by Acts 1973, 63rd Leg., p. 322, c. 143, § 1 eff. May 21, 1973.

2. Tie-In Statutes

a. Business Opportunity Act

Acts 2007 80th Leg., R.S., c. 885, § 2.479a) repealed Chapter 41, Business Opportunities and § 2.01 added Chapter 51, Business Opportunities and Agreements as a nonsubstantive revision as provided by § 1.01. Section 1.10 provides:

§ 1.01. PURPOSE OF ACT.

(a) This Act is enacted as a part of the state's continuing statutory revision program under Section 323.007, Government Code. The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this Act is to make the law encompassed by this Act more accessible and understandable by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

Texas Business and Commerce Code

TITLE 4. BUSINESS OPPORTUNITIES AND AGREEMENTS

CHAPTER 51. BUSINESS OPPORTUNITIES

SUBCHAPTER A. GENERAL PROVISIONS

§ 51.001. Short Title.

This chapter may be cited as the Business Opportunity Act.

(Formerly Bus. & Com. Code § 41.001.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 51.002. General Defintions.

In this chapter:

(1) "Business opportunity contract" means an agreement that obligates or is intended to obligate a purchaser to a seller.

(2) "Buy-back" or "secured investment" means a representation that implies a purchaser's payment is protected from loss.

(3) "Equipment" includes electrical devices, video and audio devices, molds, display units, including display racks, and machines, including coin-operated game machines and vending and other machines that dispense products.

(4) "Initial consideration" means the total amount a purchaser is obligated to pay under a business opportunity contract before or at the time products, equipment, supplies, or services are delivered or within six months after the date the purchaser begins operation of the business opportunity plan. The term means the total sale price if the contract states a specific total sale price for purchase of the business opportunity plan and the total sale price is to be paid as a down payment and one or more additional payments. The term does not include the not-for-profit sale of sales demonstration materials, samples, or equipment for not more than $500.

(5) "Marketing program" means advice or training that a seller or a person recommended by a seller gives to a purchaser regarding the sale of products, equipment, supplies, or services. The term includes the preparation or provision of:

(A) a brochure, pamphlet, or advertising material, including promotional literature;

(B) training regarding the promotion, operation, or management of a business opportunity; or

(C) operational, managerial, technical, or financial guidelines or assistance.

(6) "Product" includes tangible personal property.

(7) "Purchaser" means a person who becomes or is solicited to become obligated under a business opportunity contract.

(8) "Seller" means a principal or agent who sells or leases or offers to sell or lease a business opportunity.

(9) "Services" includes any assistance, guidance, direction, work, labor, or other services provided by a seller to initiate or maintain a business opportunity.

(10) "Supplies" includes materials used to make, produce, grow, or breed a product or item.

(Formerly Bus. & Com. Code § 41.003(1), (2), (4), (5), (6), (70, (8), (9), (10), (11), (12).) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 51.003. Defintion of Business Opportunity.

(a) In this chapter, "business opportunity" means a sale or lease for an initial consideration of more than $500 of products, equipment, supplies, or services that will be used by or for the purchaser to begin a business in which the seller represents that:

(1) the purchaser will earn or is likely to earn a profit in excess of the amount of the initial consideration the purchaser paid; and

(2) the seller will:

(A) provide a location or assist the purchaser in finding a location for the use or operation of the products, equipment, supplies, or services on premises that are not owned or leased by the purchaser or seller;

(B) provide a sales, production, or marketing program; or

(C) buy back or is likely to buy back products, equipment, or supplies purchased or products made, produced, grown, or bred by the purchaser using wholly or partly the products, equipment, supplies, or services that the seller initially sold or leased or offered for sale or lease to the purchaser.

(b) In this chapter, "business opportunity" does not include:

(1) the sale or lease of an established and ongoing business or enterprise that has actively conducted business before the sale or lease, whether composed of one or more than one component business or enterprise, if the sale or lease represents an isolated transaction or series of transactions involving a bona fide change of ownership or control of the business or enterprise or liquidation of the business or enterprise;

(2) a sale by a retailer of goods or services under a contract or other agreement to sell the inventory of one or more ongoing leased departments to a purchaser who is granted the right to sell the goods or services within or adjoining a retail business establishment as a department or division of the retail business establishment;

(3) a transaction that is:

(A) regulated by the Texas Department of Licensing and Regulation, the Texas Department of Insurance, the Texas Real Estate Commission, or the director of the Motor Vehicle Division of the Texas Department of Motor Vehicles; and

(B) engaged in by a person licensed by one of those agencies;

(4) a real estate syndication;

(5) a sale or lease to a business enterprise that also sells or leases products, equipment, or supplies or performs services:

(A) that are not supplied by the seller; and

(B) that the purchaser does not use with the seller's products, equipment, supplies, or services;

(6) the offer or sale of a franchise as described by the Petroleum Marketing Practices Act (15 U.S.C. Section 2801 et seq.) and its subsequent amendments;

(7) the offer or sale of a business opportunity if the seller:

(A) has a net worth of $25 million or more according to the seller's audited balance sheet as of a date not earlier than the 13th month before the date of the transaction; or

(B) is at least 80 percent owned by another person who:

(i) in writing unconditionally guarantees performance by the person offering the business opportunity plan; and

(ii) has a net worth of more than $25 million according to the person's most recent audited balance sheet as of a date not earlier than the 13th month before the date of the transaction; or

(8) an arrangement defined as a franchise by 16 C.F.R. Part 436 and its subsequent amendments if:

(A) the franchisor complies in all material respects in this state with 16 C.F.R. Part 436 and each order or other action of the Federal Trade Commission; and

(B) before offering for sale or selling a franchise in this state, a person files with the secretary of state a notice containing:

(i) the name of the franchisor;

(ii) the name under which the franchisor intends to transact business; and

(iii) the franchisor's principal business address.

(c) The secretary of state shall prescribe the form of the notice described by Subsection (b)(8)(B).

(Formerly Bus. & Com. Code § 41.004.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009. Amended by Acts 2009, 81st Leg., R.S., c. 933, § 3A.01, eff. Sept. 1, 2009; Acts 2009, 81st Leg., R.S., c. 548, § 1, eff. Sept. 1, 2009.

§ 51.004. Liberal Construction and Application.

(a) This chapter shall be liberally construed and applied to:

(1) protect persons against false, misleading, or deceptive practices in the advertising, offering for sale or lease, or sale or lease of business opportunities; and

(2) provide efficient and economical procedures to secure that protection.

(b) In construing this chapter, a court to the extent possible shall follow the interpretations given by the Federal Trade Commission and the federal courts to Section 5(a)(1), Federal Trade Commission Act (15 U.S.C. Section 45(a)(1)), and 16 C.F.R. Part 436 and their subsequent amendments.

(Formerly Bus. & Com. Code § 41.002.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 51.005. Burden of Proof.

A person who claims to be exempt from this chapter has the burden of proving the exemption.

Added by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009. (Formerly Bus. & Com. Code § 41.005.)

§ 51.006. Waiver.

A waiver of this chapter is contrary to public policy and void.

(Formerly Bus. & Com. Code § 41.009.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 51.007. Maintenance of Records.

(a) A seller shall maintain a complete set of books, records, and accounts of business opportunity sales made by the seller.

(b) A document relating to a business opportunity sold or leased shall be maintained until the fourth anniversary of the date of the business opportunity contract.

(Formerly Bus. & Com. Code § 41.008.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 51.008. Filing Fee.

The secretary of state may charge a reasonable fee to cover the costs incurred as a result of a filing required by Subchapter B or Section 51.003 or 51.251.

(Formerly Bus. & Com. Code § 41.007.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 51.009. Rules.

The secretary of state may adopt rules to administer and enforce this chapter.

(Formerly Bus. & Com. Code § 41.006.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

[Sections 51.010-51.050 reserved for expansion]

SUBCHAPTER B. REGISTRATION OF BUSINESS OPPORTUNITY

§ 51.051. Filing of Disclosure Statements and List of Sellers.

Before a sale or offer for sale, including advertising, of a business opportunity, the principal seller must register the business opportunity with the secretary of state by filing:

(1) a copy of the disclosure statement required by Subchapter D, except as provided by Section 51.053; and

(2) a list of the name and resident address of any individual who sells or will sell the business opportunity for the principal seller.

(Formerly Bus. & Com. Code § 41.051.) Recodified by Acts 2007, 80th Leg., R.S., Ch. 885, § 2.01, eff. April 1, 2009.

§ 51.052. Updating of Information on File.

(a) A copy of a disclosure statement filed under Section 51.051 must be updated through a new filing:
(1) annually; and
(2) when a material change occurs.
(b) The list filed under Section 51.051(2) must be updated through a new filing every six months.

(Formerly Bus. & Com. Code § 41.052.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 51.053. Filing of Disclosure Document From Other Regulatory Agency.

Instead of filing with the secretary of state a copy of a disclosure statement, a seller may file a copy of a similar document required by the State Securities Board, Securities and Exchange Commission, or Federal Trade Commission that contains all the information required to be disclosed by this chapter.

(Formerly Bus. & Com. Code § 41.054 (part).) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 51.054. Filing of Copy of Bond or Notification of Account.

A principal seller who is required to obtain a bond or establish a trust account under Subchapter C shall contemporaneously file with the secretary of state a copy of:
(1) the bond; or
(2) the formal notification by the depository that the trust account is established.

(Formerly Bus. & Com. Code § 41.053.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

[Sections 51.055-51.100 reserved for expansion]

SUBCHAPTER C. BOND, TRUST ACCOUNT, OR LETTER OF CREDIT

§ 51.101. Bond, Trust Account, or Letter of Credit Required.

(a) Before a seller makes a representation described by Section 51.003(a)(1) or otherwise represents that the purchaser is assured of making a profit from a business opportunity, the principal seller must:
(1) obtain a surety bond from a surety company authorized to transact business in this state;
(2) establish a trust account; or
(3) obtain an irrevocable letter of credit.
(b) The bond, trust account, or irrevocable letter of credit must be:
(1) in an amount of $25,000 or more; and
(2) in favor of this state.

(Formerly Bus. & Com. Code § 41.101.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 51.102. Action Against Bond, Trust Account, or Letter of Credit.

(a) A person may bring an action against the bond, trust account, or irrevocable letter of credit obtained or established under Section 51.101 to recover actual damages for:
(1) a violation of this chapter; or
(2) the seller's breach of:
(A) the business opportunity contract; or
(B) an obligation arising from a business opportunity sale.
(b) The aggregate liability of the surety, trustee, or issuer in an action under Subsection (a) may not exceed the amount of the bond, trust account, or irrevocable letter of credit.

(Formerly Bus. & Com. Code § 41.102.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

[Sections 51.103-51.150 reserved for expansion]

SUBCHAPTER D. DISCLOSURE STATEMENT

§ 51.151. Disclosure of Purchaser of Business Opportunity.

(a) Except as provided by Section 51.164, a seller must provide a purchaser with a written disclosure statement that meets the requirements of this subchapter.

(b) The seller must provide the disclosure statement at least 10 business days before the earlier of the date:

(1) the purchaser signs a business opportunity contract; or

(2) the seller receives any consideration.

(Formerly Bus. & Com. Code § 41.151.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 51.152. Cover Sheet of Disclosure Statement.

(a) A disclosure statement must have a cover sheet titled, in at least 12-point boldface capital letters, "DISCLOSURES REQUIRED BY TEXAS LAW." The following statement must appear below the title in at least 10-point boldface type: "The State of Texas has not reviewed and does not endorse, approve, recommend, or sponsor any business opportunity. The information contained in this disclosure has not been verified by the state. If you have any questions about this investment, see an attorney before you sign a contract or agreement."

(b) Only the title and required statement may appear on the cover sheet.

(Formerly Bus. & Com. Code § 41.152.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 51.153. Contents: Names and Addresses.

A disclosure statement must contain:

(1) the name of the seller;

(2) each name under which the seller has transacted, is transacting, or intends to transact business;

(3) the name of any parent or affiliated company that will engage in a business transaction with the purchaser or that takes responsibility for statements made by the seller; and

(4) the names, addresses, and titles of:

(A) the seller's officers, directors, trustees, general partners, general managers, and principal executives;

(B) shareholders owning more than 20 percent of the shares of the seller; and

(C) any other persons responsible for the seller's business activities relating to the sale of business opportunities.

(Formerly Bus. & Com. Code § 41.153.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 51.154. Contents: Sales Periods.

A disclosure statement must:

(1) specify the period during which the seller has sold business opportunities; and

(2) specify the period during which the seller has sold business opportunities involving the products, equipment, supplies, or services the seller is offering to the purchaser.

(Formerly Bus. & Com. Code § 41.154.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 51.155. Contents: Services Description.

A disclosure statement must contain:

(1) a detailed description of the actual services the seller undertakes to perform for the purchaser; and

(2) if the seller promises to perform services in connection with the placement of products, equipment, or supplies at a location:

(A) the full nature of those services; and

(B) the nature of any agreements to be made with the owners or managers of that location.

(Formerly Bus. & Com. Code § 41.155.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 51.156. Contents: Updated Financial Statement.

A disclosure statement must contain a copy of a financial statement of the seller that:

(1) was prepared according to generally accepted accounting principles within the previous 13 months; and

(2) has been updated to reflect any material change in the seller's financial condition.

(Formerly Bus. & Com. Code § 41.156.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 51.157. Contents: Training Description.

If the seller promises training, the disclosure statement must contain a complete description of the training, including:

(1) the length of the training; and

(2) any costs of the training that the purchaser will be required to incur, including travel and lodging expenses.

(Formerly Bus. & Com. Code § 41.157.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 51.158. Contents: Security Description.

If the seller is required to obtain a bond or establish a trust account, the disclosure statement must contain one of the following statements, as applicable:

(1) "As required by Texas law, the seller has secured a bond issued by _____, a surety company authorized to do business in this state. Before signing a contract to purchase this business opportunity, you should confirm the bond's status with the surety company."; or

(2) "As required by Texas law, the seller has established a trust account with _____. Before signing a contract to purchase this business opportunity, you should confirm with the bank or savings institution the current status of the trust account."

(Formerly Bus. & Com. Code § 41.158.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 51.159. Contents: Delivery Date, Cancellation of Contract.

If the seller is required to deliver to the purchaser the product, equipment, or supplies necessary to begin substantial operation of the business and states a definite or approximate delivery date for the product, equipment, or supplies, the disclosure statement must contain the following statement: "If the seller fails to deliver the product, equipment, or supplies necessary to begin substantial operation of the business within 45 days of the delivery date stated in your contract, you may notify the seller in writing and cancel your contract."

(Formerly Bus. & Com. Code § 41.159.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 51.160. Contents: Sales or Earnings Representation.

If the seller makes a statement concerning sales or earnings that may be made through the business opportunity, the disclosure statement must contain a statement disclosing:

(1) the total number of purchasers of business opportunities involving the product, equipment, supplies, or services being offered who to the seller's knowledge have, not earlier than the third year before the date of the disclosure statement, actually achieved sales of or received earnings in the amount or range specified; and

(2) the total number of purchasers who, not earlier than the third year before the date of the disclosure statement, purchased business opportunities involving the product, equipment, supplies, or services being offered.

(Formerly Bus. & Com. Code § 41.160.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 51.161. Contents: Legal Action History.

(a) A disclosure statement must contain a statement disclosing any person described by Section 51.153 who:

(1) has, during the previous seven fiscal years:

(A) been convicted of a felony, or pleaded nolo contendere to a felony charge, involving fraud, embezzlement, fraudulent conversion, or misappropriation of property; or

(B) been held liable in a civil action resulting in a final judgment, or has settled out of court a civil action, involving:

(i) allegations of fraud, embezzlement, fraudulent conversion, or misappropriation of property;

(ii) the use of untrue or misleading representations in an attempt to sell or dispose of property; or

(iii) the use of unfair, unlawful, or deceptive business practices;

(2) is a party to a civil action involving:

(A) allegations of fraud, embezzlement, fraudulent conversion, or misappropriation of property;

(B) the use of untrue or misleading representations in an attempt to sell or dispose of property; or

(C) the use of unfair, unlawful, or deceptive business practices; or

(3) is subject to an injunction or restrictive order relating to business activity as a result of an action brought by a public agency or department.

(b) A statement required by Subsection (a) must include:

(1) the identity and location of any court or agency;

(2) the date of any entry of a plea of nolo contendere, conviction, judgment, or decision;

(3) any penalty imposed;

(4) any damages assessed;

(5) the terms of any settlement or order; and

(6) the date, nature, and issuer of any order or ruling.

(Formerly Bus. & Com. Code § 41.161.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 51.162. Contents: Bankruptcy or Reorganization.

(a) A disclosure statement must contain a statement disclosing any person described by Section 51.153 who has, during the previous seven fiscal years:

(1) filed in bankruptcy;

(2) been adjudged bankrupt;

(3) been reorganized because of insolvency; or

(4) been a principal, director, executive officer, or partner of any other person that, during or not later than the first anniversary of the end of the period the person held the position in relation to the other person, filed in bankruptcy, was adjudged bankrupt, or was reorganized because of insolvency.

(b) A statement required by Subsection (a)(4) must include:

(1) the name and location of the person who filed in bankruptcy, was adjudged bankrupt, or was reorganized;

(2) the date of the filing, adjudication, or reorganization; and

(3) any other material fact relating to the filing, adjudication, or reorganization.

(Formerly Bus. & Com. Code § 41.162.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 51.163. Contents: Contract Copy.

A disclosure statement must contain a copy of the business opportunity contract that the seller uses as a matter of course and that will be presented to the purchaser at closing.

(Formerly Bus. & Com. Code § 41.163.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 51.164. Use of Diclosure Document From Other Regulatory Agency.

Instead of providing a disclosure statement to a purchaser under this subchapter, a seller may provide a copy of a similar document required by the State Securities Board, Securities and Exchange Commission, or Federal Trade Commission that contains all the information required to be disclosed by this chapter.

(Formerly Bus. & Com. Code § 41.054 (part).) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

[Sections 51.165-51.200 reserved for expansion]

SUBCHAPTER E. BUSINESS OPPORTUNITY CONTRACT

§ 51.201. Form of Business Opportunity Contract.

A business opportunity contract must be in writing and include, in 10-point type or in handwriting of an equivalent size, the following:

(1) the terms of payment, including the initial consideration, down payment, and additional payments required;

(2) a detailed description of the acts or services the seller undertakes to perform for the purchaser;

(3) the seller's principal business address;

(4) the name and address of the seller's agent in this state authorized to receive service of process;

(5) the delivery date or, if the contract provides for staggered delivery times to the purchaser, the approximate delivery date of the products, equipment, or supplies the seller is to:

(A) deliver to the purchaser's home or business address; or

(B) place at a location owned or managed by a person other than the purchaser; and

(6) a complete description of the nature of the buy-back or security arrangement if the seller has represented orally or in writing when selling, leasing, soliciting, or offering a business opportunity that there is a buy-back or that the initial consideration is secured.

(Formerly Bus. & Com. Code § 41.201.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 51.202. Delivery of Copies of Documents to Purchaser.

A copy of the completed business opportunity contract and any other document the seller requires the purchaser to sign shall be given to the purchaser at the time the purchaser signs the contract.

(Formerly Bus. & Com. Code § 41.202.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 51.203. Effect of Assignment of Business Opportunity Contract.

An assignee of a business opportunity contract or of the seller's rights under the contract is subject to all equities, rights, and defenses of the purchaser against the seller.

(Formerly Bus. & Com. Code § 41.203.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

[Sections 51.204-51.250 reserved for expansion]

SUBCHAPTER F. TERMINATION OF BUSINESS OPPORTUNITY REGISTRATION

§ 51.251. Voluntary Termination of Business Opportunity Registration.

The principal seller of a registered business opportunity may voluntarily terminate the business opportunity's registration with the secretary of state if:

(1) the registered business opportunity will no longer be offered in this state;

(2) the registered business opportunity has changed to the extent that it no longer meets the definition of a business opportunity under Section 51.003(a);

(3) the registered business opportunity has become exempt under Section 51.003(b); or

(4) the principal seller offering the registered business opportunity ceases to exist as a legal entity.

(Formerly Bus. & Com. Code § 41.251.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 51.252. Involuntary Termination of Business Opportunity Registration.

(a) The secretary of state may terminate the registration of a business opportunity registered under Section 51.051 if the seller does not comply with Section 51.052.

(b) The secretary of state must give the business opportunity registrant notice of the delinquency not later than the 31st day before the date of termination of the business opportunity registration under Subsection (a).

(c) The notice of delinquency must be given by certified mail addressed to the registered agent or the principal place of business of the business opportunity registrant noted in the latest filing made under this chapter.

(d) The secretary of state may adopt rules governing:

(1) the termination of a delinquent registration;

(2) the effective date of the termination; and

(3) the grace period, if any.

(Formerly Bus. & Com. Code § 41.252.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

[Sections 51.253-51.300 reserved for expansion

SUBCHAPTER G. ENFORCEMENT

§ 51.301. Prohibited Acts.

A seller may not:

(1) employ a representation, device, scheme, or artifice to deceive a purchaser;

(2) make an untrue statement of a material fact or omit to state a material fact in connection with the documents and information required to be provided to the secretary of state or purchaser;

(3) represent that the business opportunity provides or will provide income or earning potential unless the seller:

(A) has documented data to substantiate the representation of income or earning potential; and

(B) discloses the data to the purchaser when the representation is made; or

(4) make a claim or representation that is inconsistent with the information required to be disclosed by this chapter in:

(A) advertising or other promotional material; or

(B) an oral sales presentation, solicitation, or discussion between the seller and the purchaser.

(Formerly Bus. & Com. Code § 41.301.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 51.302. Deceptive Trade Practice; Remedies.

(a) A violation of this chapter is a false, misleading, or deceptive act or practice under Section 17.46.

(b) A public or private right or remedy prescribed by Chapter 17 may be used to enforce this chapter.

(Formerly Bus. & Com. Code § 41.302.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 51.303. Review and Suite by Attorney General.

(a) The attorney general may review the copy of a disclosure statement filed with the secretary of state under Subchapter B.

(b) If the disclosure statement fails to comply with this chapter, the attorney general may:

(1) notify the secretary of state and the seller in writing of the deficiency; and

(2) file suit to enjoin the seller from transacting business until the failure to comply has been corrected.

(c) If the attorney general notifies the secretary of state under Subsection (b), the secretary of state shall:

(1) attach a copy of the notice to the front of the disclosure statement; and

(2) on inquiry of the status of the disclosure statement, disclose that a statement has been filed but that the attorney general has questioned the correctness of the statement.

(Formerly Bus. & Com. Code § 41.303.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

b. Debt Collection Practices Act

Texas Finance Code

TITLE 5. PROTECTION OF CONSUMERS OF FINANCIAL SERVICES

CHAPTER 392. DEBT COLLECTION

SUBCHAPTER A. GENERAL PROVISIONS

§ 392.001. Definitions.

In this chapter:

(1) "Consumer" means an individual who has a consumer debt.

(2) "Consumer debt" means an obligation, or an alleged obligation, primarily for personal, family, or household purposes and arising from a transaction or alleged transaction.

(3) "Creditor" means a party, other than a consumer, to a transaction or alleged transaction involving one or more consumers.

(4) "Credit bureau" means a person who, for compensation, gathers, records, and disseminates information relating to the creditworthiness, financial responsibility, and paying habits of, and similar information regarding, a person for the purpose of furnishing that information to another person.

(5) "Debt collection" means an action, conduct, or practice in collecting, or in soliciting for collection, consumer debts that are due or alleged to be due a creditor.

(6) "Debt collector" means a person who directly or indirectly engages in debt collection and includes a person who sells or offers to sell forms represented to be a collection system, device, or scheme intended to be used to collect consumer debts.

(7) "Third-party debt collector" means a debt collector, as defined by 15 U.S.C. Section 1692a(6), but does not include an attorney collecting a debt as an attorney on behalf of and in the name of a client unless the attorney has nonattorney employees who:

(A) are regularly engaged to solicit debts for collection; or

(B) regularly make contact with debtors for the purpose of collection or adjustment of debts.

Added by Acts 1997, 75th Leg., c. 1008, § 1 eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.42 eff. Sept. 1, 1999.

[Sections 392.002 to 392.100 reserved for expansion]

SUBCHAPTER B. SURETY BOND

§ 392.101. Bond Requirement.

(a) A third-party debt collector or credit bureau may not engage in debt collection unless the third-party debt collector or credit bureau has obtained a surety bond issued by a surety company authorized to do business in this state as prescribed by this section. A copy of the bond must be filed with the secretary of state.

(b) The bond must be in favor of:

(1) any person who is damaged by a violation of this chapter; and

(2) this state for the benefit of any person who is damaged by a violation of this chapter.

(c) The bond must be in the amount of $10,000.

Added by Acts 1997, 75th Leg., c. 1008, § 1 eff. Sept. 1, 1997.

§ 392.102. Claim Against Bond.

A person who claims against a bond for a violation of this chapter may maintain an action against the third-party debt collector or credit bureau and against the surety. The aggregate liability of the surety to all persons damaged by a violation of this chapter may not exceed the amount of the bond.

Added by Acts 1997, 75th Leg., c. 1008, § 1 eff. Sept. 1, 1997.

[Sections 392.102 to 392.200 reserved for expansion]

SUBCHAPTER C. INFORMATION IN FILES OF CREDIT BUREAU OR DEBT COLLECTOR

§ 392.201. Report to Consumer.

Not later than the 45th day after the date of the request, a credit bureau shall provide to a person in its registry a copy of all information contained in its files concerning that person.

Added by Acts 1997, 75th Leg., c. 1008, § 1 eff. Sept. 1, 1997.

§ 392.202. Correction of Third-Party Debt Collector's or Credit Bureau's Files.

(a) An individual who disputes the accuracy of an item that is in a third-party debt collector's or credit bureau's file on the individual and that relates to a debt being collected by the third-party debt collector may notify in writing the third-party debt collector of the inaccuracy. The third-party debt collector shall make a written record of the dispute. If the third-party debt collector does not report information related to the dispute to a credit bureau, the third-party debt collector shall cease collection efforts until an investigation of the dispute described by Subsections (b)-(e) determines the accurate amount of the debt, if any. If the third-party debt collector reports information related to the dispute to a credit bureau, the reporting third-party debt collector shall initiate an investigation of the dispute described in Subsections (b)-(e) and shall cease collection efforts until the investigation determines the accurate amount of the debt, if any. This section does not affect the application of Chapter 20, Business & Commerce Code, to a third-party debt collector subject to that chapter.

(b) Not later than the 30th day after the date a notice of inaccuracy is received, a third-party debt collector who initiates an investigation shall send a written statement to the individual:

(1) denying the inaccuracy;

(2) admitting the inaccuracy; or

(3) stating that the third-party debt collector has not had sufficient time to complete an investigation of the inaccuracy.

(c) If the third-party debt collector admits that the item is inaccurate under Subsection (b), the third-party debt collector shall:

(1) not later than the fifth business day after the date of the admission, correct the item in the relevant file; and

(2) immediately cease collection efforts related to the portion of the debt that was found to be inaccurate and on correction of the item send to each person who has previously received a report from the third-party debt collector containing the inaccurate information notice of the inaccuracy and a copy of an accurate report.

(d) If the third-party debt collector states that there has not been sufficient time to complete an investigation, the third-party debt collector shall immediately:

(1) change the item in the relevant file as requested by the individual;

(2) send to each person who previously received the report containing the information a notice that is equivalent to a notice under Subsection (c) and a copy of the changed report; and

(3) cease collection efforts.

(e) On completion by the third-party debt collector of the investigation, the third-party debt collector shall inform the individual of the determination of whether the item is accurate or inaccurate. If the third-party debt collector determines that the information was accurate, the third-party debt collector may again report that information and resume collection efforts.

Added by Acts 1997, 75th Leg., c. 1008, § 1 eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., c. 851, § 1, eff. Sept. 1, 2003.

[Sections 392.203 to 392.300 reserved for expansion]

SUBCHAPTER D. PROHIBITED DEBT COLLECTION METHODS

§ 392.301. Threats or Coercion.

(a) In debt collection, a debt collector may not use threats, coercion, or attempts to coerce that employ any of the following practices:

(1) using or threatening to use violence or other criminal means to cause harm to a person or property of a person;

(2) accusing falsely or threatening to accuse falsely a person of fraud or any other crime;

(3) representing or threatening to represent to any person other than the consumer that a consumer is wilfully refusing to pay a nondisputed consumer debt when the debt is in dispute and the consumer has notified in writing the debt collector of the dispute;

(4) threatening to sell or assign to another the obligation of the consumer and falsely representing that the result of the sale or assignment would be that the consumer would lose a defense to the consumer debt or would be subject to illegal collection attempts;

(5) threatening that the debtor will be arrested for nonpayment of a consumer debt without proper court proceedings;

(6) threatening to file a charge, complaint, or criminal action against a debtor when the debtor has not violated a criminal law;

(7) threatening that nonpayment of a consumer debt will result in the seizure, repossession, or sale of the person's property without proper court proceedings; or

(8) threatening to take an action prohibited by law.

(b) Subsection (a) does not prevent a debt collector from:

(1) informing a debtor that the debtor may be arrested after proper court proceedings if the debtor has violated a criminal law of this state;

(2) threatening to institute civil lawsuits or other judicial proceedings to collect a consumer debt; or

(3) exercising or threatening to exercise a statutory or contractual right of seizure, repossession, or sale that does not require court proceedings.

Added by Acts 1997, 75th Leg., c. 1008, § 1 eff. Sept. 1, 1997.

§ 392.302. Harassment; Abuse.

In debt collection, a debt collector may not oppress, harass, or abuse a person by:

(1) using profane or obscene language or language intended to abuse unreasonably the hearer or reader;

(2) placing telephone calls without disclosing the name of the individual making the call and with the intent to annoy, harass, or threaten a person at the called number;

(3) causing a person to incur a long distance telephone toll, telegram fee, or other charge by a medium of communication without first disclosing the name of the person making the communication; or

(4) causing a telephone to ring repeatedly or continuously, or making repeated or continuous telephone calls, with the intent to harass a person at the called number.

Added by Acts 1997, 75th Leg., c. 1008, § 1 eff. Sept. 1, 1997.

§ 392.303. Unfair or Unconscionable Means.

(a) In debt collection, a debt collector may not use unfair or unconscionable means that employ the following practices:

(1) seeking or obtaining a written statement or acknowledgment in any form that specifies that a consumer's obligation is one incurred for necessaries of life if the obligation was not incurred for those necessaries; or

(2) collecting or attempting to collect interest or a charge, fee, or expense incidental to the obligation unless the interest or incidental charge, fee, or expense is expressly authorized by the agreement creating the obligation or legally chargeable to the consumer; or

(3) collecting or attempting to collect an obligation under a check, draft, debit payment, or credit card payment, if:

(A) the check or draft was dishonored or the debit payment or credit card payment was refused because the check or draft was not drawn or the payment was not made by a person authorized to use the applicable account;

(B) the debt collector has received written notice from a person authorized to use the account that the check, draft, or payment was unauthorized; and

(C) the person authorized to use the account has filed a report concerning the unauthorized check, draft, or payment with a law enforcement agency, as defined by Article 59.01, Code of Criminal Procedure, and has provided the debt collector with a copy of the report.

(b) Notwithstanding Subsection (a)(2), a creditor may charge a reasonable reinstatement fee as consideration for renewal of a real property loan or contract of sale, after default, if the additional fee is included in a written contract executed at the time of renewal.

(c) Subsection (a)(3) does not prohibit a debt collector from collecting or attempting to collect an obligation under a check, draft, debit payment, or credit card payment if the debt collector has credible evidence, including a document, video recording, or witness statement, that the report filed with a law enforcement agency, as required by Subsection (a)(3)(C), is fraudulent and that the check, draft, or payment was authorized.

Added by Acts 1997, 75th Leg., c. 1008, § 1 eff. Sept. 1, 1997. Amended by Acts 2005, 79th Leg., c. 505, § 1, eff. Sept. 1, 2005.

§ 392.304. Fraudulent, Deceptive, or Misleading Representations.

(a) Except as otherwise provided by this section, in debt collection or obtaining information concerning a consumer, a debt collector may not use a fraudulent, deceptive, or misleading representation that employs the following practices:

(1) using a name other than the:

(A) true business or professional name or the true personal or legal name of the debt collector while engaged in debt collection; or

(B) name appearing on the face of the credit card while engaged in the collection of a credit card debt;

(2) failing to maintain a list of all business or professional names known to be used or formerly used by persons collecting consumer debts or attempting to collect consumer debts for the debt collector;

(3) representing falsely that the debt collector has information or something of value for the consumer in order to solicit or discover information about the consumer;

(4) failing to disclose clearly in any communication with the debtor the name of the person to whom the debt has been assigned or is owed when making a demand for money;

(5) in the case of a third-party debt collector, failing to disclose, except in a formal pleading made in connection with a legal action:

(A) that the communication is an attempt to collect a debt and that any information obtained will be used for that purpose, if the communication is the initial written or oral communication between the third-party debt collector and the debtor; or

(B) that the communication is from a debt collector, if the communication is a subsequent written or oral communication between the third-party debt collector and the debtor;

(6) using a written communication that fails to indicate clearly the name of the debt collector and the debt collector's street address or post office box and telephone number if the written notice refers to a delinquent consumer debt;

(7) using a written communication that demands a response to a place other than the debt collector's or creditor's street address or post office box;

(8) misrepresenting the character, extent, or amount of a consumer debt, or misrepresenting the consumer debt's status in a judicial or governmental proceeding;

(9) representing falsely that a debt collector is vouched for, bonded by, or affiliated with, or is an instrumentality, agent, or official of, this state or an agency of federal, state, or local government;

(10) using, distributing, or selling a written communication that simulates or is represented falsely to be a document authorized, issued, or approved by a court, an official, a governmental agency, or any other governmental authority or that creates a false impression about the communication's source, authorization, or approval;

(11) using a seal, insignia, or design that simulates that of a governmental agency;

(12) representing that a consumer debt may be increased by the addition of attorney's fees, investigation fees, service fees, or other charges if a written contract or statute does not authorize the additional fees or charges;

(13) representing that a consumer debt will definitely be increased by the addition of attorney's fees, investigation fees, service fees, or other charges if the award of the fees or charges is subject to judicial discretion;

(14) representing falsely the status or nature of the services rendered by the debt collector or the debt collector's business;

(15) using a written communication that violates the United States postal laws and regulations;

(16) using a communication that purports to be from an attorney or law firm if it is not;

(17) representing that a consumer debt is being collected by an attorney if it is not;

(18) representing that a consumer debt is being collected by an independent, bona fide organization engaged in the business of collecting past due accounts when the debt is being collected by a subterfuge organization under the control and direction of the person who is owed the debt; or

(19) using any other false representation or deceptive means to collect a debt or obtain information concerning a consumer.

(b) Subsection (a)(4) does not apply to a person servicing or collecting real property first lien mortgage loans or credit card debts.

(c) Subsection (a)(6) does not require a debt collector to disclose the names and addresses of employees of the debt collector.

(d) Subsection (a)(7) does not require a response to the address of an employee of a debt collector.

(e) Subsection (a)(18) does not prohibit a creditor from owning or operating a bona fide debt collection agency.

Added by Acts 1997, 75th Leg., c. 1008, § 1 eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., c. 851, § 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., 3rd C.S., c. 3, § 28.01, eff. Jan. 11, 2004.

§ 392.305. Deceptive Use of Credit Bureau Name.

A person may not use "credit bureau," "retail merchants," or "retail merchants association" in the person's business or trade name unless:

(1) the person is engaged in gathering, recording, and disseminating information, both favorable and unfavorable, relating to the creditworthiness, financial responsibility, and paying habits of, and similar information regarding, persons being considered for credit extension so that a prospective creditor can make a sound decision in the extension of credit; or

(2) the person is a nonprofit retail trade association that:

(A) consists of individual members;

(B) qualifies as a bona fide business league as defined by the United States Internal Revenue Service; and

(C) does not engage in the business of debt collection or credit reporting.

Added by Acts 1997, 75th Leg., c. 1008, § 1 eff. Sept. 1, 1997.

§ 392.306. Use of Independent Debt Collector.

A creditor may not use an independent debt collector if the creditor has actual knowledge that the independent debt collector repeatedly or continuously engages in acts or practices that are prohibited by this chapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1 eff. Sept. 1, 1997.

§ 392.307. Collection of Certain Consumer Debt by Debt Buyers.

(a) In this section:

(1) "Charged-off debt" means a consumer debt that a creditor has determined to be a loss or expense to the creditor instead of an asset.

(2) "Debt buyer" means a person who purchases or otherwise acquires a consumer debt from a creditor or other subsequent owner of the consumer debt, regardless of whether the person collects the consumer debt, hires a third party to collect the consumer debt, or hires an attorney to pursue collection litigation in connection with the consumer debt. The term does not include:

(A) a person who acquires in-default or charged-off debt that is incidental to the purchase of a portfolio that predominantly consists of consumer debt that has not been charged off; or

(B) a check services company that acquires the right to collect on a paper or electronic negotiable instrument, including an Automated Clearing House (ACH) authorization to debit an account that has not been processed.

(b) Unless otherwise expressly provided, this section prevails to the extent of any conflict between this section and any other law of this state.

(c) A debt buyer may not, directly or indirectly, commence an action against or initiate arbitration with a consumer to collect a consumer debt after the expiration of the applicable limitations period provided by Section 16.004, Civil Practice and Remedies Code, or Section 3.118, Business & Commerce Code.

(d) If an action to collect a consumer debt is barred under Subsection (c), the cause of action is not revived by a payment of the consumer debt, an oral or written reaffirmation of the consumer debt, or any other activity on the consumer debt.

(e) If a debt buyer is engaged in debt collection for a consumer debt for which an action to collect the debt is barred under Subsection (c), the debt buyer, or a debt collector acting on behalf of the debt buyer, shall provide the following notice in the initial written communication with the consumer relating to the debt collection:

(1) if the reporting period for including the consumer debt in a consumer report prepared by a consumer reporting agency has not expired under Section 605, Fair Credit Reporting Act (15 U.S.C. Section 1681c), and the debt buyer furnishes to a consumer reporting agency information regarding the consumer debt, "THE LAW LIMITS HOW LONG YOU CAN BE SUED ON A DEBT. BECAUSE OF THE AGE OF YOUR DEBT, WE WILL NOT SUE YOU FOR IT. IF YOU DO NOT PAY THE DEBT, [INSERT NAME OF DEBT BUYER] MAY CONTINUE TO REPORT IT TO CREDIT REPORTING AGENCIES AS UNPAID FOR AS LONG AS THE LAW PERMITS THIS REPORTING. THIS NOTICE IS REQUIRED BY LAW.";

(2) if the reporting period for including the consumer debt in a consumer report prepared by a consumer reporting agency has not expired under Section 605, Fair Credit Reporting Act (15 U.S.C. Section 1681c), but the debt buyer does not furnish to a consumer reporting agency information regarding the consumer debt, "THE LAW LIMITS HOW LONG YOU CAN BE SUED ON A DEBT. BECAUSE OF THE AGE OF YOUR DEBT, WE WILL NOT SUE YOU FOR IT. THIS NOTICE IS REQUIRED BY LAW."; or

(3) if the reporting period for including the consumer debt in a consumer report prepared by a consumer reporting agency has expired under Section 605, Fair Credit Reporting Act (15 U.S.C. Section 1681c), "THE LAW LIMITS HOW LONG YOU CAN BE SUED ON A DEBT. BECAUSE OF THE AGE OF YOUR DEBT, WE WILL NOT SUE YOU FOR IT, AND WE WILL NOT REPORT IT TO ANY CREDIT REPORTING AGENCY. THIS NOTICE IS REQUIRED BY LAW."

(f) A notice required under Subsection (e) must be in at least 12-point type that is boldfaced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material.

Added by Acts 2019, 86th Leg., c. 1055, § 2, eff. Sept. 1, 2019.

Section 4 of Acts 2019, 86th Leg., c. 1055, § 2, provides:

The changes in law made by this Act apply only to an action of a debt buyer to collect a consumer debt if the action occurs on or after the effective date of this Act. An action of a debt buyer to collect a consumer debt that occurs before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

[Sections 392.307 to 392.400 reserved for expansion]

SUBCHAPTER E. DEFENSE, CRIMINAL PENALTY, AND CIVIL REMEDIES

§ 392.401. Bona Fide Error.

A person does not violate this chapter if the action complained of resulted from a bona fide error that occurred notwithstanding the use of reasonable procedures adopted to avoid the error.

Added by Acts 1997, 75th Leg., c. 1008, § 1 eff. Sept. 1, 1997.

§ 392.402. Criminal Penalty.

(a) Except as provided by Subsection (d), a person commits an offense if the person violates this chapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not less than $100 or more than $500 for each violation.

(c) A misdemeanor charge under this section must be filed not later than the first anniversary of the date of the alleged violation.

(d) This section does not apply to a violation of Section 392.307.

Added by Acts 1997, 75th Leg., c. 1008, § 1 eff. Sept. 1, 1997. Amended by Acts 2019, 86th Leg., c. 1055, § 3, eff. Sept. 1, 2019.

Section 4 of Acts 2019, 86th Leg., c. 1055, § 2, provides:

The changes in law made by this Act apply only to an action of a debt buyer to collect a consumer debt if the action occurs on or after the effective date of this Act. An action of a debt buyer to collect a consumer debt that occurs before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

§ 392.403. Civil Remedies.

(a) A person may sue for:

(1) injunctive relief to prevent or restrain a violation of this chapter; and

(2) actual damages sustained as a result of a violation of this chapter.

(b) A person who successfully maintains an action under Subsection (a) is entitled to attorney's fees reasonably related to the amount of work performed and costs.

(c) On a finding by a court that an action under this section was brought in bad faith or for purposes of harassment, the court shall award the defendant attorney's fees reasonably related to the work performed and costs.

(d) If the attorney general reasonably believes that a person is violating or is about to violate this chapter, the attorney general may bring an action in the name of this state against the person to restrain or enjoin the person from violating this chapter.

(e) A person who successfully maintains an action under this section for violation of Section 392.101, 392.202, or 392.301(a)(3) is entitled to not less than $100 for each violation of this chapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1 eff. Sept. 1, 1997.

§ 392.404. Remedies Under Other Law.

(a) A violation of this chapter is a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code, and is actionable under that subchapter.

(b) This chapter does not affect or alter a remedy at law or in equity otherwise available to a debtor, creditor, governmental entity, or other legal entity.

Added by Acts 1997, 75th Leg., c. 1008, § 1 eff. Sept. 1, 1997.

c. Cancellation of Certain Consumer Transactions (Home Solicitation Sales)

Acts 2007 80th Leg., R.S., c. 885, § 2.47(a) repealed Chapter 39. Cancellation of Certain Cosnumer Transactions and § 2.01 added Chapter 601, Cancellation of Certain Consumer Transactions as a nonsubstantive revision as provided by § 1.01. Section 1.10 provides:

§ 1.01. PURPOSE OF ACT.

(a) This Act is enacted as a part of the state's continuing statutory revision program under Section 323.007, Government Code. The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this Act is to make the law encompassed by this Act more accessible and understandable by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

Texas Business and Commerce Code

TITLE 12. RIGHTS AND DUTIES OF CONSUMERS AND MERCHANTS

CHAPTER 601. CANCELLATION OF CERTAIN CONSUMER TRANSACTIONS

SUBCHAPTER A. GENERAL PROVISIONS

§ 601.001. Definitions.

In this chapter:

(1) "Consumer" means an individual who seeks or acquires real property, money or other personal property, services, or credit for personal, family, or household purposes.

(2) "Consumer transaction" means a transaction between a merchant and one or more consumers.

(3) "Merchant" means a party to a consumer transaction other than a consumer.

(4) "Merchant's place of business" means a merchant's main or permanent branch office or local address. For a state or national bank or savings and loan association, the term includes an approved branch office and a registered loan production office.

(Formerly Bus. & Com. Code, § 39.001.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 601.002. Applicability of Chapter; Exception.

(a) This chapter applies only to a consumer transaction in which:

(1) the merchant or the merchant's agent engages in a personal solicitation of a sale to the consumer at a place other than the merchant's place of business;

(2) the consumer's agreement or offer to purchase is given to the merchant or the merchant's agent at a place other than the merchant's place of business; and

(3) the agreement or offer is for:

(A) the purchase of goods or services for consideration that exceeds $25, payable in installments or in cash; or

(B) the purchase of real property for consideration that exceeds $100, payable in installments or in cash.

(b) Notwithstanding Subsection (a), this chapter does not apply to:

(1) a purchase of farm equipment;

(2) an insurance sale regulated by the Texas Department of Insurance;

(3) a sale of goods or services made:

(A) under a preexisting revolving charge account or retail charge agreement; or

(B) after negotiations between the parties at a business establishment in a fixed location where goods or services are offered or exhibited for sale; or

(4) a sale of real property if:

(A) the purchaser is represented by a licensed attorney;

(B) the transaction is negotiated by a licensed real estate broker; or

(C) the transaction is negotiated at a place other than the consumer's residence by the person who owns the property.

(Formerly Bus. & Com. Code, § 39.002.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

[Sections 601.003-601.050 reserved for expansion]

SUBCHAPTER B. CONSUMER'S RIGHT TO CANCEL TRANSACTION

§ 601.051. Consumere's Right to Cancel.

In addition to any other rights or remedies available, a consumer may cancel a consumer transaction not later than midnight of the third business day after the date the consumer signs an agreement or offer to purchase.

(Formerly Bus. & Com. Code, § 39.003.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 601.052. Notice of Consumer's Right to Cancel Required.

(a) A merchant must provide a consumer with a complete receipt or copy of a contract pertaining to the consumer transaction at the time of its execution.

(b) The document provided under Subsection (a) must:

(1) be in the same language as that principally used in the oral sales presentation;

(2) contain the date of the transaction;

(3) contain the name and address of the merchant; and

(4) contain a statement:

(A) in immediate proximity to the space reserved in the contract for the signature of the consumer or on the front page of the receipt if a contract is not used; and

(B) in boldfaced type of a minimum size of 10 points in substantially the following form:

"YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

(Formerly Bus. & Com. Code, Secs. 39.004(a), (b).) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 601.053. Completed Cancellation Form Required.

(a) A merchant that provides a document under Section 601.052 must attach to the document a completed notice of cancellation form in duplicate. The form must:

(1) be easily detachable;

(2) be in the same language as the document provided under Section 601.052; and

(3) contain the following information and statements in 10-point boldfaced type:

"NOTICE OF CANCELLATION

(enter date of transaction)

"YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

"IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE MERCHANT OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

"IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE MERCHANT AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE MERCHANT REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE MERCHANT'S EXPENSE AND RISK.

"IF YOU DO NOT AGREE TO RETURN THE GOODS TO THE MERCHANT OR IF THE MERCHANT DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION.

"TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO (name of merchant), AT (address of merchant's place of business) NOT LATER THAN MIDNIGHT OF (date).

I HEREBY CANCEL THIS TRANSACTION.

(date)

(buyer's signature)"

(b) A merchant may not fail to include on both copies of the form described by Subsection (a):

(1) the name of the merchant;

(2) the address of the merchant's place of business;

(3) the date of the transaction; and

(4) a date not earlier than the third business day after the date of the transaction by which the consumer must give notice of cancellation.

(Formerly Bus. & Com. Code, Secs. 39.004(c), 39.008(a) (part).) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 601.054. Use of Forms and Notices Prescribed by the Federal Trade Commission Authorized.

The use of the forms and notices of the right to cancel prescribed by the Federal Trade Commission's trade-regulation rule providing a cooling-off period for door-to-door sales constitutes compliance with Sections 601.052 and 601.053.

(Formerly Bus. & Com. Code, § 39.004(d).) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 601.055. Alternative Notice Authorized for Certain Consumer Transactions.

A consumer transaction in which the contract price does not exceed $200 complies with the notice requirements of Sections 601.052 and 601.053 if:

(1) the consumer may at any time cancel the order, refuse to accept delivery of the goods without incurring any obligation to pay for the goods, or return the goods to the merchant and receive a full refund of the amount the consumer has paid; and

(2) the consumer's right to cancel the order, refuse delivery, or return the goods without obligation or charge at any time is clearly and conspicuously stated on the face or reverse side of the sales ticket.

(Formerly Bus. & Com. Code, § 39.004(e).) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

[Sections 601.056-601.100 reserved for expansion]

SUBCHAPTER C. RIGHTS AND DUTIES OF CONSUMER AND MERCHANT

§ 601.101. Merchant's Compensation.

A merchant is not entitled to compensation for services performed under a consumer transaction canceled under this chapter.

(Formerly Bus. & Com. Code, § 39.005.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 601.102. Consumer's Retention of Goods or Title to Real Property Authorized.

Until a merchant has complied with this chapter, a consumer with possession of goods or the right or title to real property delivered by the merchant:

(1) may retain possession of the goods or the right or title to the real property; and

(2) has a lien on the goods or real property to the extent of any recovery to which the consumer is entitled.

(Formerly Bus. & Com. Code, § 39.006.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 601.103. Consumer's Duties with Respect to Delivered Goods or Real Property.

(a) Within a reasonable time after a cancellation under this chapter, the consumer must, on demand, tender to the merchant any goods or any right or title to real property delivered by the merchant under the consumer transaction.

(b) The consumer is not obligated to tender goods at a place other than the consumer's residence.

(c) If the merchant fails to demand possession of the goods or the right or title to real property within a reasonable time after cancellation, the goods or real property become the property of the consumer without obligation to pay.

(d) Goods or real property in possession of the consumer are at the risk of the merchant, except that the consumer shall take reasonable care of the goods or the real property both before and for a reasonable time after cancellation.

(e) For purposes of this section, 20 days is presumed to be a reasonable time.

(Formerly Bus. & Com. Code, § 39.007.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

[Sections 601.104-601.150 reserved for expansion]

SUBCHAPTER D. PROHIBITED ACTS AND CONDUCT BY MERCHANT

§ 601.151. Confession of Judgment or Waiver of Rights.

A merchant may not include in a contract or receipt pertaining to a consumer transaction a confession of judgment or a waiver of any of the rights to which the consumer is entitled under this chapter.

(Formerly Bus. & Com. Code, § 39.008(a) (part).) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 601.152. Failure to Inform or Misrepresentation of Right to Cancel.

A merchant may not:

(1) at the time the consumer signs the contract pertaining to a consumer transaction or purchases the goods, services, or real property, fail to inform the consumer orally of the right to cancel the transaction; or

(2) misrepresent in any manner the consumer's right to cancel.

(Formerly Bus. & Com. Code, § 39.008(a) (part).) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 601.153. Transfer of Indebtedness During Certain Period.

A merchant may not negotiate, transfer, sell, or assign a note or other evidence of indebtedness to a finance company or other third party before midnight of the fifth business day after the date the contract pertaining to a consumer transaction was signed or the goods or services were purchased.

(Formerly Bus. & Com. Code, § 39.008(a) (part).) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 601.154. Failure to Take Certain Actions Following Receipt of Notice of Cancellation.

A merchant may not:

(1) fail to notify the consumer before the end of the 10th business day after the date the merchant receives the notice of cancellation whether the merchant intends to repossess or abandon any shipped or delivered goods;

(2) fail or refuse to honor a valid cancellation under this chapter by a consumer; or

(3) fail before the end of the 10th business day after the date the merchant receives a valid notice of cancellation to:

(A) refund all payments made under the contract or sale;

(B) return any goods or property traded in to the merchant in substantially the same condition as when received by the merchant;

(C) cancel and return a negotiable instrument executed by the consumer in connection with the contract of sale;

(D) take any action appropriate to terminate promptly any security interest created in the transaction; or

(E) restore improvements on real property to the same condition as when the merchant took title to or possession of the real property unless the consumer requests otherwise.

(Formerly Bus. & Com. Code, § 39.008(a) (part).) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

[Sections 601.155-601.200 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT

§ 601.201. Certain Sales or Contracts Void.

A sale or contract entered into under a consumer transaction in violation of Section 601.053(b) or Subchapter D is void.

(Formerly Bus. & Com. Code, § 39.008(b).) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 601.202. Liability for Damages.

A merchant who violates this chapter is liable to the consumer for:

(1) actual damages suffered by the consumer as a result of the violation;

(2) reasonable attorney's fees; and

(3) court costs.

(Formerly Bus. & Com. Code, § 39.008(c).) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 601.203. Alternative Recovery Under Certain Circumstances.

If the merchant fails to tender goods or property traded to the merchant in substantially the same condition as when received by the merchant, the consumer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(Formerly Bus. & Com. Code, § 39.008(d).) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 601.204. Deceptive Trade Practice.

A violation of this chapter is a false, misleading, or deceptive act or practice as defined by Section 17.46(b). In addition to any remedy under this chapter, a remedy under Subchapter E, Chapter 17, is also available for a violation of this chapter.

(Formerly Bus. & Com. Code, § 39.008(e).) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

§ 601.205. Injunction.

If the attorney general believes that a person is violating or about to violate this chapter, the attorney general may bring an action in the name of the state to restrain or enjoin the person from violating this chapter.

(Formerly Bus. & Com. Code, § 39.009.) Recodified by Acts 2007, 80th Leg., R.S., c. 885, § 2.01, eff. April 1, 2009.

d. Credit Services Organizations

Texas Finance Code

CHAPTER 393. CREDIT SERVICES ORGANIZATIONS

SUBCHAPTER A. GENERAL PROVISIONS

§ 393.001. Definitions.

In this chapter:

(1) "Consumer" means an individual who is solicited to purchase or who purchases the services of a credit services organization.

(2) "Consumer reporting agency" has the meaning assigned by Section 603(f), Fair Credit Reporting Act (15 U.S.C. Section 1681a(f)).

(3) "Credit services organization" means a person who provides, or represents that the person can or will provide, for the payment of valuable consideration any of the following services with respect to the extension of consumer credit by others:

(A) improving a consumer's credit history or rating;

(B) obtaining an extension of consumer credit for a consumer; or

(C) providing advice or assistance to a consumer with regard to Paragraph (A) or (B).

(4) "Extension of consumer credit" means the right to defer payment of debt offered or granted primarily for personal, family, or household purposes or to incur the debt and defer its payment.

Added by Acts 1997, 75th Leg., c. 1008, § 1 eff. Sept. 1, 1997.

§ 393.002. Persons Not Covered.

(a) This chapter does not apply to:

(1) a person:

(A) authorized to make a loan or grant an extension of consumer credit under the laws of this state or the United States; and

(B) subject to regulation and supervision by this state or the United States;

(2) a lender approved by the United States secretary of housing and urban development for participation in a mortgage insurance program under the National Housing Act (12 U.S.C. Section 1701 et seq.);

(3) a bank or savings association the deposits or accounts of which are eligible to be insured by the Federal Deposit Insurance Corporation or a subsidiary of the bank or association;

(4) a credit union doing business in this state;

(5) a nonprofit organization exempt from taxation under Section 501(c)(3), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(3));

(6) a real estate broker or salesperson licensed under Chapter 1101, Occupations Code, who is acting within the course and scope of that license;

(7) an individual licensed to practice law in this state who is acting within the course and scope of the individual's practice as an attorney;

(8) a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission acting within the course and scope of that regulation;

(9) a consumer reporting agency;

(10) a person whose primary business is making loans secured by liens on real property; or

(11) a mortgage broker or loan officer licensed under Chapter 156, Finance Code, who is acting within the course and scope of that license.

(12) an electronic return originator who:

(A) is an authorized Internal Revenue Service e-file provider; and

(B) makes, negotiates, arranges for, or transacts a loan that is based on a person's federal income tax refund on behalf of a bank, savings bank, savings and loan association, or credit union.

(b) In an action under this chapter, a person claiming an exemption under this section has the burden of proving the exemption.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 344, § 2.036, eff. Sept. 1, 1999; Acts 1999, 76th Leg., c. 1254, § 3, eff. Sept. 1, 1999; Acts 2003, 78th Leg., c. 1276, § 14A.775, eff. Sept. 1, 2003 (Acts 2003 amended subsection (a)(6).); Acts 2003, 78th Leg., c. 135, § 2, eff. Sept. 1, 2003 (Acts 2003 amended subsection (a)(12).).

§ 393.003. Waiver Void.

A waiver of a provision of this chapter by a consumer is void.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

[Sections 393.004 to 393.100 reserved for expansion]

SUBCHAPTER B. REGISTRATION AND DISCLOSURE STATEMENTS

§ 393.101. Registration Statement.

(a) Before conducting business in this state, a credit services organization shall register with the secretary of state by filing a statement that:

(1) contains the name and address of:

(A) the organization; and

(B) each person who directly or indirectly owns or controls at least 10 percent of the outstanding shares of stock in the organization; and

(2) fully discloses any litigation or unresolved complaint relating to the operation of the organization filed with a governmental authority of this state or contains a notarized statement that there has been no litigation or unresolved complaint of that type.

(b) The organization shall keep a copy of the registration statement in its files.

(c) The secretary of state may not require an organization to provide information other than information contained in the registration statement.

(d) A registration certificate expires on the first anniversary of its date of issuance. A registered credit services organization may renew a registration certificate by filing a renewal application, in the form prescribed by the secretary of state, and paying the renewal fee.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.44(a), eff. Sept. 1, 1999; Acts 1997, 75th Leg., c. 576, § 2, repealed by Acts 1999, 76th Leg., c. 62, § 7.44(c).

§ 393.102. Update of Registration Statement.

A credit services organization shall update information contained in the registration statement not later than the 90th day after the date on which the information changes.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 393.103. Inspection of Registration Statement.

A credit services organization shall allow a consumer to inspect the registration statement on request.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 393.104. Filing Fee.

The secretary of state may charge a credit services organization a reasonable fee to cover the cost of filing a registration statement or renewal application in an amount not to exceed $100.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.44(b), eff. Sept. 1, 1999; Acts 1997, 75th Leg., c. 576, § 2, repealed by Acts 1999, 76th Leg., c. 62, § 7.44(c).

§ 393.105. Disclosure Statement.

Before executing a contract with a consumer or receiving valuable consideration from a consumer, a credit services organization shall provide the consumer with a document containing:

(1) a complete and detailed description of the services to be performed by the organization for the consumer and the total cost of those services;

(2) an explanation of the consumer's right to proceed against the surety bond or account obtained under Section 393.302;

(3) the name and address of the surety company that issued the surety bond or the name and address of the depository and the trustee and the account number of the surety account, as appropriate;

(4) a complete and accurate statement of the consumer's right to review information on the consumer maintained in a file by a consumer reporting agency, as provided by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.);

(5) a statement that information in the consumer's file is available for review:

(A) without charge on request made to the consumer reporting agency not later than the 30th day after the date on which the agency receives notice the consumer has been denied credit; and

(B) for a minimal charge at any other time;

(6) a complete and accurate statement of the consumer's right to dispute directly with a consumer reporting agency the completeness or accuracy of an item contained in the consumer's file maintained by the agency;

(7) a statement that accurate information cannot be permanently removed from the files of a consumer reporting agency;

(8) a complete and accurate statement explaining:

(A) when consumer information becomes obsolete; and

(B) that a consumer reporting agency is prevented from issuing a report containing obsolete information; and

(9) a complete and accurate statement of the availability of nonprofit credit counseling services.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 393.106. Copy of Disclosure Statement.

A credit services organization shall keep in its files a copy of a document required under Section 393.105, signed by the consumer, acknowledging receipt, until the second anniversary of the date on which the organization provides the document.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

[Sections 393.107 to 393.200 reserved for expansion]

SUBCHAPTER C. CONTRACT FOR SERVICES

§ 393.201. Form and Terms of Contract.

(a) Each contract for the purchase of the services of a credit services organization by a consumer must be in writing, dated, and signed by the consumer.

(b) In addition to the notice required by Section 393.202, the contract must:

(1) contain the payment terms, including the total payments to be made by the consumer, whether to the organization or to another person;

(2) fully describe the services the organization is to perform for the consumer, including each guarantee and each promise of a full or partial refund and the estimated period for performing the services, not to exceed 180 days;

(3) contain the address of the organization's principal place of business; and

(4) contain the name and address of the organization's agent in this state authorized to receive service of process.

(c) A contract with a credit access business, as defined by Section 393.601, for the performance of services described by Section 393.602(a) must, in addition to the requirements of Subsection (b) and Section 393.302:

(1) contain a statement that there is no prepayment penalty;

(2) contain a statement that a credit access business must comply with Chapter 392 and the federal Fair Debt Collection Practices Act (15 U.S.C. Section 1692 et seq.) with respect to an extension of consumer credit described by Section 393.602(a);

(3) contain a statement that a person may not threaten or pursue criminal charges against a consumer related to a check or other debit authorization provided by the consumer as security for a transaction in the absence of forgery, fraud, theft, or other criminal conduct;

(4) contain a statement that a credit access business must comply, to the extent applicable, with 10 U.S.C. Section 987 and any regulations adopted under that law with respect to an extension of consumer credit described by Section 393.602(a);

(5) disclose to the consumer:

(A) the lender from whom the extension of consumer credit is obtained;

(B) the interest paid or to be paid to the lender; and

(C) the specific fees that will be paid to the credit access business for the business's services; and

(6) the name and address of the Office of Consumer Credit Commissioner and the telephone number of the office's consumer helpline.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2011, 82nd Leg., R.S., c. 1302, § 1, eff. Jan. 1, 2012.

§ 393.202. Notice of Cancellation.

(a) The contract must conspicuously state the following, in type that is boldfaced, capitalized, underlined, or otherwise distinguished from the surrounding written material and in immediate proximity to the space reserved for the consumer's signature:

"You, the buyer, may cancel this contract at any time before midnight of the third day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right."

(b) The contract must have attached two easily detachable copies of a cancellation notice. The notice must be in boldfaced type and in the following form:

"Notice of Cancellation

You may cancel this contract, without any penalty or obligation, within three days after the date the contract is signed.

If you cancel, any payment made by you under this contract will be returned within 10 days after the date of receipt by the seller of your cancellation notice.

To cancel this contract, mail or deliver a signed dated copy of this cancellation notice, or other written notice, to:

(name of seller) at (address of seller) (place of business) not later than midnight (date)

I hereby cancel this transaction.

date)

purchaser's signature)"

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 393.203. Issuance of Contract and Other Documents.

A credit services organization shall give to the consumer, when the document is signed, a copy of the completed contract and any other document the organization requires the consumer to sign.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 393.204. Breach of Contract.

The breach by a credit services organization of a contract under this chapter, or of an obligation arising from a contract under this chapter, is a violation of this chapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

[Sections 393.205 to 393.300 reserved for expansion]

SUBCHAPTER C-1. NOTICE AND DISCLOSURE REQUIREMENTS FOR CERTAIN CREDIT SERVICES ORGANIZATIONS

§ 393.221. Definitions.

In this subchapter:

(1) "Credit access business" means a credit services organization that obtains for a consumer or assists a consumer in obtaining an extension of consumer credit in the form of a deferred presentment transaction or a motor vehicle title loan.

(2) "Deferred presentment transaction" has the meaning assigned by Section 341.001. For purposes of this chapter, this definition does not preclude repayment in more than one installment. The term is also referred to as a payday loan.

(3) "Motor vehicle title loan" or "auto title loan" means a loan in which an unencumbered motor vehicle is given as security for the loan. The term does not include a retail installment transaction under Chapter 348 or another loan made to finance the purchase of a motor vehicle.

Added by Acts 2011, 82nd Leg., R.S., c. 1301, § 1, eff. Jan. 1, 2012.

§ 393.222. Posting of Fee Schedule; Notices.

(a) A credit access business shall post, in a conspicuous location in an area of the business accessible to consumers and on any Internet website, including a social media site, maintained by the credit access business:

(1) a schedule of all fees to be charged for services performed by the credit access business in connection with deferred presentment transactions and motor vehicle title loans, as applicable;

(2) a notice of the name and address of the Office of Consumer Credit Commissioner and the telephone number of the office's consumer helpline; and

(3) a notice that reads as follows:

"An advance of money obtained through a payday loan or auto title loan is not intended to meet long-term financial needs. A payday loan or auto title loan should only be used to meet immediate short-term cash needs. Refinancing the loan rather than paying the debt in full when due will require the payment of additional charges."

(b) The Finance Commission of Texas may adopt rules to implement this section.

Added by Acts 2011, 82nd Leg., R.S., c. 1301, § 1, eff. Jan. 1, 2012.

§ 393.223. Consumer Transaction Information.

(a) Before performing services described by Section 393.221(1), a credit access business must provide to a consumer a disclosure adopted by rule of the Finance Commission of Texas that discloses the following in a form prescribed by the commission:

(1) the interest, fees, and annual percentage rates, as applicable, to be charged on a deferred presentment transaction or on a motor vehicle title loan, as applicable, in comparison to interest, fees, and annual percentage rates to be charged on other alternative forms of consumer debt;

(2) the amount of accumulated fees a consumer would incur by renewing or refinancing a deferred presentment transaction or motor vehicle title loan that remains outstanding for a period of two weeks, one month, two months, and three months; and

(3) information regarding the typical pattern of repayment of deferred presentment transactions and motor vehicle title loans.

(b) If a credit access business obtains or assists a consumer in obtaining a motor vehicle title loan, the credit access business shall provide to the consumer a notice warning the consumer that in the event of default the consumer may be required to surrender possession of the motor vehicle to the lender or other person to satisfy the consumer's outstanding obligations under the loan.

(c) The Finance Commission of Texas shall adopt rules to implement this section.

Added by Acts 2011, 82nd Leg., R.S., c. 1301, § 1, eff. Jan. 1, 2012.

Section 2 of Acts 2011, 82nd Leg., R.S., c. 1301, provides:

Notwithstanding Section 393.223(a), Finance Code, as added by this Act, a credit access business is not required to comply with that section until the Finance Commission of Texas prescribes the form required by that section.

§ 393.224. Administrative Penalty.

The consumer credit commissioner, in accordance with rules adopted by the Finance Commission of Texas, may assess an administrative penalty against a credit access business that knowingly and wilfully violates this subchapter or a rule adopted under this subchapter in the manner provided by Subchapter F, Chapter 14.

Added by Acts 2011, 82nd Leg., R.S., c. 1301, § 1, eff. Jan. 1, 2012.

SUBCHAPTER D. PROHIBITIONS AND RESTRICTIONS

§ 393.301. Representative.

In this subchapter, a representative of a credit services organization includes:

(1) a salesperson, agent, or other representative of the organization; and

(2) an independent contractor who sells or attempts to sell the services of the organization.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 393.302. Charge or Receipt of Consideration Before Completion of Services.

A credit services organization or a representative of the organization may charge or receive from a consumer valuable consideration before completely performing all the services the organization has agreed to perform for the consumer only if the organization has obtained a surety bond for each of its locations or established and maintained a surety account for each of its locations in accordance with Subchapter E.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.43(a), eff. Sept. 1, 1999; Acts 1997, 75th Leg., c. 576, § 1, repealed by Acts 1999, 76th Leg., c. 62, § 7.43(b).

§ 393.303. Charge or Receipt of Consideration for Referral.

A credit services organization or a representative of the organization may not charge or receive from a consumer valuable consideration solely for referring the consumer to a retail seller who will or may extend to the consumer credit that is substantially the same as that available to the public.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 393.304. False or Misleading Representation or Statement.

A credit services organization or a representative of the organization may not:

(1) make or use a false or misleading representation in the offer or sale of the services of the organization, including:

(A) guaranteeing to "erase bad credit" or words to that effect unless the representation clearly discloses this can be done only if the credit history is inaccurate or obsolete; and

(B) guaranteeing an extension of consumer credit regardless of the person's credit history unless the representation clearly discloses the eligibility requirements for obtaining the extension; or

(2) make, or advise a consumer to make, a statement relating to a consumer's credit worthiness, credit standing, or credit capacity that the person knows, or should know by the exercise of reasonable care, to be false or misleading to a:

(A) consumer reporting agency; or

(B) person who has extended consumer credit to a consumer or to whom a consumer is applying for an extension of consumer credit.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 393.305. Fraudulent or Deceptive Conduct.

A credit services organization or a representative of the organization may not directly or indirectly engage in a fraudulent or deceptive act, practice, or course of business relating to the offer or sale of the services of the organization.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 393.306. Advertising Services Without Filing Registration Statement.

A credit services organization or a representative of the organization may not advertise the services of the organization if the organization has not filed a registration statement required by Subchapter B.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 393.307. Causing Waiver Prohibited.

A credit services organization may not attempt to cause a consumer to waive a right under this chapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

[Sections 393.308 to 393.400 reserved for expansion]

SUBCHAPTER E. SURETY BOND; SURETY ACCOUNT

§ 393.401. Surety Bond.

(a) The surety bond of a credit services organization must be issued by a surety company authorized to do business in this state.

(b) A copy of the bond shall be filed with the secretary of state.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 393.402. Surety Account.

(a) The surety account of a credit services organization must be held in trust at a federally insured bank or savings association located in this state.

(b) The name of the depository and the trustee and the account number of the surety account must be filed with the secretary of state.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 344, § 2.037, eff. Sept. 1, 1999.

§ 393.403. Amount of Surety Bond or Account.

The surety bond or account of a credit services organization must be in the amount of $10,000.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 393.404. Beneficiary of Surety Bond or Account.

The surety bond or account of a credit services organization must be in favor of:

(1) this state for the benefit of a person damaged by a violation of this chapter; and

(2) a person damaged by a violation of this chapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 393.405. Claim Against Surety Bond or Account.

(a) A person making a claim against a surety bond or account of a credit services organization for a violation of this chapter may file suit against:

(1) the organization; and

(2) the surety or trustee.

(b) A surety or trustee is liable only for actual damages, reasonable attorney's fees, and court costs awarded under Section 393.503(a).

(c) The aggregate liability of a surety or trustee for an organization's violation of this chapter may not exceed the amount of the surety bond or account.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 393.406. Term of Surety Bond or Account.

The surety bond or account of a credit services organization must be maintained until the second anniversary of the date on which the organization ceases operations.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 393.407. Payment of Money in Surety Account to Credit Services Organization.

(a) A depository may not pay money in a surety account to the credit services organization that established the account or a representative of the organization unless the organization or representative presents a statement issued by the secretary of state indicating that the requirement of Section 393.406 has been satisfied in relation to the account.

(b) The secretary of state may conduct an investigation and require information to be submitted as necessary to enforce this section.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

[Sections 393.408 to 393.500 reserved for expansion]

SUBCHAPTER F. CRIMINAL PENALTIES AND CIVIL REMEDIES

§ 393.501. Criminal Penalty.

(a) A person commits an offense if the person violates this chapter.

(b) An offense under this chapter is a Class B misdemeanor.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 393.502. Injunctive Relief.

A district court on the application of the attorney general or a consumer may enjoin a violation of this chapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 393.503. Damages.

(a) A consumer injured by a violation of this chapter is entitled to recover:

(1) actual damages in an amount not less than the amount the consumer paid the credit services organization;

(2) reasonable attorney's fees; and

(3) court costs.

(b) A consumer who prevails in an action under this section may also be awarded punitive damages.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 393.504. Deceptive Trade Practice.

A violation of this chapter is a deceptive trade practice actionable under Subchapter E, Chapter 17, Business & Commerce Code.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 393.505. Statute of Limitations.

An action under Section 393.503 or 393.504 must be brought not later than the fourth anniversary of the date on which the contract to which the action relates is executed.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

SUBCHAPTER G. LICENSING AND REGULATION OF CERTAIN CREDIT SERVICES ORGANIZATIONS

§ 393.601. Definitions.

In this subchapter:

(1) "Commissioner" means the consumer credit commissioner.

(2) "Credit access business" means a credit services organization that obtains for a consumer or assists a consumer in obtaining an extension of consumer credit in the form of a deferred presentment transaction or a motor vehicle title loan.

(3) "Deferred presentment transaction" has the meaning assigned by Section 341.001. For purposes of this chapter, this definition does not preclude repayment in more than one installment.

(4) "Finance commission" means the Finance Commission of Texas.

(5) "Motor vehicle title loan" means a loan in which an unencumbered motor vehicle is given as security for the loan. The term does not include a retail installment transaction under Chapter 348 or another loan made to finance the purchase of a motor vehicle.

(6) "Office" means the Office of Consumer Credit Commissioner.

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012.

§ 393.602. Applicability.

(a) This subchapter applies only to a credit services organization that, with respect to a consumer who is located in this state at the time of the transaction, obtains for a consumer or assists a consumer in obtaining an extension of consumer credit in the form of:

(1) a deferred presentment transaction; or

(2) a motor vehicle title loan.

(b) A credit access business may assess fees for its services as agreed to between the parties. A credit access business fee may be calculated daily, biweekly, monthly, or on another periodic basis. A credit access business is permitted to charge amounts allowed by other laws, as applicable. A fee may not be charged unless it is disclosed.

(c) A person may not use a device, subterfuge, or pretense to evade the application of this subchapter. A lawful transaction governed under another statute, including Title 1, Business & Commerce Code, does not violate this subsection and may not be considered a device, subterfuge, or pretense to evade the application of this subchapter.

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012. Amended by Acts 2019, 86th Leg., c. 767, § 82, eff. Sept. 1, 2019.

§ 393.603. Licensed Required.

A credit services organization must obtain a license under this subchapter for each location at which the organization operates as a credit access business in performing services described by Section 393.602(a).

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012.

§ 393.604. Application for License.

(a) An application for a license under this subchapter must:

(1) be under oath;

(2) give the approximate location from which the business is to be conducted;

(3) identify the business's principal parties in interest;

(4) contain the name, physical address, and telephone number of all third-party lender organizations with which the business contracts to provide services described by Section 393.602(a) or from which the business arranges extensions of consumer credit described by Section 393.602(a); and

(5) contain other relevant information that the commissioner requires for the findings required under Section 393.607.

(b) On the filing of one or more license applications, the applicant shall pay to the commissioner an investigation fee of $200. Except for good cause as determined by the finance commission, a separate investigation fee is not required for multiple license applications.

(c) On the filing of each license application, the applicant shall pay to the commissioner a license fee in an amount determined as provided by Section 14.107.

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012. Amended by Acts 2019, 86th Leg., c. 767, § 83, eff. Sept. 1, 2019.

§ 393.605. Bond.

(a) If the commissioner requires, an applicant for a license under this subchapter shall file with the application a bond that is:

(1) in an amount satisfactory to the commissioner that does not exceed the lesser of:

(A) $10,000 for the first license and $10,000 for each additional license; or

(B) $2,500,000; and

(2) issued by a surety company qualified to do business as a surety in this state.

(b) The bond must be in favor of this state for the use of this state and the use of a person who has a cause of action under this subchapter against the license holder.

(c) The bond must be conditioned on:

(1) the license holder's faithful performance under this subchapter and rules adopted under this subchapter; and

(2) the payment of all amounts that become due to this state or another person under this subchapter during the period for which the bond is given.

(d) The aggregate liability of a surety to all persons damaged by the license holder's violation of this subchapter may not exceed the amount of the bond.

(e) A credit access business that files a bond under this section is not required to file a bond under Subchapter E.

(f) A credit access business, instead of obtaining a surety bond, may satisfy the requirements of this section by depositing an amount described by Subsection (a)(1) in a surety account held in trust at a federally insured bank or savings association located in this state. The name of the depository, trustee, and account number of the surety account must be filed with the office.

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012. Amended by Acts 2019, 86th Leg., c. 767, § 84, eff. Sept. 1, 2019.

§ 393.606. Investigation of Application.

On the filing of an application and a bond, if required under Section 393.605, and on payment of the required fees, the commissioner shall conduct an investigation to determine whether to issue the license.

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012.

§ 393.607. Approval or Denial of Application.

(a) The commissioner shall approve the application and issue to the applicant a license to operate as a credit access business for purposes of engaging in the activity to which this subchapter applies if the commissioner finds that:

(1) the financial responsibility, experience, character, and general fitness of the applicant are sufficient to:

(A) command the confidence of the public; and

(B) warrant the belief that the business will be operated lawfully and fairly, within the purposes of this subchapter; and

(2) the applicant has net assets of at least $25,000 available for the operation of the business as determined in accordance with Section 393.611.

(b) If the commissioner does not find the eligibility requirements of Subsection (a) have been met, the commissioner shall notify the applicant.

(c) If an applicant requests a hearing on the application not later than the 30th day after the date of notification under Subsection (b), the applicant is entitled to a hearing not later than the 30th day after the date of the request.

(d) The commissioner shall approve or deny the application not later than the 30th day after the date of the filing of a completed application with payment of the required fees, or if a hearing is held, after the date of the completion of the hearing on the application. The commissioner and the applicant may agree to a later date in writing.

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012.

§ 393.608. Dispostion of Fees on Denial of Application.

If the commissioner denies the application, the commissioner shall retain the investigation fee and shall return to the applicant the license fee submitted with the application.

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012.

§ 393.6085. License Term.

A license issued under this chapter is valid for the period prescribed by finance commission rule adopted under Section 14.112.

Added by Acts 2019, 86th Leg., c. 767, § 85, eff. Sept. 1, 2019.

§ 393.609. Name and Place of License.

(a) A license issued under this subchapter must state:

(1) the name of the license holder; and

(2) the address of the office from which the business is to be conducted, except as provided by Subsection (c).

(b) A license holder may not conduct business under this subchapter under a name other than the name stated on the license.

(c) A license holder may not conduct business at a location other than the address stated on the license, except that a license holder:

(1) is not required to have an office in this state; and

(2) may operate using e-commerce methods, including the Internet.

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012.

§ 393.610. License Display.

A license holder shall display a license at the place of business provided on the license. With respect to business conducted through the Internet, this requirement may be satisfied by displaying the license on the business's Internet website.

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012.

§ 393.611. Minimum Assets for License.

A license holder shall maintain net assets used or readily available for use in conducting the business of each of the offices for which a license is held under this subchapter, in an amount that is not less than the lesser of:

(1) $25,000 for each office; or

(2) $2,500,000 in the aggregate.

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012.

§ 393.6115. Grounds for Refusal to Renew.

The commissioner may refuse to renew the license of a credit access business who fails to comply with an order issued by the commissioner to enforce this chapter.

Added by Acts 2019, 86th Leg., c. 767, § 85, eff. Sept. 1, 2019.

§ 393.612. License Fee.

Not later than the 30th day before the date the license expires, a license holder shall pay to the commissioner for each license held a fee in an amount determined as provided by Section 14.107.

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012. Amended by Acts 2019, 86th Leg., c. 767, § 86, eff. Sept. 1, 2019.

§ 393.613. Expiration of License on Failure to Pay Fee.

If the fee for a license is not paid before the 16th day after the date on which the written notice of delinquency of payment has been given to the license holder, the license expires on that day.

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012. Amended by Acts 2019, 86th Leg., c. 767, § 87, eff. Sept. 1, 2019.

§ 393.614. License Suspension or Revocation.

(a) After notice and opportunity for a hearing, the commissioner may suspend or revoke a license if the commissioner finds that:

(1) the license holder failed to pay the license fee, an examination fee, an investigation fee, or another charge imposed by the commissioner under this subchapter;

(2) the license holder, knowingly or without the exercise of due care, violated this chapter or a rule adopted or order issued under this chapter; or

(3) a fact or condition exists that, if it had existed or had been known to exist at the time of the original application for the license, clearly would have justified the commissioner's denial of the application.

(b) If in a three-year period the commissioner suspends or revokes under this section the licenses of five or more credit access businesses owned or controlled by the same person, including a corporation that owns multiple businesses, the commissioner may suspend or revoke the licenses of all credit access businesses owned or controlled by that person.

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012. Amended by Acts 2019, 86th Leg., c. 767, § 88, eff. Sept. 1, 2019.

§ 393.615. License Suspension or Revocation Filed with Public Records.

The decision of the commissioner on the suspension or revocation of a license and the evidence considered by the commissioner in making the decision shall be filed in the public records of the commissioner.

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012.

§ 393.616. Reinstatement of Suspended License; Issuance of New License After Revocation.

The commissioner may reinstate a suspended license or issue a new license on application to a person whose license has been revoked if at the time of the reinstatement or issuance no fact or condition exists that clearly would have justified the commissioner's denial of an original application for the license.

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012.

§ 393.617. Surrender of License.

A license holder may surrender a license issued under this subchapter by complying with the commissioner's written instructions relating to license surrender.

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012. Amended by Acts 2023, 88th Leg., R.S., SB 1371, § 30, eff. Sept. 1, 2023.

§ 393.618. Effect of License Suspension, Revocation, or Surrender.

(a) The suspension, revocation, or surrender of a license issued under this subchapter does not affect the obligation of a contract between the license holder and a consumer entered into before the revocation, suspension, or surrender.

(b) Surrender of a license does not affect the license holder's civil or criminal liability for an act committed before surrender.

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012.

§ 393.619. Moving an Office.

(a) A license holder shall give written notice to the commissioner before the 30th day before the date the license holder moves an office from the location provided on the license.

(b) The commissioner shall amend a license holder's license accordingly.

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012.

§ 393.620. Transfer or Assignment of License.

A license may be transferred or assigned only with the approval of the commissioner.

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012.

§ 393.621. Administration.

The office shall administer this subchapter.

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012.

§ 393.622. Rules.

(a) The finance commission may:

(1) adopt rules necessary to enforce and administer this subchapter;

(2) adopt rules with respect to the quarterly reporting by a credit access business licensed under this subchapter of summary business information relating to extensions of consumer credit described by Section 393.602(a); and

(3) adopt rules with respect to periodic examination by the office relating to extensions of consumer credit described by Section 393.602(a), including rules related to charges for defraying the reasonable cost of conducting the examinations.

(b) The finance commission may adopt rules under this section to allow the commissioner to review, as part of a periodic examination, any relevant contracts between the credit access business and the third-party lender organizations with which the credit access business contracts to provide services described by Section 393.602(a) or from which the business arranges extensions of consumer credit described by Section 393.602(a). A contract or information obtained by the commissioner under this section is considered proprietary and confidential to the respective parties to the contract, and is not subject to disclosure under Chapter 552, Government Code.

(c) Nothing in Section 393.201(c) or Sections 393.601-393.628 grants authority to the finance commission or the Office of Consumer Credit Commissioner to establish a limit on the fees charged by a credit access business.

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012.

§ 393.623. Providing or Advertising Services Without License Prohibited.

A credit access business or a representative of the business may not provide or advertise the services of the business if the business is not licensed under this subchapter.

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012.

§ 393.624. Restrictions on Off-Site Advertising.

(a) A credit access business may not advertise on the premises of a nursing facility, assisted living facility, group home, intermediate care facility for persons with an intellectual disability, or other similar facility subject to regulation by the Health and Human Services Commission.

(b) The finance commission may adopt rules to implement this section.

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012. Amended by Acts 2023, 88th Leg., R.S., HB 446, § 4.01, eff. Sept. 1, 2023.

§ 393.625. Military Borrowers.

An extension of consumer credit described by Section 393.602(a) that is obtained by a credit access business for a member of the United States military or a dependent of a member of the United States military or that the business assisted that person in obtaining must comply with 10 U.S.C. Section 987 and any regulations adopted under that law, to the extent applicable.

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012.

§ 393.626. Debt Collection Practices.

A violation of Chapter 392 by a credit access business with respect to an extension of consumer credit described by Section 393.602(a) constitutes a violation of this subchapter.

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012.

§ 393.627. Quarterly Report to Commissioner.

A credit access business shall file a quarterly report with the commissioner on a form prescribed by the commissioner that provides the following information relating to extensions of consumer credit described by Section 393.602(a) during the preceding quarter:

(1) the number of consumers for whom the business obtained or assisted in obtaining those extensions of consumer credit;

(2) the number of those extensions of consumer credit obtained by the business or that the business assisted consumers in obtaining;

(3) the number of refinancing transactions of the extensions of consumer credit described by Subdivision (2);

(4) the number of consumers refinancing the extensions of consumer credit described by Subdivision (2);

(5) the number of consumers refinancing more than once the extensions of consumer credit described by Subdivision (2);

(6) the average amount of the extensions of consumer credit described by Subdivision (2);

(7) the total amount of fees charged by the business for the activities described by Subdivision (1);

(8) the number of vehicles surrendered or repossessed under the terms of an extension of consumer credit in the form of a motor vehicle title loan obtained by the business or that the business assisted a consumer in obtaining;

(9) the mean, median, and mode of the number of extensions of consumer credit obtained by consumers as a result of entering into the extensions of consumer credit described by Subdivision (2); and

(10) any related information the commissioner determines necessary.

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012.

§ 393.628. Redesignatd as § 14.113, Tex. Fin. Code, by Acts 2023, 88th Leg., R.S., SB 1371, § 1, eff. Sept. 1, 2023.

e. Health Spa Act

Texas Occupations Code

TITLE 3. HEALTH PROFESSIONS

SUBTITLE M. REGULATION OF OTHER HEALTH PROFESSIONS

CHAPTER 702. HEALTH SPAS

SUBCHAPTER A. GENERAL PROVISIONS

§ 702.001. Short Title.

This chapter may be cited as the Health Spa Act.

Added by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.002. Purpose and Construction.

(a) The purpose of this chapter is to protect the public against fraud, deceit, imposition, and financial hardship and to foster and encourage competition, fair dealing, and prosperity in the field of health spa operations and services by prohibiting or restricting injurious practices involving:

(1) health spa contracts; and

(2) the marketing of health spa services.

(b) This chapter shall be liberally construed and applied to promote its purpose and to provide efficient and economical procedures to protect the public.

Rev.Civ.St. Art. 5221l, §§ 2, 4. Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.003. Definitions.

In this chapter:

(1) "Closed" means a condition in which:

(A) the facilities of a health spa are no longer available to the health spa's members and equivalent facilities located not more than 10 miles from the health spa have not been made available to the members;

(B) a certificate holder sells a registered location and the security filed or posted by the certificate holder under Subchapter D is:

(i) canceled;

(ii) withdrawn; or

(iii) otherwise unavailable to the members of the health spa; or

(C) a certificate holder sells a registered location and the buyer does not adopt or honor the contracts of existing members of the health spa.

(2) "Contract" means an agreement between a seller and purchaser by which the purchaser becomes a member of a health spa.

(3) "Facilities" means the equipment, physical structures, improvements, including improvements to leasehold premises, and other tangible property, including saunas, whirlpool baths, gymnasiums, running tracks, swimming pools, shower areas, racquetball courts, martial arts equipment, and exercise equipment, that are located at a health spa and used to conduct the business of the health spa.

(4) "Health spa" means a business that offers for sale, or sells, memberships that provide the members instruction in or the use of facilities for a physical exercise program. The term does not include:

(A) an organization that is tax exempt under Section 501 et seq., Internal Revenue Code (26 U.S.C. Section 501 et seq.);

(B) a private club owned and operated by its members;

(C) an entity operated exclusively to:

(i) teach dance or aerobic exercise; or

(ii) provide physical rehabilitation activity related to an individual's injury or disease;

(D) a person engaged in an activity authorized under a license issued by the state;

(E) an activity conducted or sanctioned by a school under the Education Cod; or

(F) a hospital or clinic owned or operated by an agency of the state or federal government or by a political subdivision of this state.

(5) "Location" means the physical site of the facilities of a health spa.

(6) "Member" means a person who is entitled to the benefits of membership in a health spa.

(7) "Membership" means the status of a person under a contract that entitles the person to use a health spa's services or facilities.

(8) "Obligor" means a person, other than a surety, who is obligated to perform if a certificate holder defaults.

(9) "Open" means the date each service of a health spa that was advertised before the opening, or promised to be made available, are available for use by its members.

(10) "Prepayment" means consideration paid by a purchaser for membership in a health spa before the date the health spa opens.

(11) "Purchaser" means a person who purchases, or applies to purchase, the right to use a health spa's services or facilities.

(12) "Registered location" means a health spa location for which a health spa operator's certificate of registration is issued under this chapter.

(13) "Seller" means a person who:

(A) owns or operates a health spa; or

(B) offers for sale, or sells, the right to use a health spa's services or facilities.

(14) "Services" means the programs, plans, guidance, or instruction that a health spa provides for its members. The term includes diet planning, exercise instruction and programs, and instructional classes.

Rev.Civ..St. Art. 5221l, §§ 6(a), (b), (c), (d), (e), (f), (g), (h), (i), (k), (l), (o), (p). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2011 82nd Leg., R.S., c. 887, § 1, eff. Sept. 1, 2011.

[Sections 702.004-702.050 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF SECRETARY OF STATE

§ 702.051. Administrative and Rulemaking Authority.

(a) The secretary of state shall administer this chapter.

(b) In administering this chapter, the secretary of state shall:

(1) adopt rules;

(2) issue administrative orders; and

(3) take action necessary to ensure compliance with this chapter.

Rev.Civ.St. Art. 5221l, § 26. Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.052. Rules Relating to Security Claims and Proceeds.

The secretary of state shall adopt rules necessary to:

(1) determine the disposition of a security claim filed under Section 702.251; and

(2) ensure the prompt and fair distribution of security proceeds.

Rev.Civ.St. Art. 5221l, § 10A(d). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.053. Registration and Renewal Fees.

The secretary of state may charge each applicant for a certificate of registration, or renewal of a certificate, a reasonable fee not to exceed $100 to cover the cost of issuance or renewal.

Rev.Civ.St. Art. 5221l, § 8(g). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

[Sections 702.054-702.100 reserved for expansion]

SUBCHAPTER C. CERTIFICATE OF REGISTRATION

§ 702.101. Certificate of Resignation Required.

A person may not operate a health spa or offer for sale, or sell, a membership in a health spa unless the person holds a health spa operator's certificate of registration.

Rev.Civ.St. Art. 5221l, § 8(a). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.102. Application Requirements.

(a) An applicant for a health spa operator's certificate of registration must file with the secretary of state an application stating:

(1) the applicant's name, address, and telephone number;

(2) the applicant's business trade name;

(3) for an applicant whose business is incorporated:

(A) the applicant's business name registered with the secretary of state;

(B) the location of the applicant's registered business office; and

(C) the name and address of each person who directly or indirectly owns or controls 10 percent or more of the outstanding shares of stock in the applicant's business;

(4) the date the applicant became the owner and operator of the applicant's business;

(5) the address of the health spa; and

(6) the type of available or proposed facilities and services offered at the health spa location.

(b) An application for a certificate of registration must be accompanied by:

(1) a sample of each contract used to sell a membership in the applicant's health spa;

(2) proof of security filed or posted by the applicant under Subchapter D; and

(3) the required registration fee.

(c) An applicant must comply with the application requirements of this section for each location where the applicant operates a health spa.

Rev.Civ.St. Art. 5221l, §§ 8(b), (c). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.103. Certificate of Registration Nontransferable; Application by New Owner.

(a) A health spa operator's certificate of registration is not transferable.

(b) A person who obtains ownership of a health spa by purchase or other transfer shall file an application for a certificate of registration under Section 702.102 not later than the fifth day after the date the person obtains ownership.

Rev.Civ.St. Art. 5221l, § 8(f). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.104. Term Renewal.

(a) A health spa operator's certificate of registration expires on the first anniversary of the date of issuance.

(b) A certificate of registration may be renewed as provided by the secretary of state.

Rev.Civ.St. Art. 5221l, § 8(d). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.105. Certificate Posting.

A certificate holder shall post a health spa operator's certificate of registration in a conspicuous place at each registered location.

Rev.Civ.St. Art. 5221l, § 8(i). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.106. Change of Information.

If the information provided in an application for a certificate of registration changes, the certificate holder shall amend the application not later than the 90th day after the date the change occurs.

Rev.Civ.St. Art. 5221l, § 8(e). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.107. Sales Tax Permit; Proof of Registration Required.

(a) A health spa operator shall submit to the comptroller a copy of the operator's certificate of registration at the time the operator applies for a sales tax permit.

(b) The comptroller may not issue a sales tax permit to a health spa operator who fails to comply with this section. The secretary of state shall assist the comptroller in determining whether a business is a health spa under this chapter.

Added by Acts, 79th Leg., c. 908, § 1, eff. Sept. 1, 2005.

[Sections 702.107-702.150 reserved for expansion]

SUBCHAPTER D. SECURITY REQUIREMENTS

§ 702.151. Security Required.

(a) Except as provided by Subchapter E, the secretary of state may not issue a health spa operator's certificate of registration to an applicant unless the applicant files a surety bond, or posts other security as prescribed by the secretary, in the amount prescribed by the secretary under Subsection (b).

(b) The secretary of state shall prescribe the amount of security required for an applicant in the amount determined sufficient by the secretary to protect the health spa's total membership. The amount may not be less than $20,000 or more than $50,000.

Rev.Civ.St. Art. 5221l, §§ 10(a), (d) (part), (g). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999. Amended by Acts, 79th Leg., c. 908, § 2, eff. Sept. 1, 2005.

§ 702.152. Surety Bond Requirements.

If a surety bond is filed under Section 702.151, the bond must:

(1) remain in effect until canceled by the surety company;

(2) be issued by a company authorized to do business in this state; and

(3) conform to the requirements of the Insurance Code.

Rev.Civ.St. Art. 5221l, §§ 10(b) (part), (c). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.153. Requirements for Security Other Than Surety Bond.

An applicant who posts under Section 702.151 security other than a surety bond is:

(1) not required to post other security annually if the applicant maintains security in the amount of $20,000; and

(2) entitled to receive the interest that accumulates on the other security posted.

Rev.Civ.St. Art. 5221l, § 10(d) (part). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.154. Beneficiary of Security.

The security filed or posted by a certificate holder under this subchapter must be payable to the state and held for the benefit of:

(1) the state; and

(2) each member of the certificate holder's health spa who has been administratively adjudicated to have suffered actual financial loss as a result of the closing of the certificate holder's health spa.

Rev.Civ.St. Art. 5221l, § 10(e). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.155. Duration of Security.

A certificate holder shall maintain the security filed or posted under Section 702.151 in effect until the earlier of:

(1) the second anniversary of the date the certificate holder's health spa closes; or

(2) the date the secretary of state determines that each claim filed against the security has been satisfied or foreclosed by law.

Rev.Civ.St. Art. 5221l, § 10(h). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2011, 82nd Leg., R.S., c. 1340, § 1, eff Sept. 1, 2011.

Section 8 of Acts 2011, 82nd Leg., c. 1340, provides:

(a) The changes in law made by this Act to Sections 702.155 and 702.156, Occupations Code, apply to security that is filed or posted before, on, or after the effective date of this Act.

§ 702.156. Notice of Cancellation of Security.

A surety or obligor of security filed or posted under this subchapter shall provide to the secretary of state, not later than the 60th day before the date the security is canceled, written notice of the cancellation.

Rev.Civ.St. Art. 5221l, §§ 10(b) (part), (j). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2011, 82nd Leg., R.S., c. 1340, § 2, eff Sept. 1, 2011.

Section 8 of Acts 2011, 82nd Leg., R.S., c. 1340, provides:

(a) The changes in law made by this Act to Sections 702.155 and 702.156, Occupations Code, apply to security that is filed or posted before, on, or after the effective date of this Act.

§ 702.157. Limit on Liability of Surety or Obligor.

(a) The limit of a surety's or obligor's liability stated in the security filed or posted under this subchapter may not be cumulative from year to year or period to period, regardless of the number of:

(1) years that the security continues in force; or

(2) premiums paid or payable.

(b) The liability of a surety or obligor is exclusively conditioned on a final administrative order issued by the secretary of state.

(c) Security filed or posted under this subchapter is subject to a claim only as provided by this subchapter.

Rev.Civ.St. Art. 5221l, § 10(i). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.158. Review of Security Amount.

(a) At least once every three years, the secretary of state shall review the amount of security a health spa operator is required to post under Section

702.151 to determine whether the amount is sufficient to protect the health spa's total membership. The secretary may increase the amount required if the secretary determines that the increase is necessary to protect that membership but may not increase the amount above the maximum amount allowed under Section 702.151(b).

(b) The secretary of state may adopt procedures necessary to implement this section, including:

(1) establishing a schedule to review the amount of security posted by each health spa operator; and

(2) requiring each health spa operator to submit periodically a written statement of the health spa's total membership.

Added by Acts 2005, 79th Leg., c. 908, § 3, eff. Sept. 1, 2005.

[Sections 702.159-702.200 reserved for expansion]

SUBCHAPTER E. EXEMPTION FROM SECURITY REQUIREMENTS

§ 702.201. Application for Exemption.

A certificate holder may apply for an exemption from the security requirements of Subchapter D by filing with the secretary of state a sworn application for the exemption on a form prescribed by the secretary of state.

Rev.Civ.St. Art. 5221l, § 10B(a) (part). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.202. Qualification for Exemption.

A certificate holder may apply for an exemption under Section 702.201 if:

(1) the certificate holder does not require, or solicit or offer a plan or program that requires, a health spa consumer to:

(A) execute a membership contract for a term that exceeds 31 days;

(B) execute a note or retail installment contract;

(C) authorize a draw or other recurring debit on a financial institution in favor of the certificate holder or the certificate holder's assignee;

(D) pay an initiation fee or other fee, not including monthly dues; or

(E) prepay for a term that exceeds 31 days; or

(2) the certificate holder submits a sworn statement every three years with the secretary of state stating that the certificate holder:

(A) has assets based on net book value that exceed $50,000 per registered location;

(B) has operated under substantially the same ownership or management for at least five years; and

(C) has not been the subject of a complaint relating to the closing of a health spa owned by the certificate holder or the failure of a health spa owned by the certificate holder to open that has been initiated or filed by a member of the health spa with a governmental authority in this state.

Rev.Civ.St. Art. 5221l, §§ 10B(b), (c), (h) (part). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., c. 908, § 4, eff. Sept. 1, 2005.

§§ 702.203, 702.204. Repealed by Acts 2005, 79th Leg., c. 908, § 10, eff. Sept. 1, 2005.

§ 702.205. Issuance of Exemption.

(a) On approval of an application for an exemption under Section 702.201, the secretary of state shall issue a certificate of exemption.

(b) A certificate holder to whom a certificate of exemption is issued is not required to file a surety bond or post other security under Subchapter D.

Rev.Civ.St. Art. 5221l, § 10B(a) (part). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.206. Nontransferability of Exemption.

(a) A certificate of exemption is not transferable.

(b) A person who by purchase or other transfer obtains ownership of a health spa for which a certificate of exemption has been issued shall, not later than the fifth day after the date the person obtains ownership:

(1) file a surety bond, or post other security, as required by Section 702.151; or

(2) file a new application for an exemption under Section 702.201.

Rev.Civ.St. Art. 5221l, § 10B(g). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.207. Denial and Revocation of Exemption.

After notice and opportunity for hearing, the secretary of state may deny an application for an exemption or permanently revoke a certificate holder's certificate of exemption if the secretary finds that the applicant or certificate holder:

(1) provided false information on the application for an exemption; or

(2) is no longer eligible for an exemption.

Rev.Civ.St. Art. 5221l, § 10B(i). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2011, 82nd Leg., R.S., c. 1340, § 3, eff Sept. 1, 2011.

Section 8 of Acts 2011, 82nd Leg., R.S., c. 1340, provides:

(b) The change in law made by this Act to Section 702.207, Occupations Code, applies only to an application for exemption that is filed or to the revocation of a certificate of exemption that occurs on or after the effective date of this Act. An application for exemption filed or the revocation of a certificate that occurs before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

[Sections 702.208-702.250 reserved for expansion]

SUBCHAPTER F. CLAIM ON SECURITY

§ 702.251. Filing of Security Claim.

. A member may file a claim against the security filed or posted under this subchapter by providing to the secretary of state a copy of the contract between the member and certificate holder who filed or posted the security, accompanied by proof of payment made under the contract, if the certificate holder's health spa:

(1) closes and fails to provide alternative facilities not more than 10 miles from the location of the health spa; or

(2) relocates more than 10 miles from its location preceding the relocation.

Added by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2011, 82nd Leg., R.S., c. 1340, § 4, eff Sept. 1, 2011.

Section 8 of Acts 2011, 82nd Leg., R.S., c. 1340, provides:

(c) The changes in law made by this Act to Sections 702.251 and 702.254, Occupations Code, apply only to a claim against security that is received by the secretary of state on or after the effective date of this Act. A claim against security received by the secretary of state before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

§ 702.252. Computation of Claim.

(a) Recovery on a claim filed under Section 702.251 is limited to the amount of actual financial loss suffered by the member as a result of the closing or relocating of the certificate holder's health spa.

(b) For purposes of this section, actual financial loss is computed by:

(1) rounding the date of the health spa's closing or relocation and the contract's expiration date to the nearest full month;

(2) subtracting the date of closing or relocation determined under Subdivision (1) from the expiration date determined under that subdivision, with the result expressed in whole months and representing the number of months remaining on a contract;

(3) computing the gross monthly payment by adding all payments made under the contract, including any down payment and initiation fee, and dividing the resulting amount by the total number of months in the term of the contract; and

(4) multiplying the number of months remaining on the contract computed under Subdivision (2) by the gross monthly payment computed under Subdivision (3).

Rev.Civ.St. Art. 5221l, §§ 10(e) (part), (f). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.253. Adjudication on Pro Rata Basis.

If the total amount of actual financial losses computed under Section 702.252 for all claims filed under Section 702.251 exceeds the amount of available security, the secretary of state shall reduce the amount of each recovery under Section 702.252 on a pro rata basis and shall compute the amount of each recovery by:

(1) dividing the amount of available security by the total amount of actual financial losses computed under Section 702.252 for all claims; and

(2) multiplying the results computed under Subdivision (1) by the amount of the recovery.

Rev.Civ.St. Art. 5221l, § 10A(c) (part). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., c. 756, § 1, eff. Sept. 1, 2001.

Section 5 of Acts 2001, 77th Leg., c. 756, provides:

This Act takes effect September 1, 2001, and applies only to a health spa that closes on or after that date. A health spa that closes before that date is governed by the law in effect immediately before September 1, 2001, and the former law is continued in effect for that purpose.

§ 702.254. Claim Barred.

The secretary of state may not consider a claim filed under Section 702.251 if the claim is received later than the 90th day after the date notice of the closure or relocation is first posted on the secretary of state's Internet website under Section 702.452(c).

Rev.Civ.St. Art. 5221l, § 10A(c) (part). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., c. 756, § 2, eff. Sept. 1, 2001; Acts 2011, 82nd Leg., R.S., c. 1340, § 5, eff Sept. 1, 2011.

Section 5 of Acts 2001, 77th Leg., c. 756, provides:

This Act takes effect September 1, 2001, and applies only to a health spa that closes on or after that date. A health spa that closes before that date is governed by the law in effect immediately before September 1, 2001, and the former law is continued in effect for that purpose.

Section 8 of Acts 2011, 82nd Leg., R.Sc. 1340, provides:

(c) The changes in law made by this Act to Sections 702.251 and 702.254, Occupations Code, apply only to a claim against security that is received by the secretary of state on or after the effective date of this Act. A claim against security received by the secretary of state before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

[Sections 702.255-702.300 reserved for expansion]

SUBCHAPTER G. CONTRACT REQUIREMENTS

§ 702.301. General Requirements.

(a) A contract:

(1) must be:

(A) in writing; and

(B) signed by the purchaser;

(2) must state the proposed opening date of the health spa that is the subject of the contract, if the health spa is not
open on the contract date; and

(3) must include the health spa operator's certificate of registration number or an identification number as provided by Subsection (b).

(b) The secretary of state shall adopt procedures for the issuance of an identification number that may be used in a contract for purposes of Subsection (a) by health spas with more than one location in this state.

(c) A contract under Subsection (a) constitutes the entire agreement between the seller and purchaser.

Rev.Civ.St. Art. 5221l, § 12(a) (part). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999. Amended by Acts, 79th Leg., c. 908, § 5, eff. Sept. 1, 2005.

§ 702.302. Disclosure Requirements.

(a) A health spa shall prepare a comprehensive list that includes each membership plan the health spa offers for sale. The health spa shall disclose the list to a prospective purchaser on request.

(b) A certificate holder who is not exempt under Section 702.202 from the security requirements of Subchapter D must deliver to a purchaser a complete copy of the contract, accompanied by a written receipt for any payment made by the purchaser under the contract before entering into the contract with the purchaser.

Rev.Civ.St. Art. 5221l, §§ 12(a) (part), 16. Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.303. Contract Term.

(a) Except as provided by Subsection (b), the term of a contract may not exceed three years.

(b) A contract that is financed through a retail installment contract or note may not require the purchaser to make payments or finance the contract for more than five years after the contract date.

(c) If, after a health spa opens, the health spa is rendered unusable for 30 consecutive days or longer because of an event beyond the control of the owner or operator of the health spa, including a natural disaster, the health spa shall extend the term of each affected member's contract for a period equal to the time that the health spa is rendered unusable.

(d) If the term of a contract overlaps the term of another contract between the same seller and purchaser, the contracts are considered to be one contract.

Rev.Civ.St. Art. 5221l, §§ 12(b), (c), (d); 24. Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.304. Cancellation and Refund Notice.

(a) Except as provided by Subsection (b), a contract must state in at least 10-point type that is boldfaced, capitalized, underlined, or otherwise conspicuously distinguished from surrounding written material:

(1) "NOTICE TO PURCHASER: DO NOT SIGN THIS CONTRACT UNTIL YOU READ IT OR IF IT CONTAINS BLANK SPACES."

(2) "IF YOU DECIDE YOU DO NOT WISH TO REMAIN A MEMBER OF THIS HEALTH SPA, YOU MAY CANCEL THIS CONTRACT BY MAILING TO THE HEALTH SPA BY MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DAY YOU SIGN THIS CONTRACT A NOTICE STATING YOUR DESIRE TO CANCEL THIS CONTRACT. THE WRITTEN NOTICE MUST BE MAILED BY CERTIFIED MAIL TO THE FOLLOWING ADDRESS:

(Address of the health spa home office)."

(3) "IF THE HEALTH SPA GOES OUT OF BUSINESS AND DOES NOT PROVIDE FACILITIES WITHIN 10 MILES OF THE FACILITY IN WHICH YOU ARE ENROLLED OR IF THE HEALTH SPA MOVES MORE THAN 10 MILES FROM THE FACILITY IN WHICH YOU ARE ENROLLED, YOU MAY:

(A) CANCEL THIS CONTRACT BY MAILING A NOTICE TO THE HEALTH SPA STATING YOUR DESIRE TO CANCEL THIS CONTRACT, ACCOMPANIED BY PROOF OF PAYMENT ON THE CONTRACT. THE WRITTEN NOTICE MUST BE MAILED BY CERTIFIED MAIL TO THE FOLLOWING ADDRESS:

(Address of the health spa home office); AND

(B) FILE A CLAIM FOR A REFUND OF YOUR UNUSED MEMBERSHIP FEES AGAINST THE BOND OR OTHER SECURITY POSTED BY THE HEALTH SPA WITH THE TEXAS SECRETARY OF STATE. TO MAKE A CLAIM AGAINST THE SECURITY PROVIDE A COPY OF YOUR CONTRACT TOGETHER WITH PROOF OF PAYMENTS MADE ON THE CONTRACT TO THE TEXAS SECRETARY OF STATE. THE REQUIRED CLAIM INFORMATION MUST BE RECEIVED BY THE SECRETARY OF STATE NOT LATER THAN THE 90TH DAY AFTER THE DATE NOTICE OF THE CLOSURE OR RELOCATION IS FIRST POSTED ON THE SECRETARY OF STATE'S INTERNET WEBSITE."

(4) "IF YOU DIE OR BECOME TOTALLY AND PERMANENTLY DISABLED AFTER THE DATE THIS CONTRACT TAKES EFFECT, YOU OR YOUR ESTATE MAY CANCEL THIS CONTRACT AND RECEIVE A PARTIAL REFUND OF YOUR UNUSED MEMBERSHIP FEE BY MAILING A NOTICE TO THE HEALTH SPA STATING YOUR DESIRE TO CANCEL THIS CONTRACT. THE HEALTH SPA MAY REQUIRE PROOF OF DISABILITY OR DEATH. THE WRITTEN NOTICE MUST BE MAILED BY CERTIFIED MAIL TO THE FOLLOWING ADDRESS:

(Address of the health spa home office)."

(b) A health spa operator is required to include the statement under Subsection (a)(3)(B) in a contract only if the operator is required to post security with the secretary of state under Subchapter D.

Rev.Civ.St. Art. 5221l, § 12(f). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., c. 908, § 6, eff. Sept. 1, 2005; Acts 2011, 82nd Leg., R.S., c. 1340, § 6, eff Sept. 1, 2011.

Section 8 of Acts 2011, 82nd Leg., R.S., c. 1340, provides:

(d) The change in law made by this Act to Section 702.304, Occupations Code, applies only to a contract that is entered into on or after the effective date of this Act. A contract entered into before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

§ 702.305. Prepayment Refund Notice.

If a certificate holder offers for sale, or sells, memberships in a health spa before the date the health spa opens, the contract for the health spa must state in at least 10-point type that is boldfaced, capitalized, underlined, or otherwise conspicuously distinguished from surrounding written material:

"IF THE HEALTH SPA DOES NOT OPEN BEFORE (insert: the date that is the 181st day after the date the membership is prepaid) OR IF THE NEW SPA DOES NOT REMAIN OPEN FOR THIRTY DAYS, YOU ARE ENTITLED TO A FULL REFUND OF THE MONEY YOU PREPAID. HOWEVER, IF ANOTHER HEALTH SPA, OPERATED BY (insert: the name of the health spa registration holder), IS LOCATED WITHIN 10 MILES OF (insert: the address of the proposed location of the new spa) AND IF YOU ARE AUTHORIZED TO USE THE OTHER FACILITIES, YOU ARE ENTITLED TO RECEIVE A FULL REFUND OF YOUR MEMBERSHIP FEES ONLY IF THIS LOCATION DOES NOT FULLY OPEN FOR BUSINESS BEFORE (insert: the date that is the 361st day after the date the new spa first sells memberships) OR IF THE NEW SPA DOES NOT REMAIN OPEN FOR 30 DAYS."

Rev.Civ.St. Art. 5221l, § 12(g). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.306. Financial Charge Notice.

A contract that contains a finance charge as defined by the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) or Regulation Z (12 C.F.R. Part 226) must state in at least 10-point type that is boldfaced, capitalized, underlined, or otherwise conspicuously distinguished from surrounding written material:

"ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER."

Rev.Civ.St. Art. 5221l, § 12(h). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.307. Cancellation of Contract for Full Refund.

(a) A member may cancel a contract and receive a full refund of the payments made under the contract by sending, not later than midnight of the third business day after the contract date, written notice of cancellation, accompanied by proof of payment made under the contract, by certified mail to the certificate holder's home office.

(b) A certificate holder who receives notice under Subsection (a) shall refund the payments made under the contract not later than the 30th day after the date notice is received.

Rev.Civ.St. Art. 5221l, §§ 13(a), (e) (part). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.308. Cancellation of Contract for Partial Refund.

(a) A member may cancel a contract and receive a refund of unearned payments made under the contract by sending written notice of cancellation, accompanied by proof of payment made under the contract, by certified mail to the certificate holder's home office if the certificate holder:

(1) closes the health spa and fails to provide alternative facilities not more than 10 miles from the location of the health spa;

(2) relocates the health spa more than 10 miles from its location preceding the relocation; or

(3) fails to provide advertised services.

(b) A member who dies or becomes totally and permanently disabled after the date a contract is entered into, or the member's estate, may cancel the contract and receive a refund of the unearned payments made under the contract by sending written notice of cancellation by certified mail to the certificate holder's home office. The certificate holder may require the member, or the member's estate, to provide reasonable proof of the member's death or disability.

(c) A certificate holder who receives notice under Subsection (a) or (b) shall refund the unearned payments made under the contract to the member, or the member's estate, as appropriate, not later that the 30th day after the date notice is received.

(d) In this section, the unearned payments are computed in the same manner as a member's actual financial loss is computed under Section 702.252, except that the date a contract is canceled is substituted for the date a health spa closes or relocates.

Rev.Civ.St. Art. 5221l, §§ 12(f) (part), 13(b), (c), (d), (e) (part). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.309. Proof of Payment.

A receipt given to a purchaser by a health spa when the purchaser makes a payment under a contract constitutes proof of the payment.

Rev.Civ.St. Art. 5221l, § 13(e) (part). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.310. Effect of Contract on Third-Party Rights.

A contract may not require the purchaser to execute a note or series of notes if separate negotiation of the notes cuts off as to third parties a right of action or defense that the purchaser may assert against the seller.

Rev.Civ.St. Art. 5221l, § 12(e). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.311. Void Contract.

A contract is void if:

(1) the contract or an assignment of the contract does not comply with this chapter;

(2) the seller does not hold a certificate of registration issued under this chapter at the time of contract; or

(3) the purchaser enters into the contract in reliance on false, fraudulent, or misleading information wilfully provided by, or a false, fraudulent, or misleading representation, notice, or advertisement wilfully made by, the seller or the health spa owner or operator.

Rev.Civ.St. Art. 5221l, § 15. Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

[Sections 702.312-702.350 reserved for expansion]

SUBCHAPTER H. PREPAYMENTS AND ESCROW

§ 702.351. Membership Prepayment.

A certificate holder may offer for sale, or sell, a membership in a health spa before the date the health spa opens.

Rev.Civ.St. Art. 5221l, § 11(a). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.352. Escrow Deposit Required.

(a) A certificate holder or an assignee or agent of a certificate holder who accepts a prepayment for a membership in the certificate holder's health spa shall deposit the prepayment in an escrow account established with a financial institution insured by the Federal Deposit Insurance Corporation.

(b) A person required to make a deposit under Subsection (a) shall:

(1) not later than the 14th day after the date the person first accepts a prepayment:

(A) deposit the prepayments received; and

(B) submit to the secretary of state:

(i) a notarized statement that identifies the financial institution and the name in which the escrow account is held; and

(ii) a signed statement on a form approved by the secretary of state that authorizes the secretary to direct inquiries to the financial institution regarding the escrow account; and

(2) after the first deposit is made under this section, deposit subsequent prepayments not less frequently than biweekly.

(c) A certificate holder shall maintain an escrow account under this section until the 30th day after the date the certificate holder's health spa opens.

Rev.Civ.St. Art. 5221l, § 9(a) (part). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.353. Exemption from Escrow Requirement.

(a) A certificate holder is not required to deposit prepayments in an escrow account under Section 702.352 if:

(1) the certificate holder has operated at least one health spa in the state for not less than two years before the date the certificate holder first sells a membership in the health spa that is the subject of the exemption; and

(2) except as provided by Subsection (b):

(A) litigation has not been initiated against the certificate holder by a member of a health spa owned or operated by the certificate holder relating to the closing of the health spa or the failure of the health spa to open; and

(B) a member of a health spa has not filed a complaint with a governmental authority in this state against the certificate holder, or an owner, officer, or director of a health spa owned or operated by the certificate holder, relating to the closing of the health spa or the failure of the health spa to open.

(b) The initiation of litigation or filing of a complaint against a certificate holder, or an owner, officer, or director of a health spa owned or operated by the certificate holder, does not preclude the certificate holder from claiming an exemption under Subsection (a) if the basis of the litigation or complaint is that the certificate holder's health spa closed:

(1) as a result of a natural disaster and the closing did not exceed one month; or

(2) to relocate the health spa to a location not more than 10 miles from its location preceding the relocation and the closing did not exceed one month.

(c) The number of exemptions that a certificate holder may claim under Subsection (a) during a two-year period may not exceed twice the number of health spas operated by the certificate holder on the first day of that two-year period.

Rev.Civ.St. Art. 5221l, §§ 9(e), (f). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.354. Duty of Financial Institution.

A financial institution in which an escrow account is established under Section 702.352 shall hold each prepayment in the account as escrow agent for the benefit of the member who made the prepayments.

Rev.Civ.St. Art. 5221l, § 9(a) (part). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.355. Refund of Escrowed Prepayment.

(a) Except as provided by Subsection (b), a member is entitled to receive a full refund of the prepayment made under a contract if the health spa that is the subject of the contract does not open before the 181st day after the date the health spa first sells a membership in the health spa or does not remain open for at least 30 days unless:

(1) an alternative health spa operated by the seller is located not more than 10 miles from the location of the health spa that is the subject of the contract; and

(2) the member is authorized to use the facilities of the alternative health spa.

(b) A member who is authorized to use the facilities of an alternative health spa under Subsection (a) is entitled to receive a full refund of the prepayment made under the contract if the health spa that is the subject of the contract does not open before the 361st day after the date the health spa first sells a membership in the health spa or does not remain open for at least 30 days.

(c) For purposes of this section, the date a health spa opens does not depend on whether the services of the health spa that were advertised before the opening, or promised to be made available, are included in the contract.

Rev.Civ.St. Art. 5221l, §§ 9(b), (c), (g); 11(b), (c). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.356. Withdrawal of Escrow Funds.

A certificate holder may withdraw prepayments deposited in an escrow account under Section 702.352 if:

(1) the health spa for which the prepayments are made remains open for not less than 30 days;

(2) the certificate holder files with the secretary of state an affidavit certifying that all obligations of the health spa for which a lien may be claimed under Chapter 53, Property Code, have been paid; and

(3) no person is eligible to claim a lien under Chapter 53, Property Code, during the period the certificate holder or an assignee or agent of the certificate holder accepts prepayments for memberships in the certificate holder's health spa.

Rev.Civ.St. Art. 5221l, § 9(d). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

[Sections 702.357-702.400 reserved for expansion]

SUBCHAPTER I. PROHIBITED PRACTICES

§ 702.401. Waiver Prohibited.

A person, including a person who buys a health spa membership from a former member, may not waive a provision of this chapter by contract or other means. A purported waiver of this chapter is void.

Rev.Civ.St. Art. 5221l, § 5. Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.402. Prohibited Acts.

(a) A seller or certificate holder may not:

(1) offer a special offer or discount to fewer than all prospective members of the health spa, except that a seller or certificate holder may offer a special group price or discount; or

(2) make a material misrepresentation to a member, prospective member, or purchaser regarding:

(A) the qualifications of the health spa staff;

(B) the availability, quality, or extent of the facilities or services of the health spa;

(C) the results obtained through exercise, diet, weight control, or physical fitness conditioning programs;

(D) membership rights; or

(E) the period during which a special offer or discount will be available.

(b) A certificate holder may not:

(1) fail or refuse to:

(A) file or amend an application for registration as required by Subchapter C;

(B) file or post, or maintain, the security required by Subchapter D; or

(C) deposit prepayments in an escrow account as required by Subchapter H;

(2) advertise that the certificate holder is bonded by the state; or

(3) sell a membership plan that is not included in the list required by Section 702.302(a).

Rev.Civ.St. Art. 5221l, § 17. Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.403. Application of Deceptive Trade Practices Act.

(a) A person who violates this chapter commits a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code.

(b) A public or private right or remedy under Chapter 17, Business & Commerce Code, may be used to enforce this chapter.

Rev.Civ.St. Art. 5221l, § 21. Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.404. Information Required in Advertisement.

A health spa operator may not advertise in any print or electronic medium unless the advertisement includes the health spa operator's certificate of registration number or an identification number issued as provided by Section 702.301(b).

Added by Acts 2005, 79th Leg., c. 908, § 7, eff. Sept. 1, 2005.

[Sections 702.405-702.450 reserved for expansion]

SUBCHAPTER J. ADMINISTRATIVE ENFORCEMENT AND DISCIPLINARY ACTIONS

§ 702.451. Disciplinary Actions.

(a) After notice and opportunity for hearing, the secretary of state may deny an application for a certificate of registration, or may permanently revoke a health spa operator's certificate of registration, on a finding by the secretary that the applicant or certificate holder:

(1) provided false information on an application or other document filed with the secretary;

(2) failed to file or post, or maintain, the security for each health spa location as required by Subchapter D; or

(3) failed to provide the contract disclosure language required by Subchapter G.

(b) The secretary of state may permanently revoke a certificate of registration under Subsection (a) based on the certificate holder's failure to maintain the required security only after a finding by the secretary that, within the 30-day period following the cancellation or lapse of the security, the certificate holder failed to file or post replacement security in the required amount.

Rev.Civ.St. Art. 5221l, § 8(h). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2011, 82nd Leg., R.S., c. 1340, § 7, eff Sept. 1, 2011.

Section 8 of Acts 2011, 82nd Leg., R.S., c. 1340, provides:

(e) The change in law made by this Act to Section 702.451, Occupations Code, applies to a disciplinary action taken on or after the effective date of this Act. A disciplinary action taken before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

§ 702.452. Notice Requirement Before Health Spa Closing.

(a) At least 30 days before the date a health spa is scheduled to close or relocate, the certificate holder shall contemporaneously:

(1) post, inside and outside each entrance to the health spa, a notice stating:

(A) the date the health spa is scheduled to close or relocate;

(B) that a member of the health spa may, not later than the 90th day after the date notice of the closure or relocation is first posted on the secretary of state's Internet website, file with the secretary of state a claim to recover actual financial loss suffered by the member as a result of the health spa closing; and

(C) the procedures for perfecting a security claim; and

(2) notify the secretary of state in writing of the health spa closing or relocation and the date that the notice was first posted.

(b) The notice posted under Subsection (a)(1) must be:

(1) at least 8-1/2 by 11 inches in size; and

(2) posted continuously for at least 30 days.

(c) After receiving a notice under Subsection (a)(2) or otherwise discovering that a health spa is closed, the secretary of state shall post on the secretary of state's Internet website a notice containing the information specified in Subsection (a)(1). The notice must be posted continuously for at least 30 days.

(d) The secretary of state shall, not later than the 10th day after the date the secretary receives notice or otherwise discovers that a health spa is closed, notify the appropriate surety company or obligor of the administrative proceedings pending under Subsection (a)(1).

(e) The notice required under Subsection (a) is not required in the case of a fire, flood, or act of God that is not within the reasonable control of a health spa.

Rev.Civ.St. Art. 5221l, §§ 10A(a), (b) (part). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., c. 756, § 3, eff. Sept. 1, 2001; Acts 2005, 79th Leg., c. 908, §§ 8, 9, eff. Sept. 1, 2005; Acts 2011, 82nd Leg., R.S., c. 1340, § 7, eff Sept. 1, 2011.

Section 5 of Acts 2001, 77th Leg., c. 756, provides:

This Act takes effect September 1, 2001, and applies only to a health spa that closes on or after that date. A health spa that closes before that date is governed by the law in effect immediately before September 1, 2001, and the former law is continued in effect for that purpose.

Section 8 of Acts 2011, 82nd Leg., R.S., c. 1340, provides:

(f) The change in law made by this Act to Section 702.452, Occupations Code, applies to the closing or relocation of a health spa that occurs on or after the effective date of this Act. A closing or relocation of a health spa that occurs before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

§ 702.453. Repealed by Acts 2001, 77th Leg., c. 156, § 4, eff. Sept. 1, 2001.

[Sections 702.454-702.500 reserved for expansion]

SUBCHAPTER K. CIVIL REMEDY

§ 702.501. Filing of Suit; Venue.

(a) A member may file suit against a seller if:

(1) the seller violates this chapter; and

(2) the seller's violation causes injury to the member.

(b) Venue for a suit filed under Subsection (a) is in a court located in:

(1) Travis County; or

(2) the county in which:

(A) the seller resides;

(B) the seller's principal place of business is located;

(C) the seller is doing business;

(D) the member resides; or

(E) the transaction that is the subject of the suit occurred.

Rev.Civ.St. Art. 5221l, § 19(a) (part). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.502. Statute of Limitations.

A member must file a suit under Section 702.501 not later than the later of:

(1) the first anniversary of the date the attorney general or district or county attorney concludes a suit filed under Section 702.552; or

(2) the second anniversary of the date the seller's violation of this chapter is discovered.

Rev.Civ.St. Art. 5221l, § 19(c). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.503. Recovery.

In a suit filed under Section 702.501, a court may award:

(1) actual damages;

(2) equitable relief;

(3) punitive damages; or

(4) reasonable attorney's fees and court costs to the prevailing party.

Rev.Civ.St. Art. 5221l, §§ 19(a) (part), (b). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.504. Temporary Closing.

For purposes of this subchapter, the closing of a health spa is not a violation of this chapter if the closing does not exceed one month and:

(1) is a result of a natural disaster; or

(2) is to relocate the health spa not more than 10 miles from its location preceding the relocation.

Rev.Civ.St. Art. 5221l, § 19(d). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

[Sections 702.505-702.550 reserved for expansion]

SUBCHAPTER L. ENFORCEMENT AND PENALTIES

§ 702.551. Investigative and Enforcement Authority.

(a) The attorney general or a district or county attorney may:

(1) investigate an alleged violation of this chapter; and

(2) enforce any penalty or remedy authorized by this chapter.

(b) The attorney general, a district or county attorney, or the secretary of state may recover reasonable expenses, including court costs, attorney's fees, investigative costs, witness fees, and deposition expenses, incurred in obtaining an injunction or recovering a civil penalty under this subchapter.

Rev.Civ.St. Art. 5221l, §§ 20(c), 23. Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.552. Suit for Enforcement.

(a) The attorney general or a district or county attorney may file suit against a person who violates, or threatens to violate, this chapter to:

(1) obtain an injunction to enjoin the person from violating this chapter; or

(2) recover a civil penalty under Section 702.553.

(b) Venue for a suit filed under this section is in a district court located in:

(1) Travis County; or

(2) the county in which the defendant resides.

Rev.Civ.St. Art. 5221l, § 18. Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.553. Amount of Civil Penalty.

(a) Except as provided by Subsection (b) and Section 702.554, a person who violates this chapter is subject to a civil penalty in an amount not to exceed $1,000 for a single violation.

(b) If more than one civil penalty is assessed against the same person, the total amount of civil penalties assessed may not exceed $25,000.

Rev.Civ.St. Art. 5221l, § 20(a). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.554. Violation of Injunction.

(a) The attorney general or a district or county attorney may file suit to recover a civil penalty against a person who violates an injunction issued under this subchapter in an amount not to exceed $25,000 for a single violation. If more than one civil penalty is assessed against the same person, the total amount of civil penalties assessed under this section may not exceed $50,000.

(b) Venue for a suit filed under this section is in the district court that issued the injunction that is the subject of the civil penalty.

Rev.Civ.St. Art. 5221l, § 20(b). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.555. Deposit in County Fund.

A civil penalty collected under this subchapter by a district or county attorney shall be deposited to the credit of the general fund of the county.

Rev.Civ.St. Art. 5221l, § 20(d) (part). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.556. Criminal Offense: Violation of Chapter.

(a) A person commits an offense if the person knowingly operates, or attempts to operate, a health spa in violation of Subchapter C, D, or H.

(b) An offense under this section is a Class A misdemeanor.

Rev.Civ.St. Art. 5221l, § 22(a). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.557. Criminal Offense: Interference with Investigation.

(a) A person commits an offense if with actual notice that the attorney general, or a district or county attorney, has initiated, or plans to initiate, an investigation under this chapter the person intentionally conceals, alters, destroys, or falsifies a document or record that is relevant or material to the investigation.

(b) An offense under this section is a Class A misdemeanor.

Rev.Civ.St. Art. 5221l, §§ 22(b), 23 (part). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

§ 702.558. Criminal Offense: Noncompliance with Subpoena or Investigative Demand.

(a) A person commits an offense if, after receiving a subpoena or civil investigative demand issued under Section 17.61, Business & Commerce Code, the person intentionally falsifies or withholds relevant material, including a document or record, that is not privileged.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed $2,000.

Rev.Civ.St. Art. 5221l, § 22(c). Recodified by Acts 1999, 76th Leg., c. 388, § 1, eff. Sept. 1, 1999.

[Chapters 703-800 reserved for expansion]

f. Health Spa Regulations

Texas Administrative Code

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 102. HEALTH SPAS

SUBCHAPTER A. DEFINITIONS

§ 102.1. Definitions.

Words and terms defined in the Health Spa Act (Texas Occupations Code, Chapter 702) shall have the same meaning in this chapter. In addition the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act—The Health Spa Act, Texas Occupations Code, Chapter 702.

(2) Equivalent Facilities--Facilities that have substantially similar hours of operation, physical structures, improvements, square footage, exercise equipment, and access to instructors, trainers and classes as the closed facility.

(3) Fully open or fully open for business--The date on which all services of the health spa that were advertised before the opening or promised to be made available are available for use by its members.

(4) Registrant--A person who has registered with the secretary and has been issued a health spa operator's certificate of registration.

(5) Secretary--The Texas secretary of state.

Source Note: The provisions of this §102.1 adopted to be effective January 18, 1993, 18 TexReg 61; amended to be effective December 27, 2004, 29 TexReg 11947; amended to be effective April 20, 2009, 34 TexReg 2375.

SUBCHAPTER B. REGISTRATION PROCEDURES

§ 102.10. Procedure for Filing an Application for or Renewal of a Certificate of Registration.

(a) A separate application for a health spa operator's certificate of registration must be submitted for each location where the applicant operates a health spa.

(b) In addition to the information required by §702.102 of the Health Spa Act (Act), an applicant for a health spa operator's certificate of registration must include the following information on any application for registration or renewal of application for registration:

(1) the health spa's name;

(2) a detailed disclosure of the proposed facilities and services, including the hours of operation and the availability and access to instructors, trainers and classes;

(3) the approximate square footage of the health spa;

(4) a complete disclosure of any litigation, or any complaint filed with a governmental authority filed within two years preceding the application or currently pending relating to the failure to open or the closing of a health spa brought against the owners, officers, or directors of the applicant; or a statement signed and sworn to by or on behalf of the applicant stating that there has been no litigation or complaint filed with a governmental authority relating to the failure to open or the closing of a health spa brought against the owners, officers, or directors of the applicant; and

(5) the federal employer identification number of the applicant.

(c) For purposes of compliance with the requirement of §702.102(a)(3)(C) of the Act, that the registration specify the name and address of each person who directly or indirectly owns or controls the applicant's business:

(1) if the applicant is a corporation, the name and address of each person who directly or indirectly owns or controls 10% or more of the issued and outstanding voting shares of a corporation;

(2) if the applicant is a general partnership, the name and address of each partner who directly or indirectly owns or controls 10% or more of the partnership interests;

(3) if the applicant is a limited partnership, the name and address of each general partner;

(4) if the applicant is a limited liability company, the name and address of each member who directly or indirectly owns or controls 10% or more of the membership interests;

(5) if the applicant is a sole proprietorship, the name and address of the sole proprietor; and

(6) if the applicant is an entity not otherwise described in this rule, the name and address of each person who directly or indirectly owns or controls 10% or more of the ownership interests of the entity.

(d) The registration must be renewed one year from the original registration date and each year thereafter on or before the anniversary of the original registration date. Renewals may be submitted 90 days prior to expiration.

(e) Each application for registration or renewal shall be signed and sworn to before a notary public or other person authorized to administer oaths by or on behalf of the applicant.

(f) The secretary of state provides a form for the application for registration or renewal as a health spa. The form can be obtained from the Statutory Documents Section of the Office of the Secretary of State, P.O. Box 13550, Austin, Texas 78711-3550. The form is also available on the secretary of state web site at http://www.sos.state.tx.us/statdoc/statforms.shtml#HSF. See form 3001.

Source Note: The provisions of this §102.10 adopted to be effective January 18, 1993, 18 TexReg 61; amended to be effective April 20, 2009, 34 TexReg 2375.

§ 102.11. Amendment.

(a) The registrant shall amend the registration or any renewal not later than the 90th day after the date on which a change in the information provided in the registration or renewal occurs.

(b) The amendment to the registration shall set forth the following information:

(1) the name of the registrant;

(2) the date of the last filed registration or renewal and any identification number assigned by the secretary to that registration or renewal; and

(3) an identification of the information that has changed and the manner in which the information has changed.

(c) The amendment shall be signed and sworn to by or on behalf of the registrant in the same manner as an original application for registration or any renewal thereof.

(d) If the amendment is filed to reflect a change in the address of the health spa, the amendment must be accompanied by a rider to any security bond reflecting the change in address.

Source Note: The provisions of this §102.11 adopted to be effective April 20, 2009, 34 TexReg 2375.

§ 102.12. Transferability of Certificate of Registration.

The certificate of registration is not transferable. If a health spa is purchased or otherwise transferred to a new owner, the new owner or transferee must submit a new application for registration within five business days of the purchase or transfer. In addition, the new owner or transferee must submit a new surety bond, post other security or a new application for exemption within five business days after the ownership has been transferred. Transfer includes a sale of substantially all of the assets, a sale of a majority of the ownership interests, or a merger or consolidation of the registrant into a surviving or resulting entity. Transfer does not include the conversion of a business entity of one type into a business entity of another type or the redomestication of an entity from one jurisdiction to another jurisdiction.

Source Note: The provisions of this §102.12 adopted to be effective April 20, 2009, 34 TexReg 2375.

§ 102.13. Fees.

(a) A fee of $100 will accompany the application for registration.

(b) The fee for filing a renewal application is $100.

(c) The fee for an initial or renewal application that is not completed before the 31st day after it is received is forfeited and the application or renewal abandoned.

(d) There is no fee for filing an amendment to a registration or renewal.

Source Note: The provisions of this §102.13 adopted to be effective January 18, 1993, 18 TexReg 61; amended to be effective April 20, 2009, 34 TexReg 2375.

§ 102.15. Excluded Activities.

The following facilities or activities are not included within the definition of "health spa" in §702.003 of the Health Spa Act and are not required to register with the secretary under Chapter 702:

(1) facilities owned by organizations that are tax exempt under 26 United States Code 501 et seq.;

(2) private clubs owned and operated by its members;

(3) entities exclusively operated for teaching dance or aerobic exercise;

(4) entities exclusively engaged in physical rehabilitation activity related to an individual's injury or disease;

(5) an individual or entity engaged in an activity authorized under a valid license issued by this state; or

(6) activities conducted or sanctioned by a school operating under the Education Code.

Source Note: The provisions of this §102.15 adopted to be effective January 18, 1993, 18 TexReg 61; amended to be effective December 27, 2004, 29 TexReg 11947; amended to be effective April 20, 2009, 34 TexReg 2375.

§ 102.18. Application for Exemption from the Security Requirements.

(a) A registrant applying for an exemption from the security requirements of Subchapter D of the Texas Occupations Code m (a) A registrant meeting the requirements for exemption from the security requirements as set forth in §702.202 of the Health Spa Act (Act) must apply for an exemption from the security requirements of Subchapter D of Chapter 702 of the Act on the application form prescribed by the secretary of state. The application for exemption must be signed and sworn to by or on behalf of the applicant.

(b) The application form may be obtained from the Statutory Documents Section of the Office of the Secretary of State, P.O. Box 13550, Austin, Texas 78711-3550. It is also available on the secretary of state web site at http://www.sos.state.tx.us/statdoc/forms/3006.doc. See form 3006.

(c) The application for exemption from the security requirements must be submitted with the application for registration.

(d) If the secretary of state determines that the applicant meets the requirements for exemption, the secretary shall issue a certificate of exemption providing that the certificate holder is not required to file a surety bond or post other security for the location registered.

(e) If an applicant has been granted an exemption under §702.202(2) of the Act, the applicant must submit a statement signed by or on behalf of the applicant continues to comply with the requirements of §702.202(2), on the third anniversary of the initial registration and every three years thereafter.

(f) The certificate of exemption is not transferable. If a health spa is purchased or otherwise transferred to a new owner, the new owner must submit a surety bond, post other security or file a new application for exemption within five business days after the ownership has been transferred. Transfer includes a sale of substantially all of the assets, a sale of a majority of the ownership interests, or a merger or consolidation of the registrant into a surviving or resulting entity. Transfer does not include the conversion of a business entity of one type into a business entity of another type or the redomestication of an entity from one jurisdiction to another jurisdiction.

Source Note: The provisions of this §102.18 adopted to be effective October 22, 2001, 26 TexReg 8340; amended to be effective April 20, 2009, 34 TexReg 2375.

SUBCHAPTER C. ESCROW

§ 102.20. Procedure for Establishing and Releasing Escrow Accounts.

(a) Unless exempted by the Health Spa Act, §702.353 a registrant or an assignee or agent that accepts prepayments for membership in a health spa before the date the health spa opens shall deposit all of the funds in an escrow account established with a financial institution whose accounts are insured by the Federal Deposit Insurance Corporation, the Savings Association Insurance Fund, or the National Credit Union Administration which shall hold the funds as escrow agent for the benefit of the members that prepay.

(b) The following conditions apply to escrow accounts:

(1) Prepayments must be deposited at least biweekly and the first deposit must be made not later than the 14th day after the date on which the registrant or its agent accepts the first payment;

(2) The funds must remain in escrow and may not be withdrawn by the registrant unless the following conditions are met:

(A) The health spa remains open for not less than 30 days; and

(B) The registrant provides the escrow agent proof that the registrant has filed an affidavit with the secretary of state certifying that all obligations of the registrant for which a lien could be filed under Property Code, Chapter 53,

have been paid and that no person is eligible to claim a lien under that chapter during the period the registrant, its agent or assignee accepts prepayments.

(3) The escrow account will terminate and the funds will be refunded to the members of the health spa under the following conditions:

(A) If the health spa does not fully open for business before the 181st day after the registrant first sells a membership in the health spa, or if the health spa does not remain open for 30 days, the escrow agreement shall terminate and all prepayment deposits shall be refunded to the members; or

(B) If another health spa is operated by the same seller and is located not more than 10 miles from the proposed location of the new health spa and the person purchasing the membership is authorized to use these other facilities, then the member of the new spa whose fees are held in escrow is entitled to receive a full refund of the membership fees from the escrow agent if the new health spa does not open before the 361st day after the date on which the new spa first sells a membership or if the new spa does not remain open for 30 days.

(4) The financial institution shall hold each prepayment as an escrow agent for the benefit of the member who made the prepayments.

(5) The financial institution will respond to each inquiry made by the secretary of state regarding the escrow account.

Source Note: The provisions of this §102.20 adopted to be effective January 18, 1993, 18 TexReg 61; amended to be effective December 27, 2004, 29 TexReg 11947; amended to be effective April 20, 2009, 34 TexReg 2375.

§ 102.21. Statement Regarding Escrow Account.

The registrant shall submit a statement to the secretary of state that identifies the escrow agent, the style of the deposit account, the name and address of the financial institution, and any other information which will identify the escrow account into which the prepayments have been deposited. In addition, the statement must give authority to the secretary of state to direct inquiries to the financial institution regarding the escrow account. The statement shall be on a form prescribed by the secretary of state. The statement shall be signed and notarized by the registrant and signed by the escrow agent.

Source Note: The provisions of this §102.21 adopted to be effective April 20, 2009, 34 TexReg 2375.

SUBCHAPTER D. SECURITY

§ 102.30. Acceptable Forms of Security.

(a) Unless exempted, a health spa operator must file a surety bond or post as other security:

(1) Cash or its equivalent; or

(2) a Certificate of Deposit as prescribed in §102.45 of this subchapter (relating to Procedure for Filing Certificates of Deposit as Security).

(b) The secretary of state will not accept Letters of Credit as security under §702.151 of the Health Spa Act. Letters of Credit posted as security on December 27, 2004 may continue as security until the expiration date of the Letter of Credit. On or before such expiration date, the health spa operator shall replace the Letter of Credit with a form of security authorized by subsection (a) of this section.

Source Note: The provisions of this §102.30 adopted to be effective December 27, 2004, 29 TexReg 11948; amended to be effective April 20, 2009, 34 TexReg 2375.

§ 102.32. Amount of Security Required.

(a) For purposes of this section, the term "total membership" in §702.151 and §702.158 of the Health Spa Act (Act) means the health spa's total prepaid memberships. The total amount paid for all prepaid memberships determines the amount of the security that must be filed or posted.

(b) "Prepaid membership" means any membership for which a member pays consideration in advance for a term that exceeds 31 days.

(c) An application for registration or any renewal from a health spa operator, not exempt under §702.202 of the Act, shall include a written statement from the health spa operator that specifies:

(1) the total number of prepaid memberships at the health spa location; and

(2) the total amount paid for all such prepaid memberships.

(d) The health spa operator shall file a security for each of the operator's health spa locations in the following amounts:

Amount stated in (c)(2)	Amount of Security
$0 - $20,000	$20,000
$20,001 - $25,000	$25,000
$25,001 - $30,000	$30,000
$30,001 - $35,000	$35,000
$35,001 - $40,000	$40,000
$40,001 - $45,000	$45,000
Over $45,000	$50,000

Source Note: The provisions of this §102.32 adopted to be effective January 4, 2006, 30 TexReg 8851; amended to be effective April 20, 2009, 34 TexReg 2375.

§ 102.35. Adjudication of Claims and Posting of Notice of Closure.

(a) Within 10 days of receiving notice that a health spa which has posted a security with the secretary has ceased operations, the secretary shall notify the surety or obligor that:

(1) the health spa has ceased operations;

(2) the members of the health spa may have suffered financial losses within the meaning of the Health Spa Act (Act) and these rules;

(3) the secretary may make a claim on the bond or other security or require that the surety or obligor holding funds compensate the members for any losses; and

(4) the secretary intends to inform the registrant that the registrant must post a notice at the health spa location notifying the public of the fact that the health spa is closed and the procedures for and the timeframe in which documents must be submitted to the secretary to perfect a claim under the security posted.

(b) The notice must be:

(1) at least 8 1/2 by 11 inches in size;

(2) posted inside and outside each entrance to the health spa; and

(3) posted continuously for at least 30 days and include the following information:

(A) the date the health spa is scheduled to close or relocate;

(B) that a member of the health spa may file a claim with the secretary to recover actual financial loss within the time prescribed by the Act; and

(C) the procedures for perfecting a security claim.

(c) If, no later than 10 days from the date the secretary discovers a health spa is closed, the secretary determines that the registrant has not posted the required notice, the secretary will take action to post the notice. In all cases, the secretary of state will post a notice of closure on the secretary of state's web site at: http://www.sos.state.tx.us/statdoc/healthspas/index.shtml.

(d) All claims received by the secretary after 90 days following the date the notice is first posted are barred and may not be considered by the secretary. The secretary has no discretion to waive the statutory time period for filing claims.

(e) In order to perfect a claim, a claimant must submit a copy of the contract that forms a basis of the claim together with documentation or a sworn affidavit indicating the total of payments made pursuant to the contract. In the event the claimant does not submit adequate documentation, the secretary shall promptly inform the claimant of this fact together with notice that adequate documentation must be received within 30 days in order for the claim to be considered.

(f) If the total of claims evidencing actual financial loss exceeds the amount of the security, the secretary shall adjudicate the claims on a pro rata basis by dividing the amount of the security by the total amount of the claims in order to ascertain a percentage to be applied to each claim.

(g) After the time for filing claims has lapsed, the secretary shall timely present claims to the surety or obligor for payment together with an administrative order signed by the secretary or deputy secretary pursuant to §702.157 of the Act.

(h) Actual financial loss shall mean and be limited to those sums which have been paid under a health spa contract to a registrant or a registrant's assignee and, which at the time the health spa is closed, are unearned. Actual financial losses shall be computed in accordance with §702.252 of the Act by multiplying the gross monthly payment by the total of months or partial months remaining on a contract at the time of closing minus any payments not made. For the purposes of this section the following terms shall have the following meanings.

(1) Gross monthly payment--The gross monthly payment shall be calculated by determining the total of payments, including down payments and initiation fees required by the contract, divided by the total number of months in the term of the contract.

(2) Calculation of dates--The date of closing and the date of the contract expiration shall be rounded to the nearest full month. The total months remaining on the contract shall be calculated by subtracting the date of closing from the expiration date of the contract. The result will be expressed in whole months.

(i) The surety or obligor shall provide the secretary proof of payment of the members' claims.

Source Note: The provisions of this §102.35 adopted to be effective January 18, 1993, 18 TexReg 61; amended to be effective October 22, 2001, 26 TexReg 8340; amended to be effective April 20, 2009, 34 TexReg 2375.

§ 102.45. Procedure for Filing Certificates of Deposit as Security.

(a) If the registrant provides a certificate of deposit as security under the Health Spa Act, §702.151, the certificate of deposit must be issued by a financial institution in this state whose deposits are insured by the Federal Deposit Insurance Corporation, the Savings Association Insurance Fund, or the National Credit Union Administration. The certificate of deposit must be assigned to the secretary of state, payable to the State of Texas for the use and benefit of each member of a health spa who suffers financial loss due to closure of a health spa. The assignment shall remain in full force and effect until expressly withdrawn by the assignor with the approval of the secretary of state.

(b) A copy of the document, issued by the financial institution evidencing the existence of the certificate of deposit must be filed along with an executed assignment form. The assignment form can be obtained from the Statutory Documents Section of the Office of the Secretary of State, P.O. Box 13550, Austin, Texas 78711-3550. The assignment form is also available on the secretary of state web site at http://www.sos.state.tx.us/statdoc/statforms.shtml#HSF. See form 3004.

Source Note: The provisions of this §102.45 adopted to be effective January 18, 1993, 18 TexReg 61; amended to be effective September 6, 1999, 24 TexReg 6967; amended to be effective December 27, 2004, 29 TexReg 11948; amended to be effective April 20, 2009, 34 TexReg 2375.

SUBCHAPTER E. GENERAL INFORMATION

§ 102.50. Forms.

Forms shall be provided by the Office of the Secretary of State for the purposes of complying with the Health Spa Act, Chapter 702, and this chapter. The forms may be obtained from the Office of the Secretary of State, Statutory Documents Section, P.O. Box 13550, Austin, Texas 78711-3550. Forms are also available on the secretary of state web site at: http://www.sos.state.tx.us/statdoc/statforms.shtml#HSF.

Source Note: The provisions of this §102.50 adopted to be effective January 18, 1993, 18 Tex.Reg 61; amended to be effective April 20, 2009, 34 TexReg 2375.

g. Processing and Settlement of Claims

Texas Insurance Code

TITLE 5. PROTECTION OF CONSUMER INTERESTS

SUBTITLE C. DECEPTIVE, UNFAIR, AND PROHIBITED ACTS

CHAPTER 542. PROCESSING AND SETTLEMENT OF CLAIMS

SUBCHAPTER A. UNFAIR CLAIM SETTLEMENT PRACTICES

§ 542.001. Short Title.

This subchapter may be cited as the Unfair Claim Settlement Practices Act.

(Formerly Ins. Code Art. 21.21-2, Sec. 1.). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 542.002. Applicability of Subchapter.

This subchapter applies to the following insurers whether organized as a proprietorship, partnership, stock or mutual corporation, or unincorporated association:

(1) a life, health, or accident insurance company;
(2) a fire or casualty insurance company;
(3) a hail or storm insurance company;
(4) a title insurance company;
(5) a mortgage guarantee company;
(6) a mutual assessment company;
(7) a local mutual aid association;
(8) a local mutual burial association;
(9) a statewide mutual assessment company;
(10) a stipulated premium company;
(11) a fraternal benefit society;
(12) a group hospital service corporation;
(13) a county mutual insurance company;
(14) a Lloyd's plan;
(15) a reciprocal or interinsurance exchange; and
(16) a farm mutual insurance company.

(Formerly Ins. Code Art. 21.21-2, Sec. 7.). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 542.003. Unfair Claim Settlement Practices Prohibited.

(a) An insurer engaging in business in this state may not engage in an unfair claim settlement practice.

(b) Any of the following acts by an insurer constitutes unfair claim settlement practices:

(1) knowingly misrepresenting to a claimant pertinent facts or policy provisions relating to coverage at issue;

(2) failing to acknowledge with reasonable promptness pertinent communications relating to a claim arising under the insurer's policy;

(3) failing to adopt and implement reasonable standards for the prompt investigation of claims arising under the insurer's policies;

(4) not attempting in good faith to effect a prompt, fair, and equitable settlement of a claim submitted in which liability has become reasonably clear;

(5) compelling a policyholder to institute a suit to recover an amount due under a policy by offering substantially less than the amount ultimately recovered in a suit brought by the policyholder;

(6) failing to maintain the information required by Section 542.005; or

(7) committing another act the commissioner determines by rule constitutes an unfair claim settlement practice.

(Formerly Ins. Code Art. 21.21-2, Secs. 2(a), (b) (part).). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 542.004. Examination of Tax Returns Prohibited.

(a) An insurer regulated under this code may not require a claimant, as a condition of settling a claim, to produce the claimant's federal income tax returns for examination or investigation by the insurer unless:

(1) the claimant is ordered to produce the tax returns by a court; or

(2) the claim involves:

(A) a fire loss; or

(B) a loss of profits or income.

(b) An insurer that violates this section commits:

(1) a prohibited practice under this subchapter; and

(2) a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code.

(c) A claimant affected by a violation of this section is entitled to remedies under Subchapter E, Chapter 17, Business & Commerce Code.

(Formerly Ins. Code Art. 21.21-2, Sec. 2(c).). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 542.005. Record of Complaints.

(a) In this section, "complaint" means any written communication primarily expressing a grievance.

(b) An insurer shall maintain a complete record of all complaints received by the insurer during the preceding three years or since the date of the insurer's last examination by the department, whichever period is shorter. The record must indicate:

(1) the total number of complaints;

(2) the classification of complaints by line of insurance;

(3) the nature of each complaint;

(4) the disposition of the complaints; and

(5) the time spent processing each complaint.

(Formerly Ins. Code Art. 21.21-2, Sec. 2(b) (part).). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 542.006. Periodic Reporting Requirement.

(a) In this section, "claim" means a written claim filed by a resident of this state with an insurer engaging in business in this state.

(b) If, based on complaints of unfair claim settlement practices under this subchapter, the department finds that an insurer should be subjected to closer supervision with respect to the insurer's claim settlement practices, the department may require the insurer to file periodic reports at intervals the department determines necessary.

(c) Repealed by Acts 2015, 84th Leg., c. 42, § 3.01(4), eff. Sept. 1, 2015.

(d) If at any time the department determines that the requirement to file a periodic report is no longer necessary to accomplish the objectives of this subchapter, the department may rescind the reporting requirement.

(Formerly Ins. Code Art. 21.21-2, Sec. 3.). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005. Amended by Acts 2015, 84th Leg., c. 42, § 3.01(4), eff. Sept. 1, 2015.

§ 542.007. Comparison of Certain Insurers to Minimum Standard of Performance; Investigation.

(a) The department shall compile the information received from an insurer under Section 542.006 in a manner that enables the department to compare the insurer's performance to a minimum standard of performance adopted by the commissioner.

(b) If the department determines that the insurer does not meet the minimum standard of performance, the department shall investigate the insurer to determine the reason, if any, that the insurer does not meet the minimum standard.

(Formerly Ins. Code Art. 21.21-2, Sec. 4(b).). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 542.008. Complaints Against Insurers; Investigation. .

(a) The department shall establish a system for receiving and processing individual complaints alleging a violation of this subchapter by an insurer regardless of whether the insurer is required to file a periodic report under Section 542.006.

(b) The department shall investigate an insurer if the department determines that:

(1) based on the number and type of complaints against an insurer, the insurer does not meet the minimum standard of performance adopted under Section 542.007; or

(2) the number and type of complaints against the insurer are not proportionate to the number and type of complaints against other insurers writing similar lines of insurance.

(Formerly Ins. Code Art. 21.21-2, Sec. 4(c).). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 542.009. Review of Investigation Results; Hearing. .

(a) On receiving the results of an investigation instituted under Section 542.007 or 542.008, the department shall review those results considering the standards of this subchapter to determine whether further action is necessary.

(b) If the department determines that further action is necessary, the department shall:

(1) set a date for a hearing to review the alleged violations of this subchapter; and

(2) notify the insurer of:

(A) the date of the hearing; and

(B) the nature of the charges.

(c) The department shall provide the notice required by Subsection (b)(2) not later than the 30th day before the date of the hearing.

(d) At a hearing under this section, the insurer may present the insurer's case with the assistance of counsel.

(e) Evidence relating to the number and type of complaints or claims prepared by the department from information received or compiled under Section 542.006, 542.007, or 542.008 is admissible in evidence at:

(1) the hearing; and

(2) any related judicial proceeding.

(f) The hearing shall be conducted in accordance with this code and rules adopted by the commissioner.

(g) An insurer may not be found to be in violation of this subchapter solely because of the number and type of complaints or claims against the insurer.

(Formerly Ins. Code Art. 21.21-2, Sec. 5(a).). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 542.010. Cease and Desist Order; Enforcement.

(a) If the department determines that an insurer has violated this subchapter, the department shall issue a cease and desist order to the insurer directing the insurer to stop the unlawful practice.

(b) If the insurer fails to comply with the cease and desist order, the department may:

(1) revoke or suspend the insurer's certificate of authority; or

(2) limit, regulate, and control:

(A) the insurer's line of business;

(B) the insurer's writing of policy forms or other particular forms; and

(C) the volume of the insurer's:

(i) line of business; or

(ii) writing of policy forms or other particular forms.

(c) The department shall exercise authority under this section to the extent that the department determines is necessary to obtain the insurer's compliance with the cease and desist order.

(d) At the request of the department, the attorney general shall assist the department in enforcing the cease and desist order.

(Formerly Ins. Code Art. 21.21-2, Sec. 6(a).). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 542.011. Time Limit to Appeal.

An insurer affected by a ruling or order of the department under this subchapter may appeal the ruling or order, in accordance with Subchapter D, Chapter 36, by filing a petition for judicial review not later than the 20th day after the date of the ruling or order.

(Formerly Ins. Code Art. 21.21-2, Sec. 6(b) (part).). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 542.012. Attorney's Fees.

The department is entitled to reasonable attorney's fees if judicial action is necessary to enforce an order of the department under this subchapter.

(Formerly Ins. Code Art. 21.21-2, Sec. 6(b) (part).). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 542.013. Personnel.

The department may hire employees and examiners as needed to enforce this subchapter.

(Formerly Ins. Code Art. 21.21-2, Sec. 4(a).). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 542.014. Rules.

The commissioner shall adopt reasonable rules as necessary to implement and augment the purposes and provisions of this subchapter.

(Formerly Ins. Code Art. 21.21-2, Sec. 8.). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005.

[Sections 542.015-542.050 reserved for expansion]

h. Timeshare Act

Texas Property Code

TITLE 12. MISCELLANEOUS SHARED REAL PROPERTY INTERESTS

CHAPTER 221. TEXAS TIMESHARE ACT

SUBCHAPTER A. GENERAL PROVISIONS

§ 221.001. Short Title.

This chapter shall be known and may be cited as the Texas Timeshare Act.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.001 by Acts 1989, 71st Leg., c. 2, § 13.03(b), eff. Aug. 28, 1989.

§ 221.002. Definitions.

As used in this chapter:

(1) "Accommodation" means any apartment, condominium or cooperative unit, hotel or motel room, cabin, lodge, or other private or commercial structure that:

(A) is affixed to real property;

(B) is designed for occupancy or use by one or more individuals; and

(C) is part of a timeshare plan.

(2) "Advertisement" means any written, oral, or electronic communication that is directed to or targeted at individuals in this state and contains a promotion, inducement, or offer to sell a timeshare interest, including a promotion, inducement, or offer to sell:

(A) contained in a brochure, pamphlet, or radio or television transcript;

(B) communicated by electronic media or telephone; or

(C) solicited through direct mail.

(3) "Amenities" means all common areas and includes recreational and maintenance facilities of the timeshare plan.

(4) "Assessment" means an amount assessed against or collected from a purchaser by an association or its managing entity in a fiscal year, regardless of the frequency with which the amount is assessed or collected, to cover expenditures, charges, reserves, or liabilities related to the operation of a timeshare plan or timeshare properties managed by the same managing entity.

(5) "Association" means a council or association composed of all persons who have purchased a timeshare interest.

(5-a) "Board" means the governing body of a timeshare association designated in a project instrument to act on behalf of the association.

(6) "Commission" means the Texas Real Estate Commission.

(7) "Component site" means a specific geographic location where accommodations that are part of a multisite timeshare plan are located. Separate phases of a single timeshare property in a specific geographic location and under common management are a single component site.

(8) "Developer" means:

(A) any person, excluding a sales agent, who creates a timeshare plan or is in the business of selling timeshare interests or employs a sales agent to sell timeshare interests; or

(B) any person who succeeds in the developer's interest by sale, lease, assignment, mortgage, or other transfer if the person:

(i) offers at least 12 timeshare interests in a particular timeshare plan; and

(ii) is in the business of selling timeshare interests or employs a sales agent to sell timeshare interests.

(9) "Dispose" or "disposition" means a voluntary transfer of any legal or equitable timeshare interest but does not include the transfer or release of a real estate lien or of a security interest.

(10) "Escrow agent" means a bonded escrow company, a financial institution whose accounts are insured by a governmental agency or instrumentality, or an attorney or title insurance agent licensed in this state who is responsible for the receipt and disbursement of funds in accordance with this chapter.

(11) "Exchange company" means any person who owns or operates an exchange program.

(12) "Exchange disclosure statement" means a written statement that includes the information required by Section 221.033.

(13) "Exchange program" means any method, arrangement, or procedure for the voluntary exchange of timeshare interests among purchasers or owners.

(14) "Incidental use right" means the right to use accommodations and amenities at one or more timeshare properties that is not guaranteed and is administered by the managing entity of the timeshare properties that makes vacant accommodations at the timeshare properties available to owners of timeshare interests in the timeshare properties.

(15) "Managing entity" means the person responsible for operating and maintaining a timeshare property.

(16) "Multisite timeshare plan" means a plan in which a timeshare purchaser has:

(A) a specific timeshare interest, which is the right to use and occupy accommodations at a specific timeshare property and the right to use and occupy accommodations at one or more other component sites created by or acquired solely through the reservation system of the timeshare plan; or

(B) a nonspecific timeshare interest, which is the right to use and occupy accommodations at more than one component site created by or acquired solely through the reservation system of the timeshare plan but which does not include a right to use and occupy a particular accommodation.

(17) "Offering" or "offer" means any advertisement, inducement, or solicitation and includes any attempt to encourage a person to purchase a timeshare interest other than as a security for an obligation.

(18) "Project instrument" means a timeshare instrument or one or more recordable documents, by whatever name denominated, applying to the whole of a timeshare project and containing restrictions or covenants regulating the use, occupancy, or disposition of units in a project, including a declaration for a condominium, association articles of incorporation, association bylaws, and rules for a condominium in which a timeshare plan is created.

(19) "Promotion" means any program, activity, contest, or gift, prize, or other item of value used to induce any person to attend a timeshare sales presentation.

(20) "Purchaser" means any person, other than a developer, who by means of a voluntary transfer acquires a legal or equitable interest in a timeshare interest other than as a security for an obligation.

(21) "Reservation system" means the method, arrangement, or procedure by which a purchaser, in order to reserve the use and occupancy of an accommodation of a multisite timeshare plan for one or more timeshare periods, is required to compete with other purchasers in the same multisite timeshare plan, regardless of whether the reservation system is operated and maintained by the multisite timeshare plan, a managing entity, an exchange company, or any other person. If a purchaser is required to use an exchange program as the purchaser's principal means of obtaining the right to use and occupy the accommodations and facilities of the plan, the arrangement is considered a reservation system. If the exchange company uses a mechanism to exchange timeshare periods among members of the exchange program, the use of the mechanism is not considered a reservation system of the multisite timeshare plan.

(22) "Single-site timeshare plan" means a timeshare plan in which a timeshare purchaser's right to use and occupy accommodations is limited to a single timeshare property. A single-site timeshare plan that includes an incidental use right or a program under which the owner of a timeshare interest at a specific timeshare property may exchange a timeshare period for another timeshare period at the same or another timeshare property under common management does not transform the single-site timeshare plan into a multisite timeshare plan.

(23) "Timeshare disclosure statement" means a written statement that includes the information required by Section 221.032.

(24) "Timeshare estate" means an arrangement under which the purchaser receives a right to occupy a timeshare property and an estate interest in the real property

(25) "Timeshare interest" means a timeshare estate or timeshare use.

(26) "Timeshare instrument" means a master deed, master lease, declaration, or any other instrument used in the creation of a timeshare plan.

(27) "Timeshare period" means the period within which the purchaser of a timeshare interest is entitled to the exclusive possession, occupancy, and use of an accommodation.

(28) "Timeshare plan" means any arrangement, plan, scheme, or similar method, excluding an exchange program but including a membership agreement, sale, lease, deed, license, or right-to-use agreement, by which a purchaser, in

exchange for consideration, receives an ownership right in or the right to use accommodations for a period of time less than a year during a given year, but not necessarily consecutive years.

(29) "Timeshare property" means:

(A) one or more accommodations and any related amenities subject to the same timeshare instrument; and

(B) any other property or property rights appurtenant to the accommodations and amenities.

(30) "Timeshare use" means any arrangement under which the purchaser receives a right to occupy a timeshare property, but under which the purchaser does not receive an estate interest in the timeshare property.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.002 by Acts 1989, 71st Leg., c. 2, § 13.03(b), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., c. 443, § 1, eff. Sept. 1, 1993; Acts 2005, 79th Leg., c. 539, § 1, eff. Jan. 15, 2006; Acts 2013, 83rd Leg., R.S., c. 1352, § 3, eff. Sept. 1, 2013.

Section 17 of Acts 2005, 79th Leg., c. 539, provides:

This Act applies to timeshare plans created on or after January 15, 2006, and to any developer who offers or disposes of an interest in a timeshare plan and a managing entity that manages a timeshare property under Chapter 221, Property Code, as amended by this Act, on or after that date.

Section 18 of Acts 2005, 79th Leg., c. 539, provides:

If a timeshare plan is registered with the Texas Real Estate Commission before January 15, 2006:

(1) the registration expires 24 months after the last anniversary of the date the timeshare plan was registered;

(2) a developer may renew the registration as provided by Section 221.023, Property Code, as amended by this Act; and

(3) the developer may continue to use the timeshare disclosure statement for the timeshare plan as approved by the Texas Real Estate Commission prior to January 15, 2006, so long as the registration is amended from time to time to disclose any materially adverse changes as required by Section 221.023, Property Code, as amended by this Act.

§ 221.003. Applicability.

(a) This chapter applies to all timeshare properties that are located in this state or offered for sale in this state.

(b) Timeshare properties located outside this state are subject only to Subchapters C through H and J [§§ 221.021 et seq. to 221.101 et seq.].

(c) This chapter applies to any timeshare property in existence on or after August 26, 1985, but does not affect a timeshare contract in existence before that date.

(d) A timeshare property subject to this chapter is not subject to:

(1) Section 5.008 or 5.012;

(2) Chapter 202;

(3) Chapter 207; or

(4) Chapter 209, unless an individual timeshare owner continuously occupies a single timeshare property as the owner's primary residence 12 months of the year.

(e) If a person with a specific program that might otherwise be subject to this chapter received from the commission, before January 31, 2005, a written determination that the program is exempt from this chapter as the chapter existed when the determination was made, the program remains exempt from this chapter if:

(1) the program does not vary materially from the terms on which the exemption was granted; or

(2) the program varies materially from the terms on which the exemption was granted, but the person receives from the commission a new written determination that the program is exempt from this chapter.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.003 by Acts 1989, 71st Leg., c. 2, § 13.03(b), eff. Aug. 28, 1989; Acts 2005, 79th Leg., c. 539, § 2, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.); Acts 2013, 83rd Leg., R.S., c. 1352, § 4, eff. Sept. 1, 2013; Acts 2015, 84th Leg., c. 554, § 1, eff. Sept. 1, 2015.

§ 221.004. Conflicts of Law.

(a) The provisions of this chapter prevail over a conflicting or inconsistent provision of law applicable to timeshare owners' associations.

(b) Provisions of this code relating to property owners' associations do not apply to an association subject to this chapter.

Added by Acts 2013, 83rd Leg., R.S., c. 1352, § 4, eff. Sept. 1, 2013

[Sections 221.004 to 221.010 reserved for expansion]

SUBCHAPTER B. CREATION OF TIMESHARE REGIME

§ 221.011. Declaration.

(a) The developer of a timeshare plan any part of which is located in this state must record the timeshare instrument in this state. When a person expressly declares an intent to subject the property to a timeshare plan through the

recordation of a timeshare instrument that sets forth the information provided in Subsection (b), that property shall be established thenceforth as a timeshare plan.

(b) The declaration made in a timeshare instrument recorded under this section must include:

(1) a legal description of the timeshare property, including a ground plan indicating the location of each existing or proposed building included in the timeshare plan;

(2) a description of each existing or proposed accommodation, including the location and square footage of each unit and an interior floor plan of each existing or proposed building;

(3) a description of any amenities furnished or to be furnished to the purchaser;

(4) a statement of the fractional or percentage part that each timeshare interest bears to the entire timeshare plan;

(5) if applicable, a statement that the timeshare property is part of a multisite timeshare plan;

(6) any additional provisions that are consistent with this section; and

(7) the provisions required by Subchapter I to be included in a project instrument unless the provisions are included in one or more other project instruments.

(c) Any timeshare interest created under this section is subject to Section 1101.002(5), Occupations Code, but Sections 1101.351(a)(1) and (c), Occupations Code, do not apply to the acts of an exchange company in exchanging timeshare periods.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.011 by Acts 1989, 71st Leg., c. 2, § 13.03(b), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., c. 443, § 2, eff. Sept. 1, 1993; Acts 2003, 78th Leg., c. 1276, § 14A.809, eff. Sept. 1, 2003; Acts 2005, 79th Leg., c. 539, § 3, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.); Acts 2013, 83rd Leg., R.S., c. 1352, § 6, eff. Sept. 1, 2013.

§ 221.012. Conveyance and Encumbrance.

Once the property is established as a timeshare plan, each timeshare interest may be individually conveyed or encumbered and shall be entirely independent of all other timeshare interests in the same timeshare property. Any title or interest in a timeshare interest may be recorded.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.012 by Acts 1989, 71st Leg., c. 2, § 13.03(b), eff. Aug. 28, 1989. Amended by Acts 2005, 79th Leg., c. 539, § 3, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.).

§ 221.013. Common Ownership.

(a) Any timeshare interest may be jointly or commonly owned by more than one person.

(b) A timeshare estate may be jointly or commonly owned in the same manner as any other real property interest in this state.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.013 by Acts 1989, 71st Leg., c. 2, § 13.03(b) eff. Aug. 28, 1989. Amended by Acts 2005, 79th Leg., c. 539, § 3, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.).

§ 221.014. Partition.

An action for partition of a timeshare interest may not be maintained during the term of a timeshare plan.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.014 by Acts 1989, 71st Leg., c. 2, § 13.03(b), eff. Aug. 28, 1989. Amended by Acts 2005, 79th Leg., c. 539, § 3, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.).

[Sections 221.015 to 221.020 reserved for expansion]

SUBCHAPTER C. REGISTRATION

§ 221.021. Registration Required.

(a) Except as provided by Subsection (b) or (d) of this section or another provision of this chapter, a person may not offer or dispose of a timeshare interest unless the timeshare plan is registered with the commission.

(b) Before a registration application for a timeshare plan is submitted or completed, a developer or any person acting on the developer's behalf may accept a reservation and a deposit from a prospective purchaser if the deposit is placed in a segregated escrow account with an independent escrow agent and if the deposit is fully refundable at any time at the request of the purchaser. The deposit may not be forfeited unless the purchaser affirmatively creates a binding obligation by a subsequent written instrument.

(c) A developer or any person acting on the developer's behalf may not offer or dispose of a timeshare interest during any period within which there is in effect an order by the commission or by any court of competent jurisdiction revoking or suspending the registration of the timeshare plan of which such timeshare interest is a part.

(d) At the developer's request, the commission may authorize the developer to conduct presales before a timeshare plan is registered if the registration application is administratively complete, as determined by the commission or as established by commission rule. The authorization for presales permits the developer to offer and dispose of timeshare interests during the period the application is in process. To obtain a presales authorization, the developer must:

(1) submit a written request to the commission for an authorization to conduct presales;

(2) submit an administratively complete application for registration, including appropriate fees and exhibits required by the commission; and

(3) provide evidence acceptable to the commission that all funds received by the developer will be placed with an escrow agent with instructions requiring the funds to be retained until a registration application is complete as determined by the commission.

(e) During the presales authorization period, the developer must:

(1) provide to each purchaser and prospective purchaser a copy of the proposed timeshare disclosure statement that the developer submitted to the commission with the initial registration application; and

(2) offer each purchaser the opportunity to cancel the purchase contract as provided by Section 221.041.

(f) After the final timeshare disclosure statement is approved by the commission, the developer must:

(1) give each purchaser and prospective purchaser a copy of the final timeshare disclosure statement; and

(2) if the commission determines that a materially adverse change exists between the disclosures contained in the proposed timeshare disclosure statement and the final timeshare disclosure statement, provide the purchaser a second opportunity to cancel the purchase contract as provided by Section 221.041.

(g) The requirements of this subchapter remain in effect during the period the developer offers or disposes of timeshare interests of the timeshare plan registered with the commission. The developer must notify the commission in writing when all of the timeshare interests of a timeshare plan have been disposed of.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.021 by Acts 1989, 71st Leg., c. 2, § 13.03(b), eff. Aug. 28, 1989. Amended by Acts 2005, 79th Leg., c. 539, § 4, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.).

§ 221.022. Application for Registration.

(a) An application for registration filed under this section must include a timeshare disclosure statement and any required exchange disclosure statement required by Section 221.033, recorded copies of all timeshare instruments, and other information as may be required by the commission. If the timeshare

property is a newly developed property, recorded copies of the timeshare instruments must be provided promptly after recorded copies are available from the entity with which the instruments are recorded. If existing or proposed accommodations are in a condominium, an applicant who complies with this section is not required to prepare or deliver a condominium information statement or a resale certificate as described by Chapter 82.

(b) If existing or proposed accommodations are in a condominium or similar development, the application for registration must contain the project instruments of that development and affirmatively indicate that the creation and disposition of timeshare interests are not prohibited by those instruments. If the project instruments do not expressly authorize the creation and disposition of timeshare interests, the application must contain evidence that existing owners of the condominium development were provided written notice, at least 60 days before the application for registration, that timeshare interests would be created and sold. If the project instruments prohibit the creation or disposition of timeshare interests, the application must contain a certification by the authorized representative of all existing owners that the project instruments have been properly amended to permit that creation and disposition.

(c) The commission may accept an abbreviated registration application from a developer of a timeshare plan for any accommodations in the plan located outside this state. The developer must file written notice of the intent to register under this section not later than the 15th day before the date the abbreviated application is submitted.

(d) A developer of a timeshare plan with any accommodation located in this state may not file an abbreviated application unless:

(1) the developer is a:

(A) successor in interest after a merger or acquisition; or

(B) joint venture in which the previous developer or its affiliate is a partner or a member; and

(2) the previous developer registered the timeshare plan in this state preceding the merger, acquisition, or joint venture.

(e) A developer filing an abbreviated application must provide:

(1) the legal name and any assumed names and the principal office location, mailing address, telephone number, and primary contact person of the developer;

(2) the name, location, mailing address, telephone number, and primary contact person of the timeshare plan;

(3) the name and address of the developer's authorized or registered agent for service of process in this state;

(4) the name, primary office location, mailing address, and telephone number of the managing entity of the timeshare plan;

(5) the certificate or other evidence of registration from any jurisdiction in which the timeshare plan is approved or accepted;

(6) the certificate or other evidence of registration from the appropriate regulatory agency of any other jurisdiction in the United States in which some or all of the accommodations are located;

(7) a declaration stating whether the timeshare plan is a single-site timeshare plan or a multisite timeshare plan;

(8) if the plan is a multisite timeshare plan, a declaration stating whether the plan consists of specific timeshare interests or nonspecific timeshare interests;

(9) a disclosure of each jurisdiction in which the developer has applied for registration of the timeshare plan and whether the timeshare plan, the developer, or the managing entity used were denied registration or, during the five-year period before the registration application date, were the subject of a final adverse disposition in a disciplinary proceeding;

(10) if requested by the commission, copies of any disclosure documents required to be provided to purchasers or filed with any jurisdiction that approved or accepted the timeshare plan;

(11) the appropriate filing fee; and

(12) any other information reasonably requested by the commission or required by commission rule.

(f) A foreign jurisdiction providing evidence of registration as provided by Subsection (e)(6) must have registration and disclosure requirements that are substantially similar to or stricter than the requirements of this chapter.

(g) The commission shall investigate all matters relating to the application and may in its discretion require a personal inspection of the proposed timeshare property by any persons designated by it. All direct expenses incurred by the commission in inspecting the property shall be borne by the applicant. The commission may require the applicant to pay an advance deposit sufficient to cover those expenses.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.022 by Acts 1989, 71st Leg., c. 2, § 13.03(b), eff. Aug. 28, 1989. Amended by Acts 2005, 79th Leg., c. 539, § 4, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.). Amended by Acts 2009, 81st Leg., R.S., c. 279, § 1, eff. Sept. 1, 2009.

Section 6 of Acts 2009, 81st Leg., R.S., c. 279 provides:

This Act applies to timeshare plans created on or after January 15, 2010, and to any developer who offers or disposes of an interest in a timeshare plan and a managing entity that manages a timeshare property under Chapter 221, Property Code, as amended by this Act, on or after that date.

§ 221.023. Amendment of Registration.

The developer shall file amendments to the registration reporting to the commission any materially adverse change in any document contained in the registration not later than the 30th day after the date the developer knows or reasonably should know of the change. The developer may continue to offer and dispose of timeshare interests under the existing registration pending review of the amendments by the commission if the materially adverse change is disclosed to prospective purchasers.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.023 by Acts 1989, 71st Leg., c. 2, § 13.03(b), eff. Aug. 28, 1989. Amended by Acts 2005, 79th Leg., c. 539, § 4, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.).

§ 221.024. Powers of Commission.

(a) The commission may prescribe and publish forms and adopt rules necessary to carry out the provisions of this chapter and may suspend or revoke the registration of any developer, place on probation the registration of a developer that has been suspended or revoked, reprimand a developer, impose an administrative penalty of not more than $10,000, or take any other disciplinary action authorized by this chapter if, after notice and hearing, the commission determines that a developer has materially violated this chapter, the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code), or the Contest and Gift Giveaway Act (Chapter 621, Business & Commerce Code).

(b) The commission:

(1) shall authorize the State Office of Administrative Hearings to conduct hearings in contested cases; and

(2) may establish reasonable fees for forms and documents it provides to the public and for the filing or registration of documents required by this chapter.

(c) If the commission initiates a disciplinary proceeding under this chapter, the person is entitled to a hearing before the State Office of Administrative Hearings. The commission by rule shall adopt procedures to permit an appeal to the commission from a determination made by the State Office of Administrative Hearings in a disciplinary action.

(d) The commission shall set the time and place of the hearing.

(e) A disciplinary procedure under this chapter is governed by the contested case procedures of Chapter 2001, Government Code.

(f) The commission may file a suit in a district court of Travis County to prevent a violation of this chapter or for any other appropriate relief.

(g) Judicial review of a commission order imposing an administrative penalty is:

(1) instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) by trial de novo.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.024 by Acts 1989, 71st Leg., c. 2, § 13.03(b), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., c. 381, § 1, eff. June 14, 1989; Acts 1999, 76th Leg., c. 62, § 7.87, eff. Sept. 1, 1999; Acts 2005, 79th Leg., c. 539, § 4, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.); Acts 2007, 80th Leg., R.S., c. 885, § 2.34, eff. April 1, 2009; Acts 2009, 81st Leg., R.S., c. 23, § 8, eff. May 12, 2009.

§ 221.0245. Complaint Investigation.

If the commission determines at any time that an allegation made or formal complaint submitted by a person is inappropriate or without merit, the commission shall dismiss the complaint and no further action may be taken. The commission may delegate to commission staff the duty to dismiss complaints under this section.

Added by Acts 2019, 86th Leg., c. 334, § 43, eff. Sept. 1, 2019.

§ 221.025. Effect of Registration On Other Laws: Exemption From Certain Laws. [Effective through Dec. 31, 2021.]

(a) A developer's compliance with this chapter exempts the developer's offer and disposition of timeshare interests subject to this chapter from securities and dealer registration under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes).

(b) A timeshare plan created as a condominium regime before January 1, 1994, that complies with this chapter is exempt from the requirements of Section 81.112 relating to club membership.

(c) A timeshare plan subject to Chapter 82 that complies with this chapter is exempt from the requirements of:

(1) Section 82.0675 relating to club membership; and

(2) Sections 82.103(c)-(e) relating to declarant control.

(c-1) The exemption provided by Subsection (c)(2) applies to a timeshare plan created before September 1, 2013, and to the project instrument governing the timeshare property subject to the timeshare plan only if the developer and the association agree to the application of the exemption in writing and the project instrument is amended to provide for the application of the exemption. If the conditions provided by this subsection are not satisfied, a timeshare plan created before September 1, 2013, and the timeshare property subject to the timeshare plan are governed by any developer control provisions provided in the project instrument, notwithstanding any other law.

(d) A developer's compliance with this chapter as to any timeshare plan exempts any company, as defined by Chapter 181, Finance Code (Texas Trust Company Act), that holds title to the timeshare interests in the timeshare plan from compliance with the Texas Trust Company Act as to the company's activities relating to the holding of that title.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.025 by Acts 1989, 71st Leg., c. 2, § 13.03(b), eff. Aug. 28, 1989. Amended by Acts 2005, 79th Leg., c. 539, § 4, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.); Acts 2013, 83rd Leg., R.S., c. 1352, § 7, eff. Sept. 1, 2013.

§ 221.025. Effect of Registration On Other Laws: Exemption From Certain Laws. [Effective Jan. 1, 2022.]

(a) A developer's compliance with this chapter exempts the developer's offer and disposition of timeshare interests subject to this chapter from securities and dealer registration under The Securities Act (Title 12, Government Code).

(b) A timeshare plan created as a condominium regime before January 1, 1994, that complies with this chapter is exempt from the requirements of Section 81.112 relating to club membership.

(c) A timeshare plan subject to Chapter 82 that complies with this chapter is exempt from the requirements of:

(1) Section 82.0675 relating to club membership; and

(2) Sections 82.103(c)-(e) relating to declarant control.

(c-1) The exemption provided by Subsection (c)(2) applies to a timeshare plan created before September 1, 2013, and to the project instrument governing the timeshare property subject to the timeshare plan only if the developer and the association agree to the application of the exemption in writing and the project instrument is amended to provide for the application of the exemption. If the conditions provided by this subsection are not satisfied, a timeshare plan

created before September 1, 2013, and the timeshare property subject to the timeshare plan are governed by any developer control provisions provided in the project instrument, notwith-standing any other law.

(d) A developer's compliance with this chapter as to any timeshare plan exempts any company, as defined by Chapter 181, Finance Code (Texas Trust Company Act), that holds title to the timeshare interests in the timeshare plan from compliance with the Texas Trust Company Act as to the company's activities relating to the holding of that title.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.025 by Acts 1989, 71st Leg., c. 2, § 13.03(b), eff. Aug. 28, 1989. Amended by Acts 2005, 79th Leg., c. 539, § 4, eff. Jan. 15, 2006 (See notes to the 2005 amendment in the legislative history following § 221.002.); Acts 2013, 83rd Leg., R.S., c. 1352, § 7, eff. Sept. 1, 2013.

§ 221.026. Issuance and Renewal of Registration.

(a) The commission by rule shall adopt requirements for the issuance and renewal of a developer's registration under this chapter, including:

(1) the form required for application for registration or a renewal of registration; and

(2) any supporting documentation required for registration or renewal of registration.

(b) The commission shall issue or renew a registration under this chapter for a period not to exceed 24 months.

(c) The commission may assess and collect a fee for the issuance or renewal of a registration under this chapter.

(d) The commission may assess and collect a late fee if the commission has not received the fee or any supporting documentation required before the 61st day after the date a registration is issued or renewed under this section.

(e) Failure to pay a renewal fee or late fee is a violation of this chapter.

Added by Acts 2005, 79th Leg., c. 539, § 4, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.).

§ 221.027. Temporary Suspension.

(a) The presiding officer of the commission shall appoint a disciplinary panel consisting of three commission members to determine whether the registration for a timeshare plan under this chapter should be temporarily suspended.

(b) If the disciplinary panel determines from the information presented to the panel that a timeshare plan registered under this chapter would, by the continued disposition of the timeshare property, constitute a continuing threat to the public welfare, the panel shall temporarily suspend the registration of the timeshare plan.

(c) A registration may be suspended under this section without notice or hearing on the complaint if:

(1) institution of proceedings for a hearing before the State Office of Administrative Hearings is initiated simultaneously with the temporary suspension; and

(2) a hearing is held under Chapter 2001, Government Code, and this chapter as soon as possible.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the panel.

Added by Acts 2007, 80th Leg., c. 1411, § 58, eff. Sept. 1, 2007. Amended by Acts 2009, 81st Leg., R.S., c. 23, § 9, eff. May 12, 2009.

§ 221.028. Denial of Registration Renewal.

a) The commission may deny the renewal of a registration under this chapter if the developer is in violation of a commission order.

(b) The denial of a registration renewal under this section is subject to the same provisions as are applicable under Section 1101.364, Occupations Code, to the denial of a license.

Added by Acts 2019, 86th Leg., c. 334, § 44, eff. Sept. 1, 2019.

[Sections 221.029 to 221.030 reserved for expansion]

SUBCHAPTER D. DISCLOSURE

§ 221.031. Advertisements and Promotions.

(a) At any time, the commission may request a developer to file for review by the commission any advertisement used in this state by the developer in connection with offering a timeshare interest. The developer shall provide the advertisement not later than the 15th day after the date the commission makes the request. If the commission determines that the advertisement violates this chapter or Chapter 621, Business & Commerce Code, the commission shall notify the developer in writing, stating the specific grounds for the commission's determination not later than the 15th

day after the date the commission makes its determination. The commission may grant the developer provisional approval for the advertisement if the developer agrees to correct the deficiencies identified by the commission. A developer, on its own initiative, may submit any proposed advertisement to the commission for review and approval by the commission.

(b) Any advertisement that contains a promotion in connection with the offering of a timeshare interest must comply with Chapter 621, Business & Commerce Code.

(c) As provided by Subsections (d) and (e), an advertisement that contains a promotion in connection with the offering of a timeshare interest must include, in addition to any disclosures required under Chapter 621, Business & Commerce Code, the following:

(1) a statement to the effect that the promotion is intended to solicit purchasers of timeshare interests;

(2) if applicable, a statement to the effect that any person whose name is obtained during the promotion may be solicited to purchase a timeshare interest;

(3) the full name of the developer of the timeshare property; and

(4) if applicable, the full name and address of any marketing company involved in the promotion of the timeshare property, excluding the developer or an affiliate or subsidiary of the developer.

(d) An advertisement containing the disclosures required by Chapter 621, Business & Commerce Code, and Subsection (c) must be provided in writing or electronically:

(1) at least once before a scheduled sales presentation; and

(2) in a reasonable period before the scheduled sales presentation to ensure that the recipient receives the disclosures before leaving to attend the sales presentation.

(e) The developer is not required to provide the disclosures required by this section in every advertisement or other written, oral, or electronic communication provided or made to a recipient before a scheduled sales presentation.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.031 by Acts 1989, 71st Leg., c. 2, § 13.03(b), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., c. 381, § 2, eff. June 14, 1989; Acts 2005, 79th Leg., c. 539, § 5, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.); Acts 2007, 80th Leg., R.S., c. 885, § 2.35, eff. April 1, 2009.

§ 221.032. Timeshare Disclosure Statement.

(a) Before the signing of any agreement to acquire a timeshare interest, the developer shall provide a timeshare disclosure statement to the prospective purchaser and shall obtain from the purchaser a written acknowledgement of receipt of the timeshare disclosure statement.

(b) The timeshare disclosure statement for a single-site timeshare plan or a multisite timeshare plan that includes a specific timeshare interest must include:

(1) the type of timeshare plan offered and the name and address of:

(A) the developer; and

(B) the single site or specific site offered for the multisite timeshare plan;

(2) a description of the duration and operation of the timeshare plan;

(3) a description of the existing or proposed accommodations, including the type and number of timeshare interests in the accommodations expressed in periods of seven-day use availability or other time increment applicable to the timeshare plan. The description of each type of accommodation included in the timeshare plan shall be categorized by the number of bedrooms, the number of bathrooms, and sleeping capacity, and shall include a statement indicating whether the accommodation contains a full kitchen, which means a kitchen that has a minimum of a dishwasher, range, sink, oven, and refrigerator. If the accommodations are proposed or incomplete, a schedule for commencement, completion, and availability of the accommodations shall be provided;

(4) a description of any existing or proposed amenities of the timeshare plan and, if the amenities are proposed or incomplete, a schedule for commencement, completion, and availability of the amenities;

(5) the extent to which financial arrangements have been provided for the completion of all promised accommodations and amenities that are committed to be built;

(6) a description of the method and timing for performing maintenance of the accommodations;

(7) a statement indicating that, on an annual basis, the sum of the nights that purchasers are entitled to use the accommodations does not exceed the number of nights the accommodations are available for use by the purchasers;

(8) a description of the method by which purchasers' use of the accommodations is scheduled;

(9) a statement that an association exists or is expected to be created or that such an association does not exist and is not expected to be created and, if such an association exists or is reasonably contemplated, a description of its powers and responsibilities;

(10) relating to the single-site timeshare plan or the specific timeshare interest of a multisite timeshare plan, copies of the following documents, if applicable, including any amendments to the documents, unless separately provided to the purchaser simultaneously with the timeshare disclosure statement:

(A) the declaration;

(B) the association articles of incorporation;

(C) the association bylaws;

(D) the association rules; and

(E) any lease or contract, excluding the purchase contract and other loan documents required to be signed by the purchaser at closing;

(11) the name and principal address of the managing entity and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it;

(12) the current annual budget, if available, or the projected annual budget for the timeshare plan or timeshare properties managed by the same managing entity if assessments are deposited in a common account. The budget must include:

(A) a statement of the amount reserved or budgeted for repairs, replacements, and refurbishment;

(B) the projected common expense liability, if any, by category of expenditure for the timeshare plan or timeshare properties managed by the same managing entity; and

(C) the assumptions on which the operating budget is based;

(13) the projected assessments and a description of the method for calculating and apportioning those assessments among purchasers;

(14) any initial fee or special fee due from the purchaser at closing, together with a description of the purpose and method of calculating the fee;

(15) a description of any lien, defect, or encumbrance on or affecting title to the timeshare interest and, if applicable, a copy of each written warranty provided by the developer;

(16) a description of any bankruptcy that is pending or that has occurred within the past five years, pending civil or criminal suit, adjudication, or disciplinary actions material to the timeshare plan of which the developer has knowledge;

(17) a description of any financing offered by or available through the developer;

(18) any current or anticipated fees or charges to be paid by timeshare purchasers for the use of any accommodations or amenities related to the timeshare plan, and a statement that the fees or charges are subject to change;

(19) a description and amount of insurance coverage provided for the protection of the purchaser;

(20) the extent to which a timeshare interest may become subject to a tax lien or other lien arising out of claims against purchasers of different timeshare interests;

(21) a description of those matters required by Section 221.041;

(22) a statement disclosing any right of first refusal or other restraint on the transfer of all or any portion of a timeshare interest;

(23) a statement disclosing that any deposit made in connection with the purchase of a timeshare interest must be held by an escrow agent until expiration of any right to cancel the contract and that any deposit must be returned to the purchaser if the purchaser [he] elects to exercise the right of cancellation; or, if the commission accepts from the developer a surety bond, irrevocable letter of credit, or other form of financial assurance instead of an escrow deposit, a statement disclosing that the developer has provided a surety bond, irrevocable letter of credit, or other form of financial assurance in an amount equal to or in excess of the funds that would otherwise be held by an escrow agent and that the deposit must be returned if the purchaser elects to exercise the right of cancellation;

(24) if applicable, a statement that the assessments collected from the purchasers may be placed in a common account with the assessments collected from the purchasers of other timeshare

properties managed by the same managing entity;

(25) if the timeshare plan provides purchasers with the opportunity to participate in an exchange program, a description of the name and address of the exchange company and the method by which a purchaser accesses the exchange program; and

(26) any other information the commission determines is necessary to protect prospective purchasers or to implement the purpose of this chapter.

(c) A developer who offers a specific timeshare interest in a multisite timeshare plan also must fully disclose the following information in written, graphic, or tabular form:

(1) a description of each component site, including the name and address of each component site;

(2) a description of each type of accommodation in each component site, categorized by the number of bedrooms, the number of bathrooms, and sleeping capacity, and a statement indicating whether the accommodation contains a full kitchen, which means a kitchen that has a minimum of a dishwasher, range, sink, oven, and refrigerator;

(3) a description of the amenities at each component site available for use by the purchasers;

(4) a description of the reservation system, which must include:

(A) the entity responsible for operating the reservation system, its relationship to the developer, and the duration of any agreement for operation of the reservation system;

(B) a summary or the rules governing access to and use of the reservation system; and

(C) the existence of and explanation regarding any priority reservation features that affect a purchaser's ability to make reservations for the use of a given accommodation on a first-come, first-served basis;

(5) the name and principal address of the managing entity for the multisite timeshare plan and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it;

(6) a description of any right to make additions to, substitutions in, or deletions from accommodations, amenities, or component sites, and a description of the basis on which accommodations, amenities, or component sites may be added to, substituted in, or deleted from the multisite timeshare plan;

(7) a description of the purchaser's liability for any fees associated with the multisite timeshare plan;

(8) the location of each component site of the multisite timeshare plan, the historical occupancy of each component site for the prior 12-month period, if the component site was part of the multisite timeshare plan during such 12-month time period, as well as any periodic adjustment or amendment to the reservation system that may be needed in order to respond to actual purchaser use patterns and changes in purchaser use demand for the accommodations existing at the time within the multisite timeshare plan; and

(9) any other information the commission determines is necessary to protect prospective purchasers or to implement the purpose of this chapter.

(d) A developer who offers a nonspecific timeshare interest in a multisite timeshare plan must disclose the following information in written, graphic, or tabular form:

(1) the name and address of the developer;

(2) a description of the type of interest and the usage rights the purchaser will receive;

(3) a description of the duration and operation of the timeshare plan;

(4) a description of the type of insurance coverage provided for each component site;

(5) an explanation of who holds title to the accommodations of each component site;

(6) a description of each component site, including the name and address of each component site;

(7) a description of the existing or proposed accommodations, expressed in periods of seven-day use availability or any other time increment applicable to the timeshare plan. The description of each type of accommodation included in the timeshare plan shall be categorized by the number of bedrooms, the number of bathrooms, and sleeping capacity, and shall include a statement indicating whether the accommodation contains a full kitchen, which means a kitchen that has a minimum of a dishwasher, range, sink, oven, and refrigerator. If the accommodations are proposed or incomplete, a schedule for commencement, completion, and availability of the accommodations shall be provided;

(8) a statement that an association exists or is expected to be created or that such an association does not exist and is not expected to be created and, if such an association exists or is reasonably contemplated, a description of its powers and responsibilities;

(9) if applicable, copies of the following documents applicable to the multisite timeshare plan, including any amendments to the documents, unless separately provided to the purchaser simultaneously with the timeshare disclosure statement:

(A) the declaration;

(B) the association articles of incorporation;

(C) the association bylaws;

(D) the association rules; and

(E) any lease or contract, excluding the purchase contract and other loan documents required to be signed by the purchaser at closing;

(10) a description of the method and timing for performing maintenance of the accommodations;

(11) a statement indicating that, on an annual basis, the sum of the nights that purchasers are entitled to use the accommodations does not exceed the number of nights the accommodations are available for use by the purchasers;

(12) a description of each type of accommodation included in the timeshare plan, categorized by the number of bedrooms, the number of bathrooms, and sleeping capacity, and a statement indicating whether the accommodation contains a full kitchen, which means a kitchen that has a minimum of a dishwasher, range, sink, oven, and refrigerator;

(13) a description of amenities available for use by the purchaser at each component site;

(14) the location of each component site of the multisite timeshare plan, the historical occupancy of each component site for the prior 12-month period, if the component site was part of the multisite timeshare plan during such 12-month time period, as well as any periodic adjustment or amendment to the reservation system that may be needed in order to respond to actual purchaser use patterns and changes in purchaser use demand for the accommodations existing at the time within the multisite timeshare plan;

(15) a description of the right to make any additions, substitutions, or deletions of accommodations, amenities, or component sites, and a description of the basis upon which accommodations, amenities, or component sites may be added to, substituted in, or deleted from the multisite timeshare plan;

(16) a description of the reservation system that shall include all of the following:

(A) the entity responsible for operating the reservation system, its relationship to the developer, and the duration of any agreement for operation of the reservation system;

(B) a summary of the rules governing access to and use of the reservation system; and

(C) the existence of and an explanation regarding any priority reservation features that affect a purchaser's ability to make reservations for the use of a given accommodation on a first-come, first-served basis;

(17) the name and principal address of the managing entity for the multisite timeshare plan and a description of the procedures, if any, for altering the powers and responsibilities of the managing entity and for removing or replacing it, and a description of the relationship between the multisite timeshare plan managing entity and the managing entity of the component sites of the multisite timeshare plan, if different from the multisite timeshare plan managing entity;

(18) the current annual budget of the multisite timeshare plan, if available, or the projected annual budget for the multisite timeshare plan, which must include:

(A) a statement of the amount reserved or budgeted for repairs, replacements, and refurbishment;

(B) the projected common expense liability, if any, by category of expenditure for the multisite timeshare plan; and

(C) the assumptions on which the operating budget is based;

(19) the projected assessments and a description of the method for calculating and apportioning those assessments among purchasers of the multisite timeshare plan;

(20) if applicable, a statement that the assessments collected from the purchasers may be placed in a common account with the assessments collected from the purchasers of other timeshare properties managed by the same managing entity;

(21) any current fees or charges to be paid by timeshare purchasers for the use of any amenities related to the timeshare plan and a statement that the fees or charges are subject to change;

(22) any initial or special fee due from the purchaser at closing, together with a description of the purpose of and method of calculating the fee;

(23) a description of the purchaser's liability for any fees associated with the multisite timeshare plan;

(24) a description of any lien, defect, or encumbrance on or affecting title to the timeshare interest and, if applicable, a copy of each written warranty provided by the developer;

(25) the extent to which a timeshare interest may become subject to a tax lien or other lien arising out of claims against purchasers of different timeshare interests;

(26) a description of those matters required by Section 221.041;

(27) a description of any financing offered by or available through the developer;

(28) a description of any bankruptcy that is pending or that has occurred within the past five years, pending civil or criminal suits, adjudications, or disciplinary actions material to the timeshare plan of which the developer has knowledge;

(29) a statement disclosing any right of first refusal or other restraint on the transfer of all or a portion of a timeshare interest;

(30) a statement disclosing that any deposit made in connection with the purchase of a timeshare interest must be held by an escrow agent until expiration of any right to cancel the contract and that any deposit must be returned to the purchaser if the purchaser elects to exercise the right of cancellation; or, if the commission accepts from the developer a surety bond, irrevocable letter of credit, or other form of financial assurance instead of an escrow deposit, a statement disclosing that the developer has provided a surety bond, irrevocable letter of credit, or other form of

financial assurance in an amount equal to or in excess of the funds that would otherwise be held by an escrow agent and that the deposit must be returned if the purchaser elects to exercise the right of cancellation;

(31) if the timeshare plan provides purchasers with the opportunity to participate in an exchange program, a description of the name and address of the exchange company and the method by which a purchaser accesses the exchange program; and

(32) any other information the commission determines is necessary to protect prospective purchasers or to implement the purpose of this chapter.

(e) A developer may include any other information in a timeshare disclosure statement required by this section on approval by the commission.

(f) If a timeshare plan is located wholly outside this state, the commission may permit the developer to submit a timeshare disclosure statement the developer is currently providing purchasers or an equivalent timeshare disclosure statement filed for the timeshare plan in another state if the current statement or the equivalent statement substantially complies with the requirements of this subchapter. This subsection does not exempt the developer from other requirements of this chapter.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.032 by Acts 1989, 71st Leg., c. 2, § 13.03(b), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., c. 443, § 3, eff. Sept. 1, 1993; Acts 2005, 79th Leg., c. 539, § 5, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.). Amended by Acts 2009, 81st Leg., R.S., c. 279, § 2, eff. Sept. 1, 2009.

Section 6 of Acts 2009, 81st Leg., R.S., c. 279 provides:

This Act applies to timeshare plans created on or after January 15, 2010, and to any developer who offers or disposes of an interest in a timeshare plan and a managing entity that manages a timeshare property under Chapter 221, Property Code, as amended by this Act, on or after that date.

§ 221.033. Exchange Disclosure Statement.

(a) Before the signing of any agreement to purchase a timeshare interest in which a prospective purchaser is also offered participation in any exchange program, the developer shall also deliver to the prospective purchaser the exchange disclosure statement of any exchange company whose service is advertised or offered by the developer or other person in connection with the disposition.

(b) If participation in an exchange program is offered for the first time after a disposition has occurred, any person offering that participation shall also deliver an exchange disclosure statement to the purchaser before the execution by the purchaser of any instrument relating to participation in the exchange program.

(c) In all cases, the person offering participation in the exchange program shall obtain from the purchaser a written acknowledgement of receipt of the exchange disclosure statement.

(d) The exchange disclosure statement must include the following information:

(1) the name and address of the exchange company;

(2) if the exchange company is not the developer, a statement describing the legal relationship, if any, between the exchange company and the developer;

(3) a statement indicating the conditions under which the exchange program might terminate or become unavailable;

(4) whether membership or participation or both in the exchange program is voluntary or mandatory;

(5) a complete description of the required procedure for executing an exchange of timeshare periods;

(6) the fee required for membership or participation or both in the program and whether the fee is subject to change;

(7) a statement to the effect that participation in the exchange program is conditioned on compliance with the terms of a contract between the exchange company and the purchaser;

(8) a statement in conspicuous and bold-faced print to the effect that all exchanges are arranged on a space-available basis and that neither the developer nor the exchange company guarantees that a particular timeshare period can be exchanged; and

(9) a description of seasonal demand and unit occupancy restrictions employed in the exchange program.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.033 by Acts 1989, 71st Leg., c. 2, § 13.03(b), eff. Aug. 28, 1989. Amended by Acts 2005, 79th Leg., c. 539, § 6, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.).

§ 221.034. Exempt Offerings and Dispositions; Communications.

(a) An offering or disposition is exempt from this chapter if it is:

(1) a gratuitous offering or disposition of a timeshare interest;

(2) a disposition pursuant to a court order;

(3) a disposition by a governmental agency;

(4) a disposition by foreclosure or deed in lieu of foreclosure;

(5) an offering or disposition by an association of its own timeshare interest acquired through foreclosure, deed in lieu of foreclosure, or gratuitous transfer;

(6) an offering or disposition of all timeshare interests in a timeshare plan to not more than five persons;

(7) an offering or disposition of a timeshare interest in a timeshare property situated wholly outside this state under a contract executed wholly outside this state, if there has been no offering to the purchaser within this state;

(8) an offering or disposition of a timeshare interest to a purchaser who is not a resident of this state under a contract executed wholly outside this state, if there has been no offering to the purchaser within this state;

(9) the offering or redisposition of a timeshare interest by a purchaser who acquired the interest for the purchaser's personal use; or

(10) the offering or disposition of a rental of an accommodation for a period of three years or less.

(b) If a developer has a timeshare plan registered under this chapter and is subject to Section 221.024, the developer may offer or dispose of an interest in a timeshare plan that is not registered under this chapter to a person who is the owner of a timeshare interest in a timeshare plan created by the developer. A developer under this subsection is exempt from Sections 221.021, 221.022, 221.023, 221.032, 221.041, 221.042, 221.043, 221.061, 221.071(a)(1) and (8), 221.074, and 221.075 if the developer:

(1) permits the purchaser to cancel the purchase contract before the sixth day after the date the contract is signed; and

(2) provides the purchaser all timeshare disclosure documents required by law to be provided in the jurisdiction in which the timeshare property is located.

(c) The following communications are not advertisements under this chapter:

(1) any stockholder communication, including an annual report or interim financial report, proxy material, registration statement, securities prospectus, timeshare disclosure statement, or other material required to be delivered to a prospective purchaser by a state or federal governmental entity;

(2) any oral or written statement disseminated by a developer to broadcast or print media, excluding:

(A) paid advertising or promotional material relating to plans for acquiring or developing timeshare property; and

(B) the rebroadcast or other dissemination of any oral statements by a developer to a prospective purchaser or the distribution or other dissemination of written statements, including newspaper or magazine articles or press releases, by a developer to prospective purchasers;

(3) the offering of a timeshare interest in a national publication or by electronic media that is not directed to or targeted at any individual located in this state;

(4) any audio, written, or visual publication or material relating to the availability of any accommodations for transient rental if:

(A) a sales presentation is not a term or condition of the availability of the accommodations; and

(B) the failure of the transient renter to take a tour of the timeshare property or attend a sales presentation does not result in a reduction in the level of services or an increase in the rental price that would otherwise be available to the renter; or

(5) any follow-up communication with a person relating to a promotion if the person previously received an advertisement relating to the promotion that complied with Section 221.031.

(d) The following communications are exempt from this chapter if they are delivered to a person who has previously executed a contract for the purchase of or is an owner of a timeshare interest in a timeshare plan:

(1) any communication addressed to and relating to the account of the person; or

(2) any audio, written, or visual publication or material relating to an exchange company or program if the person is a member of that exchange company or program.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.034 by Acts 1989, 71st Leg., c. 2, § 13.03(b), eff. Aug. 28, 1989. Amended by Acts 2005, 79th Leg., c. 539, § 7, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.).

§ 221.035. Supervisory Duties of Developer.

Notwithstanding obligations placed upon any other persons by this chapter, the developer shall supervise, manage, and control all aspects of the offering of a timeshare interest, including but not limited to promotion, advertising, contracting, and closing. Any violation of this chapter which occurs during such offering activities is considered to be a violation by the developer as well as by the person actually committing the violation.

Added by Acts 1989, 71st Leg., c. 381, § 3, eff. June 14, 1989.

§ 221.036. Developer Preparation and Completion of Documents.

(a) A developer may charge a reasonable fee for completion of a contract form, closing document, or disclosure document required for the sale, exchange, option, lease, or rental of a timeshare interest.

(b) The action of a developer under Subsection (a) does not constitute the unauthorized or illegal practice of law in this state if the contract or document has been:

(1) accepted by the commission for use in the particular type of transaction involved; or

(2) prepared by an attorney licensed to practice law in this state for use in the particular type of transaction involved.

Added by Acts 2003, 78th Leg., c. 1244, § 1, eff. Sept. 1. 2003.

§ 221.037. Alternative Terminology or Name.

(a) In providing the disclosures required by this chapter, the use of the terms "vacation ownership interest" or "vacation ownership plan" to refer to the timeshare interest or plan offered by the developer, or the use of other terms that are substantially similar and that are regularly used by the developer to denote a timeshare interest or plan, is sufficient and complies with the requirements of this chapter.

(b) In providing the full name of a developer or a marketing company as required by this chapter, the disclosure of an assumed name of the developer or the marketing company, if the entity has complied with the requirements of the applicable assumed business names statutes or other laws regarding the use of the assumed name, is sufficient and complies with this chapter.

Added by Acts 2009, 81st Leg., R.S., c. 279, § 3, eff. Sept. 1, 2009.

Section 6 of Acts 2009, 81st Leg., R.S., c. 279 provides:

This Act applies to timeshare plans created on or after January 15, 2010, and to any developer who offers or disposes of an interest in a timeshare plan and a managing entity that manages a timeshare property under Chapter 221, Property Code, as amended by this Act, on or after that date.

[Sections 221.036 to 221.040 reserved for expansion]

SUBCHAPTER E. CANCELLATION OF PURCHASE CONTRACT

§ 221.041. Purchaser's Right to Cancel.

(a) A purchaser may cancel a purchase contract before the sixth day after the date the purchaser signs and receives a copy of the purchase contract or receives the required timeshare disclosure statement, whichever is later.

(b) A purchaser may not waive the right of cancellation under this section. A contract containing a waiver is voidable by the purchaser.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.041 by Acts 1989, 71st Leg., c. 2, § 13.03(b), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., c. 381, § 4, eff. June 14, 1989; Acts 1993, 73rd Leg., c. 443, § 4, eff. Sept. 1, 1993; Acts 2005, 79th Leg., c. 539, § 8, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.).

§ 221.042. Notice; Refund.

(a) If a purchaser elects to cancel a purchase contract under Section 221.041, the purchaser may do so by hand-delivering notice of cancellation to the developer, by mailing notice by prepaid United States mail to the developer or to the developer's agent for service of process, or by providing notice by overnight common carrier delivery service to the developer or the developer's agent for service of process.

(b) Cancellation is without penalty, and all payments made by the purchaser before cancellation must be refunded on or before the 30th day after the date on which the developer receives a timely notice of cancellation or on or before the fifth day after the date the developer receives good funds from the purchaser, whichever is later.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.042 by Acts 1989, 71st Leg., c. 2, § 13.03(b), eff. Aug. 28, 1989. Amended by Acts 2005, 79th Leg., c. 539, § 8, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.).

§ 221.043. Contract Requirements.

a) Each purchase contract shall contain the following information. The statements required by this subsection and Subsection (c)(8) shall be provided in a conspicuous manner and in the exact language set forth in this section with the developer's name and address, the date of the last day of the fiscal year, and the address of the managing entity inserted where indicated:

"PURCHASER'S RIGHT TO CANCEL.

"(1) BY SIGNING THIS CONTRACT YOU ARE INCURRING AN OBLIGATION TO PURCHASE A TIMESHARE INTEREST. YOU MAY, HOWEVER, CANCEL THIS CONTRACT WITHOUT PENALTY OR OBLIGATION BEFORE THE SIXTH DAY AFTER THE DATE YOU SIGN AND RECEIVE A COPY OF THE PURCHASE CONTRACT, OR RECEIVE THE REQUIRED TIMESHARE DISCLOSURE STATEMENT, WHICHEVER IS LATER.

"(2) IF YOU DECIDE TO CANCEL THIS CONTRACT, YOU MAY DO SO BY EITHER HAND-DELIVERING NOTICE OF CANCELLATION TO THE DEVELOPER, BY MAILING NOTICE BY PREPAID UNITED STATES MAIL TO THE DEVELOPER OR THE DEVELOPER'S AGENT FOR SERVICE OF PROCESS, OR BY PROVIDING NOTICE BY OVERNIGHT COMMON CARRIER DELIVERY SERVICE TO THE DEVELOPER OR THE DEVELOPER'S AGENT FOR SERVICE OF PROCESS. YOUR NOTICE OF CANCELLATION IS EFFECTIVE ON THE DATE SENT OR DELIVERED TO (INSERT NAME OF DEVELOPER) AT (INSERT ADDRESS OF DEVELOPER). FOR YOUR PROTECTION, SHOULD YOU DECIDE TO CANCEL YOU SHOULD EITHER SEND YOUR NOTICE OF CANCELLATION BY CERTIFIED MAIL WITH A RETURN RECEIPT REQUESTED OR OBTAIN A SIGNED AND DATED RECEIPT IF DELIVERING IT IN PERSON OR BY OVERNIGHT COMMON CARRIER.

"(3) A PURCHASER SHOULD NOT RELY ON STATEMENTS OTHER THAN THOSE INCLUDED IN THIS CONTRACT AND THE DISCLOSURE STATEMENT."

(b) Immediately following the required statements in Subsection (a) shall be a space reserved for the signature of the purchaser.

(c) The purchase contract must also include the following:

(1) the name and address of the developer and the address of the timeshare property or the address of any available timeshare interest being offered;

(2) an agreement describing the cancellation policy prescribed by Section 221.041;

(3) the name of the person or persons primarily involved in the sales presentation on behalf of the developer;

(4) a statement disclosing the amount of the periodic assessments currently assessed against or collected from the purchasers of the timeshare interest, immediately followed by a statement providing that collected assessments will be used by the managing entity to pay for expenditures, charges, reserves, or liabilities relating to the operation of the timeshare plan or timeshare properties managed by the managing entity;

(5) the date the purchaser signs the contract; and

(6) the following statement:

"AS A TIMESHARE OWNER, YOU HAVE A RIGHT TO REQUEST A WRITTEN ANNUAL TIMESHARE FEE AND EXPENSE STATEMENT. THIS STATEMENT IS PREPARED ANNUALLY BY THE MANAGING ENTITY AND WILL BE AVAILABLE NOT LATER THAN FIVE MONTHS AFTER (INSERT THE DATE OF THE LAST DAY OF THE FISCAL YEAR). YOU MAY REQUEST THE STATEMENT BY WRITING TO (INSERT NAME AND ADDRESS OF THE MANAGING ENTITY)."

(d) The information required to be provided by this section may be provided in the purchase contract or in an exhibit to the purchase contract, or it may be provided in part in both if all of the information is provided.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.043 by Acts 1989, 71st Leg., c. 2, § 13.03(b), eff. Aug. 28, 1989. Amended by Acts 1989, 71st Leg., c. 381, § 5, eff. June 14, 1989; Acts 1993, 73rd Leg., c. 443, § 5, eff. Sept. 1, 1993. Amended by Acts 2005, 79th Leg., c. 539, § 8, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.). Amended by Acts 2009, 81st Leg., R.S., c. 279, § 4, eff. Sept. 1, 2009.

Section 6 of Acts 2009, 81st Leg., R.S., c. 279 provides:

This Act applies to timeshare plans created on or after January 15, 2010, and to any developer who offers or disposes of an interest in a timeshare plan and a managing entity that manages a timeshare property under Chapter 221, Property Code, as amended by this Act, on or after that date.

[Sections 221.044 to 221.050 reserved for expansion]

SUBCHAPTER F. EXCHANGE PROGRAM

§ 221.051. Operation Requirement.

An exchange company shall employ seasonal demand and unit occupancy restrictions in the operation of its exchange program.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.051 by Acts 1989, 71st Leg., c. 2, § 13.03(b), eff. Aug. 28, 1989.

§ 221.052. Liability of Developer and Exchange Company.

(a) A developer does not incur any liability arising out of the use, delivery, or publication to a purchaser of written information or audio-visual materials provided to it by the exchange company in accordance with Subchapter D, unless the developer knows or has reason to know that the materials are inaccurate or false.

(b) No exchange company shall have any liability with respect to any violation under this chapter arising out of the use by a developer of information relating to an exchange program other than that provided to the developer by the exchange company.

(c) An exchange company that denies exchange privileges to an owner whose use of accommodations in the owner's timeshare plan is denied is not liable to any member of the exchange company or exchange program or any third party because of the denial of the owner's exchange privileges.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.052 by Acts 1989, 71st Leg., c. 2, § 13.03(b), eff. Aug. 28, 1989. Amended by Acts 2005, 79th Leg., c. 539, § 9, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.).

§ 221.053. Exchange Company Liability.

Except for written information or audio-visual materials provided to a developer by an exchange company, an exchange company does not incur liability as a result of:

(1) a representation made by a developer that relates to any exchange program or exchange company; or

(2) the use, delivery, or publication by a developer of information that relates to an exchange program or exchange company.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.053 by Acts 1989, 71st Leg., c. 2, § 13.03(b), eff. Aug. 28, 1989.

[Sections 221.054 to 221.060 reserved for expansion]

SUBCHAPTER G. ESCROW DEPOSITS

§ 221.061. Escrow or Trust Account Required.

a) A developer or escrow agent of a timeshare plan shall deposit in an escrow or trust account in a federally insured depository 100 percent of all funds received during the purchaser's cancellation period.

(b) An escrow agent owes the purchaser a fiduciary duty.

(c) The escrow agent and the developer shall execute an agreement that includes a statement providing that:

(1) funds may be disbursed to the developer from the escrow or trust account by the agent only:

(A) after the purchaser's cancellation period has expired; and

(B) as provided by the purchase contract, subject to this subchapter; and

(2) if the purchaser cancels the purchase contract as provided by the contract, the funds must be paid to:

(A) the purchaser; or

(B) the developer if the purchaser's funds have been refunded previously by the developer.

(d) If a developer contracts to sell a timeshare interest and the construction of the building in which the timeshare interest is located has not been completed when the cancellation period expires, the developer shall continue to maintain all funds received from the purchaser under the purchase agreement in the escrow or trust account until construction of the building is completed. The documentation required for evidence of completion of construction includes:

(1) a certificate of occupancy;

(2) a certificate of substantial completion;

(3) evidence of a public safety inspection equivalent to Subdivision (1) or (2) from a government agency in the applicable jurisdiction; or

(4) any other evidence acceptable to the commission.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.061 by Acts 1989, 71st Leg., c. 2, § 13.03(b), eff. Aug. 28, 1989. Amended by Acts 2005, 79th Leg., c. 539, § 10, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.).

§ 221.062. Release of Escrow.

(a) The funds or property constituting the escrow or trust deposit may be released from escrow only in accordance with this section.

(b) If the purchaser cancels the purchase contract as provided by the contract, the funds shall be paid to:

(1) the purchaser; or

(2) the developer if the purchaser's funds have been refunded previously by the developer.

(c) If the purchaser defaults in the performance of obligations under the terms of the purchase contract, the funds shall be paid to the developer.

(d) If the developer defaults in the performance of obligations under the purchase contract, the funds shall be paid to the purchaser.

(e) If the funds of the purchaser have not been disbursed previously as provided by Subsections (a)-(d), the funds may be disbursed to the developer by the escrow or trust agent if acceptable evidence of completion of construction is provided.

(f) If there is a dispute relating to the funds in the escrow or trust account, the agent shall maintain the funds in the account until:

(1) the agent receives written directions agreed to and signed by all parties; or

(2) a civil action relating to the disputed funds is filed.

(g) If a civil action is filed under Subsection (f)(2), the escrow or trust account agent shall deposit the funds with the court in which the action is filed.

(h) Excluding any encumbrance placed against the purchaser's timeshare interest that secures the purchaser's payment of purchase money financing for the purchase, the developer is not entitled to the release of any funds escrowed with respect to each timeshare interest until the developer has provided the commission with satisfactory evidence that:

(1) the timeshare interest and any other property or rights to property appurtenant to the timeshare interest, including any amenities represented to the purchaser as being part of the timeshare plan, are free and clear of any of the claims of the developer, any owner of the underlying fee, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the timeshare interest or appurtenant property or property rights;

(2) the developer, any owner of the underlying fee, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the timeshare interest or appurtenant property or property rights, including any amenities represented to the purchaser as being part of the timeshare plan, has recorded a subordination and notice to creditors document in the jurisdiction in which the timeshare interest is located that expressly and effectively provides that the interest holder's right, lien, or encumbrance does not adversely affect and is subordinate to the rights of the owners of the timeshare interests in the timeshare plan, regardless of the date of purchase, on and after the effective date of the subordination document;

(3) the developer, any owner of the underlying fee, a mortgagee, judgment creditor, or other lienor, or any other person having an interest in or lien or encumbrance against the timeshare interest or appurtenant property or property rights, including any amenities represented to the purchaser as being part of the timeshare plan, has transferred the subject accommodations or amenities or all use rights therein to a nonprofit organization or an owners' association to be held for the use and benefit of the purchasers of the timeshare plan, which entity shall act as a fiduciary to the purchasers, provided that the developer has transferred control of that entity to the purchasers or does not exercise its voting rights in that entity with respect to the subject accommodations or amenities and, prior to the transfer, any lien or other encumbrance against the accommodation or facility is subject to a subordination and notice to creditors instrument pursuant to this subsection; or

(4) alternative arrangements have been made that are adequate to protect the rights of the purchasers of the timeshare interests and are approved by the commission.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.062 by Acts 1989, 71st Leg., c. 2, § 13.03(b), eff. Aug. 28, 1989. Amended by Acts 2005, 79th Leg., c. 539, § 10, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.). Amended by Acts 2009, 81st Leg., R.S., c. 279, § 5, eff. Sept. 1, 2009.

Section 6 of Acts 2009, 81st Leg., R.S., c. 279 provides:

This Act applies to timeshare plans created on or after January 15, 2010, and to any developer who offers or disposes of an interest in a timeshare plan and a managing entity that manages a timeshare property under Chapter 221, Property Code, as amended by this Act, on or after that date.

§ 221.063. Alternative to Escrow or Trust Account: Financial Assistance.

(a) Instead of the deposit of funds in an escrow or trust account as provided by Section 221.061, the commission may accept from the developer a surety bond, irrevocable letter of credit, or other form of financial assurance, including financial assurance posted in another state or jurisdiction.

(b) The amount of the financial assurance provided under this section must be an amount equal to or more than the amount of funds that would otherwise be placed in an escrow or trust account under Section 221.061(a).

(c) The amount of the financial assurance provided under this section for timeshare property under construction as provided by Section 221.061(d) must be the lesser of:

(1) an amount equal to or more than the amount of funds that would otherwise be placed in an escrow or trust account under that subsection; or

(2) the amount necessary to assure completion of the building in which the timeshare interest is located.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.063 by Acts 1989, 71st Leg., c. 2, § 13.03(b), eff. Aug. 28, 1989. Amended by Acts 2005, 79th Leg., c. 539, § 10, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.).

§ 221.064. Documentation Required.

The escrow or trust account agent or developer shall make documents related to the escrow or trust account or the financial assurance provided available to the commission at the commission's request.

Added by Acts 2005, 79th Leg., c. 539, § 10, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.).

[Sections 221.064 to 221.070 reserved for expansion]

SUBCHAPTER H. MISCELLANEOUS PROVISIONS

§ 221.071. Deceptive Trade Practices.

(a) A developer or other person commits a false, misleading, or deceptive act or practice within the meaning of Subsections (a) and (b) of Section 17.46 of the Texas Deceptive Trade Practices-Consumer Protection Act (Article 17.46 et seq., Business & Commerce Code), by engaging in any of the following acts:

(1) failing to disclose information concerning a timeshare interest required by Subchapter D;

(2) making false or misleading statements of fact concerning the characteristics of accommodations or amenities available to a consumer;

(3) predicting specific or immediate increases in the value of a timeshare interest without a reasonable basis for such predictions;

(4) making false or misleading statements of fact concerning the duration that accommodations or amenities will be available to a consumer;

(5) making false or misleading statements of fact concerning the conditions under which a purchaser of a timeshare interest may exchange the right to occupy a unit for the right to occupy a unit in the same or another timeshare property;

(6) representing that a prize, gift, or other benefit will be awarded in connection with a promotion with the intent not to award that prize, gift, or benefit in the manner represented;

(7) failing to provide a copy of the purchase contract to the purchaser at the time the contract is signed by the purchaser;

(8) failing to provide the annual statement as required by Section 221.074(a); or

(9) exceeding a one-to-one purchaser-to-accommodation ratio for a timeshare plan during a consecutive 12-month period, as determined under Subsection (c).

(b) The provisions of this section are not exclusive and are in addition to provisions provided for in any other law.

(c) A developer complies with the one-to-one purchaser-to-accommodation ratio referred to in Subsection (a)(9) if the total number of purchasers eligible to use the accommodations of the timeshare plan during a consecutive 12-month period never exceeds the total number of accommodations available for use in the timeshare plan during that same period. A purchaser-to-accommodation ratio is computed by dividing the number of purchasers eligible to use an accommodation in a timeshare plan on any given day by the number of accommodations within the plan available for use on that day. For purposes of computing the purchaser-to-accommodation ratio:

(1) each purchaser is counted at least once each consecutive 12-month period;

(2) each accommodation is counted not more than 365 times each consecutive 12-month period, excluding a leap year, in which each accommodation may be counted 366 times; and

(3) a purchaser who is delinquent in paying timeshare assessments is considered eligible to use timeshare plan accommodations.

(d) If a developer has substantially complied with this chapter in good faith, a nonmaterial error or omission is not actionable. Any nonmaterial error or omission is not sufficient to permit a purchaser to cancel a purchase contract after the period provided for cancellation expires under this chapter.

(e) A person, other than an owner of a timeshare interest who purchased the interest from a developer for the person's own personal use and occupancy, commits a false, misleading, or deceptive act or practice within the meaning of Sections 17.46(a) and (b), Business & Commerce Code, and an unconscionable action or course of action as defined by Section 17.45, Business & Commerce Code, by knowingly participating, for consideration or with the expectation of consideration, in any plan or scheme a purpose of which is to transfer a timeshare interest to a transferee who does not have the ability, means, or intent to pay all assessments and taxes for the timeshare interest. An association or other managing entity does not commit an act or action as described by this subsection by performing administrative acts and collecting fees or expenses as customary or required by law or under the project instruments in connection with a transfer by an owner of a timeshare interest in the timeshare property.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.071 by Acts 1989, 71st Leg., c. 2, § 13.03(b), eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., c. 443, § 6, eff. Sept. 1, 1993; Acts 2005, 79th Leg., c. 539, § 11, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.); Acts 2013, 83rd Leg., R.S., c. 1352, § 8, eff. Sept. 1, 2013.

§ 221.072. Insurance.

Before the disposition of any timeshare interest, the developer or managing entity shall maintain the following insurance with respect to the timeshare property:

(1) property insurance on the timeshare property and any personal property for use by purchasers, other than personal property separately owned by a purchaser, insuring against all risks of direct physical loss commonly insured against, in a total amount, after application of deductibles, of the replacement cost of the accommodations and amenities of the timeshare property; and

(2) liability insurance covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, and maintenance of the timeshare property.

Added by Acts 1987, 70th Leg., c. 167, § 6.03, eff. Sept. 1, 1987. Renumbered from § 201.072 by Acts 1989, 71st Leg., c. 2, § 13.03(b), eff. Aug. 28, 1989. Amended by Acts 2005, 79th Leg., c. 539, § 12, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.).

§ 221.073. Penalty.

(a) A developer subject to this chapter commits an offense if the developer offers or disposes of a timeshare interest in a timeshare property which has not been registered with the commission.

(b) It is not a violation of this section for a developer subject to this chapter to accept reservations and deposits from prospective purchasers in accordance with Section 221.021(b) or (d).

(c) An offense under this section is a Class A misdemeanor. A person may not be prosecuted for more than one offense involving the same promotion, even if mailed or distributed to more than one person.

Added by Acts 1989, 71st Leg., c. 381, § 6, eff. June 14, 1989. Amended by Acts 1999, 76th Leg., c. 1382, § 9, eff. June 19, 1999; Acts 2005, 79th Leg., c. 539, § 13, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.).

Section 11(b) of Acts 1999, 76th Leg., c. 1382, provides:

(b) The changes in law made by Sections 3, 6, 8, and 9 of this Act apply only to a violation committed on or after the effective date of this Act. For the purposes of this subsection, a violation is committed before the effective date of this Act if any element of the violation occurs before that date. A violation committed before the effective date of this Act is covered by the law in effect when the violation was committed, and the former law is continued in effect for that purpose.

§ 221.074. Annual Timeshare Fee and Expense Statement.

a) Notwithstanding any contrary provision of the required timeshare disclosure statement, project instrument, timeshare instrument, or bylaws adopted pursuant to a timeshare instrument, the managing entity shall make a written annual accounting of the operation of the timeshare properties managed by the managing entity to each purchaser who requests an accounting not later than five months after the last day of each fiscal year. The statement shall fairly and accurately represent the collection and expenditure of assessments and include:

(1) a balance sheet;

(2) an income and expense statement;

(3) the current budget for the timeshare property, timeshare properties managed by the same managing entity, or multisite timeshare plan required by Section 221.032(b)(12); and

(4) the name, address, and telephone number of a designated representative of the managing entity.

(b) On the request of an owner, the managing entity of the timeshare plan shall provide the owner with the name and address of each member of the board of directors of the owners' association, if one exists.

(c) A developer or managing entity shall have an annual independent audit of the financial statements of the timeshare plan or timeshare properties managed by the managing entity performed by a certified public accountant or an accounting firm. The audit must be:

(1) conducted in accordance with generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants, the Governmental Accounting Standards Board, the United States General Accounting Office, or other professionally recognized entities that prescribe auditing standards; and

(2) completed not later than five months after the last day of the fiscal year of the timeshare plan or timeshare property.

(d) Knowingly furnishing false information in the annual timeshare fee and expense statement is a violation of the Deceptive Trade Practices-Consumer Protection Act (Section 17.41 et seq., Business & Commerce Code).

(e) The managing entity of any accommodation located in this state shall post prominently in the registration area of the accommodations the following notice, with the date of the last day of the current fiscal year and the address of the managing entity inserted where indicated:

"AS A TIMESHARE OWNER YOU HAVE A RIGHT TO REQUEST A WRITTEN ANNUAL TIMESHARE FEE AND EXPENSE STATEMENT. THIS STATEMENT IS PREPARED ANNUALLY BY THE MANAGING ENTITY AND WILL BE AVAILABLE NO LATER THAN FIVE MONTHS [THE 90TH DAY] FOLLOWING (INSERT THE DATE OF THE LAST DAY OF THE CURRENT FISCAL YEAR). YOU MAY REQUEST THE STATEMENT, BY WRITING TO (INSERT ADDRESS OF THE MANAGING ENTITY)."

Added by Acts 1993, 73rd Leg., c. 443, § 7, eff. Jan. 1, 1995. Amended by Acts 2005, 79th Leg., c. 539, § 14, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.).

§ 221.075. Civil Penalty for Late Statement; Injunction.

(a) On receipt of a written request filed with the commission by a managing entity before the date on which the statement required by Section 221.074 must be made available, the commission for good cause shown may grant the managing entity an extension of no more than 30 days in which to provide the statement.

(b) If the statement required by Section 221.074 is late and an extension has not been granted under Subsection (a), the managing entity required to provide the statement is liable to the state for a civil penalty not to exceed:

(1) $500 per day for each of the first 10 days that the statement is late; and

(2) $1,500 per day for each day after the 10th day, until the managing entity has complied with Section 221.074.

(c) In no event shall the civil penalties exceed $30,000 for any one statement period.

(d) A managing entity may not assess against or collect from the purchasers of a timeshare property the amount of a penalty incurred under this section.

(e) If it appears that a managing entity has violated Section 221.074, the attorney general may institute an action for injunctive relief, a civil penalty, or both.

Added by Acts 1993, 73rd Leg., c. 443, § 7, eff. Jan. 1, 1995. Amended by Acts 1999, 76th Leg., c. 1382, § 10, eff. June 19, 1999; Acts 2005, 79th Leg., c. 539, § 15, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.).

Section 11(a) of Acts 1999, 76th Leg., c. 1382, provides:

(a) The changes in law made in sections 1, 2, 4, 5, 7, and 10 of this Act apply to a violation committed before, on, or after the effective date of this Act.

§ 221.076. Managing Entities That Manage More Than One Timeshare Property.

(a) A managing entity that manages two or more single-site timeshare plans may commingle the assessments collected from purchasers of one timeshare plan with the assessments collected from purchasers of any other single-site plan for which it is the managing entity only if the practice is disclosed in the timeshare disclosure statement for each timeshare property and the appropriate statement is included in the declaration for each timeshare property as required by Subchapter B.

(b) A managing entity which manages a multisite timeshare plan may deposit assessments collected from purchasers of one timeshare property into a common account with assessments collected from purchasers [owners] of other timeshare properties participating in the same multisite timeshare plan only if the practice is disclosed in the timeshare disclosure statement for each timeshare property in the multisite timeshare plan and the appropriate statement is included in the declaration for each timeshare plan as required by Subchapter B.

(c) Nothing in this section shall be construed to allow a managing entity to commingle assessments of a multisite timeshare plan with the assessments of a separate multisite timeshare plan or a timeshare plan that is not a part of the multisite timeshare plan.

Added by Acts 1993, 73rd Leg., c. 443, § 8, eff. Sept. 1, 1993. Amended by Acts 2005, 79th Leg., c. 539, § 16, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.).

§ 221.077. Availability of Books and Records; Records Retention.

(a) A developer or managing entity, on written request of an owner, shall make available for examination at its registered office or principal place of business and at any reasonable time or times the relevant books and records relating to the collection and expenditure of assessments.

(b) A developer or managing entity shall maintain in its records a copy of each purchase contract for an accommodation sold by the developer for a timeshare period unless the contract has been canceled. If a sale of the timeshare estate is pending, the developer shall retain a copy of the contract until a deed of conveyance, agreement for deed, or lease is recorded in the real property records of the county in which the timeshare property is located.

Added by Acts 1993, 73rd Leg., c. 443, § 8, eff. Sept. 1, 1993. Amended by Acts 2005, 79th Leg., c. 539, § 16, eff. Jan. 15, 2006 (*See* notes to the 2005 amendment in the legislative history following § 221.002.).

SUBCHAPTER I. TIMESHARE OWNERS' ASSOCIATIONS

§ 221.081. Applicability.

(a) Except as provided by this section, this subchapter applies to a timeshare plan, the project instrument governing the timeshare property subject to the timeshare plan, and the association related to the timeshare plan, regardless of the date on which the timeshare plan was created.

(b) Except as provided by Section 221.083(f), this subchapter applies to a timeshare plan, the project instrument governing the timeshare property subject to the timeshare plan, and the association related to the timeshare plan, created before September 1, 2013, unless the project instrument is amended before September 1, 2013, to provide that this subchapter does not apply.

Added by Acts 2013, 83rd Leg., R.S., c. 1352, § 2, eff. Sept. 1, 2013.

§ 221.082. Powers and Limitations of Board.

(a) An association may be governed by a board of directors. Except as provided in the project instrument, or this chapter, the board may act in all instances on behalf of the association.

(b) Except as expressly authorized in the project instrument or otherwise permitted by the association, the board may not act on behalf of the association to:

(1) amend the project instrument;

(2) terminate the timeshare plan;

(3) elect or remove board members; or

(4) determine the qualifications, powers, duties, or terms of office of board members.

(c) Subject to the project instrument, the board may appoint a member to fill a vacancy on the board and the member appointed serves for the unexpired portion of the term of the predecessor board member.

Added by Acts 2013, 83rd Leg., R.S., c. 1352, § 2, eff. Sept. 1, 2013.

§ 221.083. Period of Developer Control.

(a) Except as otherwise provided in this section, the project instrument may provide for a period of developer control of an association during which the developer, or a person designated by the developer, may appoint and remove board members and officers of the association.

(b) Regardless of the period of developer control provided in the project instrument, that period expires not later than the earlier of:

(1) the 120th day after the date that at least 95 percent of the timeshare interests that were created by the timeshare instrument are conveyed to owners other than the developer; or

(2) the fifth anniversary of the date the developer ceased to offer timeshare interests for sale in the ordinary course of business under the timeshare plan or under another timeshare plan in which the timeshare interests are included, whichever date is later.

(c) A developer may voluntarily surrender the developer's right to appoint and remove board members and officers of the association during the period of developer control by executing a written instrument stating that the developer's rights are surrendered and providing a copy of the instrument to the owners. The developer may provide in the surrender instrument that, during the remaining period otherwise designated for developer control, specified actions of the association or board as described in the project instrument are effective only on approval of the developer. The surrender instrument must be recorded in the real property records of the county in which the timeshare property is located.

(d) If the project instrument provides for a developer control period of shorter duration than any period prescribed by this section, the project instrument controls.

(e) During the period of developer control and subject to the project instrument, the developer may determine all matters governing the association, including the occurrence of special or regular meetings of the members and the notice requirements and rules for those meetings.

(f) This section applies to a timeshare plan created before September 1, 2013, and to the project instrument governing the timeshare property subject to the timeshare plan only if the developer and the association agree to the application in writing and the project instrument is amended to provide for that application. If the conditions provided by this subsection are not satisfied, a timeshare plan created before September 1, 2013, and the timeshare property subject to the timeshare plan are governed by any developer control provisions provided in the project instrument, notwithstanding any other law.

Added by Acts 2013, 83rd Leg., R.S., c. 1352, § 2, eff. Sept. 1, 2013.

§ 221.084. Election of Initial Board Members and Officers.

(a) Not later than the termination, by expiration or surrender, of any period of developer control, the owners, including the developer to the extent of any developer-owned timeshare interests, must elect a board of at least three members. The board may include one or more representatives of the developer.

(b) The board shall elect the officers of the association.

(c) The board members and officers of the association take office on election.

Added by Acts 2013, 83rd Leg., R.S., c. 1352, § 2, eff. Sept. 1, 2013.

§ 221.085. Removal of Board Members.

Notwithstanding any provision of a project instrument to the contrary, the owners, by a vote of at least two-thirds of the voting rights of persons entitled to vote and voting in person or by proxy at any meeting of the owners, may remove a member of the board, with or without cause, other than a member appointed by the developer during the period of developer control under Section 221.083, provided that the developer remains in control of the association.

Added by Acts 2013, 83rd Leg., R.S., c. 1352, § 2, eff. Sept. 1, 2013.

§ 221.086. Quorum.

(a) Unless the project instrument provides for a larger quorum requirement, the percentage of voting interests constituting a quorum at a meeting of the members of an association is 10 percent of the voting interests of owners who are not delinquent in assessments, voting in person or by proxy.

(b) If a quorum is not present at any meeting of the association at which board members will be elected, the meeting may be adjourned and reconvened not later than the 90th day after the date of adjournment for the sole purpose of electing board members. Unless the project instrument provides for a larger quorum requirement, the quorum for the reconvened meeting is 10 percent of the voting interests of owners who are not delinquent in assessments, voting in person or by proxy.

(c) Unless the project instrument provides otherwise, a quorum of the board is considered present throughout a board meeting if the members entitled to cast a majority of the votes are present at the beginning of the meeting.

Added by Acts 2013, 83rd Leg., R.S., c. 1352, § 2, eff. Sept. 1, 2013.

§ 221.087. Votes.

(a) If only one of the multiple owners of a timeshare interest is present at a meeting of the association, that owner may cast all votes allocated to that timeshare interest. If more than one of the multiple owners are present, the votes allocated to that timeshare interest may be cast only in accordance with the agreement of a majority of the timeshare interest held by the multiple owners unless the timeshare instrument expressly provides otherwise. For purposes of this subsection, there is a majority agreement if any one of the multiple owners casts the votes allocated to that timeshare interest and no protest is made promptly to the person presiding over the meeting by any of the other owners of the timeshare interest.

(b) Votes allocated to a timeshare interest may be cast under a proxy duly executed by an owner. A proxy must expressly state the dates of execution and termination. An owner may only revoke a proxy given under this section by actual notice of revocation to the person presiding over a meeting of the association. A proxy is revoked on presentation of a later dated proxy or other written revocation executed by the same owner. A proxy terminates the 25th month after the date the proxy is executed, unless the proxy specifies a shorter period or states that the proxy is coupled with an interest and is irrevocable.

(c) The project instrument for a timeshare plan may authorize votes of members of an association to be cast by mail only if:

(1) mail ballots are mailed or sent to each member in the manner prescribed for a notice of a special meeting under Section 221.089;

(2) the period for return of mail ballots is not later than the 30th day after the date the ballots are mailed or sent to members; and

(3) the required minimum number of ballots that must be returned by members for the vote to be effective represents at least the percentage of voting interests required for a quorum as prescribed by Section 221.086(a).

(d) Only timeshare interests included in the timeshare plan have voting rights.

(e) Unless the project instrument provides otherwise, owners who are delinquent in assessments do not have the right to cast a vote. The right to cast a vote is also subject to any additional limitations provided in the project instrument.

Added by Acts 2013, 83rd Leg., R.S., c. 1352, § 2, eff. Sept. 1, 2013.

§ 221.088. Open Meetings; Exceptions.

(a) Notwithstanding any provision in the project instrument to the contrary and except as provided in this section, after the period of developer control under Section 221.083, all meetings of the association and board are open to all members of the association and all members must be permitted to attend and listen to the deliberations and proceedings. Meetings must be conducted as provided in the project instrument. The board may adjourn a board meeting and reconvene in a closed executive session to consider:

(1) legal advice from an attorney for the board or the association;

(2) pending or contemplated litigation;

(3) financial information about an individual member of the association, an individual employee of the association, an individual employee of the managing entity, or an individual employee of a contractor for the association or managing entity; or

(4) matters relating to the job performance of, compensation of, health records of, or specific complaints against an individual employee of the association, an individual employee of the managing entity, or an individual employee of a contractor of the association or managing entity who works under the direction of the association or the managing entity.

(b) If a board meeting is closed as provided by Subsection (a)(1) or (2), the board, on final resolution of any matter for which the board received legal advice or that concerned pending or contemplated litigation, may disclose information about that matter in an open meeting, except to the extent that those matters are required to remain confidential by the terms of a settlement agreement or judgment.

Added by Acts 2013, 83rd Leg., R.S., c. 1352, § 2, eff. Sept. 1, 2013.

§ 221.089. Notice.

(a) A meeting of the members of the association must be held annually after the termination of the period of developer control under Section 221.083. Special meetings of the members of the association may be called by the president, by a majority of the board, or by owners having at least 25 percent of the votes allocated to timeshare interests in the association or any lower percentage specified in the project instrument.

(b) Unless the project instrument provides otherwise, the association or managing entity must send notice of the meeting to the mailing address of each owner on record with the association:

(1) not later than the 30th day or earlier than the 90th day before the date of an annual meeting; and

(2) not later than the 10th day or earlier than the 60th day before the date of a special meeting.

(c) The notice of a meeting of the owners must state the date, time, and place of the meeting. The notice of a special meeting of the owners must also state the purpose of the meeting. A notice of a meeting may be included in a list of upcoming meetings sent to owners, and the list is not required to be specific to one meeting. The failure of an owner to receive actual notice of a meeting of the owners does not affect the validity of any action taken at that meeting.

(d) Unless the project instrument provides otherwise, the association or managing entity must send notice of a board meeting held after the date the developer control period terminates to the mailing address of each owner on record with the association not later than the 10th day before the date of the meeting. Notice to owners of a board meeting is not required if emergency circumstances require action by the board before notice can be given. A notice of a board meeting must state the date, time, and place of the meeting. A notice of a meeting may be included in a list of upcoming meetings sent to owners, and the list is not required to be specific to one meeting. The failure of an owner to receive actual notice of a board meeting does not affect the validity of any action taken at that meeting.

(e) A notice may be provided in a newsletter or a similar mailing. Notice may be provided by prepaid United States mail, e-mail for those owners who have provided an e-mail address, or any other reasonable method selected by the board.

(f) Notwithstanding Subsections (a)-(d) or any other law related to notice by an association, a notice to an owner may be provided by conspicuous disclosure on the association's website if the owner has consented to that alternative notice. Consent to that alternative notice must be in writing and may be revoked by the owner at any time.

(g) An affidavit of notice by an officer of the association or the managing entity is prima facie evidence that notice was provided under this section.

Added by Acts 2013, 83rd Leg., R.S., c. 1352, § 2, eff. Sept. 1, 2013.

§ 221.090. Duties; List of Owners.

(a) The association or managing entity of the association must maintain among its records a complete and current list of the names and addresses of all owners of timeshare interests in the timeshare plan. The association or managing entity must update this list not less than quarterly.

(b) The association or managing entity may not publish the owners list or provide a copy of the list to any owner or to any third party, except:

(1) as reasonably required to conduct legitimate association business; or

(2) as authorized or required by law.

(c) On the termination of the period of developer control under Section 221.083 and on the written request of an owner, the association or managing entity shall send by first class mail to owners on the list described by Subsection (a) any materials provided by any owner if the purpose of the mailing is for legitimate association business, including a proxy solicitation for the recall of a board member elected by the owners or the discharge of the managing entity. The use of the solicited proxies must comply with the project instrument and this chapter. Materials required to be provided under this subsection must be mailed not later than the 30th day after the date the request is received from an owner.

(d) The board or the managing entity is responsible for determining the appropriateness of a mailing requested under Subsection (c) and establishing reasonable procedures for exercising rights under this section. The association or managing entity does not have an obligation to mail an item that the board or managing entity reasonably believes based on advice of legal counsel may be libelous or otherwise actionable. An owner who requests the mailing of materials under Subsection (c) must reimburse the association or managing entity in advance for the actual costs of performing the mailing or a proportionate share of actual costs if the mailing is included in a mailing with other items.

(e) After the termination of the period of developer control under Section 221.083, it is a violation of this subchapter to refuse to mail material provided by a requesting owner who has complied with the reasonable procedures established by the board or managing entity, if:

(1) the sole purpose of the materials is to advance legitimate association business; and

(2) the requesting owner has:

(A) tendered to the association or managing entity payment of the cost under Subsection (d); or

(B) requested an invoice for that cost and has not received the invoice before the 10th day after the date the request was delivered to the association or managing entity.

(f) Except as otherwise authorized or required by law, the association or other managing entity may not furnish the name, address, telephone number, or e-mail address of any owner to any other owner or authorized agent of an owner unless the owner whose name, address, phone number, or e-mail address is requested first approves the disclosure in writing.

Added by Acts 2013, 83rd Leg., R.S., c. 1352, § 2, eff. Sept. 1, 2013.

SUBCHAPTER J. SERVICE AGREEMENTS TO TRANSFER OR TERMINATE A TIMESHARE INTEREST

§ 221.101. Transfer or Termination of Timeshar Interest.

In this subchapter:

(1) ”Termination” with respect to a timeshare interest:

(A) means:

(i) the release of contractual obligations relating to a timeshare interest by the developer, association, or managing entity; or

(ii) the invalidation, cancellation, nullification, or cessation of contractual obligations related to a timeshare interest by a judgment or court order; and

(B) does not include the cancellation of a purchase contract governed by Subchapter E.

(2) ”Transfer” with respect to a timeshare interest means the conveyance of all or substantially all of a timeshare interest.

Added by Acts 2015, 84th Leg., c. 554, § 2, eff. Sept. 1, 2015.

Section 3(a) of Acts 2015, 84th Leg., c. 554, provides:

The disclosure and notice requirements provided by Subchapter J, Chapter 221, Property Code, as added by this Act, apply only to an agreement to facilitate the transfer or termination of a timeshare interest entered into on or after the effective date of this Act. An agreement to facilitate the transfer or termination of a timeshare interest entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 221.102. Applicability.

(a) This subchapter applies to a timeshare interest if the timeshare interest has been acquired only for the purchaser's personal, family, or household use and:

(1) the timeshare interest is owned by a resident of this state;

(2) the timeshare property is located in this state; or

(3) the timeshare interest acquired is in a multisite timeshare plan required to be registered under Subchapter C.

(b) Except as provided by Subsection (c), this subchapter applies to a person who:

(1) is acting in the ordinary course of business; and

(2) directly or indirectly, regardless of whether acting in person, by mail, by telephone, or by any mode of Internet or electronic communication, offers or advertises an offer to engage in, for consideration, the following activities:

(A) obtaining or attempting to obtain on behalf of a timeshare interest owner a termination of contractual obligations relating to a timeshare interest;

(B) selling, renting, listing, or advertising a timeshare interest on behalf of a timeshare interest owner;

(C) purchasing a timeshare interest from a timeshare interest owner; or

(D) assisting in the transfer of an owner's timeshare interest.

(c) This subchapter does not apply to:

(1) a license holder under Chapter 1101, Occupations Code, acting as a broker, agent, or salesperson under that person's license in connection with the transfer or termination of a timeshare interest;

(2) a developer, association, or managing entity for a timeshare interest to be transferred or terminated or a third party acting at the specific request of the developer, association, or managing entity; or

(3) an attorney, title agent, title company, or escrow company that:

(A) provides only closing, settlement, or other comparable transaction services in connection with the transfer or termination of a timeshare interest; and

(B) does not otherwise engage in activities described by Subsection (b).

Added by Acts 2015, 84th Leg., c. 554, § 2, eff. Sept. 1, 2015.

Section 3(a) of Acts 2015, 84th Leg., c. 554, provides:

The disclosure and notice requirements provided by Subchapter J, Chapter 221, Property Code, as added by this Act, apply only to an agreement to facilitate the transfer or termination of a timeshare interest entered into on or after the effective date of this Act. An agreement to facilitate the transfer or termination of a timeshare interest entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 221.103. General Disclosures Required.

A person subject to this subchapter who enters into an agreement with a timeshare interest owner to facilitate the transfer or termination of a timeshare interest shall provide to the timeshare interest owner, before the third day before the date the timeshare interest owner enters into the agreement the following written disclosures, as applicable:

(1) the name, telephone number, and physical address of the person providing services under the agreement and any affiliate, agent, or third-party representative of that person;

(2) if the person identified in Subdivision (1), or an affiliate, agent, or third-party representative of that person providing services under the agreement, is an attorney licensed to practice law in this state, a disclosure of whether the attorney will be providing services under the agreement and representing the timeshare interest owner in connection with the transfer or termination of the timeshare interest;

(3) a description, legally sufficient for identification, of the timeshare interest to be transferred or terminated;

(4) a description of the method of transfer or termination or a copy of the instrument that will be used for transferring or terminating the timeshare interest;

(5) a description of any interest the timeshare interest owner retains after the transfer;

(6) a description of the scope of a power of attorney or other delegation of authority, if any, that the timeshare interest owner is required to give to complete the transfer of the timeshare interest;

(7) an itemized statement of any amounts the timeshare owner is required to pay as consideration or reimbursement for services provided in connection with the agreement;

(8) the name of each recipient of amounts described by Subdivision (7);

(9) the estimated date for completing all services sufficient to transfer or terminate the timeshare interest; and

(10) a statement that, on completion of the transfer or termination of the timeshare interest, the person will give written notice of the transfer or termination to:

(A) the developer, association, or managing entity, as applicable; and

(B) if applicable, the exchange company for the timeshare interest.

Added by Acts 2015, 84th Leg., c. 554, § 2, eff. Sept. 1, 2015.

Section 3(a) of Acts 2015, 84th Leg., c. 554, provides:

The disclosure and notice requirements provided by Subchapter J, Chapter 221, Property Code, as added by this Act, apply only to an agreement to facilitate the transfer or termination of a timeshare interest entered into on or after the effective date of this Act. An agreement to facilitate the transfer or termination of a timeshare interest entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 221.104. Disclosure of Authorized Use of Timeshare Interest.

(a) A person subject to this subchapter who enters into an agreement with a timeshare interest owner to facilitate the transfer or termination of a timeshare interest shall disclose in writing to the timeshare interest owner the name of any person, other than the timeshare interest owner, who may occupy, rent, exchange, or otherwise use the timeshare interest during the term of the agreement.

(b) If a person is authorized to occupy, rent, exchange, or otherwise use the timeshare interest during the term of the agreement, the agreement must state the name of each person receiving consideration for the occupation, rent, exchange, or use of the timeshare interest.

Added by Acts 2015, 84th Leg., c. 554, § 2, eff. Sept. 1, 2015.

Section 3(a) of Acts 2015, 84th Leg., c. 554, provides:

The disclosure and notice requirements provided by Subchapter J, Chapter 221, Property Code, as added by this Act, apply only to an agreement to facilitate the transfer or termination of a timeshare interest entered into on or after the effective date of this Act. An agreement to facilitate the transfer or termination of a timeshare interest entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 221.105. Disclosures Relating to Payment of Fees for Transfer Services.

A person subject to this subchapter who enters into an agreement with a timeshare interest owner to facilitate the transfer of the timeshare interest must conspicuously disclose in writing to the timeshare interest owner that the timeshare interest owner is not required to pay any consideration or reimbursement under the agreement until the timeshare interest owner receives:

(1) a written acknowledgement from the developer, the association, or the managing entity that the person facilitating the transfer under the agreement complied with all applicable policies of the developer, association, or managing entity, if any, governing the transfer of the timeshare interest; and

(2) a copy of the instrument transferring the timeshare interest, recorded, if required by applicable law, in the real property records of the county in which the timeshare property is located.

Added by Acts 2015, 84th Leg., c. 554, § 2, eff. Sept. 1, 2015.

Section 3(a) of Acts 2015, 84th Leg., c. 554, provides:

The disclosure and notice requirements provided by Subchapter J, Chapter 221, Property Code, as added by this Act, apply only to an agreement to facilitate the transfer or termination of a timeshare interest entered into on or after the effective date of this Act. An agreement to facilitate the transfer or termination of a timeshare interest entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 221.106. Required Notice for Transfer Services.

A person subject to this subchapter who enters into an agreement with a timeshare interest owner to facilitate the transfer of the timeshare interest must provide to the timeshare interest owner a statement printed in 14-point boldface type or 14-point uppercase typewritten letters that reads substantially similar to the following:

I (name of the person facilitating the transfer) WILL ACT IN GOOD FAITH AND IN A COMMERCIALLY REASONABLE MANNER TO COMPLETE THE TRANSFER OF OWNERSHIP OF YOUR TIMESHARE INTEREST NOT LATER THAN THE 180TH DAY AFTER THE DATE OF THIS AGREEMENT.

YOUR OBLIGATION TO PAY ALL COSTS AND FEES ASSOCIATED WITH YOUR TIMESHARE INTEREST, INCLUDING ANY REGULAR OR SPECIAL ASSESSMENTS OR REAL OR PERSONAL PROPERTY TAXES, DOES NOT CEASE BY VIRTUE OF THE EXECUTION OF THIS AGREEMENT.

IF THE TRANSFER OF YOUR TIMESHARE INTEREST IS NOT COMPLETED BEFORE THE 180TH DAY AFTER THE DATE OF THIS AGREEMENT, YOU WILL CONTINUE TO BE RESPONSIBLE FOR THE PAYMENT OF ALL COSTS AND FEES ASSOCIATED WITH YOUR TIMESHARE INTEREST, INCLUDING ANY REGULAR OR SPECIAL ASSESSMENTS OR REAL OR PERSONAL PROPERTY TAXES.

Added by Acts 2015, 84th Leg., c. 554, § 2, eff. Sept. 1, 2015.

Section 3(a) of Acts 2015, 84th Leg., c. 554, provides:

The disclosure and notice requirements provided by Subchapter J, Chapter 221, Property Code, as added by this Act, apply only to an agreement to facilitate the transfer or termination of a timeshare interest entered into on or after the effective date of this Act. An agreement to facilitate the transfer or termination of a timeshare interest entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 221.107. Required Notice for Termination Services.

A person subject to this subchapter who enters into an agreement with a timeshare interest owner to facilitate the termination of the timeshare interest must provide to the timeshare interest owner a statement printed in 14-point boldface type or 14-point uppercase typewritten letters that reads substantially similar to the following:

I (name of the person facilitating the termination of the timeshare interest) WILL ACT IN GOOD FAITH AND IN A COMMERCIALLY REASONABLE MANNER TO COMPLETE THE TERMINATION OF YOUR TIMESHARE INTEREST NOT LATER THAN THE 180TH DAY AFTER THE DATE OF THIS AGREEMENT BY OBTAINING:

(1) A VALID AND ENFORCEABLE RELEASE FROM THE DEVELOPER, ASSOCIATION, OR MANAGING ENTITY; OR

(2) A JUDGMENT OR COURT ORDER INVALIDATING THE PURCHASE OR OWNERSHIP OF YOUR TIMESHARE INTEREST.

YOUR OBLIGATION TO PAY ALL COSTS AND FEES ASSOCIATED WITH YOUR TIMESHARE INTEREST, INCLUDING ANY REGULAR OR SPECIAL ASSESSMENTS OR REAL OR PERSONAL PROPERTY TAXES, DOES NOT CEASE BY VIRTUE OF THE EXECUTION OF THIS AGREEMENT.

I CANNOT GUARANTEE THAT I WILL SUCCESSFULLY COMPLETE THE TERMINATION OF YOUR TIMESHARE INTEREST. IF I FAIL TO COMPLETE THE TERMINATION OF YOUR TIMESHARE INTEREST, YOU WILL CONTINUE TO BE RESPONSIBLE FOR THE PAYMENT OF ALL COSTS AND FEES ASSOCIATED WITH YOUR TIMESHARE INTEREST, INCLUDING ANY REGULAR OR SPECIAL ASSESSMENTS OR REAL OR PERSONAL PROPERTY TAXES.

Added by Acts 2015, 84th Leg., c. 554, § 2, eff. Sept. 1, 2015.

Section 3(a) of Acts 2015, 84th Leg., c. 554, provides:

The disclosure and notice requirements provided by Subchapter J, Chapter 221, Property Code, as added by this Act, apply only to an agreement to facilitate the transfer or termination of a timeshare interest entered into on or after the effective date of this Act. An agreement to facilitate the transfer or termination of a timeshare interest entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 221.108. Reliance.

In making disclosures required by this subchapter, a person facilitating the transfer or termination of a timeshare interest may rely on written information provided by the timeshare interest owner, the developer, the association, or the managing entity.

Added by Acts 2015, 84th Leg., c. 554, § 2, eff. Sept. 1, 2015.

Section 3(a) of Acts 2015, 84th Leg., c. 554, provides:

The disclosure and notice requirements provided by Subchapter J, Chapter 221, Property Code, as added by this Act, apply only to an agreement to facilitate the transfer or termination of a timeshare interest entered into on or after the effective date of this Act. An agreement to facilitate the transfer or termination of a timeshare interest entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 221.109. Duty of Good Faith Regarding Transfer or Termination Services.

A person facilitating the transfer or termination of a timeshare interest must act in good faith to accomplish the transfer or termination not later than the 180th day after the date the person enters into an agreement with the timeshare interest owner.

Added by Acts 2015, 84th Leg., c. 554, § 2, eff. Sept. 1, 2015.

Section 3(a) of Acts 2015, 84th Leg., c. 554, provides:

The disclosure and notice requirements provided by Subchapter J, Chapter 221, Property Code, as added by this Act, apply only to an agreement to facilitate the transfer or termination of a timeshare interest entered into on or after the effective date of this Act. An agreement to facilitate the transfer or termination of a timeshare interest entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 221.110. Deceptive Trade Practices.

A person subject to this subchapter commits a false, misleading, or deceptive act or practice within the meaning of Sections 17.46(a) and (b), Business & Commerce Code, by engaging in any of the following acts:

(1) failing to disclose information as required by this subchapter;

(2) making false or misleading statements concerning:

(A) the existence of an offer related to the purchase or rent of a timeshare interest;

(B) the likelihood of the completion or the time necessary to complete any sale, rental, transfer, or termination of a timeshare interest;

(C) the value of a timeshare interest;

(D) the current or future costs, including assessments, maintenance fees, or taxes, of owning a timeshare interest;

(E) the method by which or source from which a timeshare interest owner's name, address, telephone number, or other contact information was obtained;

(F) the identity of the person providing services to facilitate the transfer or termination of a timeshare interest or any affiliate, agent, or third-party representative of that person;

(G) the terms and conditions under which services to facilitate a transfer or termination of a timeshare interest are offered;

(H) the willingness of a developer, association, or managing entity to:

(i) agree to the transfer or termination of a timeshare interest; or

(ii) execute instruments necessary to transfer or terminate the timeshare interest; or

(I) the manner in which consideration or reimbursements paid by a timeshare interest owner will be used or applied;

(3) encouraging or inducing a timeshare interest owner to stop paying the developer, the association, or the managing entity in violation of a contract with or any other legally enforceable obligation to the developer, the association, or the managing entity before the completion of a transfer or termination; or

(4) receiving or collecting consideration for or reimbursement related to the facilitation of the transfer of a timeshare interest before the timeshare interest owner receives the documents described by Sections 221.105(1) and (2).

Added by Acts 2015, 84th Leg., c. 554, § 2, eff. Sept. 1, 2015.

Section 3(a) of Acts 2015, 84th Leg., c. 554, provides:

The disclosure and notice requirements provided by Subchapter J, Chapter 221, Property Code, as added by this Act, apply only to an agreement to facilitate the transfer or termination of a timeshare interest entered into on or after the effective date of this Act. An agreement to facilitate the transfer or termination of a timeshare interest entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

Section 3(b) of Acts 2015, 84th Leg., c. 554, provides:

Section 221.110, Property Code, as added by this Act, applies only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law as it existed when the conduct occurred, and the former law is continued in effect for that purpose.

§ 221.111. Supervisory Duties.

(a) The person who enters into an agreement to facilitate the transfer or termination of a timeshare interest shall supervise, manage, and control all aspects of the services provided under the agreement.

(b) Any violation of this subchapter that occurs during the provision of services is considered a violation by the person who enters into the agreement and any affiliate, agent, or third-party representative of that person.

(c) Section 221.035 does not apply to a person providing services under this subchapter.

Added by Acts 2015, 84th Leg., c. 554, § 2, eff. Sept. 1, 2015.

Section 3(a) of Acts 2015, 84th Leg., c. 554, provides:

The disclosure and notice requirements provided by Subchapter J, Chapter 221, Property Code, as added by this Act, apply only to an agreement to facilitate the transfer or termination of a timeshare interest entered into on or after the effective date of this Act. An agreement to facilitate the transfer or termination of a timeshare interest entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

i. Regulation of Consumer Credit Reporting Agencies

Texas Business & Commerce Code

TITLE 2. COMPETITION AND TRADE PRACTICES

CHAPTER 20. REGULATION OF CONSUMER CREDIT REPORTING AGENCIES

SUBCHAPTER A. GENERAL REQUIREMENTS

§ 20.01. Definitions.

In this chapter:

(1) "Adverse action" includes:

(A) the denial of, increase in a charge for, or reduction in the amount of insurance for personal, family, or household purposes;

(B) the denial of employment or other decision made for employment purposes that adversely affects a current or prospective employee; or

(C) an action or determination with respect to a consumer's application for credit that is adverse to the consumer's interests.

(2) "Consumer" means an individual who resides in this state.

(3) "Consumer file" means all of the information about a consumer that is recorded and retained by a consumer reporting agency regardless of how the information is stored.

(4) "Consumer report" means a communication or other information by a consumer reporting agency relating to the credit worthiness, credit standing, credit capacity, debts, character, general reputation, personal characteristics, or mode of living of a consumer that is used or expected to be used or collected, wholly or partly, as a factor in establishing the consumer's eligibility for credit or insurance for personal, family, or household purposes, employment purposes, or other purpose authorized under Sections 603 and 604 of the Fair Credit Reporting Act (15 U.S.C. Sections 1681a and 1681b), as amended. The term does not include:

(A) a report containing information solely on a transaction between the consumer and the person making the report;

(B) an authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(C) a report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer makes a decision with respect to the request, if the third party advises the consumer of the name and address of the person to whom the request was made and the person makes the disclosures that must be made under Section 615 of the Fair Credit Reporting Act (15 U.S.C. Section 1681m), as amended, to the consumer in the event of adverse action against the consumer;

(D) any communication of information described in this subdivision among persons related by common ownership or affiliated by corporate control; or

(E) any communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity before the time that the information is initially communicated to direct that such information not be communicated among such persons.

(5) "Consumer reporting agency" means a person that regularly engages wholly or partly in the practice of assembling or evaluating consumer credit information or other information on consumers to furnish consumer reports to third parties for monetary fees, for dues, or on a cooperative nonprofit basis. The term does not include a business entity that provides only check verification or check guarantee services.

(6) "Investigative consumer report" means all or part of a consumer report in which information on the character, general reputation, personal characteristics, or mode of living of a consumer is obtained through a personal interview with a neighbor, friend, or associate of the consumer or others with whom the consumer is acquainted or who may

have knowledge concerning any such information. The term does not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when the information was obtained directly from a creditor of the consumer or from the consumer.

(7) "Security alert" means a notice placed on a consumer file that alerts a recipient of a consumer report involving that consumer file that the consumer's identity may have been used without the consumer's consent to fraudulently obtain goods or services in the consumer's name.

(8) "Security freeze" means a notice placed on a consumer file that prohibits a consumer reporting agency from releasing a consumer report relating to the extension of credit involving that consumer file without the express authorization of the consumer.

Added by Acts 1997, 75th Leg., c. 1396, § 33(a), eff. Oct. 1, 1997. Amended by Acts 2003, 78th Leg., c. 1326, § 1, eff. Sept. 1, 2003.

§ 20.02. Permissible Purposes; Prohibition; Use of Consumer's Social Security Number.

(a) A consumer reporting agency may furnish a consumer report only:

(1) in response to a court order issued by a court with proper jurisdiction;

(2) in accordance with the written instructions of the consumer to whom the report relates; or

(3) to a person the agency has reason to believe:

(A) intends to use the information in connection with a transaction involving the extension of credit to, or review or collection of an account of, the consumer to whom the report relates;

(B) intends to use the information for employment purposes as authorized under the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), as amended, and regulations adopted under that Act;

(C) intends to use the information in connection with the underwriting of insurance involving the consumer as authorized under the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), as amended, and regulations adopted under that Act;

(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental entity required by law to consider an applicant's financial responsibility or status;

(E) has a legitimate business need for the information in connection with a business transaction involving the consumer; or

(F) intends to use the information for any purpose authorized under the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), as amended, and regulations adopted under that Act.

(b) A consumer reporting agency may not prohibit a user of a consumer report or investigative consumer report from disclosing the contents of the report or providing a copy of the report to the consumer to whom it relates at the consumer's request if adverse action against the consumer based wholly or partly on the report has been taken or is contemplated by the user of the report. A user of a consumer report or a consumer reporting agency may not be found liable or otherwise held responsible for a disclosed or copied report when acting under this subsection. The disclosure or copy of the report, by itself, does not make a user of the report a consumer reporting agency.

(c) If a consumer furnishes the consumer's social security number to a person for use in obtaining a consumer report, the person shall include the consumer's social security number with the request for the consumer report and shall include the social security number with all future reports of information regarding the consumer made by the person to a consumer reporting agency unless the person has reason to believe that the social security number is inaccurate.

Added by Acts 1997, 75th Leg., c. 1396, § 33(a), eff. Oct. 1, 1997.

§ 20.021. Check Verification and Check Guarantee Services; Disclosures to Consumers.

(a) In this section, "check verifier" means any business offering check verification or check guarantee services in this state.

(b) On request and proper identification provided by a consumer, a check verifier shall disclose to the consumer in writing all information pertaining to the consumer in the check verifier's files at the time of the request, including:

(1) the criteria used by the check verifier to reject a check from the consumer;

(2) a set of instructions describing how information is presented on the check verifier's written disclosure of the consumer file; and

(3) a toll-free number at which personnel are available to consumers during normal business hours for use in resolving a dispute if the consumer submits a written dispute to the check verifier.

(c) A check verifier may not charge a consumer for disclosing the information required under Subsection (b) if the check verifier has rejected a check from the consumer in the 30 days prior to the consumer's request for information.

A check verifier may otherwise impose a reasonable charge on a consumer for the disclosure of information pertaining to the consumer in an amount not to exceed $8.

Added by Acts 2003, 78th Leg., c. 1291, § 2, eff. Sept. 1, 2003. Renumbered from V.T.C.A., Bus. & C. Code § 20.11 by Acts 2005, 79th Leg., c. 728, § 23.001(2), eff. Sept. 1, 2005.

§ 20.03. Disclosures to Consumers.

(a) On request and proper identification provided by a consumer, a consumer reporting agency shall disclose to the consumer in writing all information pertaining to the consumer in the consumer reporting agency's files at the time of the request, including:

(1) the name of each person requesting credit information about the consumer during the preceding six months and the date of each request;

(2) a set of instructions describing how information is presented on the consumer reporting agency's written disclosure of the consumer file; and

(3) if the consumer reporting agency compiles and maintains files on a nationwide basis, a toll-free number at which personnel are available to consumers during normal business hours for use in resolving a dispute if the consumer submits a written dispute to the consumer reporting agency.

(b) The information must be disclosed in a clear, accurate manner that is understandable to a consumer.

(c) A consumer reporting agency shall provide a copy of the consumer's file to the consumer on the request of the consumer and on evidence of proper identification, as directed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), as amended, and regulations adopted under that Act.

(d) Any written disclosure to a consumer by a consumer reporting agency under this chapter must include a written statement that explains in clear and simple language the consumer's rights under this chapter and includes:

(1) the process for receiving a consumer report or consumer file;

(2) the process for requesting or removing a security alert or freeze;

(3) the toll-free telephone number for requesting a security alert;

(4) applicable fees;

(5) dispute procedures;

(6) the process for correcting a consumer file or report; and

(7) information on a consumer's right to bring an action in court or arbitrate a dispute.

Added by Acts 1997, 75th Leg., c. 1396, § 33(a), eff. Oct. 1, 1997. Amended by Acts 2003, 78th Leg., c. 1326, § 2, eff. Sept. 1, 2003.

SUBCHAPTER B. SECURITY ALERT AND SECURITY FREEZE

§ 20.031. Requesting Security Alert.

On a request in writing or by telephone and with proper identification provided by a consumer, a consumer reporting agency shall place a security alert on the consumer's consumer file not later than 24 hours after the date the agency receives the request. The security alert must remain in effect for not less than 45 days after the date the agency places the security alert on the file. There is no limit on the number of security alerts a consumer may request. At the end of a 45-day security alert, on request in writing or by telephone and with proper identification provided by the consumer, the agency shall provide the consumer with a copy of the consumer's file. A consumer may include with the security alert request a telephone number to be used by persons to verify the consumer's identity before entering into a transaction with the consumer.

Added by Acts 2003, 78th Leg., c. 1326, § 3, eff. Sept. 1, 2003.

§ 20.032. Notification of Security Alert.

A consumer reporting agency shall notify a person who requests a consumer report if a security alert is in effect for the consumer file involved in that report and include a verification telephone number for the consumer if the consumer has provided a number under Section 20.031.

Added by Acts 2003, 78th Leg., c. 1326, § 3, eff. Sept. 1, 2003.

§ 20.033. Toll-Free Security Alert Request Number.

A consumer reporting agency shall maintain a toll-free telephone number that is answered at a minimum during normal business hours to accept security alert requests from consumers. If calls are not answered after normal business

hours, an automated answering system shall record requests and calls shall be returned to the consumer not later than two hours after the time the normal business day begins on the next business day after the date the call was received.

Added by Acts 2003, 78th Leg., c. 1326, § 3, eff. Sept. 1, 2003.

§ 20.034. Requesting Security Freeze.

(a) On written request sent by certified mail that includes proper identification provided by a consumer, a consumer reporting agency shall place a security freeze on a consumer's consumer file not later than the fifth business day after the date the agency receives the request.

(b) On written request for a security freeze provided by a consumer under Subsection (a), a consumer reporting agency shall disclose to the consumer the process of placing, removing, and temporarily lifting a security freeze and the process for allowing access to information from the consumer's consumer file for a specific requester or period while the security freeze is in effect.

(c) A consumer reporting agency shall, not later than the 10th business day after the date the agency receives the request for a security freeze:

(1) send a written confirmation of the security freeze to the consumer; and

(2) provide the consumer with a unique personal identification number or password to be used by the consumer to authorize a removal or temporary lifting of the security freeze under Section 20.037.

(d) A consumer may request in writing a replacement personal identification number or password. The request must comply with the requirements for requesting a security freeze under Subsection (a). The consumer reporting agency shall not later than the third business day after the date the agency receives the request for a replacement personal identification number or password provide the consumer with a new unique personal identification number or password to be used by the consumer instead of the number or password that was provided under Subsection (c).

Added by Acts 2003, 78th Leg., c. 1326, § 3, eff. Sept. 1, 2003. Amended by Acts 2007, 80th Leg., c. 1143, § 1, eff. Sept. 1, 2007.

Section 5 of Acts 2007, 80th Leg., c. 1143, provides:

The change in law made by this Act applies only to a request for placement, removal, or temporary lifting of a security freeze on a consumer file that is made on or after the effective date of this Act. A request for placement, removal, or temporary lifting of a security freeze on a consumer file that is made before the effective date of this Act is governed by the law in effect on the date the request was made, and the former law is continued in effect for that purpose.

§ 20.035. Notification of Change.

If a security freeze is in place, a consumer reporting agency shall notify the consumer in writing of a change in the consumer file to the consumer's name, date of birth, social security number, or address not later than 30 calendar days after the date the change is made. The agency shall send notification of a change of address to the new address and former address. This section does not require notice of an immaterial change, including a street abbreviation change or correction of a transposition of letters or misspelling of a word.

Added by Acts 2003, 78th Leg., c. 1326, § 3, eff. Sept. 1, 2003.

§ 20.036. Notification of Security Freeze.

A consumer reporting agency shall notify a person who requests a consumer report if a security freeze is in effect for the consumer file involved in that report.

Added by Acts 2003, 78th Leg., c. 1326, § 3, eff. Sept. 1, 2003.

§ 20.037. Removal or Temporary Lifting of Security Freeze.

(a) On a request in writing or by telephone and with proper identification provided by a consumer, including the consumer's personal identification number or password provided under Section 20.034, a consumer reporting agency shall remove a security freeze not later than the third business day after the date the agency receives the request.

(b) On a request in writing or by telephone and with proper identification provided by a consumer, including the consumer's personal identification number or password provided under Section 20.034, a consumer reporting agency, not later than the third business day after the date the agency receives the request, shall temporarily lift the security freeze for:

(1) a certain properly designated period; or

(2) a certain properly identified requester.

(c) A consumer reporting agency may develop procedures involving the use of a telephone, a facsimile machine, the Internet, or another electronic medium to receive and process a request from a consumer under this section.

(d) A consumer reporting agency shall remove a security freeze placed on a consumer file if the security freeze was placed due to a material misrepresentation of fact by the consumer. The consumer reporting agency shall notify the consumer in writing before removing the security freeze under this subsection.

(e) Repealed by Acts 2007, 80th Leg., c. 1143, § 4, eff. Sept. 1, 2007.

Added by Acts 2003, 78th Leg., c. 1326, § 3, eff. Sept. 1, 2003. Subsec. (e) repealed by Acts 2007, 80th Leg., c. 1143, § 4, eff. Sept. 1, 2007.

Section 5 of Acts 2007, 80th Leg., c. 1143, provides:

The change in law made by this Act applies only to a request for placement, removal, or temporary lifting of a security freeze on a consumer file that is made on or after the effective date of this Act. A request for placement, removal, or temporary lifting of a security freeze on a consumer file that is made before the effective date of this Act is governed by the law in effect on the date the request was made, and the former law is continued in effect for that purpose.

§ 20.038. Exemption from Security Freeze.

A security freeze does not apply to a consumer report provided to:

(1) a state or local governmental entity, including a law enforcement agency or court or private collection agency, if the entity, agency, or court is acting under a court order, warrant, subpoena, or administrative subpoena;

(2) a child support agency as defined by Section 101.004, Family Code, acting to investigate or collect child support payments or acting under Title IV-D of the Social Security Act (42 U.S.C. Section 651 et seq.);

(3) the Health and Human Services Commission acting under Section 531.102, Government Code

[Subsection (3) as amended by Acts 2023, 88th Leg., R.S., HB 4611, § 2.01, eff. April 1, 2025.]

(3) the Health and Human Services Commission acting under the following provisions of the Government Code;

(A) Section 544.0052;

(B) Section 544.0101;

(C) Section 544.0102;

(D) Section 544.0103;

(E) Section 544.0104;

(F) Section 544.0105;

(G) Section 544.0106;

(H) Section 544.0108;

(I) Sections 544.0109(b) and (d);

(J) Section 544.0110;

(K) Section 544.0113;

(L) Section 544.0114;

(M) Section 544.0251;

(N) Section 544.0252(b);

(O) Section 544.0254;

(P) Section 544.0255;

(Q) Section 544.0257;

(R) Section 544.0301;

(S) Section 544.0302;

(T) Section 544.0303; and

(U) Section 544.0304;

(4) the comptroller acting to investigate or collect delinquent sales or franchise taxes;

(5) a tax assessor-collector acting to investigate or collect delinquent ad valorem taxes;

(6) a person for the purposes of prescreening as provided by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), as amended;

(7) a person with whom the consumer has an account or contract or to whom the consumer has issued a negotiable instrument, or the person's subsidiary, affiliate, agent, assignee, prospective assignee, or private collection agency, for purposes related to that account, contract, or instrument;

(8) a subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under Section 20.037(b);

(9) a person who administers a credit file monitoring subscription service to which the consumer has subscribed;

(10) a person for the purpose of providing a consumer with a copy of the consumer's report on the consumer's request;

(11) a check service or fraud prevention service company that issues consumer reports:

(A) to prevent or investigate fraud; or

(B) for purposes of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment;

(12) a deposit account information service company that issues consumer reports related to account closures caused by fraud, substantial overdrafts, automated teller machine abuses, or similar negative information regarding a consumer to an inquiring financial institution for use by the financial institution only in reviewing a consumer request for a deposit account with that institution; or

(13) a consumer reporting agency that:

(A) acts only to resell credit information by assembling and merging information contained in a database of another consumer reporting agency or multiple consumer reporting agencies; and

(B) does not maintain a permanent database of credit information from which new consumer reports are produced.

Added by Acts 2003, 78th Leg., c. 1326, § 3, eff. Sept. 1, 2003. Amended by Acts 2023, 88th Leg., R.S., HB 4611, § 2.01, eff. April 1, 2025.

§ 20.0385. Applicability of Security Alert and Security Freeze.

(a) The requirement under this chapter to place a security alert or security freeze on a consumer file does not apply to:

(1) a check service or fraud prevention service company that issues consumer reports:

(A) to prevent or investigate fraud; or

(B) for purposes of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment; or

(2) a deposit account information service company that issues consumer reports related to account closures caused by fraud, substantial overdrafts, automated teller machine abuses, or similar negative information regarding a consumer to an inquiring financial institution for use by the financial institution only in reviewing a consumer request for a deposit account with that institution.

(b) The requirement under this chapter to place a security freeze on a consumer file does not apply to a consumer reporting agency that:

(1) acts only to resell credit information by assembling and merging information contained in a database of another consumer reporting agency or multiple consumer reporting agencies; and

(2) does not maintain a permanent database of credit information from which new consumer reports are produced.

(c) Notwithstanding Section 20.12, a violation of a requirement under this chapter to place, temporarily lift, or remove a security freeze on a consumer file is not a false, misleading, or deceptive act or practice under Subchapter E, Chapter 17.

Added by Acts 2003, 78th Leg., c. 1326, § 3, eff. Sept. 1, 2003. Amended by Acts 2007, 80th Leg., c. 1143, § 2, eff. Sept. 1, 2007.

Section 5 of Acts 2007, 80th Leg., c. 1143, provides:

The change in law made by this Act applies only to a request for placement, removal, or temporary lifting of a security freeze on a consumer file that is made on or after the effective date of this Act. A request for placement, removal, or temporary lifting of a security freeze on a consumer file that is made before the effective date of this Act is governed by the law in effect on the date the request was made, and the former law is continued in effect for that purpose.

§ 20.039. Respect of Security Freeze.

A consumer reporting agency shall honor a security freeze placed on a consumer file by another consumer reporting agency.

Added by Acts 2003, 78th Leg., c. 1326, § 3, eff. Sept. 1, 2003.

SUBCHAPTER C. RESTRICTIONS ON AND AUTHORITY OF CONSUMERS AND CONSUMER REPORTING AGENCIES

§ 20.04. Charges for Certain Disclosures or Services.

(a) Except as provided by Subsection (b), a consumer reporting agency may impose a reasonable charge on a consumer for the disclosure of information pertaining to the consumer or for placing a security freeze on a consumer file, temporarily lifting a security freeze for a designated period or for an identified requester, or removing a security freeze in accordance with this chapter. The amount of the charge for the disclosure of information pertaining to the consumer may not exceed $8. The amount of the charge for placing a security freeze on a consumer file, temporarily lifting a security freeze for a designated period, or removing a security freeze may not exceed $10 per request. The amount of the charge for temporarily lifting a security freeze for an identified requester may not exceed $12 per request. On

January 1 of each year, a consumer reporting agency may increase the charge for disclosure to a consumer or for placing, temporarily lifting, or removing a security freeze. The increase, if any, must be based proportionally on changes to the Consumer Price Index for All Urban Consumers as determined by the United States Department of Labor with fractional changes rounded to the nearest 50 cents.

(b) A consumer reporting agency may not charge a fee for:

(1) a request by a consumer for a copy of the consumer's file:

(A) made not later than the 60th day after the date on which adverse action is taken against the consumer; or

(B) made on the expiration of a 45-day security alert;

(2) notification of the deletion of information that is found to be inaccurate or can no longer be verified sent to a person designated by the consumer, as prescribed by Section 611 of the Fair Credit Reporting Act (15 U.S.C. Section 1681i), as amended;

(3) a set of instructions for understanding the information presented on the consumer report;

(4) a toll-free telephone number that consumers may call to obtain additional assistance concerning the consumer report or to request a security alert;

(5) a request for a security alert made by a consumer;or

(6) the placement, temporary lifting, or removal of a security freeze at the request of a consumer who has submitted to the consumer reporting agency a copy of a valid police report, investigative report, or complaint involving the alleged commission of an offense under Section 32.51, Penal Code.

Added by Acts 1997, 75th Leg., c. 1396, § 33(a), eff. Oct. 1, 1997. Amended by Acts 2003, 78th Leg., c. 1326, § 4, eff. Sept. 1, 2003; Acts 2007, 80th Leg., c. 1143, § 3, eff. Sept. 1, 2007.

Section 5 of Acts 2007, 80th Leg., c. 1143, provides:

The change in law made by this Act applies only to a request for placement, removal, or temporary lifting of a security freeze on a consumer file that is made on or after the effective date of this Act. A request for placement, removal, or temporary lifting of a security freeze on a consumer file that is made before the effective date of this Act is governed by the law in effect on the date the request was made, and the former law is continued in effect for that purpose.

§ 20.05. Reporting of Information Prohibited.

(a) Except as provided by Subsection (b), a consumer reporting agency may not furnish a consumer report containing information related to:

(1) a case under Title 11 of the United States Code or under the federal Bankruptcy Act in which the date of entry of the order for relief or the date of adjudication predates the consumer report by more than 10 years;

(2) a suit or judgment in which the date of entry predates the consumer report by more than seven years or the governing statute of limitations, whichever is longer;

(3) a tax lien in which the date of payment predates the consumer report by more than seven years;

(4) a record of arrest, indictment, or conviction of a crime in which the date of disposition, release, or parole predates the consumer report by more than seven years;

(5) a collection account with a medical industry code, if the consumer was covered by a health benefit plan at the time of the event giving rise to the collection and the collection is for an outstanding balance, after copayments, deductibles, and coinsurance, owed to an emergency care provider or a facility-based provider for an out-of-network benefit claim; or

(6) another item or event that predates the consumer report by more than seven years.

(b) A consumer reporting agency may furnish a consumer report that contains information described by Subsection (a) if the information is provided in connection with:

(1) a credit transaction with a principal amount that is or may reasonably be expected to be $150,000 or more;

(2) the underwriting of life insurance for a face amount that is or may reasonably be expected to be $150,000 or more; or

(3) the employment of a consumer at an annual salary that is or may reasonably be expected to be $75,000 or more.

(b-1) A consumer reporting agency may furnish to a person a consumer report that contains information described by Subsection (a) if the information is needed by the person to avoid a violation of 18 U.S.C. Section 1033.

(c) A consumer reporting agency may not furnish medical information about a consumer in a consumer report that is being obtained for employment purposes or in connection with a credit, insurance, or direct marketing transaction unless the consumer consents to the furnishing of the medical information.

(d) In this section:

(1) "Emergency care provider" means a physician, health care practitioner, facility, or other health care provider who provides emergency care.

(2) "Facility" has the meaning assigned by Section 324.001, Health and Safety Code.

(3) "Facility-based provider" means a physician, health care practitioner, or other health care provider who provides health care or medical services to patients of a facility.

(4) "Health care practitioner" means an individual who is licensed to provide health care services.

Added by Acts 1997, 75th Leg., c. 1396, § 33(a), eff. Oct. 1, 1997. Amended by Acts 2005, 79th Leg., c. 599, § 1, eff. June 17, 2005; Acts 2019, 86th Leg., c. 340, §§ 1 and 2, eff. May 31, 2019.

§ 20.06. Dispute Procedure.

(a) If the completeness or accuracy of information contained in a consumer's file is disputed by the consumer and the consumer notifies the consumer reporting agency of the dispute, the agency shall reinvestigate the disputed information free of charge and record the current status of the disputed information not later than the 30th business day after the date on which the agency receives the notice. The consumer reporting agency shall provide the consumer with the option of notifying the agency of a dispute concerning the consumer's file by speaking directly to a representative of the agency during normal business hours.

(b) Not later than the fifth business day after the date on which a consumer reporting agency receives notice of a dispute from a consumer in accordance with Subsection (a), the agency shall provide notice of the dispute to each person who provided any information related to the dispute.

(c) A consumer reporting agency may terminate a reinvestigation of information disputed by a consumer under Subsection (a) if the agency reasonably determines that the dispute is frivolous or irrelevant. An agency that terminates a reinvestigation of disputed information under this subsection shall promptly notify the consumer of the termination and the reasons for the termination by mail, or if authorized by the consumer, by telephone. The presence of contradictory information in a consumer's file does not by itself constitute reasonable grounds for determining that the dispute is frivolous or irrelevant.

(d) If disputed information is found to be inaccurate or cannot be verified after a reinvestigation under Subsection (a), the consumer reporting agency, unless otherwise directed by the consumer, shall promptly delete the information from the consumer's file, revise the consumer file, and provide the revised consumer report to the consumer and to each person who requested the consumer report within the preceding six months. The consumer reporting agency may not report the inaccurate or unverified information in subsequent reports.

(e) Information deleted under Subsection (d) may not be reinserted in the consumer's file unless the person who furnishes the information to the consumer reporting agency reinvestigates and states in writing or by electronic record to the agency that the information is complete and accurate.

(f) A consumer reporting agency shall provide written notice of the results of a reinvestigation or reinsertion made under this section not later than the fifth business day after the date on which the reinvestigation or reinsertion has been completed. The notice must include:

(1) a statement that the reinvestigation is complete;

(2) a statement of the determination made by the agency on the completeness or accuracy of the disputed information;

(3) a copy of the consumer's file or consumer report and a description of the results of the reinvestigation;

(4) a statement that a description of the procedure used to determine the accuracy and completeness of the information shall be provided to the consumer by the agency on request, including the name, business address, and, if available, the telephone number of each person contacted in connection with the information;

(5) a statement that the consumer is entitled to add a statement to the consumer's file disputing the accuracy or completeness of the information as provided by Section 611 of the Fair Credit Reporting Act (15 U.S.C. Section 1681i), as amended; and

(6) a statement that the consumer may be entitled to dispute resolution as prescribed by this section, after the consumer receives the notice specified under this subsection.

(g) This section does not require a person who obtains a consumer report for resale to another person to alter or correct an inaccuracy in the consumer report if the report was not assembled or prepared by the person.

(h) This section applies to a business offering check verification or check guarantee services in this state.

Added by Acts 1997, 75th Leg., c. 1396, § 33(a), eff. Oct. 1, 1997. Amended by Acts 2003, 78th Leg., c. 851, § 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., c. 1291, § 1, eff. Sept. 1, 2003.

§ 20.07. Correction of Inaccurate Information.

(a) A consumer reporting agency shall provide a person who provides consumer credit information to the agency with the option of correcting previously reported inaccurate information by submitting the correction by facsimile or other automated means.

(b) The credit reporting agency which receives a correction shall have reasonable procedures to assure that previously reported inaccurate information in a consumer's file is corrected in a prompt and timely fashion.

Added by Acts 1997, 75th Leg., c. 1396, § 33(a), eff. Oct. 1, 1997.

SUBCHAPTER D. ENFORCEMENT

§ 20.08. Consumer's Right to File Action in Court or Arbitrate Disputes.

(a) An action to enforce an obligation of a consumer reporting agency to a consumer under this chapter may be brought in any court as provided by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), as amended, or, if agreed to by both parties, may be submitted to binding arbitration after the consumer has followed all dispute procedures in Section 20.06 and has received the notice specified in Section 20.06(f) in the manner provided by the rules of the American Arbitration Association.

(b) A decision rendered by an arbitrator under this section does not affect the validity of an obligation or debt owed by the consumer to any party.

(c) A prevailing party in an action or arbitration proceeding brought under this section shall be compensated for the party's attorney fees and costs of the proceeding as determined by the court or arbitration.

(d) A consumer may not submit to arbitration more than one action against a particular consumer reporting agency during any 120-day period.

(e) The results of an arbitration action brought against a consumer reporting agency doing business in this state shall be communicated in a timely manner to other consumer reporting agencies doing business in this state.

(f) If a determination is made in favor of a consumer after submission of a dispute to arbitration, the disputed adverse information in the consumer's file or record shall be removed or stricken in a timely manner. If the adverse information is not removed or stricken, the consumer may bring an action against the noncomplying agency under this section regardless of the 120-day waiting period required under this section.

Added by Acts 1997, 75th Leg., c. 1396, § 33(a), eff. Oct. 1, 1997.

§ 20.09. Civil Liability.

(a) A consumer reporting agency that wilfully violates this chapter is liable to the consumer against whom the violation occurs for the greater of three times the amount of actual damages to the consumer or $1,000, reasonable attorney fees, and court or arbitration costs.

(b) A consumer reporting agency that negligently violates this chapter is liable to the consumer against whom the violation occurs for the greater of the amount of actual damages to the consumer or $500, reasonable attorney fees, and court or arbitration costs. A consumer reporting agency is not considered to have negligently violated this chapter if, not later than the 30th day after the date on which the agency receives notice of a dispute from the consumer under Section 20.06 that clearly explains the nature and substance of the dispute, the agency completes the reinvestigation and sends the consumer and, at the request of the consumer, each person who received the consumer information written notification of the results of the reinvestigation in accordance with Section 20.06(f).

(c) In addition to liability imposed under Subsection (a), a consumer reporting agency that does not correct a consumer's file and consumer report before the 10th day after the date on which a judgment is entered against the agency because of inaccurate information contained in a consumer's file is also liable for $1,000 a day until the inaccuracy is corrected.

Added by Acts 1997, 75th Leg., c. 1396, § 33(a), eff. Oct. 1, 1997.

§ 20.10. Remedies Cumulative.

An action taken under this chapter does not prohibit a consumer from taking any other action authorized by law except that a credit reporting agency may not be subject to suit with respect to any issue that was the subject of an arbitration proceeding brought under Section 20.08.

Added by Acts 1997, 75th Leg., c. 1396, § 33(a), eff. Oct. 1, 1997.

§ 20.11. Injunctive Relief; Civil Penalty.

(a) The attorney general may file a suit against a person for:

(1) injunctive relief to prevent or restrain a violation of this chapter; or

(2) a civil penalty in an amount not to exceed $2,000 for each violation of this chapter.

(b) If the attorney general brings an action against a person under Subsection (a) and an injunction is granted against the person or the person is found liable for a civil penalty, the attorney general may recover reasonable expenses, court costs, investigative costs, and attorney's fees.

(c) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty under this section.

Added by Acts 2003, 78th Leg., c. 1326, § 5, eff. Sept. 1, 2003.

§ 20.12. Deceptive Trade Practice.

A violation of this chapter is a false, misleading, or deceptive act or practice under Subchapter E, Chapter 17.

Added by Acts 2003, 78th Leg., c. 1326, § 5, eff. Sept. 1, 2003.

§ 20.13. Venue.

An action brought under this chapter shall be filed in a district court:

(1) in Travis County;

(2) in any county in which the violation occurred; or

(3) in the county in which the victim resides, regardless of whether the alleged violator has resided, worked, or done business in the county in which the victim resides.

Added by Acts 2003, 78th Leg., c. 1326, § 5, eff. Sept. 1, 2003.

SUBCHAPTER E. SECURITY FREEZE FOR CHILD

§ 20.21. Definitions.

In this subchapter:

(1) "Protected consumer" means an individual who resides in this state and is younger than 16 years of age at the time a request for the placement of a security freeze is made.

(2) "Record," with respect to a protected consumer, means a compilation of information identifying a protected consumer created by a consumer reporting agency solely to comply with this subchapter.

(3) "Representative" means a person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer.

(4) "Security freeze," with respect to a protected consumer, means:

(A) if a consumer reporting agency does not have a consumer file pertaining to the protected consumer, a restriction that:

(i) is placed on the protected consumer's record in accordance with this subchapter; and

(ii) prohibits a consumer reporting agency from releasing a consumer report relating to the extension of credit involving the consumer's record without the express authorization of the consumer's representative or the consumer, as applicable; or

(B) if a consumer reporting agency has a consumer file pertaining to the protected consumer, a restriction that:

(i) is placed on the protected consumer's consumer report in accordance with this subchapter; and

(ii) except as otherwise provided by this subchapter, prohibits a consumer reporting agency from releasing the protected consumer's consumer report relating to the extension of credit involving that consumer file, or any information derived from the protected consumer's consumer report.

Added by Acts 2013, 83rd Leg., R.S., c. 64, § 1, eff. Jan. 1, 2014.

§ 20.22. Applicability; Conflict of Law.

(a) This subchapter does not apply to the use of a protected consumer's consumer report or record by:

(1) a person administering a credit file monitoring subscription service to which:

(A) the protected consumer has subscribed; or

(B) the representative of the protected consumer has subscribed on behalf of the protected consumer;

(2) a person providing the protected consumer or the protected consumer's representative with a copy of the protected consumer's consumer report on request of the protected consumer or the protected consumer's representative;

(3) a consumer reporting agency with respect to a database or file that consists entirely of information concerning, and is used solely for, one or more of the following:

(A) criminal history record information;

(B) personal loss history information;

(C) fraud prevention or detection;

(D) tenant screening; or

(E) employment screening; or

(4) an entity described by Section 20.038(11), (12), or (13).

(b) To the extent of a conflict between a provision of this subchapter relating to a protected consumer and another provision of this chapter, this subchapter controls.

Added by Acts 2013, 83rd Leg., R.S., c. 64, § 1, eff. Jan. 1, 2014.

§ 20.23. Proof of Authority and Identification.

(a) Documentation that shows a person has authority to act on behalf of a protected consumer is considered sufficient proof of authority for purposes of this subchapter, including:

(1) an order issued by a court; or

(2) a written, notarized statement signed by a representative that expressly describes the authority of the representative to act on behalf of a protected consumer.

(b) Information or documentation that identifies a protected consumer or a representative of a protected consumer is considered sufficient proof of identity for purposes of this subchapter, including:

(1) a social security number or a copy of the social security card issued by the United States Social Security Administration;

(2) a certified or official copy of a birth certificate issued by the entity authorized to issue the birth certificate;

(3) a copy of a driver's license or identification card issued by the Department of Public Safety; or

(4) any other government-issued identification.

Added by Acts 2013, 83rd Leg., R.S., c. 64, § 1, eff. Jan. 1, 2014.

§ 20.24. Use of Record to Consider Credit Worthiness or for Other Purposes Prohibited.

A protected consumer's record may not be created or used to consider the protected consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living for any purpose described by Section 20.01(4).

Added by Acts 2013, 83rd Leg., R.S., c. 64, § 1, eff. Jan. 1, 2014.

§ 20.25. Request to Place a Security Freeze; Creation of Record.

(a) Except as provided by Subsection (b), a consumer reporting agency shall place a security freeze on a protected consumer's consumer file if:

(1) the consumer reporting agency receives a request from the protected consumer's representative for the placement of the security freeze as provided by this section; and

(2) the protected consumer's representative:

(A) submits the request to the consumer reporting agency at the address or other point of contact of and in the manner specified by the consumer reporting agency;

(B) provides to the consumer reporting agency sufficient proof of identification of the protected consumer and the representative;

(C) provides to the consumer reporting agency sufficient proof of authority to act on behalf of the protected consumer; and

(D) pays to the consumer reporting agency a fee as provided by Section 20.29.

(b) If a consumer reporting agency does not have a consumer file pertaining to a protected consumer when the consumer reporting agency receives a request under Subsection (a) and if the requirements of Subsection (a) are met, the consumer reporting agency shall create a record for the protected consumer and place a security freeze on the protected consumer's record.

(c) The consumer reporting agency shall place the security freeze on the protected consumer's consumer file or record, as applicable, not later than the 30th day after receiving a request that meets the requirements of Subsection (a).

Added by Acts 2013, 83rd Leg., R.S., c. 64, § 1, eff. Jan. 1, 2014.

§ 20.26. Release of Consumer Report Prohibited.

Unless a security freeze on a protected consumer's consumer file or record is removed under Section 20.28 or 20.30, a consumer reporting agency may not release any consumer report relating to the protected consumer, any information derived from the protected consumer's consumer report, or any record created for the protected consumer.

Added by Acts 2013, 83rd Leg., R.S., c. 64, § 1, eff. Jan. 1, 2014.

§ 20.27. Period of Security Freeze.

A security freeze on a protected consumer's consumer file or record remains in effect until:

(1) the protected consumer or the protected consumer's representative requests that the consumer reporting agency remove the security freeze in accordance with Section 20.28; or

(2) a consumer reporting agency removes the security freeze under Section 20.30.

Added by Acts 2013, 83rd Leg., R.S., c. 64, § 1, eff. Jan. 1, 2014.

§ 20.28. Removal of Security Freeze.

(a) A protected consumer or a protected consumer's representative may remove a security freeze on a protected consumer's consumer file or record if the protected consumer or representative:

(1) submits a request for the removal of the security freeze to the consumer reporting agency at the address or other point of contact of and in the manner specified by the consumer reporting agency;

(2) provides to the consumer reporting agency:

(A) in the case of a request by the protected consumer:

(i) sufficient proof of identification of the protected consumer; and

(ii) proof that the sufficient proof of authority for the protected consumer's representative to act on behalf of the protected consumer is no longer valid; or

(B) in the case of a request by the representative of a protected consumer:

(i) sufficient proof of identification of the protected consumer and the representative; and

(ii) sufficient proof of authority to act on behalf of the protected consumer; and

(3) pays to the consumer reporting agency a fee as provided by Section 20.29.

(b) The consumer reporting agency shall remove the security freeze on the protected consumer's consumer file or record not later than the 30th day after the date the agency receives a request that meets the requirements of Subsection (a).

Added by Acts 2013, 83rd Leg., R.S., c. 64, § 1, eff. Jan. 1, 2014.

§ 20.29. Fees.

(a) A consumer reporting agency may not charge a fee for any service performed under this subchapter other than a fee authorized by this section.

(b) Except as provided by Subsection (c), a consumer reporting agency may charge a reasonable fee in an amount not to exceed $10 for each placement or removal of a security freeze on the protected consumer's consumer file or record.

(c) A consumer reporting agency may not charge a fee for the placement of a security freeze under this subchapter if:

(1) the protected consumer's representative submits to the consumer reporting agency a copy of a valid police report, investigative report, or complaint involving the commission of an offense under Section 32.51, Penal Code; or

(2) at the time the protected consumer's representative makes the request for a security freeze:

(A) the protected consumer is under the age of 16; and

(B) the consumer reporting agency has created a consumer report pertaining to the protected consumer.

Added by Acts 2013, 83rd Leg., R.S., c. 64, § 1, eff. Jan. 1, 2014.

§ 20.30. Effect of Material Misrepresentation of Fact.

A consumer reporting agency may remove a security freeze on a protected consumer's consumer file or record, or delete a record of a protected consumer, if the security freeze was placed or the record was created based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.

Added by Acts 2013, 83rd Leg., R.S., c. 64, § 1, eff. Jan. 1, 2014.

§ 20.31. Remedy of Violation.

Notwithstanding Subchapter D or any other law, the exclusive remedy for a violation of this subchapter is a suit filed by the attorney general under Section 20.11.

Added by Acts 2013, 83rd Leg., R.S., c. 64, § 1, eff. Jan. 1, 2014.

j. Regulation of Consumer Rebate Programs

Texas Business & Commerce Code

TITLE 12. RIGHTS AND DUTIES OF CONSUMERS AND MERCHANTS

CHAPTER 605. CONSUMER REBATE RESPONSE AND GRACE PERIOD FOR CORRECTIONS

§ 605.001. Definitions.

In this chapter:

(1) "Consumer" means a person who obtains a product or service that is to be used primarily for personal, business, family, or household purposes.

(2) "Consumer rebate" means an offer to a consumer of cash, credit, or credit toward future purchases that is made in connection with a sale of a good or service to the consumer, is in an amount of $10 or more, and requires the consumer to mail or electronically submit a rebate request after the sale is completed. The term does not include:

(A) any promotion or incentive that is offered by a manufacturer to another company or organization that is not the consumer to help promote or place the product or service;

(B) a rebate that is redeemed at the time of purchase;

(C) any discount, cash, credit, or credit toward a future purchase that is automatically provided to a consumer without the need to submit a request for redemption;

(D) a rebate that is applied to a bill that the consumer becomes obligated to pay after the date the purchase is made;

(E) any refund that may be given to a consumer in accordance with a manufacturer or retailer's return, guarantee, adjustment, or warranty policies; or

(F) any manufacturer or retailer's frequent shopper customer reward program.

(3) "Properly completed" means that the consumer submitted the required information and documentation in the manner and by the deadline specified in the rebate offer and otherwise satisfied the terms and conditions of the rebate offer.

Added by Acts 2009, 81st Leg., R.S., c. 87, § 4.012(a), eff. Sept. 1, 2009.

§ 605.002. Rebate Response Period; Grace Period for Corrections.

(a) Except as provided by Subsection (b), a person, including a manufacturer or retailer, who offers a rebate shall mail the amount of the rebate to the consumer or electronically pay the consumer the amount of the rebate within the time period promised in the rebate information provided to the consumer or, if silent, not later than the 30th day after the date the person receives a properly completed rebate request.

(b) If a consumer rebate offer is contingent on the consumer continuing to purchase a service for a minimum length of time, the time period in Subsection (a) begins on the later of:

(1) the date the consumer submits the rebate request; or

(2) the expiration date of the service period.

(c) If the person offering the rebate receives a rebate request that is timely submitted but not properly completed, the person shall:

(1) process the rebate in the manner provided by Subsection (a) as if the rebate request were properly completed; or

(2) notify the consumer, not later than the date specified by Subsection (a), of the reasons that the rebate request is not properly completed and the consumer's right to correct the deficiency within 30 days after the date of the notification.

(d) The notification under Subsection (c)(2) must be by mail, except that notification may be by e-mail if the consumer has agreed to be notified by e-mail.

(e) If the consumer corrects the deficiency stated in the notification under Subsection (c)(2) before the 31st day after the postmark date of the person's mailed notification to the consumer or the date the e-mail is received, if applicable, the person shall process the rebate in the manner provided by Subsection (a) for a properly completed request.

(f) This section does not impose any obligation on a person to pay a rebate to any consumer who is not eligible under the terms and conditions of the rebate offer or has not satisfied all of the terms and conditions of the rebate offer, if the person offering the rebate has complied with Subsections (c) and (d).

(g) A person offering a rebate has the right to reject a rebate request from a consumer who the person determines:

(1) is attempting to commit fraud;

(2) has already received the offered rebate; or

(3) is submitting proof of purchase that is not legitimate.

(h) A person making a determination under Subsection (g) shall notify the consumer within the time period provided by Subsection (c) that the person is considering rejecting, or has rejected, the rebate request and shall instruct the consumer of any actions that the consumer may take to cure the deficiency.

(i) If the person offering a rebate erroneously rejects a properly completed rebate request, the person shall pay the consumer as soon as practicable, but not later than 30 days, after the date the person learns of the error.

Added by Acts 2009, 81st Leg., R.S., c. 87, § 4.012(a), eff. Sept. 1, 2009.

§ 605.003. Use of Independent Entity to Process Rebate.

For the purposes of this chapter, if a person who offers a rebate uses an independent entity to process the rebate, an act of the entity is considered to be an act of the person and receipt of a rebate request by the entity is considered receipt of the request by the person.

Added by Acts 2009, 81st Leg., R.S., c. 87, § 4.012(a), eff. Sept. 1, 2009.

§ 605.004. Deceptive Trade Practice.

(a) A violation of this chapter is a deceptive trade practice in addition to the practices described by Subchapter E, Chapter 17, and is actionable by a consumer under that subchapter. Claims related to more than one consumer may not be joined in a single action brought for an alleged violation of this chapter, unless all parties agree.

(b) A violation of this chapter is subject to an action by the office of the attorney general as provided by Section 17.46(a).

Added by Acts 2009, 81st Leg., R.S., c. 87, § 4.012(a), eff. Sept. 1, 2009.

§ 605.005. Certification as Class Action Prohibited.

A court may not certify an action brought under this chapter as a class action.

Added by Acts 2009, 81st Leg., R.S., c. 87, § 4.012(a), eff. Sept. 1, 2009.

k. Texas Controlled Substances Act

Texas Health and Safety Code

TITLE 6. FOOD, DRUGS, ALCOHOL, AND HAZARDOUS SUBSTANCES

SUBTITLE C. SUBSTANCE ABUSE REGULATION AND CRIMES

CHAPTER 481. TEXAS CONTROLLED SUBSTANCES ACT

SUBCHAPTER D. OFFENSES AND PENALTIES

§ 481.1191. Civil Liability for Engaging in or Aiding in Production, Distribution, Sale, or Provision of Synthetic Substances.

(a) In this section:

(1) "Minor" means a person younger than 18 years of age.

(2) "Synthetic substance" means an artificial substance that produces and is intended by the manufacturer to produce when consumed or ingested an effect similar to or in excess of the effect produced by the consumption or ingestion of a controlled substance or controlled substance analogue, as those terms are defined by Section 481.002.

(b) A person is liable for damages proximately caused by the consumption or ingestion of a synthetic substance by another person if the actor:

(1) produced, distributed, sold, or provided the synthetic substance to the other person; or

(2) aided in the production, distribution, sale, or provision of the synthetic substance to the other person.

(c) A person is strictly liable for all damages caused by the consumption or ingestion of a synthetic substance by a minor if the actor:

(1) produced, distributed, sold, or provided the synthetic substance to the minor; or

(2) aided in the production, distribution, sale, or provision of the synthetic substance to the minor.

(d) A person who is found liable under this section or other law for any amount of damages arising from the consumption or ingestion by another of a synthetic substance is jointly and severally liable with any other person for the entire amount of damages awarded.

(e) Chapter 33, Civil Practice and Remedies Code, does not apply to an action brought under this section or an action brought under Section 17.50, Business & Commerce Code, based on conduct made actionable under Subsection (f) of this section.

(f) Conduct for which Subsection (b) or (c) creates liability is a false, misleading, or deceptive act or practice or an unconscionable action or course of action for purposes of Section 17.50, Business & Commerce Code, and that conduct is:

(1) actionable under Subchapter E, Chapter 17, Business & Commerce Code; and

(2) subject to any remedy prescribed by that subchapter.

(g) An action brought under this section may include a claim for exemplary damages, which may be awarded in accordance with Section 41.003, Civil Practice and Remedies Code.

(h) Section 41.008, Civil Practice and Remedies Code, does not apply to the award of exemplary damages in an action brought under this section.

(i) Section 41.005, Civil Practice and Remedies Code, does not apply to a claim for exemplary damages in an action brought under this section.

(j) It is an affirmative defense to liability under this section that the synthetic substance produced, distributed, sold, or provided was approved for use, sale, or distribution by the United States Food and Drug Administration or other state or federal regulatory agency with authority to approve a substance for use, sale, or distribution.

(k) It is not a defense to liability under this section that a synthetic substance was in packaging labeled with "Not for Human Consumption" or other wording indicating the substance is not intended to be ingested.

Added by Acts 2017, 85th Leg., R.S., c. 861, § 1, eff. Sept. 1, 2017.

Section 3 of Acts 2017, 85th Leg., R.S., c. 861, provides:

This Act applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law applicable to the cause of action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

3. Statute of Frauds

Texas Business & Commerce Code

TITLE 3. INSOLVENCY, FRAUDULENT TRANSFERS, AND FRAUD

CHAPTER 26. STATUTE OF FRAUDS

§ 26.01. Promise or Agreement Must Be in Writing.

(a) A promise or agreement described in Subsection (b) of this section is not enforceable unless the promise or agreement, or a memorandum of it, is

(1) in writing; and

(2) signed by the person to be charged with the promise or agreement or by someone lawfully authorized to sign for him.

(b) Subsection (a) of this section applies to:

(1) a promise by an executor or administrator to answer out of his own estate for any debt or damage due from his testator or intestate;

(2) a promise by one person to answer for the debt, default, or miscarriage of another person;

(3) an agreement made on consideration of marriage or on consideration of nonmarital conjugal cohabitation;

(4) a contract for the sale of real estate;

(5) a lease of real estate for a term longer than one year;

(6) an agreement which is not to be performed within one year from the date of making the agreement;

(7) a promise or agreement to pay a commission for the sale or purchase of:

(A) an oil or gas mining lease;

(B) an oil or gas royalty;

(C) minerals; or

(D) a mineral interest; and

(8) an agreement, promise, contract, or warranty of cure relating to medical care or results thereof made by a physician or health care provider as defined in Section 74.001, Civil Practice and Remedies Code. This section shall not apply to pharmacists.

Added by Acts 1967, 60th Leg., vol. 2, p. 2343, c. 785, § 1. Amended by Acts 1977, 65th Leg., p. 2053, c. 817, § 21.01, eff. Aug. 29, 1977; Acts 1987, 70th Leg., c. 551, § 1, eff. Aug. 31, 1987; Acts 2005, 79th Leg., c. 187, § 1, eff. Sept. 1, 2005.

Section 2 of Acts 2005, 79th Leg., c. 187, provides:

(a) This Act applies only to a cause of action that accrues on or after the effective date of this Act. An action that accrued before the effective date of this Act is governed by the law applicable to the action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) This Act applies only to an act, including an agreement, promise, contract, warranty, notice, request, disclosure, use of a consent form, or report, made or occurring on or after the effective date of this Act.

§ 26.02. Loan Agreement Must be in Writing.

(a) In this section:

(1) "Financial institution" means a state or federally chartered bank, savings bank, savings and loan association, or credit union, a holding company, subsidiary, or affiliate of such an institution, or a lender approved by the United States Secretary of Housing and Urban Development for participation in a mortgage insurance program under the National Housing Act (12 U.S.C. Section 1701 et seq.).

(2) "Loan agreement" means one or more promises, promissory notes, agreements, undertakings, security agreements, deeds of trust or other documents, or commitments, or any combination of those actions or documents, pursuant to which a financial institution loans or delays repayment of or agrees to loan or delay repayment of money, goods, or

another thing of value or to otherwise extend credit or make a financial accommodation. The term does not include a promise, promissory note, agreement, undertaking, document, or commitment relating to:

(A) a credit card or charge card; or

(B) an open-end account, as that term is defined by Section 301.002 Finance Code, intended or used primarily for personal, family, or household use.

(b) A loan agreement in which the amount involved in the loan agreement exceeds $50,000 in value is not enforceable unless the agreement is in writing and signed by the party to be bound or by that party's authorized representative.

(c) The rights and obligations of the parties to an agreement subject to Subsection (b) of this section shall be determined solely from the written loan agreement, and any prior oral agreements between the parties are superseded by and merged into the loan agreement.

(d) An agreement subject to Subsection (b) of this section may not be varied by any oral agreements or discussions that occur before or contemporaneously with the execution of the agreement.

(e) In a loan agreement subject to Subsection (b) of this section, the financial institution shall give notice to the debtor or obligor of the provisions of Subsections (b) and (c) of this section. The notice must be in a separate document signed by the debtor or obligor or incorporated into one or more of the documents constituting the loan agreement. The notice must be in type that is boldface, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous. The notice must state substantially the following:

"This written loan agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.

"There are no unwritten oral agreements between the parties. "Debtor or Obligor Financial Institution"

(f) If the notice required by Subsection (e) of this section is not given on or before execution of the loan agreement or is not conspicuous, this section does not apply to the loan agreement, but the validity and enforceability of the loan agreement and the rights and obligations of the parties are not impaired or affected.

(g) All financial institutions shall conspicuously post notices that inform borrowers of the provisions of this section. The notices shall be located in such a manner and in places in the institutions so as to fully inform borrowers of the provisions of this section. The Finance Commission of Texas shall prescribe the language of the notice.

Added by Acts 1989, 71st Leg., c. 831, § 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., c. 1396, § 34, eff. Sept. 1, 1997; Acts 1999, 76th Leg., c. 62, § 7.47 eff. Sept. 1, 1999.

4. Texas Residential Construction Commission Act

Texas Property Code

TITLE 16. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION ACT

Section 52 of Acts 2007, 80th Leg., c. 843, provides:

(a) The House Committee on State Affairs shall conduct an interim study regarding the feasibility of creating a fund designed to reimburse aggrieved persons who experience actual damages from a builder's actions in violation of Title 16, Property Code. The speaker of the house of representatives shall appoint two additional members of the house of representatives who have expressed an interest in this issue as voting adjunct members of the committee for the purpose of participating in the study.

(b) The committee shall investigate:

(1) potential methods for payments into the fund, procedures for managing the fund, and methods for making claims to the fund; and

(2) similar funds created by other states and jurisdictions of the United States and the relative successes or failures of those funds.

(c) Not later than September 1, 2008, the committee shall submit to the speaker of the house of representatives and the members of the house of representatives:

(1) the results of the study; and

(2) any recommendations for statutory changes resulting from the findings of the study.

(d) This section expires October 1, 2008.

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 401. GENERAL PROVISIONS

§ 401.001. Short Title.

This title may be cited as the Texas Residential Construction Commission Act.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 401.002. General Definitions.

In this title:

(1) "Applicable building and performance standards" means:

(A) building and performance standards adopted under Section 430.001; or

(B) for homes constructed before the adoption of building and performance standards under Section 430.001, the building and performance standards under any express warranty provided in writing by the builder or, if there is no express warranty, the usual and customary residential construction practices in effect at the time of the construction.

(2) "Applicable warranty period" means:

(A) a warranty period established under Section 430.001; or

(B) for construction to which the warranty periods adopted under Section 430.001 do not apply, any other construction warranty period that applies to the construction.

(3) "Approved architect" means an architect licensed by this state and approved by the commission to provide services to the commission in connection with the state-sponsored inspection and dispute resolution process.

(4) "Approved structural engineer" means a licensed professional engineer approved by the commission to provide services to the commission in connection with the state-sponsored inspection and dispute resolution process.

(5) "Commission" means the Texas Residential Construction Commission.

(6) "Home" means the real property and improvements and appurtenances for a single-family house or duplex.

(7) "Homeowner" means a person who owns a home or a subrogee or assignee of a person who owns a home.

(7-a) "Improvement to the interior of an existing home" means any modification to the interior living space of a home, which includes the addition or installation of permanent fixtures inside the home. An improvement to the interior of an existing home does not include improvements to an existing home if the improvements are designed primarily to repair or replace the home's component parts.

(8) "Limited statutory warranty and building and performance standards" means the limited statutory warranty and building and performance standards adopted by the commission under Section 430.001.

(8-a) "Material improvement" means a modification to an existing home that either increases or decreases the home's total square footage of living space that also modifies the home's foundation, perimeter walls, or roof. A material improvement does not include modifications to an existing home if the modifications are designed primarily to repair or replace the home's component parts.

(9) "Nonstructural matter" has the meaning assigned by the limited statutory warranty and building and performance standards adopted by the commission under Section 430.001.

(10) "Request" means a request submitted under Section 428.001.

(11) "State inspector" means a person employed by the commission under Section 427.002.

(12) "State-sponsored inspection and dispute resolution process" means the process by which the commission resolves a request.

(13) "Structural" means the load-bearing portion of a home.

(14) "Structural failure" has the meaning assigned by the limited statutory warranty and building and performance standards adopted by the commission under Section 430.001.

(15) "Third-party inspector" means a person appointed by the commission under Section 428.003.

(16) "Warranty of habitability" means a builder's obligation to construct a home or home improvement that is in compliance with the limited statutory warranties and building and performance standards adopted by the commission under Section 430.001 and that is safe, sanitary, and fit for humans to inhabit.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Acts 2007, c. 843, § 6, eff. Sept. 1, 2007

§ 401.003. Definition of Builder. [Version 1].

(a) In this title, "builder" means any person who, for a fixed price, commission, fee, wage, or other compensation, sells, constructs, or supervises or manages the construction of, or contracts for the construction of or the supervision or management of the construction of:

(1) a new home;

(2) a material improvement to a home, other than an improvement solely to replace or repair a roof of an existing home; or

(3) an improvement to the interior of an existing home when the cost of the work exceeds $10,000.

(b) The term includes:

(1) an owner, officer, director, shareholder, partner, affiliate, subsidiary, or employee of the builder;

(2) a risk retention group governed by Article 21.54, Insurance Code, that insures all or any part of a builder's liability for the cost to repair a residential construction defect; and

(3) a third-party warranty company and its administrator.

(c) The term does not include any person who:

(1) has been issued a license by this state or an agency of this state to practice a trade or profession related to or affiliated with residential construction if the work being done by the entity or individual to the home is solely for the purpose for which the license was issued; or

(2) sells a new home and:

(A) does not construct or supervise or manage the construction of the home; and

(B) holds a license issued under Chapter 1101, Occupations Code, or is exempt from that chapter under Section 1101.005, Occupations Code.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 7, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 401.003. Definition of Builder. [Version 2].

(a) In this title, "builder" means any business entity or individual who, for a fixed price, commission, fee, wage, or other compensation, constructs or supervises or manages the construction of:

(1) a new home;

(2) a material improvement to a home, other than an improvement solely to replace or repair a roof of an existing home; or

(3) an improvement to the interior of an existing home when the cost of the work exceeds $20,000.

(b) The term includes:

(1) an owner, officer, director, shareholder, partner, affiliate, or employee of the builder;

(2) a risk retention group governed by Article 21.54, Insurance Code, that insures all or any part of a builder's liability for the cost to repair a residential construction defect; and

(3) a third-party warranty company and its administrator.

(c) The term does not include any business entity or individual who has been issued a license by this state or an agency or political subdivision of this state to practice a trade or profession related to or affiliated with residential construction if the work being done by the entity or individual to the home is solely for the purpose for which the license was issued.

(d) The term does not include a nonprofit business entity that is exempt from taxation under Section 501(c)(3), Internal Revenue Code, if:

(1) the construction or supervision or management of the construction of the home, material improvement, or improvement sold by the nonprofit business entity is performed by a builder registered under this title;

(2) the builder contractually agrees to comply with the provisions of this title;

(3) the builder is contractually liable to the homeowner for the warranties and building and performance standards of this title; and

(4) the nonprofit business entity does not participate directly in the construction of the home, material improvement, or improvement.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by adding subsec. (d) by Laws 2007, 80th Leg., c. 1082, § 1, eff. Sept. 1, 2007.

Section 2 of Acts 2007, 80th Leg., c. 1082, provides:

(a) This Act applies only to the following that are filed on or after the effective date of this Act:

(1) an application for a building permit or registration or certification as a builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for registration or certification as a builder or a request for state-sponsored inspection and dispute resolution that was filed before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 401.004. Definition of Construction Defect.

(a) In this title, "construction defect" means:

(1) the failure of the design, construction, or repair of a home, an alteration of or a repair, addition, or improvement to an existing home, or an appurtenance to a home to meet the applicable warranty and building and performance standards during the applicable warranty period; and

(2) any physical damage to the home, an appurtenance to the home, or real property on which the home or appurtenance is affixed that is proximately caused by that failure.

(b) The term does not include a defect that arises or any damages that arise wholly or partly from:

(1) the negligence of a person other than the builder or an agent, employee, subcontractor, or supplier of the builder;

(2) failure of a person other than the builder or an agent, employee, subcontractor, or supplier of the builder to:

(A) take reasonable action to mitigate any damages that arise from a defect; or

(B) take reasonable action to maintain the home;

(3) normal wear, tear, or deterioration; or

(4) normal shrinkage due to drying or settlement of construction components within the tolerance of building and performance standards.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 401.005. Exemptions.

(a) This title does not apply to a home that is:

(1) built by the individual who owns the home, alone or with the assistance of the individual's employees or independent contractors; and

(2) used by the individual as the individual's primary residence for at least one year after the completion or substantial completion of construction of the home.

(b) This title does not apply to a homeowner or to a homeowner's real estate broker, agent, interior designer registered under Chapter 1053, Occupations Code, interior decorator, or property manager who supervises or arranges for the construction of an improvement to a home owned by the homeowner.

(c) An individual who builds a home or a material improvement to a home and sells the home immediately following completion of the building or remodeling and does not live in the home for at least one year following completion of the building or remodeling is responsible as a builder under the warranty obligation created by this title for work completed by the individual. Responsibility under this subsection does not automatically require an individual to register under Section 416.001.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 8, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 401.006. Sunset Provision.

The Texas Residential Construction Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this title expires September 1, 2009.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 401.007. Injunction; Appeal.

(a) If the commission has reasonable cause to believe that a person is violating a statute to which this chapter applies, the commission, in addition to any other authorized action, may issue an order to cease and desist from the violation or an order to take affirmative action, or both, to enforce compliance. A person may appeal the order directly to district court in accordance with Chapter 2001, Government Code.

(b) Before issuing an order under this section, the commission shall set and give notice of a hearing before a hearings officer. The hearing is governed by Chapter 2001, Government Code. Based on the findings of fact, conclusions of law, and recommendations of the hearings officer, the commission by order may find whether a violation has occurred.

(c) The commission, after providing notice and an opportunity to appear for a hearing, may impose against a person who violates a cease and desist order an administrative penalty in an amount not to exceed $1,000 for each day of violation. In addition to any other remedy provided by law, the attorney general or the commission may institute in district court a suit for injunctive relief and to collect an administrative penalty. A bond is not required of the commission with respect to injunctive relief granted under this section. In the action, the court may enter as proper an order awarding a preliminary or final injunction.

(d) A suit by the attorney general under this section must be brought in Travis County.

(e) The attorney general and the commission may recover reasonable expenses incurred in obtaining injunctive relief under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

(f) If a party seeks review of the order by the commission, the party shall file a petition initiating judicial review not later than the 30th day after the date of the issuance of the decision.

Added by Laws 2007, 80th Leg., c. 843, § 9, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

[Chapters 402-405 reserved for expansion]

SUBTITLE B. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 406. COMMISSION

§ 406.001. Texas Residential Construction Commission; Membership.

(a) The Texas Residential Construction Commission consists of nine members appointed by the governor with the advice and consent of the senate as follows:

(1) four members must be builders who each hold a certificate of registration under Chapter 416;

(2) three members must be representatives of the general public;

(3) one member must be a licensed professional engineer who practices in the area of residential construction; and

(4) one member must be either a licensed architect who practices in the area of residential construction or a building inspector who meets the requirements set forth in Chapter 427 and practices in the area of residential construction.

(a-1) In making appointments under Subsection (a)(2), the governor shall consider individuals who can represent the interests of homeowners, including individuals who have experience representing consumer or homeowner interests.

(b) Appointments to the commission shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(c) A person may not be a public member of the commission if the person or the person's spouse:

(1) is a builder registered with the commission, or is otherwise registered, certified, or licensed by a regulatory agency in the field of residential construction;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the commission;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the commission; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the commission other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 10, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 406.002. Terms.

(a) Commission members serve staggered six-year terms, with three members' terms expiring February 1 of each odd-numbered year. The terms of three of the builder representatives must expire in different odd-numbered years. The term of one of the representatives of the general public must expire in each odd-numbered year.

(b) A member of the commission may not serve more than two complete terms.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 406.003. Presiding Officer.

The governor shall designate a member of the commission as the presiding officer of the commission to serve in that capacity at the pleasure of the governor. At a regular meeting in February of each year, the commission shall elect from its membership a vice presiding officer and a secretary.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 406.004. Membership and Employee Restrictions.

(a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and their industry or profession as a whole in dealing with mutual business or professional problems, issues, and circumstances and in promoting the common interest of its members and their industry and profession as a whole.

(b) A person may not be a member of the commission and may not be a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

(1) the person is an officer, employee, manager, or paid consultant of a Texas trade association or consumer association in the field of residential construction; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association or consumer association in the field of residential construction.

(c) A person may not be a member of the commission or act as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305, Government Code.

(d) A person may not be a commission employee described by Subsection (b) if the person is an employee or agent in the field of residential construction. This subsection does not apply to a person appointed to the commission.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 11, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 406.005. Grounds for Removal.

(a) It is a ground for removal from the commission that a member:

(1) does not have at the time of taking office the qualifications required by Section 406.001;

(2) does not maintain during service on the commission the qualifications required by Section 406.001;

(3) is ineligible for membership under Section 406.004;

(4) cannot because of illness or disability discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the commission.

(b) The validity of an action of the commission is not affected by the fact that it is taken when a ground for removal of a commission member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the commission, who shall notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 406.006. Training.

(a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the commission;

(2) the programs operated by the commission;

(3) the role and functions of the commission;

(4) the rules of the commission, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the commission;

(6) the results of the most recent formal audit of the commission;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 406.007. Meetings.

The commission shall meet at least quarterly and at other times at the call of the presiding officer.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

CHAPTER 407. EXECUTIVE DIRECTOR AND OTHER AGENCY PERSONNEL

§ 407.001. Executive Director.

The commission shall employ an executive director as the executive head of the agency.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 407.002. Other Personnel.

The commission may employ other personnel as necessary for the administration of this title.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 407.003. Division of Responsibilities.

The commission shall develop and implement policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the executive director and the staff of the commission.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 407.004. Qualifications and Standards of Conduct Information.

The executive director or the executive director's designee shall provide to members of the commission and to commission employees, as often as necessary, information regarding the requirements for office or employment under this title, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 407.005. Career Ladder Program; Performance Evaluation.

(a) The executive director or the executive director's designee shall develop an intra-agency career ladder program that addresses opportunities for mobility and advancement for employees within the commission. The program must require intra-agency posting of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for commission employees must be based on the system established under this subsection.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 407.006. Equal Employment Opportunity Policy; Annual Report.

(a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the commission to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the commission's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;
(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and
(3) be filed with the governor's office.

(d) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (c)(3). The report may be made separately or as a part of other biennial reports made to the legislature.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 407.007. Repealed by Acts 2009, 81st Leg., R.S., c. 614, § 4(33), eff. June 19, 2009.

CHAPTER 408. POWERS AND DUTIES

§ 408.001. Rules.

The commission shall adopt rules as necessary for the implementation of this title, including rules:

(1) governing the state-sponsored inspection and dispute resolution process, including building and performance standards, administrative regulations, and the conduct of hearings under Subtitle D;
(2) establishing limited statutory warranty and building and performance standards for residential construction;
(3) approving third-party warranty companies; and
(4) approving third-party inspectors.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 408.002. Fees.

(a) The commission shall adopt fees as required by this title in amounts that are reasonable and necessary to provide sufficient revenue to cover the costs of administering this title.

(b) The commission may charge a late fee for late payment of any fee due to the commission. The late fee may be any amount that does not exceed the amount of the fee due.

(c) The commission may charge a reasonable fee for:

(1) a homeowner to submit a request for state-sponsored inspection under Subtitle D;

(2) providing public information requested under Chapter 552, Government Code, excluding information requested from the commission under Section 409.001; or

(3) producing, mailing, and distributing special printed materials and publications generated in bulk by the commission for use and distribution by builders.

(d) The commission may waive or reduce the fee for an inspection under Subtitle D for a homeowner who demonstrates an inability to pay the fee.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 12, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:
(1) an application for a building permit or certification as a builder or a Texas Star Builder; or
(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 408.003. Accessibility.

(a) The commission shall comply with federal and state laws related to program and facility accessibility.

(b) The executive director shall prepare and maintain a written plan that describes how a person who does not speak English can obtain reasonable access to the commission's programs and services.

(c) The commission may procure and distribute to consumers informational materials and promotional items that contain commission contact details and outreach information.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 13, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:
(1) an application for a building permit or certification as a builder or a Texas Star Builder; or
(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 408.004. Annual Report.

(a) The commission shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding fiscal year.

(b) The report must be in the form and reported in the time provided by the General Appropriations Act.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 408.005. Collection of Amounts Due.

The commission may seek reimbursement of any amounts due to the commission and restitution for any dishonored payment instrument presented for payment to the commission.

Added by Laws 2007, 80th Leg., c. 843, § 14, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

CHAPTER 409. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

§ 409.001. Public Interest Information.

(a) The commission shall prepare information of public interest describing the functions of the commission, the provisions of the limited statutory warranty and building and performance standards, the state-sponsored inspection and dispute resolution process, and the procedures by which complaints or requests are filed with and resolved by the commission.

(b) The commission shall make the information available to the public and appropriate state agencies and shall post the information on the commission's website.

(c) Within 30 days of the receipt by the commission of the registration required by Section 426.003, the commission shall mail a copy of the information of public interest described in Subsection (a) to the owner of the home as described in the registration.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 408.0011. Builder List.

(a) In this section, "volume builder" means a builder who registers at least 100 homes each year as provided by Section 426.003.

(b) The commission shall create and make accessible to the public an electronic list and a hard-copy list of builders who:

(1) are registered with the commission; and

(2) provide in this state building services, including accessible floor plans, to persons with mobility-related special needs.

(c) The electronic list required under Subsection (b) shall provide, if available, the following information with respect to each listed builder:

(1) a link to the builder's website; and

(2) contact information for the builder, including the municipalities where the builder provides building services described by Subsection (b)(2).

(d) The commission shall contact all volume builders in this state and encourage those builders to develop floor plans that are designed to be accessible for persons with mobility-related special needs.

(e) The Veterans' Land Board shall make accessible to the public on its Internet website and in hard-copy format the electronic list required under Subsection (b).

Added by Laws 2007, 80th Leg., c. 843, § 15, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 409.002. Public Participation.

The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 409.003. Records of Complaints.

(a) The commission shall maintain a file on each written complaint filed with the commission.

(b) The commission shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(c) The commission, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation.

(d) The commission shall make available to the public information about each complaint that resulted in disciplinary action by the commission.

(e) The commission may not disclose the address of any individual home registered with the commission when making information available to the public under this title, except as necessary to implement this title.

(f) Notwithstanding Subsections (d) and (e), the commission may not disclose the address of an individual home registered with the commission:

(1) on the commission's Internet website; or

(2) in connection with an open records request under Chapter 552, Government Code.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 16, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 409.004. Directory of Builders.

The commission shall make available to the public a list of each builder who holds a certificate of registration issued under Chapter 416.

Added by Laws 2007, 80th Leg., c. 843, § 17, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

[Chapters 410-415 reserved for expansion]

SUBTITLE C. BUILDER REGISTRATION

CHAPTER 416. CERTIFICATE OF REGISTRATION

§ 416.001. Registration Required.

A person may not act as a builder unless the person holds a certificate of registration under this chapter.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 416.002. Application for Certificate.

(a) An applicant for an original or renewal certificate of registration must submit an application on a form prescribed by the commission.

(b) Each applicant must disclose in the application whether the applicant has:

(1) entered a plea of guilty or nolo contendere to a felony charge or a misdemeanor involving moral turpitude; or

(2) been convicted of a felony or a misdemeanor involving moral turpitude and the time for appeal has elapsed or the conviction has been affirmed on appeal.

(c) Disclosure under Subsection (b) is required regardless of whether an order granting the person community supervision suspended the imposition of the sentence.

(d) The commission may, on receipt of an application, conduct a criminal background check of the applicant or any person responsible for the application. The commission may obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation, or any other local, state, or national governmental entity. Unless the information is a public record at the time the commission obtains the information under this subsection, the information is confidential, and the commission may not release or disclose the information to any person except under a court order or with the permission of the applicant.

(e) Based on a commission investigation of an alleged violation of Sections 418.001(a)(14)-(20), the commission may require an applicant for renewal of a certificate of registration to disclose to the commission every person with an ownership interest in the applicant's business as a builder. This subsection does not apply to a publicly traded company.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 18, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 416.003. Expired January 1, 2005.

§ 416.004. Fees.

(a) The commission shall charge and collect:

(1) a filing fee for an application for an original certificate of registration that does not exceed $500;

(2) a fee for renewal of a certificate of registration that does not exceed $300; and

(3) a late fee that does not exceed the amount of the fee due if payment of a registration application or renewal fee due under this title is late.

(b) The commission shall establish a fee schedule that takes into consideration the unit volume or dollar volume of potential applicants.

(c) All fees paid to the commission under this section are nonrefundable.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 19, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 416.005. General Eligibility Requirements.

A person may not receive a certificate of registration under this chapter unless:

(1) the person, at the time of the application:

(A) is at least 18 years of age; and

(B) is a citizen of the United States or a lawfully admitted alien; and

(2) the commission is satisfied with the person's honesty, trustworthiness, and integrity based on information supplied or discovered in connection with the person's application.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 416.006. Additional Eligibility Requirements for Business Entities. .

(a) To be eligible for an original or renewal certificate of registration under this chapter:

(1) a corporation must designate one of its officers as its agent for the purposes of this chapter;

(2) a limited liability company must designate one of its managers as its agent for the purposes of this chapter; and

(3) a partnership, limited partnership, or limited liability partnership must designate one of its managing partners as its agent for the purposes of this chapter.

(b) A corporation, limited liability company, partnership, limited partnership, or limited liability partnership is not eligible to be registered under this chapter and may not act as a builder unless the entity's designated agent is individually registered as a builder.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 416.007. Issuance of Certificate.

(a) Not later than the 15th day after the date the commission receives an application from an applicant who meets the requirements of this chapter, the commission shall issue a certificate of registration to the applicant.

(b) The certificate of registration remains in effect for the period prescribed by the commission if the certificate holder complies with this chapter and pays the appropriate renewal fees.

(c) The commission shall issue one certificate of registration for each business entity registered under this chapter.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 416.008. Denial of Registration.

(a) If the commission denies an application for an original certificate of registration or a renewal application, the commission shall give written notice to the applicant not later than the 15th day after the date the commission receives the application.

(b) The applicant may appeal the denial of the application if, on or before the 30th day after the date the applicant receives notice under this section, the applicant files a written request for a hearing before the commission.

(c) The commission shall:

(1) set a time and place for the hearing not later than the 30th day after the date the commission receives the notice of the appeal; and

(2) give notice of the hearing to the applicant before the 15th day before the date of the hearing.

(d) The hearings officer may grant a motion for continuance of the hearing on the request of the commission or either party.

(e) The hearing shall be held before a hearings officer appointed by the commission. After the hearing, the hearings officer shall enter an appropriate order.

(f) The commission shall adopt procedural rules under which a decision by a hearings officer under this section is subject to appeal to the commission.

(g) A hearing under this section is governed by Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 20, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 416.009. Expiration of Certificate.

(a) The commission may issue or renew a certificate of registration for a period that does not exceed 24 months.

(b) The commission by rule may adopt a system under which certificates of registration expire on several dates during the year. The commission shall adjust the date for payment of renewal fees accordingly.

(c) In a year in which the expiration date for a certificate of registration is changed, the renewal fee payable shall be prorated on a monthly basis so that the certificate holder pays only that portion of the fee that is allocable to the number of months during which the certificate of registration is valid. On renewal of the certificate of registration on the new expiration date, the total renewal fee is payable.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 416.010. Office Location; Change of Address; Assumed Names.

(a) A builder shall maintain a fixed office location in this state. The address of the builder's principal place of business must be designated on the certificate of registration.

(b) Not later than the 30th day after the date a builder moves from the address designated on the certificate of registration, the builder shall submit an application, accompanied by the appropriate fee, for a certificate of registration that designates the new location of the builder's principal place of business. The commission shall issue a certificate of registration that designates the new location if the new location complies with the requirements of this section.

(c) If a builder operates under any name other than the name that is set forth on the builder's certificate of registration, the builder shall, within 45 days of operating under this other name, disclose this other name to the commission.

(d) This section does not require a builder to obtain a certificate of registration for each sales office.

(e) A builder may designate a United States Postal Service postal box for use in correspondence. The builder may not use the box as the builder's principal place of business for purposes of this section.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 21, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 416.011. Texas Star Builder Designation.

(a) The commission shall establish rules and procedures for a program through which a builder can be designated as a "Texas Star Builder." A builder's participation in the program is voluntary and is not a requirement for the issuance of a certificate of registration required under this chapter.

(b) A builder who participates in this program will be allowed to represent to the public that the builder is a "Texas Star Builder" and meets all of the requirements and qualifications that are set forth by the commission for the program.

(c) If the commission determines that a builder must meet certain education requirements to participate in the "Texas Star Builder" program, a builder may satisfy those requirements by completing education programs offered by a trade association or other organization whose education programs have been approved by the commission.

(d) The certification issued by the commission as a "Texas Star Builder" is valid for at most one year and renewable on a date to be determined at the commission's discretion.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 22, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 416.012. Continuing Education Programs.

(a) The commission shall recognize or administer continuing education programs for builders registered by the commission. A registered builder must participate in the programs to the extent required by this section to maintain the builder's registration.

(b) A builder who registers for the first time on or after September 1, 2007, must complete, during the first year the builder is registered with the commission, five hours of continuing education, one hour of which must address ethics.

(c) A builder who is registered before September 1, 2007, and all other builders who register for the first time on or after September 1, 2007, and satisfy the requirements of Subsection (b), must complete five hours of continuing education every five years, one hour of which must address ethics.

(d) The commission shall permit a registered builder to receive continuing education credit for educational, technical, ethical, or professional management activities related to the practice of residential construction, including:

(1) successfully completing or auditing a course sponsored by an institution of higher education;

(2) successfully completing a course certified by a professional or trade organization;

(3) attending a seminar, tutorial, short course, correspondence course, videotaped course, or televised course on the practice of residential construction;

(4) participating in an in-house course sponsored by a corporation or other business entity;

(5) teaching a course described by Subdivisions (1)-(4);

(6) publishing an article, paper, or book on the practice of residential construction;

(7) making or attending a presentation at a meeting of a residential or builder association or organization or writing a paper presented at the meeting;

(8) participating in the activities of a residential or builder association, including serving on a committee of the organization; and

(9) engaging in self-directed study on the practice of residential construction.

(e) A registered builder may not receive more than two continuing education credit hours during each five-year period for engaging in self-directed study.

(f) At least two hours of the continuing education requirement under this section must address:

(1) limited statutory warranties;

(2) building and performance standards; and

(3) requirements of the International Residential Code as adopted under Section 430.001 and other statutes and rules that apply to builders under this title.

(g) A builder's agent or other designated individual may satisfy the requirements of this section for the builder if the builder is a corporation or other business entity.

Added by Laws 2007, 80th Leg., c. 843, § 23, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

Section 55 of Acts 2007, 80th Leg., c. 843, provides:

Section 416.012, Property Code, as added by this Act, applies only to work performed by a builder on or after September 1, 2007. Work performed by a builder before that date is governed by the law in effect when the work is performed, and the former law is continued in effect for that purpose.

CHAPTER 417. CERTIFICATION OF RESIDENTIAL CONSTRUCTION ARBITRATORS

§ 417.001. Certification.

(a) The commission by rule shall establish eligibility requirements and procedures for a person to be certified by the commission as a residential construction arbitrator.

(b) The requirements established under this section must, at a minimum, require a certified arbitrator to:

(1) have at least five years' experience in conducting arbitrations between homeowners and builders involving construction defects;

(2) be familiar with the statutory warranties and building and performance standards established under Chapter 430 and with the provisions of Chapter 27; and

(3) meet continuing education requirements established by the commission.

(c) Nothing in the chapter prohibits an arbitrator who does not hold a certificate under this chapter from conducting an arbitration involving a residential construction defect.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 417.002. Application for Certification.

An applicant for certification under this chapter or for renewal of that certification must submit an application on a form prescribed by the commission and include the fee required by Section 417.003.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 417.003. Fees.

(a) The commission shall charge and collect:

(1) a filing fee for an application for certification under this chapter that does not exceed $100;

(2) a fee for renewal of a certification under this chapter that does not exceed $50; and

(3) a late fee that does not exceed the amount of the fee due if payment of a registration or application fee due under this title is late.

(b) All fees paid to the commission under this section are nonrefundable.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 24, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 417.004. Publication and Comment Period; Certification.

(a) The commission shall publish notice of each applicant's original application for certification under this chapter in the Texas Register and allow public comment on the application during the 21 days after the date the notice is published. During that period, any person may contest the application in writing submitted to the commission.

(b) If the commission finds that certification of the applicant is in the public interest, the commission shall certify the applicant under this chapter.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 417.005. Denial of Certification.

The commission shall establish procedures under which a denial of a certification under this chapter may be contested by the applicant.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 417.006. Expiration of Certification.

The commission may issue or renew a certification under this chapter for a period that does not exceed 24 months.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 417.007. List of Certified Arbitrators.

The commission shall maintain an updated list of residential construction arbitrators certified under this chapter and make the list available to the public.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

CHAPTER 418. PROHIBITED PRACTICES; DISCIPLINARY PROCEEDINGS

§ 418.001. Grounds for Disciplinary Action.

A person, including a builder or a person who is designated as a builder's agent under Section 416.006, or a person who owns or controls a majority ownership interest in the builder is subject to disciplinary action under this chapter for:

(1) fraud or deceit in obtaining a registration or certification under this subtitle;

(2) misappropriation or misapplication of trust funds in the practice of residential construction, including a violation of Chapter 32, Penal Code, or Chapter 162, if found by a final nonappealable court judgment;

(3) naming false consideration in a contract to sell a new home or in a construction contract;

(4) discriminating on the basis of race, color, religion, sex, national origin, or ancestry;

(5) publishing a false or misleading advertisement;

(6) failure to honor, within a reasonable time, a check issued to the commission, or any other instrument of payment, including a credit or debit card or electronic funds transfer, after the commission has sent by certified mail a request for payment to the person's last known business address, according to commission records;

(7) failure to pay an administrative penalty assessed by the commission under Chapter 419 or a fee due under Chapter 426;

(8) failure to pay a final nonappealable court judgment arising from a construction defect or other transaction between the person and a homeowner;

(9) failure to register a home as required by Section 426.003;

(10) failure to remit the fee for registration of a home under Section 426.003;

(11) failure to reimburse a homeowner the amount ordered by the commission as provided by [~~in~~] Section 428.004(d);

(12) engaging in statutory or common-law fraud or misappropriation of funds, as determined by the commission after a hearing under Section 418.003;

(13) a repeated failure to participate in the state-sponsored inspection and dispute resolution process if required by this title;

(14) failure to register as a builder as required under Chapter 416;

(15) using or attempting to use a certificate of registration that has expired or that has been revoked;

(16) falsely representing that the person holds a certificate of registration issued under Chapter 416;

(17) acting as a builder using a name other than the name or names disclosed to the commission;

(18) aiding, abetting, or conspiring with a person who does not hold a certificate of registration to evade the provisions of this title or rules adopted under this title, if found by a final nonappealable court judgment;

(19) allowing the person's certificate of registration to be used by another person;

(20) acting as an agent, partner, or associate of a person who does not hold a certificate of registration with the intent to evade the provisions of this title or rules adopted under this title;

(21) a failure to reasonably perform on an accepted offer to repair or a repeated failure to make an offer to repair based on:

(A) the recommendation of a third-party inspector under Section 428.004; or

(B) the final holding of an appeal under Chapter 429;

(22) a repeated failure to respond to a commission request for information;

(23) a failure to obtain a building permit required by a political subdivision before constructing a new home or an improvement to an existing home;

(24) abandoning, without justification, any home improvement contract or new home construction project engaged in or undertaken by the person, if found to have done so by a final, nonappealable court judgment;

(25) a repeated failure to comply with the requirements of Subtitle F; or

(26) otherwise violating this title or a commission rule adopted under this title.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 25, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

Section 56 of Acts 2007, 80th Leg., c. 843, provides:

The changes in law made by this Act by the amendment of Section 418.001, Property Code, apply only to conduct that occurs on or after September 1, 2007. Conduct that occurs before that date is governed by the law in effect when the conduct occurs, and the former law is continued in effect for that purpose.

§ 418.002. Disciplinary Powers of Commission.

(a) On a determination that a ground for disciplinary action under Section 418.001 exists, the commission may:

(1) revoke or suspend a registration or certification in the event of repeated prior violations that have resulted in disciplinary action;

(2) probate the suspension of a registration or certification; [~~or~~]

(3) formally or informally reprimand a registered or certified person; or

(4) impose an administrative penalty under Chapter 419.

(b) The commission must consider the factors described by Section 419.002(b) before taking disciplinary action under this chapter.

(c) For purposes of Section 418.001(12), the commission may not conduct a hearing or revoke or suspend a registration or certification unless the determination of statutory or common-law fraud or misappropriation of funds has been made in a final nonappealable judgment by a court.

(d) Prior to imposing disciplinary action under Subsection (a)(1) based upon grounds that involve a transaction between a builder and a homeowner, there must be repeated prior violations that have resulted in disciplinary action that involve the greater of:

(1) at least three homes registered by the builder under Section 426.003; or

(2) at least one percent of the homes registered by the builder under Section 426.003 during the preceding 12 months.

(e) When the commission has information that a matter may be criminal in nature, the commission may refer the matter to a local district attorney or county attorney for investigation.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 25, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 418.003. Hearing.

(a) If the commission proposes to take a disciplinary action against a person under Section 418.002, the person is entitled to a hearing before the commission.

(b) The commission shall adopt procedural rules by which all decisions to take disciplinary action under this chapter are subject to appeal to the commission.

(c) The commission shall prescribe the time and place of the hearing.

(d) A hearing under this section is governed by Chapter 2001, Government Code.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 418.004. Appeal.

(a) A person aggrieved by a ruling, order, or decision of the commission is entitled to appeal to a district court in the county in which the administrative hearing was held.

(b) An appeal under this section is governed by Chapter 2001, Government Code.

(c) An appeal to a district court of a final decision of the commission under this section regarding a revocation or suspension of a registration or certification is determined by substantial evidence.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 26, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 418.005. Responsibility for Administrative Actions.

(a) The commission may simultaneously take administrative action under this chapter against:

(1) a builder; and

(2) a person who owns or controls a majority ownership interest in the builder.

(b) A builder and a person who owns or controls a majority ownership interest in the builder are jointly and severally liable for any amounts due to the commission under this title.

Amended by Laws 2007, 80th Leg., c. 843, § 27, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

CHAPTER 419. ADMINISTRATIVE PENALTY

§ 419.001. Imposition of Administrative Penalty.

The commission may impose an administrative penalty on a person who violates this title or a rule adopted or order issued by the commission under this title.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 28, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 419.002. Amount of Penalty.

(a) Except as provided by Subsection (c), an administrative penalty imposed under this chapter may not exceed $10,000 for each violation.

(b) In determining the amount of an administrative penalty, the hearings officer or commission shall consider:

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

(2) the history of previous violations;

(3) the amount necessary to deter a future violation;

(4) efforts to correct the violation; and

(5) any other matter justice may require.

(c) A violation of Section 418.001(2) or (12) is punishable by a penalty not to exceed $100,000.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 29, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 419.003. Payment of Penalty.

The commission shall specify in an order imposing an administrative penalty under this chapter a date on or before the 30th day after the date the order becomes final and unappealable by which the person against whom the penalty is imposed must pay the penalty.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 419.004. Enforcement of Penalty.

If a person does not pay an administrative penalty imposed under this chapter and enforcement of the penalty is not stayed, the commission may:

(1) refer the matter to the attorney general for collection of the penalty; or

(2) enforce any part of the order that specifies disciplinary action to be taken against the registered or certified person if the registered or certified person fails to pay the administrative penalty within the time prescribed.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

[Chapters 421-425 reserved for expansion]

CHAPTER 420. BUILDING CONTRACT PROVISIONS

§ 420.001. Required Written Disclosure.

In a contract for the construction of a new home or an improvement to an existing home required to be registered under Section 426.003, the contract must contain a notice to the consumer in at least 10-point bold type or the computer equivalent that gives the telephone number of the commission and states:

STATE LAW REQUIRES THAT A PERSON HOLD A CERTIFICATE OF REGISTRATION FROM THE TEXAS RESIDENTIAL CONSTRUCTION COMMISSION IF THE PERSON CONTRACTS TO CONSTRUCT A NEW HOME OR IF THE PERSON CONTRACTS TO CONSTRUCT A MATERIAL IMPROVEMENT TO AN EXISTING HOME OR CERTAIN IMPROVEMENTS TO THE INTERIOR OF AN EXISTING HOME AND THE TOTAL COST OF THE IMPROVEMENT IS $10,000 OR MORE (INCLUDING LABOR AND MATERIALS).

YOU MAY CONTACT THE COMMISSION AT [insert commission's telephone number] TO FIND OUT WHETHER THE BUILDER HAS A VALID CERTIFICATE OF REGISTRATION. THE COMMISSION HAS INFORMATION AVAILABLE ON THE HISTORY OF BUILDERS, INCLUDING SUSPENSIONS, REVOCATIONS, COMPLAINTS, AND RESOLUTION OF COMPLAINTS.

THIS CONTRACT IS SUBJECT TO CHAPTER 426, PROPERTY CODE. THE PROVISIONS OF THAT CHAPTER GOVERN THE PROCESS THAT MUST BE FOLLOWED IN THE EVENT A DISPUTE ARISES OUT OF AN ALLEGED CONSTRUCTION DEFECT. IF YOU HAVE A COMPLAINT CONCERNING A CONSTRUCTION DEFECT YOU MAY CONTACT THE COMMISSION AT THE TOLL-FREE TELEPHONE NUMBER TO LEARN HOW TO PROCEED UNDER THE STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS.

Added by Laws 2007, 80th Leg., c. 843, § 30, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 420.002. Required Contract Provisions.

In a contract for the construction of a new home or an improvement to an existing home required to be registered under Section 426.003, the contract is not enforceable against a homeowner unless the contract:

(1) contains the builder's name and certificate of registration number; and

(2) contains the notice required by Section 420.001.

Added by Laws 2007, 80th Leg., c. 843, § 30, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 420.003. Binding Arbitration Contract Provision.

(a) In a contract for the construction of a new home or the improvement of an existing home required to be registered under Section 426.003 and that contains a provision requiring the parties to submit a dispute arising under the contract to binding arbitration, the provision must be conspicuously printed or typed in a size equal to at least 10-point bold type or the computer equivalent.

(b) A provision described by Subsection (a) is not enforceable against the homeowner unless the requirements of Subsection (a) are met.

Amended by Laws 2007, 80th Leg., c. 843, § 30, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

SUBTITLE D. STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS; STATUTORY WARRANTY AND BUILDING AND PERFORMANCE STANDARDS

CHAPTER 426. GENERAL PROVISIONS

§ 426.001. Applicability of Subtitle.

(a) This subtitle applies to a dispute between a builder and a homeowner if:

(1) the dispute arises out of an alleged construction defect, other than a claim solely for:

(A) personal injury, survival, or wrongful death; or

(B) damage to goods; and

(2) a request is submitted to the commission not later than the 30th day after the 10th anniversary of:

(A) the date of the initial transfer of title from the builder to the initial owner of the home or the improvement that is the subject of the dispute; or

(B) if there is not a closing in which title is transferred, the date on which the construction of the improvement was substantially completed.

(b) This subtitle does not apply to a dispute arising out of:

(1) an alleged violation of Section 27.01, Business & Commerce Code;

(2) a builder's wrongful abandonment of an improvement project before completion; or

(3) a violation of Chapter 162.

(c) For the purposes of this section, "damage to goods" does not include damage to a home.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 32, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 426.002. Conflict with Certain Other Law.

To the extent of any conflict between this subtitle and any other law, including Chapter 27 and the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code), this subtitle prevails.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 426.003. Registration of Home.

(a) A builder shall register a new home with the commission on or before the 15th day of the month following the month in which the transfer of title from the builder to the homeowner occurs. The registration must include the information required by the commission by rule and be accompanied by the fee required by Subsection (c).

(b) A builder who enters a transaction governed by this title, other than the transfer of title of a new home from the builder to the seller, shall register the home involved in the transaction with the commission. The registration must:

(1) include the information required by the commission by rule;

(2) be accompanied by the fee required by Subsection (c); and

(3) be delivered to the commission not later than the 15th day after the earlier of:

(A) the date of the substantial completion of the home or other residential construction project;

(B) the date the new home is occupied; or

(C) the date of issuance of a certificate of occupancy or a certificate of completion.

(c) A builder must remit to the commission a registration fee for each home registered with the commission in an amount determined by the commission. The fee set by the commission under this subsection may not exceed $125.

(d) The commission may assess a late payment penalty that does not exceed $500 against a builder who fails to pay a required registration fee in the time prescribed by this section.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 31, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 426.004. Fees.

(a) A party who submits a request under this subtitle shall pay any amount required by the commission to cover the expense of the third-party inspector.

(b) The commission shall adopt rules permitting a waiver or reduction of the inspection expenses for homeowners demonstrating a financial inability to pay the expenses.

(c) If the transfer of the title of the home from the builder to the initial homeowner occurred before January 1, 2004, or if the contract for improvements or additions between the builder and homeowner was entered into before January 1, 2004, the commission shall register the home and the builder shall pay the registration fee required by Section 426.003.

(d) The commission may reimburse an inspector for travel expenses incurred to complete an inspection regardless of whether the expenses exceed the amount collected under this section.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 33, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 426.005. Prerequisite to Action.

(a) A homeowner or builder must comply with this subtitle before initiating an action for damages or other relief arising from an alleged construction defect.

(b) An action described by Subsection (a) must be filed:

(1) on or before the expiration of any applicable statute of limitations or by the 45th day after the date the third-party inspector issues the inspector's recommendation, whichever is later; or

(2) if the recommendation is appealed, on or before the expiration of any applicable statute of limitations or by the 45th day after the date the commission issues its ruling on the appeal, whichever is later.

(c) Any claim for personal injuries, damages to personal goods, or consequential damages or other relief arising out of an alleged construction defect must be included in any action concerning the construction defect.

(d) This section does not apply to an action that is initiated by a person subrogated to the rights of a claimant if payment was made pursuant to a claim made under an insurance policy.

(e) [Subsection (f) was added by Acts 2007. There was and is no subsection (e).]

(f) A homeowner is not required to comply with this subtitle if:

(1) at the time a homeowner and a builder enter into a contract covered by this title the builder was not registered; or

(2) the certificate of registration of the builder has been revoked.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 34, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 426.006. Time for Requesting Inspection and Dispute Resolution.

(a) For an alleged defect discovered during an applicable warranty period, the state-sponsored inspection and dispute resolution process must be requested on or before the second anniversary of the date of discovery of the conditions claimed to be evidence of the construction defect but not later than the 90th day after the date the applicable warranty period expires.

(b) If the alleged defect would violate the statutory warranty of habitability and was not discoverable by a reasonable, prudent inspection or examination of the home or improvement within the applicable warranty period, the state-sponsored inspection and dispute resolution process must be requested:

(1) on or before the second anniversary of the date of discovery of the conditions claimed to be evidence of the construction defect; and

(2) not later than the 10th anniversary of the date of the initial transfer of title from the builder to the initial owner of the home or improvement that is the subject of the dispute or, if there is not a closing, the date on which the contract for construction of the improvement is entered into.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 35, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

426.007. Admissibility of Certain Evidence.

A person who submits a request for state-sponsored inspection and dispute resolution or responds to a request under Chapter 428 must disclose in the request or response the name of any expert who, before the request is submitted, inspected the home on behalf of the requestor or respondent in connection with the construction defect alleged in the request or response. If an expert's name is known to the requestor or respondent at the time of the request or response and is not disclosed as required by this section, the requestor or respondent may not designate the person as an expert or use materials prepared by that person in:

(1) the state-sponsored inspection and dispute resolution process arising out of the request; or

(2) any action arising out of the construction defect that is the subject of the request or response.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 36, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 426.008. Rebuttable Presumption of Third-Party Inspector's Recommendation or Ruling by Panel of State Inspectors.

(a) In any action involving a construction defect brought after a recommendation by a third-party inspector or ruling by a panel of state inspectors on the existence of the construction defect or its appropriate repair, the recommendation or ruling shall constitute a rebuttable presumption of the existence or nonexistence of a construction defect or the reasonable manner of repair of the construction defect. A party seeking to dispute, vacate, or overcome that presumption must establish by a preponderance of the evidence that the recommendation or ruling is inconsistent with the applicable warranty and building and performance standards.

(b) The presumption established by this section applies only to an action between the homeowner and the builder. A recommendation or ruling under this subtitle is not admissible in an action between any other parties.

(c) For the purposes of admissibility of a third-party inspector's recommendation or a ruling by a panel of state inspectors, the recommendation or ruling shall be considered a business record under Rule 902, Texas Rules of Evidence.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 37, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

CHAPTER 427. INSPECTORS

§ 427.001. Qualification of Third-Party Inspectors. .

(a) A third-party inspector approved by the commission must:

(1) meet the minimum qualifications prescribed by this section and any other qualifications prescribed by the commission by rule; and

(2) submit an application to the commission annually with an application fee in the amount required by the commission by rule.

(b) A third-party inspector who inspects an issue involving workmanship and materials must:

(1) have a minimum of three years' experience in the residential construction industry; and

(2) be certified as a residential combination inspector by the International Code Council.

(c) A third-party inspector who inspects an issue involving a structural matter or involving workmanship, materials, and a structural matter must:

(1) be an approved structural engineer or approved architect; and

(2) have a minimum of five years' experience in residential construction.

(c-1) A third-party inspector who inspects an issue involving a structural matter and an unrelated issue involving workmanship and materials matters must meet the requirements of Subsections (b) and (c).

(d) Each third-party inspector must receive, in accordance with commission rules:

(1) initial training regarding the state-sponsored inspection and dispute resolution process and this subtitle; and

(2) annual continuing education in the inspector's area of practice.

(e) A third-party inspector may not receive more than 10 percent of the inspector's gross income in a federal income tax year from providing expert witness services, including retention for the purpose of providing testimony, evidence, or consultation in connection with a pending or threatened legal action.

(f) In adopting rules under Subsection (d), the commission shall recognize any continuing education requirements established for engineers and architects.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 38, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 427.002. State Inspectors.

(a) The commission shall employ state inspectors to:

(1) review on an appeals panel the recommendations of third-party inspectors;

(2) provide consultation to third-party inspectors; and

(3) administer the state-sponsored inspection and dispute resolution process.

(b) A state inspector must be certified as a residential combination inspector by the International Code Council.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 427.003. No Civil Liability.

(a) A person who performs services for the commission as a third-party inspector or a state inspector who does not act with wanton and wilful disregard for the rights, safety, or property of another is not liable for civil damages for any act or omission within the course and scope of carrying out the person's duties or functions as a third-party inspector or state inspector.

(b) This section does not apply to an intentional act of misconduct or gross negligence.

Added by Laws 2007, 80th Leg., c. 843, § 39, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

CHAPTER 428. STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS

§ 428.001. Request of Resolution.

(a) If a dispute between a homeowner and a builder arises out of an alleged construction defect, the homeowner or the builder may submit to the commission a written request for state-sponsored inspection and dispute resolution.

(b) The request must:

(1) specify in reasonable detail each alleged construction defect that is a subject of the request;

(2) state the amount of any known out-of-pocket expenses and engineering or consulting fees incurred by the homeowner in connection with each alleged construction defect;

(3) include any evidence that depicts the nature and cause of each alleged construction defect and the nature and extent of repairs necessary to remedy the construction defect, including, if available, expert reports, photographs, and videotapes, if that evidence would be discoverable under Rule 192, Texas Rules of Civil Procedure;

(4) be accompanied by the fees required under Section 426.004; and

(5) state the name of any person who has, on behalf of the requestor, inspected the home in connection with an alleged construction defect.

(c) Not later than the 30th day before the date a homeowner submits a request under this section, the homeowner must notify the builder in writing of each construction defect the homeowner claims to exist. After the notice is provided, the builder must be provided with a reasonable opportunity to inspect the home or have the builder's designated consultants inspect the home.

(d) At the time a person submits a request under this section, the person must send by certified mail, return receipt requested, a copy of the request, including evidence submitted with the request, to each other party involved in the dispute.

(e) The commission by rule shall establish methods by which homeowners may be notified of the name, mailing address, and telephone number of the commission for the purpose of directing a request to the commission.

(f) The commission shall provide a person who files a request with a copy of the commission's policies and procedures relating to investigation and resolution of a request.

(g) The commission by rule shall establish a standard form for submitting a request under this section.

(h) The filing of a request under this section tolls the limitations period in any action between the homeowner and the builder arising out of the subject of the request until the 45th day after the date a final, nonappealable recommendation is issued under this title in response to the request.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 40, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 428.002. Builder's Right of Inspection.

(a) In addition to the right of inspection provided by Section 428.001(c), at any time before the conclusion of the state-sponsored inspection and dispute resolution process and on the builder's written request, the builder shall be given reasonable opportunity to inspect the home that is the subject of the request or have the home inspected to determine the nature and cause of the construction defect and the nature and extent of repairs necessary to remedy the construction defect.

(b) The builder may take reasonable steps to document the construction defect and the condition of the home.

(c) If the homeowner delays the inspection for more than five days after the date of receiving the builder's written request, any period for subsequent action to be taken by the builder or the third-party inspector shall be extended one day for each day the inspection is delayed after the fifth day.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 428.003. Inspection by Third-Party Inspector.

(a) On or before the 30th day after the date the commission receives a request, the commission shall appoint the next available third-party inspector from the applicable lists of third-party inspectors maintained by the commission under Subsection (c).

(b) The commission shall establish rules and regulations that allow the homeowner and the builder to each have the right to strike the appointment of a third-party inspector one time for each request submitted.

(c) The commission shall adopt rules that allow for the commission to maintain a list of available third-party inspectors for the various regions of the state, as required to satisfy the provisions of this title.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 41, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 428.004. Inspector's Recommendation.

(a) If the dispute involves workmanship and materials in the home of a nonstructural matter, the third-party inspector shall issue a recommendation not later than the 30th day after the date the third-party inspector receives the appointment from the commission.

(b) If the dispute involves a structural matter in the home, the commission shall appoint an approved engineer to be the third-party inspector. The third-party inspector shall inspect the home not later than the 30th day after the date the request is submitted and issue a recommendation not later than the 60th day after the date the third-party inspector receives the assignment from the commission, unless additional time is requested by the third-party inspector or a party to the dispute. The commission shall adopt rules governing the extension of time under this subsection.

(c) The third-party inspector's recommendation must:

(1) address only the construction defect, based on the applicable warranty and building and performance standards; and

(2) designate a method or manner of repair, if any.

(d) Except as provided by this subsection, the third-party inspector's recommendation may not include payment of any monetary consideration. If the inspector finds for the party who submitted the request, the commission may order the other party to reimburse all or part of the fees and inspection expenses paid by the requestor under Section 426.004.

(e) The commission may not require a builder to reimburse fees or inspection expenses under this section if, before the inspection, the builder offered to make repairs or have repairs made substantially equivalent to those required by the findings of the final report confirming the defect requiring repair.

(f) If, before the inspection, the builder has made or offered to make repairs substantially equivalent to those required by the findings of the final report confirming the defect, the agency may not list the finding on the commission's Internet website.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 42, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 428.005. Threat to Health or Safety.

A builder who receives written notice of a request relating to a construction defect that creates an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. If the builder fails to cure the defect in a reasonable time, the homeowner may have the defect cured and recover from the builder the reasonable cost of the cure plus reasonable attorney's fees and expenses associated with curing the defect in addition to any other damages not inconsistent with this subtitle.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

CHAPTER 429. APPEAL OF THIRD-PARTY INSPECTOR'S RECOMMENDATION

§ 429.001. Appeal.

(a) A homeowner or builder may appeal a third-party inspector's recommendation on or before the 15th day after the date the recommendation is issued.

(b) If a homeowner or builder appeals a third-party inspector's recommendation, the executive director shall appoint three state inspectors to a panel to review the recommendation. If the recommendation involves a dispute regarding a structural failure, one of the state inspectors on the panel must be a licensed professional engineer.

(c) The panel shall:

(1) review the recommendation for compliance with this title as required by rules adopted by the commission;

(2) approve, reject, or modify the recommendation of the third-party inspector or remand the dispute for further action by the third-party inspector; and

(3) issue written findings of fact and a ruling on the appeal not later than the 30th day after the date the notice of appeal is filed with the commission.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 43, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

CHAPTER 430. WARRANTIES AND BUILDING AND PERFORMANCE STANDARDS

§ 430.001. Limited Statutory Warranties and Building and Performance Standards.

(a) The commission by rule shall adopt limited statutory warranties and building and performance standards for residential construction that comply with this section.

(b) The warranty periods shall be:

(1) one year for workmanship and materials;

(2) two years for plumbing, electrical, heating, and air-conditioning delivery systems; and

(3) 10 years for major structural components of the home.

(c) The limited statutory warranties and building and performance standards must:

(1) require substantial compliance with the nonelectrical standards contained in the version of the International Residential Code for One- and Two-Family Dwellings published by the International Code Council that is applicable under Subsection (d) and the electrical standards contained in the version of the National Electrical Code that is applicable under Subsection (e);

(2) include standards for mold reduction and remediation that comply with Section 430.003;

(3) establish standards for performance for interior and exterior components of a home, including foundations, floors, ceilings, walls, roofs, drainage, landscaping, irrigation, heating, cooling, and electrical and plumbing components; and

(4) contain standards that are not less stringent than the standards required by the United States Department of Housing and Urban Development for FHA programs as set forth in 24 C.F.R. Sections 203.202 through 203.206.

(d) The International Residential Code for One-and Two-Family Dwellings that applies to nonelectrical aspects of residential construction for the purposes of the limited statutory warranties and building and performance standards adopted under this section is:

(1) for residential construction located in a municipality or the extraterritorial jurisdiction of a municipality, the version of the International Residential Code applicable to nonelectrical aspects of residential construction in the municipality under Section 214.212, Local Government Code;

(2) for residential construction located in an unincorporated area not in the extraterritorial jurisdiction of a municipality, the version of the International Residential Code applicable to nonelectrical aspects of residential construction in the municipality that is the county seat of the county in which the construction is located; and

(3) for residential construction located in an unincorporated area in a county that does not contain an incorporated area, the version of the International Residential Code that existed on May 1, 2001.

(e) The National Electrical Code for One- and Two-Family Dwellings that applies to electrical aspects of residential construction for the purposes of this section is:

(1) for residential construction located in a municipality or the extraterritorial jurisdiction of a municipality, the version of the National Electrical Code applicable to electrical aspects of residential construction in the municipality under Section 214.214, Local Government Code;

(2) for residential construction located in an unincorporated area not in the extraterritorial jurisdiction of a municipality, the version of the National Electrical Code applicable to electrical aspects of residential construction in the municipality that is the county seat of the county in which the construction is located; and

(3) for residential construction located in an unincorporated area in a county that does not contain an incorporated area, the version of the National Electrical Code that existed on May 1, 2001.

(f) Except as provided by a written agreement between the builder and the initial homeowner, a warranty period adopted under this section for a new home begins on the earlier of the date of:

(1) occupancy; or

(2) transfer of title from the builder to the initial homeowner.

(g) A warranty period adopted under this section for an improvement other than a new home begins on the date the improvement is substantially completed.

(h) The building and performance standards adopted by the commission under this section may be adopted in phases and amended or supplemented by the commission from time to time as the commission receives additional evidence or information from task forces or other sources regarding any improvements or developments in the areas of residential homebuilding practices, procedures, or technology.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 430.002. Warranty of Habitability.

(a) The construction of each new home or home improvement shall include the warranty of habitability.

(b) For a construction defect to be actionable as a breach of the warranty of habitability, the defect must have a direct adverse effect on the habitable areas of the home and must not have been discoverable by a reasonable prudent inspection or examination of the home or home improvement within the applicable warranty periods adopted by the commission under Section 430.001.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 430.003. Mold Reduction and Remediation; Task Force. .

(a) The building and performance standards adopted under Section 430.001 must include measures that are designed to reduce the general population's exposure to mold often formed in water-damaged building materials and that include:

(1) methods by which mold, water damage, and microbial volatile compounds in indoor environments may be recognized; and

(2) recommended management practices for:

(A) limiting moisture intrusion in a home, which may include the use of a water leak detection system listed by Underwriters Laboratories that is capable of shutting off a valve on the main water line coming into the structure immediately upon detecting a water leak in the structure; and

(B) mold remediation.

(b) The commission shall appoint a task force to advise the commission with regard to adoption of standards under this section. The task force must include representatives of public health officers of this state, health and medical experts, mold abatement experts, and representatives of affected consumers and industries. The commission and the task force shall consider the feasibility of adopting permissible limits for exposure to mold in indoor environments.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 430.004. Certain Design Recommendations; Advisory Committee.

The commission shall appoint a task force to develop design recommendations for residential construction that encourage rain harvesting and water recycling.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 430.005. Alternative Standards for Certain Construction.

(a) For the purpose of this title, the only statutory warranty and building and performance standards that apply to residential construction in unincorporated areas of counties that are considered economically distressed areas as defined by Section 15.001(11) of the Water Code and located within 50 miles of an international border are the standards established for colonia housing programs administered by the Texas Department of Housing and Community Affairs, unless a county commissioners court has adopted other building and performance standards authorized by statute.

(b) This section does not exempt a builder in an area described by Subsection (a) from the registration requirements imposed by this title, including the requirements of Sections 416.001 and 426.003.

(c) An allegation of a postconstruction defect in a construction project in an area described by Subsection (a) is subject to the state-sponsored inspection and dispute resolution process described by this subtitle.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 44, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 430.006. Statutory Warranties Exclusive.

The warranties established under this chapter supersede all implied warranties. The only warranties that exist for residential construction or residential improvements are:

(1) warranties created by this chapter;

(2) warranties created by other statutes expressly referring to residential construction or residential improvements;

(3) any express, written warranty acknowledged by the homeowner and the builder; and

(4) warranties that apply to an area described by Section 430.005(a) as described by that section.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003. Amended by Laws 2007, 80th Leg., c. 843, § 45, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 430.007. Waiver by Contract Prohibited.

A contract between a builder and a homeowner may not waive the limited statutory warranties and building and performance standards adopted under this chapter or the warranty of habitability. This section does not prohibit a builder and a homeowner from contracting for more stringent warranties and building standards than are provided under this chapter.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 430.008. Approval of Third-Party Warranty Company. .

(a) The commission may approve as a third-party warranty company for the purposes of Section 430.009:

(1) an entity that has operated warranty programs in this state for at least five years;

(2) a company whose performance is insured by an insurance company authorized to engage in the business of insurance in this state; or

(3) an insurance company that insures the warranty obligations of a builder under the statutory warranty and building and performance standards.

(b) A third-party warranty company must submit to the commission an annual application and fee in the form and in the amount required by the commission by rule before the company may be approved under this section.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 430.009. Third-Party Warranty Company.

(a) A builder may elect to provide a warranty through a third-party warranty company approved by the commission.

(b) A transfer of liability under this section is not effective unless the company providing the warranty:

(1) agrees to perform the builder's warranty obligations under this chapter that are covered by the warranty provided through the third-party warranty company; and

(2) actually pays for or corrects any construction defect covered by the warranty provided through the third-party warranty company.

(c) A third-party warranty company approved by the commission has all of the obligations and rights of a builder under this subtitle regarding performance of repairs to remedy construction defects or payment of money instead of repair.

(d) The third-party warranty company may not assume liability for personal injuries or damage to personal property. A builder does not avoid liability for personal injuries or damage to personal property for which the builder would otherwise be liable under law by providing a written warranty from a third-party warranty company.

(e) A company that administers a warranty for a third-party warranty company is not liable for any damages resulting from a construction defect or from repairs covered under the warranty.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 430.010. Minimum Standards for Determination of Defect.

A third-party warranty company shall use defect inspection procedures substantially similar to the procedures adopted by the commission under this subtitle. A warranty company may adopt warranty standards in addition to the standards adopted by the commission. A third-party warranty company may not reduce the limited statutory warranty and building and performance standards, except that a third-party warranty company shall not be required to provide a warranty of habitability.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 430.011. Effect of Subtitle on Other Rights and Obligations.

(a) Except as permitted by this subtitle, an express, written contract between a homeowner and a builder may not limit the obligations of a builder under this title.

(b) After the issuance of written findings of fact and a ruling on an appeal under Chapter 429, a homeowner may bring a cause of action against a builder or third-party warranty company for breach of a limited statutory warranty adopted by the commission under this subtitle. In an action brought under this subtitle, the homeowner may recover only those damages provided by Section 27.004.

(c) Breach of a limited statutory warranty adopted by the commission or breach of the statutory warranty of habitability shall not, by itself, constitute a violation of the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code).

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

CHAPTER 431. ENERGY-EFFICIENT BUILDING ACCREDITATION PROGRAM

§ 431.001. Energy-Efficient Building Accreditation Program.

(a) In this section, "National Housing Act" means Section 203(b), (i), or (k) of the National Housing Act (12 U.S.C. Sections 1709(b), (i), and (k)).

(b) The commission, in consultation with the Energy Systems Laboratory at the Texas Engineering Experiment Station of The Texas A&M University System, the Texas Commission on Environmental Quality, and an advisory committee appointed by the commission, may establish an energy-efficient building accreditation program for buildings that exceed the building energy performance standards under Section 388.003, Health and Safety Code, by 15 percent or more.

(c) If the commission establishes a program under this chapter, the commission, in consultation with the Energy Systems Laboratory, shall update the program on or before December 1 of each even-numbered year using the best available energy-efficient building practices.

(d) If the commission establishes a program under this chapter, the program must include a checklist system to produce an energy-efficient building scorecard to help:

(1) home buyers compare potential homes and, by providing a copy of the completed scorecard to a mortgage lender, qualify for energy-efficient mortgages under the National Housing Act; and

(2) communities qualify for emissions reduction credits by adopting codes that meet or exceed the energy-efficient building or energy performance standards established under Chapter 388, Health and Safety Code.

Added by Laws 2007, 80th Leg., c. 843, § 46, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 431.002. Public Information Program.

The commission may establish a public information program to inform homeowners, sellers, buyers, and others regarding energy-efficient building ratings.

Added by Laws 2007, 80th Leg., c. 843, § 46, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 431.003. Measurement System for Reduction in Energy and Emissions.

If the commission establishes a program under this chapter, the Energy Systems Laboratory shall establish a system to measure the reduction in energy and emissions produced under the energy-efficient building program and report those savings to the commission.

Added by Laws 2007, 80th Leg., c. 843, § 46, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

§ 431.004. Certification Fee.

If the commission establishes a program under this chapter, the commission may set a certification fee sufficient to cover the cost of administering the program and pay for any education efforts conducted under this chapter.

Added by Laws 2007, 80th Leg., c. 843, § 46, eff. Sept. 1, 2007.

Section 53 of Acts 2007, 80th Leg., c. 843, provides:

(a) This Act applies only to the following that are filed on or after September 1, 2007:

(1) an application for a building permit or certification as a builder or a Texas Star Builder; or

(2) a request for state-sponsored inspection and dispute resolution.

(b) An application for a building permit or for certification as a builder or a Texas Star Builder or a request for state-sponsored inspection and dispute resolution that was filed before September 1, 2007, is governed by the law as it existed immediately before September 1, 2007, and that law is continued in effect for that purpose.

[Chapters 432-435 reserved for expansion]

SUBTITLE E. RESIDENTIAL CONSTRUCTION ARBITRATION

CHAPTER 436. GENERAL PROVISIONS

§ 436.001. Definitions.

In this subtitle:

(1) "Arbitration" means the procedure for dispute resolution described by Section 154.027, Civil Practice and Remedies Code.

(2) "Arbitration services provider" means a person that holds itself out as:

(A) managing, coordinating, or administering arbitrations;

(B) providing the services of arbitrators;

(C) making referrals or appointments to arbitrators; or

(D) providing lists of arbitrators.

(3) "Arbitrator" means a neutral individual who hears the claims of the parties to a dispute and renders a decision and who is:

(A) chosen by the parties to the dispute;

(B) appointed by a court; or

(C) selected by an arbitration services provider under an agreement of the parties or applicable rules.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 436.002. Applicability.

(a) This subtitle applies only to an arbitration of a dispute between a homeowner and a builder that involves an alleged construction defect.

(b) The requirements of this subtitle supplement Chapter 171, Civil Practice and Remedies Code, and the Federal Arbitration Act (9 U.S.C. Sections 1-16), as amended.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 436.003. Venue.

(a) An arbitration of a dispute involving a construction defect shall be conducted in the county in which the home alleged to contain the defect is located.

(b) The requirements of this section may not be waived by contract.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 436.004. Residential Construction Arbitration Task Force.

(a) The commission shall appoint a task force to study residential arbitrators and arbitration and advise the commission with respect to residential arbitrators and arbitration.

(b) The task force established under this section shall report to the 79th and 80th legislatures on the task force's recommendations and the effect of the implementation of those recommendations and of the provisions relating to arbitrators and arbitration in this subtitle. This subsection expires September 1, 2007.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

CHAPTER 437. REPORTING REQUIREMENTS

§ 437.001. Award Filing.

(a) If an arbitration award is filed in a court of competent jurisdiction in this state, the filer shall also, not later than the 30th day after the date an award is made in a residential construction arbitration, file with the commission a summary of the arbitration award that includes:

(1) the names of the parties to the dispute;

(2) the name of each party's attorney, if any;

(3) the name of the arbitrator who conducted the arbitration;

(4) the name of the arbitration services provider who administered the arbitration, if any;

(5) the fee charged to conduct the arbitration;

(6) a general statement of each issue in dispute;

(7) the arbitrator's determination, including the party that prevailed in each issue in dispute and the amount of any monetary award; and

(8) the date of the arbitrator's award.

(b) The commission shall establish rules to permit the voluntary filing of the information listed in Subsection (a) by any interested party. Any agreement prohibiting the disclosure of the information listed in Subsection (a) is unenforceable.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

§ 437.002. Enforcement.

(a) The commission by rule shall establish a fee not to exceed $100 for the late filing of an arbitration award and procedures for the collection of that fee.

(b) A party to an arbitration, or an attorney for a party, may report an overdue filing of an arbitration award to the commission.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

CHAPTER 438. ENFORCEABILITY OF RESIDENTIAL CONSTRUCTION ARBITRATION AWARDS

§ 438.001. Grounds for Vacating Award.

In addition to grounds for vacating an arbitration award under Section 171.088, Civil Practice and Remedies Code, on application of a party, a court shall vacate an award in a residential construction arbitration upon a showing of manifest disregard for Texas law.

Added by Acts 2003, 78th Leg., c. 458, § 1.01, eff. Sept. 1, 2003.

Section 1.02 of Acts 2003 78th Leg., ch, 458, provides:

(a) On or before December 1, 2003, the governor shall appoint the members of the Texas Residential Construction Commission in accordance with Title 16, Property Code, as added by this article. In making the initial appointments, the governor shall designate three members for terms expiring February 1, 2005, three members for terms expiring February 1, 2007, and three members for terms expiring February 1, 2009.

(b) The governor shall designate a person to perform the ministerial acts necessary for posting notice of and holding the first meeting of the commission.

(c) Section 406.006, Property Code, as added by this article, does not apply to a member of the Texas Residential Construction Commission until March 1, 2004.

Section 1.03 of Acts 2003, 78th Leg., c. 458, provides:

As soon as possible after appointment of its members, the Texas Residential Construction Commission shall adopt limited statutory warranties and building and performance standards under Section 430.001, Property Code, as added by this article. The warranties and building and performance standards adopted by the commission apply only to residential construction that begins on or after the effective date of those warranties and building and performance standards as determined by the commission. Residential construction that begins before the effective date of those warranties and building and performance standards is governed by the warranties and building and performance standards applicable to the construction before that date.

Section 1.04 of Acts 2003, 78th Leg., c. 458, provides:

On or before March 1, 2004, the Texas Residential Construction Commission shall begin requiring registration under Subtitle C, Title 16, Property Code, as added by this article.

Section 1.05 of Acts 2003, 78th Leg., c. 458, provides:

On January 1, 2004, the Texas Residential Construction Commission shall begin collecting, and builders are required to remit, the registration fee required by Section 426.003, Property Code, as added by this Act.

Section 1.06 of Acts 2003, 78th Leg., c. 458, provides:

On or before March 1, 2004, the Texas Residential Construction Commission shall begin certifying arbitrators under Chapter 417, Property Code, as added by this article.

Section 1.07 of Acts 2003, 78th Leg., c. 458, provides:

(a) Section 436.003, Property Code, as added by this article, governs the venue of an arbitration initiated on or after the effective date of this Act under a residential construction contract entered into before, on, or after the effective date of this Act, unless otherwise provided by a contract entered into before the effective date of this Act.

(b) Chapter 437, Property Code, as added by this article, applies only to an arbitration initiated on or after January 1, 2004. An arbitration initiated before that date is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(c) Chapter 438, Property Code, as added by this article, applies only to an arbitration initiated on or after the effective date of this Act. An arbitration initiated before that date is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

SUBTITLE F. INSPECTION OF NEW RESIDENTIAL CONSTRUCTION

CHAPTER 446. RESIDENTIAL CONSTRUCTION IN UNINCORPORATED AREAS AND OTHER AREAS NOT SUBJECT TO MUNICIPAL INSPECTIONS

§ 446.001. Applicability of Chapter.

This chapter applies to residential construction described by Sections 401.003(a)(1), (2), and (3) in an unincorporated area and to other areas not subject to municipal inspections.

Added by Acts 2007, 80th Leg., R.S., c. 843, § 47, eff. Sept. 1, 2007.

§ 446.002. Inspection Required.

(a) A builder shall have a new home or other improvement to which this chapter applies inspected by a fee inspector.

(b) For new construction subject to this chapter, there shall be a minimum of three inspections performed during the project to ensure code compliance, as applicable, at the following stages of construction:

(1) foundation, prior to the placement of concrete;

(2) framing and mechanical systems prior to being covered with sheetrock or other interior wall covering; and

(3) final inspection when the home is completed.

(c) For improvements other than new construction, the inspections described in Subsection (b) shall occur as necessary based upon the scope of work of the project.

(d) The builder shall be responsible for contracting with a fee inspector authorized by this chapter to perform the inspections required by this section.

(e) The commission may establish fees necessary to administer this subtitle. Such fees may be included in the home registration fee required by and described in Section 426.003(c).

Added by Acts 2007, 80th Leg., R.S., c. 843, § 47, eff. Sept. 1, 2007.

§ 446.003. Electronic Reporting System.

(a) The commission shall establish an Internet-based process to implement this subtitle. The process shall be password protected. Inspectors will use the Internet-based process to report the satisfactory completion of the inspections required by Section 446.002 to the commission. Upon reporting of satisfactory completion of the inspections, the commission shall issue a certificate of completion which shall be forwarded to the homeowner within 30 days following the registration of a home, as required by Section 426.003.

(b) The commission shall allow for an alternative reporting system for persons who demonstrate to the commission an inability to comply with the electronic reporting requirements of Subsection (a).

Added by Acts 2007, 80th Leg., R.S., c. 843, § 47, eff. Sept. 1, 2007.

§ 446.004. Fee Inspector.

A fee inspector must be either a licensed engineer, a registered architect, a professional inspector licensed by the Texas Real Estate Commission, or a third-party inspector qualified under Section 427.001(b). A builder may use the same or a different fee inspector for inspections required under this chapter.

Added by Acts 2007, 80th Leg., R.S., c. 843, § 47, eff. Sept. 1, 2007.

§ 446.005. Elements of Inspection.

The commission by rule shall:

(1) establish the elements of the construction that must be inspected under this chapter in accordance with Section 446.002 to ensure compliance with the applicable code provisions as required by Section 430.001(d); and

(2) prescribe the form and the manner in which the results of the inspection will be reported in writing.

Added by Acts 2007, 80th Leg., R.S., c. 843, § 47, eff. Sept. 1, 2007.

§ 446.006. Construction in Certain Areas: Eligibility For Certain Windstorm and Hail Insurance.

(a) This section applies only to construction in an unincorporated area in which windstorm and hail insurance coverage is available under Chapter 2210, Insurance Code.

(b) In addition to an inspection required pursuant to Section 446.002, the builder must, if required by statute, obtain a certificate of compliance for the structure in the manner provided under Section 2210.251, Insurance Code.

Added by Acts 2007, 80th Leg., R.S., c. 843, § 47, eff. Sept. 1, 2007.

5. Residential Contractors' Liability Act

a. *Pre-September 1, 2003 version*

Texas Property Code

TITLE 4. ACTIONS AND REMEDIES

CHAPTER 27. RESIDENTIAL CONSTRUCTION LIABILITY

§ 27.001. Definitions.

In this chapter:

(1) "Appurtenance" means any structure or recreational facility that is appurtenant to a residence but is not a part of the dwelling unit.

(2) "Construction defect" means a matter concerning the design, construction, or repair of a new residence, of an alteration of or repair or addition to an existing residence, or of an appurtenance to a residence, on which a person has a complaint against a contractor. The term may include any physical damage to the residence, any appurtenance, or the real property on which the residence and appurtenance are affixed proximately caused by a construction defect.

(3) "Contractor" means a person contracting with an owner for the construction or sale of a new residence constructed by that person or of an alteration of or addition to an existing residence, repair of a new or existing residence, or construction, sale, alteration, addition, or repair of an appurtenance to a new or existing residence. The term includes:

(A) an owner, officer, director, shareholder, partner, or employee of the contractor; and

(B) a risk retention group registered under Article 21.54, Insurance Code, that insures all or any part of a contractor's liability for the cost to repair a residential construction defect.

(4) "Residence" means a single-family house, duplex, triplex, or quadruplex or a unit in a multiunit residential structure in which title to the individual units is transferred to the owners under a condominium or cooperative system.

(5) "Structural failure" means actual physical damage to the load-bearing portion of a residence caused by a failure of the load-bearing portion.

Added by Acts 1989, 71st Leg., c. 1072, § 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., c. 797, §§ 1, 2 eff. Aug. 30, 1993; Acts 1999, 76th Leg., c. 189, § 1, eff. Sept. 1, 1999.

Section 9 of Acts 1999, 76th Leg. c. 189, provides:

(c) The change in law made by this Act apply only to a contract subject to Chapter 27, Property Code, as amended by this Act, that is entered into on or after the effective date of this Act. A contract subject to Chapter 27, Property Code, that was entered into before the effective date of this Act is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose.

§ 27.002. Application of Chapter.

(a) This chapter applies to:

(1) any action to recover damages resulting from a construction defect, except a claim for personal injury, survival, or wrongful death or for damage to goods; and

(2) any subsequent purchaser of a residence who files a claim against a contractor.

(b) To the extent of conflict between this chapter and any other law, including the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code), this chapter prevails.

(c) In this section:

(1) "Goods" does not include a residence.

(2) "Personal injury" does not include mental anguish.

Added by Acts 1989, 71st Leg., c. 1072, § 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., c. 797, § 3, eff. Aug. 30, 1993; Acts 1999, 76th Leg., c. 189, § 2, eff. Sept. 1, 1999.

Section 9 of Acts 1999, 76th Leg. c. 189, provides:

(c) The change in law made by this Act apply only to a contract subject to Chapter 27, Property Code, as amended by this Act, that is entered into on or after the effective date of this Act. A contract subject to Chapter 27, Property Code, that was entered into before the effective date of this Act is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose.

§ 27.003. Liability.

(a) In an action to recover damages resulting from a construction defect:

(1) a contractor is not liable for any percentage of damages caused by:

(A) negligence of a person other than the contractor or an agent, employee, or subcontractor of the contractor;

(B) failure of a person other than the contractor or an agent, employee, or subcontractor of the contractor to:

(i) take reasonable action to mitigate the damages; or

(ii) take reasonable action to maintain the residence;

(C) normal wear, tear, or deterioration;

(D) normal shrinkage due to drying or settlement of construction components within the tolerance of building standards; or

(E) the contractor's reliance on written information relating to the residence, appurtenance, or real property on which the residence and appurtenance are affixed that was obtained from official government records, if the written information was false or inaccurate and the contractor did not know and could not reasonably have known of the falsity or inaccuracy of the information, and

(2) if an assignee of the claimant of a person subrogated to the rights of a claimant fails to provide the written notice to the contractor required by Section 27.004(a) before performing repairs, the contractor is not liable for the cost of any repairs or any percentage of damages caused by repairs made to a construction defect at the request of an assignee of the claimant of a person subrogated to the rights of a claimant by a person other than the contractor or an agent, employee, or subcontractor of the contractor.

(b) Except as provided herein, this chapter does not limit or bar any other defense or defensive matter or other defensive cause of action applicable to an action to recover damages resulting from a construction defect.

Added by Acts 1989, 71st Leg., c. 1072, § 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., c. 797, § 4, eff. Aug. 30, 1993; Acts 1999, 76th Leg., c. 189, § 3, eff. Sept. 1, 1999.

Section 9 of Acts 1999, 76th Leg. c. 189, provides:

(c) The change in law made by this Act apply only to a contract subject to Chapter 27, Property Code, as amended by this Act, that is entered into on or after the effective date of this Act. A contract subject to Chapter 27, Property Code, that was entered into before the effective date of this Act is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose.

§ 27.0031. Frivolous Suit; Harassment.

A party who files a suit under this chapter that is groundless and brought in bad faith or for purposes of harassment is liable to the defendant for reasonable attorney's fees and court costs.

Added by Acts 1999, 76th Leg., c. 189, § 4, eff. Sept. 1, 1999.

Section 9 of Acts 1999, 76th Leg. c. 189, provides:

(c) The change in law made by this Act apply only to a contract subject to Chapter 27, Property Code, as amended by this Act, that is entered into on or after the effective date of this Act. A contract subject to Chapter 27, Property Code, that was entered into before the effective date of this Act is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose.

§ 27.004. Notice and Offer of Settlement.

(a) Before the 60th day preceding the date a claimant seeking from a contractor damages arising from a construction defect files suit, the claimant shall give written notice by certified mail, return receipt requested, to the contractor, at the contractor's last known address, specifying in reasonable detail the construction defects that are the subject of the complaint. On the request of the contractor, the claimant shall provide to the contractor any evidence that depicts the nature and cause of the defect and the nature and extent of repairs necessary to remedy the defect, including expert reports, photographs, and videotapes, if that evidence would be discoverable under Rule 192, Texas Rules of Civil Procedure. During the 35-day period after the date the contractor receives the notice, and on the contractor's written request, the contractor shall be given a reasonable opportunity to inspect and have inspected the property that is the subject of the complaint to determine the nature and cause of the defect and the nature and extent of repairs necessary to remedy the defect. The contractor may take reasonable steps to document the defect.

(b) Within the 45-day period after the date the contractor receives the notice, the contractor may make a written offer of settlement to the claimant. The offer must be sent to the claimant at the claimant's last known address or the claimant's attorney by certified mail, return receipt requested. The offer may include either an agreement by the contractor to repair or to have repaired by an independent contractor at the contractor's expense any construction defect described in the notice and shall describe in reasonable detail the kind of repairs which will be made. The

repairs shall be made within the 45-day period after the date the contractor receives written notice of acceptance of the settlement offer, unless completion is delayed by the claimant or by other events beyond the control of the contractor. For the purposes of this section, "independent contractor" means a person who is independent of the contractor and did not perform any of the work complained of in the claimant's notice. The claimant and the contractor may agree in writing to extend the periods described by this subsection.

(c) If the giving of the notice under Subsections (a) and (b) within the period prescribed by those subsections is impracticable because of the necessity of filing suit at an earlier date to prevent expiration of the statute of limitations or if the complaint is asserted as a counterclaim, that notice is not required. However, the suit or counterclaim shall specify in reasonable detail each construction defect that is the subject of the complaint, and the inspection provided for by Subsection (a) may be made during the 60-day period following the date of service of the suit or counterclaim on the contractor, and the offer provided for by Subsection (b) may be made within the 60-day period following the date of service. If, while a suit subject to this chapter is pending, the statute of limitations for the cause of action would have expired and it is determined that the provisions of Subsection (a) were not properly followed, the suit shall be abated for up to 75 days in order to allow compliance with Subsections (a) and (b).

(d) The court shall abate a suit governed by this chapter if Subsection (c) does not apply and the court, after a hearing, finds that the contractor is entitled to an abatement because the claimant failed to provide the notice or failed to give the contractor a reasonable opportunity to inspect the property as required by Subsection (a). A suit is automatically abated without the order of the court beginning on the 11th day after the date a plea in abatement is filed if the plea in abatement:

(1) is verified and alleges that the person against whom the suit is pending did not receive the written notice or was not given a reasonable opportunity to inspect the property as required by Subsection (a); and

(2) is not controverted by an affidavit filed by the claimant before the 11th day after the date on which the plea in abatement is filed.

(e) An abatement under Subsection (d) continues until the 60th day after the date that written notice is served in compliance with Subsection (a).

(f) If a claimant unreasonably rejects an offer made as provided by this section or does not permit the contractor or independent contractor a reasonable opportunity to repair the defect pursuant to an accepted offer of settlement, the claimant:

(1) may not recover an amount in excess of:

(A) the reasonable cost of the offered repairs which are necessary to cure the construction defect and which are the responsibility of the contractor; or

(B) the amount of a reasonable monetary settlement offer made under Subsection (n); or

(2) may recover only the amount of reasonable and necessary attorney's fees and costs incurred before the offer was rejected or considered rejected.

(g) If a contractor fails to make a reasonable offer under this section, or fails to make a reasonable attempt to complete the repairs specified in an accepted offer made under this section, or fails to complete, in a good and workmanlike manner, the repairs specified in an accepted offer made under this section, the limitations on damages and defenses to liability provided for in this section shall not apply.

(h) Except as provided by Subsection (f), in a suit subject to this chapter the claimant may recover only the following damages proximately caused by a construction defect:

(1) the reasonable cost of repairs necessary to cure any construction defect, including any reasonable and necessary engineering or consulting fees required to evaluate and cure the construction defect, that the contractor is responsible for repairing under this chapter;

(2) the reasonable expenses of temporary housing reasonably necessary during the repair period;

(3) the reduction in market value, if any, to the extent the reduction is due to structural failure; and

(4) reasonable and necessary attorney's fees.

(i) The total damages awarded in a suit subject to this chapter may not exceed the greater of the claimant's purchase price for the residence or the fair market value of the residence without the construction defect.

(j) An offer of settlement made under this section that is not accepted before the 25th day after the date the offer is received by the claimant is considered rejected.

(k) An affidavit certifying rejection of a settlement offer under this section may be filed with the court. The trier of fact shall determine the reasonableness of an offer of settlement made under this section.

(l) A contractor who makes or provides for repairs under this section is entitled to take reasonable steps to document the repair and to have it inspected.

(m) Notwithstanding Subsections (a), (b), and (c), a contractor who receives written notice of a construction defect resulting from work performed by the contractor or an agent, employee, or subcontractor of the contractor and creating

an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. If the contractor fails to cure the defect in a reasonable time, the owner of the residence may have the defect cured and may recover from the contractor the reasonable cost of the repairs plus attorney's fees and costs in addition to any other damages recoverable under any law not inconsistent with the provisions of this chapter.

(n) This section does not preclude a contractor from making a monetary settlement offer.

(o) The inspection and repair provisions of this chapter are in addition to any rights of inspection and settlement provided by common law or by another statute, including Section 17.505, Business & Commerce Code.

(p) If the contractor provides written notice of a claim for damages arising from a construction defect to a subcontractor, the contractor retains all rights of contribution from the subcontractor if the subcontractor settles the claim with the claimant.

Added by Acts 1989, 71st Leg., c. 1072, § 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., c. 797, § 5, eff. Aug. 30, 1993; Acts 1995, 74th Leg., c. 414, § 10, eff. Sept. 1, 1995; Acts 1999, 76th Leg., c. 189, § 5, eff. Sept. 1, 1999.

Section 9 of Acts 1999, 76th Leg. c. 189, provides:

(c) The change in law made by this Act apply only to a contract subject to Chapter 27, Property Code, as amended by this Act, that is entered into on or after the effective date of this Act. A contract subject to Chapter 27, Property Code, that was entered into before the effective date of this Act is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose.

§ 27.0041. Mediation.

(a) If a claimant files suit seeking from a contractor damages arising from a construction defect in an amount greater than $7,500, the claimant or contractor may file a motion to compel mediation of the dispute. The motion must be filed not later than the 90th day after the date the suit is filed.

(b) Not later than the 30th day after the date a motion is filed under Subsection (a), the court shall order the parties to mediate the dispute. If the parties cannot agree on the appointment of a mediator, the court shall appoint the mediator.

(c) The court shall order the parties to begin mediation of the dispute not later than the 30th day after the date the court enters its order under Subsection (b) unless the parties agree otherwise or the court determines additional time is required. If the court determines that additional time is required, the court may order the parties to begin mediation of the dispute not later than the 60th day after the date the court enters its order under Subsection (b).

(d) Unless each party who has appeared in a suit filed under this chapter agrees otherwise, each party shall participate in the mediation and contribute equally to the cost of the mediation.

(e) Section 154.023, Civil Practice and Remedies Code, and Subchapters C and D, Chapter 154, Civil Practice and Remedies Code, apply to a mediation under this section to the extent those laws do not conflict with this section.

Added by Acts 1999, 76th Leg., c. 189, § 6, eff. Sept. 1, 1999.

Section 9 of Acts 1999, 76th Leg. c. 189, provides:

(c) The change in law made by this Act apply only to a contract subject to Chapter 27, Property Code, as amended by this Act, that is entered into on or after the effective date of this Act. A contract subject to Chapter 27, Property Code, that was entered into before the effective date of this Act is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose.

§ 27.005. Limitations on Effect of Chapter.

This chapter does not create a cause of action or derivative liability or extend a limitations period.

Added by Acts 1989, 71st Leg., c. 1072, § 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., c. 189, § 7, eff. Sept. 1, 1999.

Section 9 of Acts 1999, 76th Leg. c. 189, provides:

(c) The change in law made by this Act apply only to a contract subject to Chapter 27, Property Code, as amended by this Act, that is entered into on or after the effective date of this Act. A contract subject to Chapter 27, Property Code, that was entered into before the effective date of this Act is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose.

§ 27.006. Causation.

In an action to recover damages resulting from a construction defect, the claimant must prove that the damages were proximately caused by the construction defect.

Added by Acts 1993, 73rd Leg., c. 797, § 6, eff. Aug. 30, 1993.

§ 27.007. Disclosure Statement Required.

(a) A written contract subject to this chapter must contain next to the signature lines in the contract a notice printed or typed in 10-point boldface type or the computer equivalent that reads substantially similar to the following:

"This contract is subject to Chapter 27, Property Code. The provisions of that chapter may affect your right to recover damages arising from the performance of this contract. If you have a complaint concerning a construction defect arising from the performance of this contract and that defect has not been corrected through normal warranty service, you must provide notice regarding the defect to the contractor by certified mail, return receipt requested, not later than the 60th day before the date you file suit to recover damages in a court of law. The notice must refer to Chapter 27, Property Code, and must describe the construction defect. If requested by the contractor, you must provide the contractor an opportunity to inspect and cure the defect as provided by Section 27.004, Property Code."

(b) If a contract does not contain the notice required by this section, the claimant may recover from the contractor a civil penalty of $500 in addition to any other remedy provided by this chapter.

Added by Acts 1999, 76th Leg., c. 189, § 8, eff. Sept. 1, 2000.

Sections 9 (b), (c) of Acts 1999, 76th Leg. c. 189, provides:

(b) Section 27.007, Property Code, as added by this Act, takes effect September 1, 2000.

(c) The change in law made by this Act apply only to a contract subject to Chapter 27, Property Code, as amended by this Act, that is entered into on or after the effective date of this Act. A contract subject to Chapter 27, Property Code, that was entered into before the effective date of this Act is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose.

b. Current version

Texas Property Code

TITLE 4. ACTIONS AND REMEDIES

CHAPTER 27. RESIDENTIAL CONSTRUCTION LIABILITY

§ 27.001. Definitions.

[Amendments by Acts 2023, 88th Leg., R.S., HB 2022, § 1, eff. Sept. 1, 2023.]

In this chapter:

(1) “Action” means a court or judicial proceeding or an arbitration.

(2) “Appurtenance” means any garage, outbuilding, retaining wall, or other structure or recreational facility that is constructed by a contractor in connection with the construction or alteration of a residence, regardless of whether it is attached to or a part of the dwelling unit.

(3) “Construction defect” means a deficiency in the design, construction, or repair of a new residence, of an alteration of or repair or addition to an existing residence, or of an appurtenance to a residence, on which a person has a complaint against a contractor.

(4) ”Contractor”:

(A) means:

(i) a builder contracting with an owner for the construction or repair of a new residence, for the repair or alteration of or an addition to an existing residence, or for the construction, sale, alteration, addition, or repair of an appurtenance to a new or existing residence;

(ii) any person contracting for the sale or construction of a new residence constructed by or on behalf of that person; or

(iii) a person contracting with an owner or the developer of a condominium or other housing project for the construction or sale of one or more [a] new residences, for an alteration of or an addition to an existing residence, for repair of a new or existing residence, or for the construction, sale, alteration, addition, or repair of an appurtenance to a new or existing residence; and

(B) includes:

(i) an owner, officer, director, shareholder, partner, or employee of the contractor; and

(ii) a risk retention group registered under Chapter 2201, Insurance Code, that insures all or any part of a contractor’s liability for the cost to repair a residential construction defect.

(5) “Economic damages” means compensatory damages for pecuniary loss proximately caused by a construction defect. The term does not include exemplary damages or damages for bodily or personal injury, physical pain and mental anguish, loss of consortium, disfigurement, physical impairment, or loss of companionship and society.

(6) “Residence” means the real property and improvements for a detached one-family or two-family dwelling, a townhouse not more than three stories above grade plane in height with a separate means of egress, an accessory structure not more than three stories above grade plane in height, or a duplex, triplex, or quadruplex or a unit and the common elements in a multiunit residential structure in which the individual units are sold to the owners under a condominium or cooperative system.

(7) “Structural failure” means actual physical damage to the load-bearing portion of a residence caused by a failure of the load-bearing portion.

(8) “Developer of a condominium” means a declarant, as defined by Section 82.003, of a condominium consisting of one or more residences.

(9) "Townhouse" means a single-family dwelling unit constructed in a group of three or more attached units in which each unit extends from foundation to roof and with a yard or public way on not less than two sides.

[Amendments by Acts 2023, 88th Leg., R.S., SB 1768, §§ 1, 13(2), eff. May 29, 2023.]

In this chapter:

(1) “Action” means a court or judicial proceeding or an arbitration.

(2) "Appurtenance" means any structure or recreational facility that is appurtenant to a residence but is not a part of the dwelling unit.

(3) Repealed by Acts 2023, 88th Leg., R.S., SB 1768, § 13(2), eff. May 29, 2023.

(4) "Construction defect" means a matter concerning the design, construction, or repair of a new residence, of an alteration of or repair or addition to an existing residence, or of an appurtenance to a residence, on which a person has a complaint against a contractor. The term may include any physical damage to the residence, any appurtenance, or the real property on which the residence and appurtenance are affixed proximately caused by a construction defect.

(5) "Contractor":

(A) means:

(i) a builder contracting with an owner for the construction or repair of a new residence, for the repair or alteration of or an addition to an existing residence, or for the construction, sale, alteration, addition, or repair of an appurtenance to a new or existing residence;

(ii) any person contracting with a purchaser for the sale of a new residence constructed by or on behalf of that person; or

(iii) a person contracting with an owner or the developer of a condominium for the construction of a new residence, for an alteration of or an addition to an existing residence, for repair of a new or existing residence, or for the construction, sale, alteration, addition, or repair of an appurtenance to a new or existing residence; and

(B) includes:

(i) an owner, officer, director, shareholder, partner, or employee of the contractor; and

(ii) a risk retention group registered under Chapter 2201, Insurance Code, that insures all or any part of a contractor's liability for the cost to repair a residential construction defect.

(6) "Economic damages" means compensatory damages for pecuniary loss proximately caused by a construction defect. The term does not include exemplary damages or damages for physical pain and mental anguish, loss of consortium, disfigurement, physical impairment, or loss of companionship and society.

(7) "Residence" means the real property and improvements for a single-family house, duplex, triplex, or quadruplex or a unit and the common elements in a multiunit residential structure in which title to the individual units is transferred to the owners under a condominium or cooperative system.

(8) "Structural failure" means actual physical damage to the load-bearing portion of a residence caused by a failure of the load-bearing portion.

(9) Repealed by Acts 2023, 88th Leg., R.S., SB 1768, § 13(2), eff. May 29, 2023.

(10) "Developer of a condominium" means a declarant, as defined by Section 82.003, of a condominium consisting of one or more residences.

Added by Acts 1989, 71st Leg., c. 1072, § 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., c. 797, §§ 1, 2 eff. Aug. 30, 1993; Acts 1999, 76th Leg., c. 189, § 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., c. 458, § 2.01, eff. Sept. 1, 2003; Acts 2007, 80th Leg., c. 750, § 1, eff. Sept. 1, 2007; Acts 2023, 88th Leg., R.S., SB 1768, §§ 1, 13(2), eff. May 29, 2023; Acts 2023, 88th Leg., R.S., HB 2022, § 1, eff. Sept. 1, 2023.

Section 3 of Acts 2007, 80th Leg., c. 750, provides:

The changes in law made by this Act apply only to a contract that was entered into on or after the effective date of this Act. A contract that was entered into before the effective date of this Act is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose.

Section 9 of Acts 2023, 88th Leg., R.S., HB 2022, provides:

The changes in law made by this Act apply only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 27.002. Application of Chapter.

(a) This chapter applies to:

(1) any action to recover damages or other relief arising from a construction defect, except a claim for personal injury, survival, or wrongful death or for damage to goods; and

(2) any subsequent purchaser of a residence who files a claim against a contractor.

(b) To the extent of conflict between this chapter and any other law, including the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code) or a common law cause of action, this chapter prevails.

(c) In this section:

(1) "Goods" does not include a residence.

(2) "Personal injury" does not include mental anguish.

(d) This chapter does not apply to an action to recover damages that arise from:

(1) a violation of Section 27.01, Business & Commerce Code;

(2) a contractor's wrongful abandonment of an improvement project before completion; or

(3) a violation of Chapter 162.

Added by Acts 1989, 71st Leg., c. 1072, § 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., c. 797, § 3, eff. Aug. 30, 1993; Acts 1999, 76th Leg., c. 189, § 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., c. 458, § 2.02, eff. Sept. 1, 2003; Acts 2007, 80th Leg., c. 843, § 2, eff. Sept. 1, 2007; Acts 2023, 88th Leg., R.S., SB 1768, § 2, eff. May 29, 2023; Acts 2023, 88th Leg., R.S., HB 2022, § 2, eff. Sept. 1, 2023.

Section 2.07 of Acts 2003, 78th Leg., c. 458, provides:

(a) The changes in law made by this article to Sections 27.002, 27.003, and 27.004, Property Code, apply only to a cause of action that accrues on or after the effective date of the Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before that date, and that law in continued in effect for that purpose.

Section 3 of Acts 2007, 80th Leg., c. 750, provides:

The changes in law made by this Act apply only to a contract that was entered into on or after the effective date of this Act. A contract that was entered into before the effective date of this Act is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose.

Section 9 of Acts 2023, 88th Leg., R.S., HB 2022, provides:

The changes in law made by this Act apply only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that pur-pose.

§ 27.003. Liability.

[Amendments by Acts 2023, 88th Leg., R.S., HB 2022, § 3, eff. Sept. 1, 2023.]

(a) In an action subject to this chapter arising from a construction defect:

(1) a contractor is liable only to the extent a defective condition proximately causes:

(A) actual physical damage to the residence;

(B) an actual failure or lack of capability of a building component to perform its intended function or purpose; or

(C) a verifiable danger to the safety of the occupants of the residence;

(2) a contractor is not liable for damages caused by:

(A) negligence of a person other than the contractor or an agent, employee, or subcontractor of the contractor;

(B) failure of a person other than the contractor or an agent, employee, or subcontractor of the contractor to:

(i) mitigate the damages; [or]

(ii) maintain the residence; or

(iii) timely notify a contractor of a construction defect;

(C) normal wear, tear, or deterioration;

(D) normal cracking or shrinkage cracking due to drying or settlement of construction components within the tolerance of building standards; or

(E) the contractor's reliance on written information relating to the residence, appurtenance, or real property on which the residence and appurtenance are affixed that was obtained from official government records, if the written information was false, modified, or inaccurate and the contractor did not know and could not reasonably have known of the falsity, modification, or inaccuracy of the information; and

(3) if an assignee of the claimant or a person subrogated to the rights of a claimant fails to provide the contractor with the written notice and opportunity to inspect and offer to repair required by Section 27.004 before performing repairs, the contractor is not liable for the cost of any repairs or any percentage of damages caused by repairs made to a construction defect at the request of an assignee of the claimant or a person subrogated to the rights of a claimant by a person other than the contractor or an agent, employee, or subcontractor of the contractor.

(c) To maintain a claim of breach of a warranty of habitability, a claimant must establish that a construction defect:

(1) was latent at the time the residence was completed or title was conveyed to the original purchaser; and

(2) has rendered the residence unsuitable for its intended use as a home.

[Amendments by Acts 2023, 88th Leg., R.S., SB 1768, § 3, eff. May 29, 2023.]

(a) In an action to recover damages or other relief arising from a construction defect:

(1) a contractor is not liable for any percentage of damages caused by:

(A) negligence of a person other than the contractor or an agent, employee, or subcontractor of the contractor;

(B) failure of a person other than the contractor or an agent, employee, or subcontractor of the contractor to:

(i) take reasonable action to mitigate the damages; or

(ii) take reasonable action to maintain the residence;

(C) normal wear, tear, or deterioration;

(D) normal shrinkage due to drying or settlement of construction components within the tolerance of building standards; or

(E) the contractor's reliance on written information relating to the residence, appurtenance, or real property on which the residence and appurtenance are affixed that was obtained from official government records, if the written information was false or inaccurate and the contractor did not know and could not reasonably have known of the falsity or inaccuracy of the information, and

(2) if an assignee of the claimant of a person subrogated to the rights of a claimant fails to provide the contractor with the written notice and opportunity to inspect and offer to repair required by Section 27.004 before performing repairs, the contractor is not liable for the cost of any repairs or any percentage of damages caused by repairs made to a construction defect at the request of an assignee of the claimant of a person subrogated to the rights of a claimant by a person other than the contractor or an agent, employee, or subcontractor of the contractor.

(b) Except as provided by this chapter, this chapter does not limit or bar any other defense or defensive matter or other defensive cause of action applicable to an action to recover damages or other relief arising from a construction defect.

Added by Acts 1989, 71st Leg., c. 1072, § 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., c. 797, § 4, eff. Aug. 30, 1993; Acts 1999, 76th Leg., c. 189, § 3, eff. Sept. 1, 1999; Acts 2003, 78th Leg., c. 458, § 2.03, eff. Sept. 1, 2003; Acts 2023, 88th Leg., R.S., SB 1768, § 3, eff. May 29, 2023; Acts 2023, 88th Leg., R.S., HB 2022, § 3, eff. Sept. 1, 2023.

Section 2.07 Acts 2003, 78th Leg., c. 458, provides:

(a) The changes in law made by this article to Sections 27.002, 27.003, and 27.004, Property Code, apply only to a cause of action that accrues on or after the effective date of the Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before that date, and that law in continued in effect for that purpose.

Section 9 of Acts 2023, 88th Leg., R.S., HB 2022, provides:

The changes in law made by this Act apply only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 27.0031. Frivolous Suit; Harassment.

A party who files a suit under this chapter that is groundless and brought in bad faith or for purposes of harassment is liable to the defendant for reasonable attorney's fees and court costs.

Added by Acts 1999, 76th Leg., c. 189, § 4, eff. Sept. 1, 1999.

Section 9(c) of Acts 1999, 76th Leg. c. 189, provides:

(c) The change in law made by this Act apply only to a contract subject to Chapter 27, Property Code, as amended by this Act, that is entered into on or after the effective date of this Act. A contract subject to Chapter 27, Property Code, that was entered into before the effective date of this Act is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose.

§ 27.004. Notice and Offer of Settlement.

[Amendments by Acts 2023, 88th Leg., R.S., HB 2022, §§ 4, 8(1), eff. Sept. 1, 2023.]

Before the 60th day preceding the date a claimant seeking from a contractor damages or other relief arising from a construction defect initiates an action, the claimant shall give written notice by certified mail, return receipt requested, to the contractor, at the contractor's last known address, specifying in reasonable detail the construction defects that are the subject of the complaint. The claimant shall provide to the contractor any evidence that depicts the nature and cause of the defect and the nature and extent of repairs necessary to remedy the defect, including any expert reports, photographs, and video or audio recordings, if that evidence would be discoverable under Rule 192, Texas Rules of Civil Procedure. During the 35-day period after the date the contractor receives the notice, and on the contractor's written request, the contractor shall be given a reasonable opportunity to inspect and have inspected the property that is the subject of the complaint to determine the nature and cause of the defect and the nature and extent of repairs necessary to remedy the defect. To the extent requested, the contractor shall be given the opportunity to conduct up to three inspections during the 35-day period after the date the contractor receives the notice and during any extension of that inspection period provided by law or as otherwise agreed to by the parties. The contractor may take reasonable steps to document the defect

(b) Not later than the 60th day after the date the contractor receives the notice under this section, the contractor may make a written offer of settlement to the claimant. The offer must be sent to the claimant at the claimant's last known address or to the claimant's attorney by certified mail, return receipt requested. The offer may include either an agreement by the contractor to repair or to have repaired by an independent contractor partially or totally at the contractor's expense or at a reduced rate to the claimant any construction defect described in the notice and shall describe in reasonable detail the kind of repairs which will be made and the time for completion of the repairs if more than 60 days. The repairs shall be made not later than the 60th day after the date the contractor receives written notice of acceptance of the settlement offer, unless completion is delayed by the claimant or by other events beyond the control of the contractor. If a contractor makes a written offer of settlement that the claimant considers to be unreasonable:

(1) on or before the 25th day after the date the claimant receives the offer, the claimant shall advise the contractor in writing and in reasonable detail of the reasons why the claimant considers the offer unreasonable; and

(2) not later than the 10th day after the date the contractor receives notice under Subdivision (1), the contractor may make a supplemental written offer of settlement to the claimant by sending the offer to the claimant or the claimant's attorney.

(c) If the giving of the notice under Subsections (a) and (b) within the period prescribed by those subsections is impracticable because of the necessity of initiating an action at an earlier date to prevent expiration of the statute of limitations or if the complaint is asserted as a counterclaimthe notice is not required. However, the action or counterclaim shall specify in reasonable detail each construction defect that is the subject of the complaint. The inspection provided for by Subsection (a) may be made not later than the 75th day after the date of service of the suit, request for arbitration, or counterclaim on the contractor, and the offer provided for by Subsection (b) may be made not later than the 60th day after the date of service. If, while an action subject to this chapter is pending, the statute of limitations for the cause of action would have expired and it is determined that the provisions of Subsection (a) were not properly followed, the action shall be abated to allow compliance with Subsections (a) and (b).

(d) The court or arbitration tribunal shall abate an action governed by this chapter if Subsection (c) does not apply and the court or tribunal, after a hearing, finds that the contractor is entitled to abatement because the claimant failed to provide the notice or failed to give the contractor a reasonable opportunity to inspect the property as required by Subsection (a)[,] or failed to follow the procedures specified by Subsection (b). An action is automatically abated without the order of the court or tribunal beginning on the 11th day after the date a motion to abate is filed if the motion:

(1) is verified and alleges that the person against whom the action is pending did not receive the written notice required by Subsection (a), the person against whom the action is pending was not given a reasonable opportunity to inspect the property as required by Subsection (a), or the claimant failed to follow the procedures specified by Subsection (b); and

(2) is not controverted by an affidavit filed by the claimant before the 11th day after the date on which the motion to abate is filed.

(g) Except as provided by Subsection (e), in an action subject to this chapter the claimant may recover only the following economic damages proximately caused by a construction defect:

(1) the reasonable cost of repairs necessary to cure any construction defect;

(2) the reasonable and necessary cost for the replacement or repair of any damaged goods in the residence;

(3) reasonable and necessary engineering and consulting fees;

(4) the reasonable expenses of temporary housing reasonably necessary during the repair period;

(5) the reduction in current market value, if any, after the construction defect is repaired if the construction defect is a structural failure;

(6) reasonable and necessary attorney's fees; and

(7) reasonable and necessary arbitration filing fees and the claimant's share of arbitrator compensation.

(g-1) The court or arbitration tribunal may order that an offer made by the contractor after the time prescribed is considered timely for purposes of Subsection (b) or (c), as applicable, if the contractor is prejudiced in the contractor's opportunity to inspect as provided for by Subsection (a) or (c) or make an offer provided for by Subsection (b) or (c):

(1) because the claimant:

(A) failed to provide the contractor evidence available and in the claimant's possession, custody, or control at the time of the original notice depicting the nature and cause of the defect and the nature and extent of repairs necessary to remedy the defect, including reports, photographs, videos, or any other evidence; or

(B) amended a claim to add a new alleged defect; or

(2) due to events beyond the contractor's control.

(h) A homeowner and a contractor may agree in writing to extend any time period described in this chapter.

(i) An offer of settlement made under this section that is not accepted before the 25th day after the date the offer is received by the claimant is considered rejected.

(j) An affidavit certifying rejection of a settlement offer under this section may be filed with the court or arbitration tribunal. The trier of fact shall determine the reasonableness of a final offer of settlement made under this section.

(k) A contractor who makes or provides for repairs under this section is entitled to take reasonable steps to document the repair and to have it inspected.

(l) Repealed by Acts 2023, 88th Leg., R.S., HB 2022, § 8(1), eff. Sept. 1, 2023.

(m) Notwithstanding Subsections (a), (b), and (c), a contractor who receives written notice of a construction defect resulting from work performed by the contractor or an agent, employee, or subcontractor of the contractor and creating

an imminent threat to the health or safety of the inhabitants of the residence shall take reasonable steps to cure the defect as soon as practicable. If the contractor fails to cure the defect in a reasonable time, the owner of the residence may have the defect cured and may recover from the contractor the reasonable cost of the repairs plus attorney's fees and costs in addition to any other damages recoverable under any law not inconsistent with the provisions of this chapter.

(n) This section does not preclude a contractor from making a monetary settlement offer or an offer to purchase the residence.

(o) A notice and response letter prescribed by this chapter must be sent by certified mail, return receipt requested, to the last known address of the recipient. If previously disclosed in writing that the recipient of a notice or response letter is represented by an attorney, the letter shall be sent to the recipient's attorney in accordance with Rule 21a, Texas Rules of Civil Procedure.

(p) If the contractor provides written notice of a claim for damages arising from a construction defect to a subcontractor, the contractor retains all rights of contribution from the subcontractor if the contractor settles the claim with the claimant.

(q) If a contractor refuses to initiate repairs under an accepted offer made under this section, the limitations on damages provided for in this section shall not apply.

[Amendments by Acts 2023, 88th Leg., R.S., SB 1768, §§ 4, 13(3), eff. May 29, 2023.]

(a) Before the 60th day preceding the date a claimant seeking from a contractor damages or other relief arising from a construction defect initiates an action, the claimant shall give written notice by certified mail, return receipt requested, to the contractor, at the contractor's last known address, specifying in reasonable detail the construction defects that are the subject of the complaint. On the request of the contractor, the claimant shall provide to the contractor any evidence that depicts the nature and cause of the defect and the nature and extent of repairs necessary to remedy the defect, including expert reports, photographs, and videotapes, if that evidence would be discoverable under Rule 192, Texas Rules of Civil Procedure. During the 35-day period after the date the contractor receives the notice, and on the contractor's written request, the contractor shall be given a reasonable opportunity to inspect and have inspected the property that is the subject of the complaint to determine the nature and cause of the defect and the nature and extent of repairs necessary to remedy the defect. The contractor may take reasonable steps to document the defect.

(b) Not later than the 45th day after the contractor receives the notice under this section, the contractor may make a written offer of settlement to the claimant. The offer must be sent to the claimant at the claimant's last known address or the claimant's attorney by certified mail, return receipt requested. The offer may include either an agreement by the contractor to repair or to have repaired by an independent contractor partially or totally at the contractor's expense or at a reduced rate to the claimant any construction defect described in the notice and shall describe in reasonable detail the kind of repairs which will be made. The repairs shall be made not later than the 45th day after the date the contractor receives written notice of acceptance of the settlement offer, unless completion is delayed by the claimant or by other events beyond the control of the contractor. If a contractor makes a written offer of settlement that the claimant considers to be unreasonable:

(1) on or before the 25th day after the date the claimant receives the offer, the claimant shall advise the contractor in writing and in reasonable detail of the reasons why the claimant considers the offer unreasonable; and

(2) not later than the 10th day after the date the contractor receives notice under Subdivision (1), the contractor may make a supplemental written offer of settlement to the claimant by sending the offer to the claimant or the claimant's attorney.

(c) If the giving of the notice under Subsections (a) and (b) within the period prescribed by those subsections is impracticable because of the necessity of initiating an action at an earlier date to prevent expiration of the statute of limitations or if the complaint is asserted as a counterclaim, the notice is not required. However, the action or counterclaim shall specify in reasonable detail each construction defect that is the subject of the complaint. The inspection provided for by Subsection (a) may be made not later than the 75th day after the date of service of the suit, request for arbitration, or counterclaim on the contractor, and the offer provided for by Subsection (b) may be made not later than the 60th day after the date of service, if Subtitle D, Title 16, does not apply. If, while an action subject to this chapter is pending, the statute of limitations for the cause of action would have expired and it is determined that the provisions of Subsection (a) were not properly followed, the action shall be abated to allow compliance with Subsections (a) and (b).

(d) The court or arbitration tribunal shall abate an action governed by this chapter if Subsection (c) does not apply and the court or tribunal, after a hearing, finds that the contractor is entitled to abatement because the claimant failed to provide the notice or failed to give the contractor a reasonable opportunity to inspect the property as required by Subsection (a), or failed to follow the procedures specified by Subsection (b). An action is automatically abated

without the order of the court or tribunal beginning on the 11th day after the date a motion to abate is filed if the motion:

(1) is verified and alleges that the person against whom the action is pending did not receive the written notice required by Subsection (a), the person against whom the action is pending was not given a reasonable opportunity to inspect the property as required by Subsection (a), or the claimant failed to follow the procedures specified by Subsection (b); and

(2) is not controverted by an affidavit filed by the claimant before the 11th day after the date on which the motion to abate is filed.

(e) If a claimant rejects a reasonable offer made under Subsection (b) or does not permit the contractor or independent contractor a reasonable opportunity to inspect or repair the defect pursuant to an accepted offer of settlement, the claimant:

(1) may not recover an amount in excess of:

(A) the fair market value of the contractor's last offer of settlement under Subsection (b); or

(B) the amount of a reasonable monetary settlement or purchase offer made under Subsection (n); and

(2) may recover only the amount of reasonable and necessary costs and attorney's fees as prescribed by Rule 1.04, Texas Disciplinary Rules of Professional Conduct, incurred before the offer was rejected or considered rejected.

(f) If a contractor fails to make a reasonable offer under Subsection (b), the limitations on damages provided for in Subsection (e) shall not apply

(g) Except as provided by Subsection (e), in an action subject to this chapter the claimant may recover only the following economic damages proximately caused by a construction defect:

(1) the reasonable cost of repairs necessary to cure any construction defect;

(2) the reasonable and necessary cost for the replacement or repair of any damaged goods in the residence;

(3) reasonable and necessary engineering and consulting fees;

(4) the reasonable expenses of temporary housing reasonably necessary during the repair period;

(5) the reduction in current market value, if any, after the construction defect is repaired if the construction defect is a structural failure; and

(6) reasonable and necessary attorney's fees.

(h) A homeowner and a contractor may agree in writing to extend any time period described in this chapter.

(i) An offer of settlement made under this section that is not accepted before the 25th day after the date the offer is received by the claimant is considered rejected.

(j) An affidavit certifying rejection of a settlement offer under this section may be filed with the court or arbitration tribunal. The trier of fact shall determine the reasonableness of a final offer of settlement made under this section.

(k) A contractor who makes or provides for repairs under this section is entitled to take reasonable steps to document the repair and to have it inspected.

(l) Repealed by Acts 2023, 88th Leg., R.S., SB 1768, § 13(3), eff. May 29, 2023

(n) This section does not preclude a contractor from making a monetary settlement offer or an offer to purchase the residence.

(o) A notice and response letter prescribed by this chapter must be sent by certified mail, return receipt requested, to the last known address of the recipient. If previously disclosed in writing that the recipient of a notice or response letter is represented by an attorney, the letter shall be sent to the recipient's attorney in accordance with Rule 21a, Texas Rules of Civil Procedure.

(p) If the contractor provides written notice of a claim for damages arising from a construction defect to a subcontractor, the contractor retains all rights of contribution from the subcontractor if the subcontractor settles the claim with the claimant.

(q) If a contractor refuses to initiate repairs under an accepted offer made under this section, the limitations on damages provided for in this section shall not apply.

Added by Acts 1989, 71st Leg., c. 1072, § 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., c. 797, § 5, eff. Aug. 30, 1993; Acts 1995, 74th Leg., c. 414, § 10, eff. Sept. 1, 1995; Acts 1999, 76th Leg., c. 189, § 5, eff. Sept. 1, 1999; Acts 2003, 78th Leg., c. 458, § 2.04, eff. Sept. 1, 2003; Acts 2007, 80th Leg., c. 843, § 3, eff. Sept. 1, 2007; Acts 2023, 88th Leg., R.S., SB 1768, §§ 4, 13(3), eff. May 29, 2023; Acts 2023, 88th Leg., R.S., HB 2022, §§ 4, 8(1), eff. Sept. 1, 2023.

Section 2.07 of Acts 2003, 78th Leg., c. 458, provides:

(a) The changes in law made by this article to Sections 27.002, 27.003, and 27.004, Property Code, apply only to a cause of action that accrues on or after the effective date of the Act. A cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before that date, and that law in continued in effect for that purpose.

Section 3 of Acts 2007, 80th Leg., c. 750, provides:

The changes in law made by this Act apply only to a contract that was entered into on or after the effective date of this Act. A contract that was entered into before the effective date of this Act is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose.

Section 9 of Acts 2023, 88th Leg., R.S., HB 2022, provides:

The changes in law made by this Act apply only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that pur-pose.

§ 27.0041. Mediation.

(a) If a claimant files suit seeking from a contractor damages arising from a construction defect in an amount greater than $7,500, the claimant or contractor may file a motion to compel mediation of the dispute. The motion must be filed not later than the 90th day after the date the suit is filed.

(b) Not later than the 30th day after the date a motion is filed under Subsection (a), the court shall order the parties to mediate the dispute. If the parties cannot agree on the appointment of a mediator, the court shall appoint the mediator.

(c) The court shall order the parties to begin mediation of the dispute not later than the 30th day after the date the court enters its order under Subsection (b) unless the parties agree otherwise or the court determines additional time is required. If the court determines that additional time is required, the court may order the parties to begin mediation of the dispute not later than the 60th day after the date the court enters its order under Subsection (b).

(d) Unless each party who has appeared in a suit filed under this chapter agrees otherwise, each party shall participate in the mediation and contribute equally to the cost of the mediation.

(e) Section 154.023, Civil Practice and Remedies Code, and Subchapters C and D, Chapter 154, Civil Practice and Remedies Code, apply to a mediation under this section to the extent those laws do not conflict with this section.

Added by Acts 1999, 76th Leg., c. 189, § 6, eff. Sept. 1, 1999.

Section 9(c) of Acts 1999, 76th Leg. c. 189, provides:

(c) The change in law made by this Act apply only to a contract subject to Chapter 27, Property Code, as amended by this Act, that is entered into on or after the effective date of this Act. A contract subject to Chapter 27, Property Code, that was entered into before the effective date of this Act is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose.

§ 27.0042. Conditional Sale to Builder.

[Amendments by Acts 2023, 88th Leg., R.S., HB 2022, §§ 5, 8(2), eff. Sept. 1, 2023.]

(a) A written agreement between a contractor and a homeowner may provide that, if the reasonable cost of repairs necessary to repair a construction defect that is the responsibility of the contractor exceeds an agreed percentage of current fair market value of the residence, as determined without reference to the construction defects, then, in an action subject to this chapter, the contractor may elect as an alternative to the damages specified in Section 27.004(g) that the contractor who sold the residence to the homeowner purchase it.

(b) Repealed by Acts 2023, 88th Leg., R.S., HB 2022, § 8(2), eff. Sept. 1, 2023.

(c) If a contractor elects to purchase the residence under Subsection (a):

(1) the contractor shall pay the original purchase price of the residence and closing costs incurred by the homeowner and the costs of transferring title to the contractor under the election;

(2) the homeowner may recover:

(A) reasonable and necessary attorney's and expert fees as identified in Section 27.004(g);

(B) reimbursement for permanent improvements the owner made to the residence after the date the owner purchased the residence from the builder; and

(C) reasonable costs to move from the residence; and

(3) conditioned on the payment of the purchase price, the homeowner shall tender a special warranty deed to the contractor, free of all liens and claims to liens as of the date the title is transferred to the contractor, and without damage caused by the homeowner.

(d) An offer to purchase a claimant's home that complies with this section is considered reasonable absent clear and convincing evidence to the contrary.

[Amendments by Acts 2023, 88th Leg., R.S., SB 1768, § 5, eff. May 29, 2023.]

(a) A written agreement between a contractor and a homeowner may provide that, except as provided by Subsection (b), if the reasonable cost of repairs necessary to repair a construction defect that is the responsibility of the contractor exceeds an agreed percentage of current fair market value of the residence, as determined without reference to the construction defects, then, in an action subject to this chapter, the contractor may elect as an alternative to the damages specified in Section 27.004(g) that the contractor who sold the residence to the homeowner purchase it.

(b) A contractor may not elect to purchase the residence under Subsection (a) if the residence is more than five years old at the time an action is initiated.

(c) If a contractor elects to purchase the residence under Subsection (a):

(1) the contractor shall pay the original purchase price of the residence and closing costs incurred by the homeowner and the costs of transferring title to the contractor under the election;

(2) the homeowner may recover:

(A) reasonable and necessary attorney's and expert fees as identified in Section 27.004(g);

(B) reimbursement for permanent improvements the owner made to the residence after the date the owner purchased the residence from the builder; and

(C) reasonable costs to move from the residence; and

(3) conditioned on the payment of the purchase price, the homeowner shall tender a special warranty deed to the contractor, free of all liens and claims to liens as of the date the title is transferred to the contractor, and without damage caused by the homeowner.

(d) An offer to purchase a claimant's home that complies with this section is considered reasonable absent clear and convincing evidence to the contrary.

Added by Acts 2003, 78th Leg., c. 458, § 2.05, eff. Sept. 1, 2003. Amended by Acts 2023, 88th Leg., R.S., SB 1768, § 5, eff. May 29, 2023; Acts 2023, 88th Leg., R.S., HB 2022, §§ 5, 8(2), eff. Sept. 1, 2023.

Section 2.07 of Acts 2003, 78th Leg., c. 458, provides:

(b) Section 27.0042, Property Code, as added by this article and the changes in law made by this article to Section 27.007(a), Property Code, apply only with respect to a contract between a contractor and a homeowner that is entered into on or after the effective date of this Act. With respect to a contract that is entered into before the effective date of this Act, the law in effect immediately before the effective date applies, and that law is continued in effect for that purpose.

Section 9 of Acts 2023, 88th Leg., R.S., HB 2022, provides:

The changes in law made by this Act apply only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 27.005. Limitations on Effect of Chapter.

This chapter does not create a cause of action or derivative liability or extend a limitations period.

Added by Acts 1989, 71st Leg., c. 1072, § 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., c. 189, § 7, eff. Sept. 1, 1999.

Section 9 of Acts 1999, 76th Leg., c. 189, provides:

(c) The change in law made by this Act apply only to a contract subject to Chapter 27, Property Code, as amended by this Act, that is entered into on or after the effective date of this Act. A contract subject to Chapter 27, Property Code, that was entered into before the effective date of this Act is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose.

§ 27.006. Causation.

In an action to recover damages resulting from a construction defect, the claimant must prove that:

(1) the construction defect existed at the time of completion of the construction, alteration, or repair; and

(2) the damages were proximately caused by the construction defect.

Added by Acts 1993, 73rd Leg., c. 797, § 6, eff. Aug. 30, 1993. Amended by Acts 2023, 88th Leg., R.S., HB 2022, § 6, eff. Sept. 1, 2023.

§ 27.007. Disclosure Statement Required.

(a) A written contract subject to this chapter, other than a contract between a developer of a condominium and a contractor for the construction or repair of a residence or appurtenance to a residence in a condominium, must contain in the contract a notice printed or typed in 10-point boldface type or the computer equivalent that reads substantially similar to the following:

"This contract is subject to Chapter 27 of the Texas Property Code. The provisions of that chapter may affect your right to recover damages arising from a construction defect. If you have a complaint concerning a construction defect and that defect has not been corrected as may be required by law or by contract, you must provide the notice required by Chapter 27 of the Texas Property Code to the contractor by certified mail, return receipt requested, not later than the 60th day before the date you file suit to recover damages in a court of law or initiate arbitration. The notice must refer to Chapter 27 of the Texas Property Code and must describe the construction defect. If requested by the contractor, you must provide the contractor an opportunity to inspect and cure the defect as provided by Section 27.004 of the Texas Property Code."

(b) If a contract does not contain the notice required by this section, the claimant may recover from the contractor a civil penalty of $500 in addition to any other remedy provided by this chapter.

(c) Repealed by Acts 2023, 88th Leg., R.S., HB 2022, § 8(3), eff. Sept. 1, 2023; Acts 2023, 88th Leg., R.S., SB 1769, § 13(4), eff. May 29, 2023.

Added by Acts 1999, 76th Leg., c. 189, § 8, eff. Sept. 1, 2000. Amended by Acts 2003, 78th Leg., c. 458, § 2.06, eff. Sept. 1, 2003; Subsec. (a) amended by Acts 2007, 80th Leg., c. 750, § 2, eff. Sept. 1, 2007; Subsec. (c) added by Acts 2007, 80th Leg., c. 843, § 4, eff. Sept. 1, 2007; Subsection (c) repealed by Acts 2023, 88th Leg., R.S., SB 1768, § 13(4), eff. May 29, 2023 and Acts 2023, 88th Leg., R.S., HB 2022, § 8(3), eff. Sept. 1, 2023.

Section 2.07 of Acts 2003, 78th Leg., c. 458, provides:

(b) Section 27.0042, Property Code, as added by this article and the changes in law made by this article to Section 27.007(a), Property Code, apply only with respect to a contract between a contractor and a homeowner that is entered into on or after the effective date of this Act. With respect to a contract that is entered into before the effective date of this Act, the law in effect immediately before the effective date applies, and that law is continued in effect for that purpose.

Section 3 of Acts 2007, 80th Leg., c. 750, provides:

The changes in law made by this Act apply only to a contract that was entered into on or after the effective date of this Act. A contract that was entered into before the effective date of this Act is governed by the law in effect when the contract was entered into, and the former law is continued in effect for that purpose.

Section 9 of Acts 2023, 88th Leg., R.S., HB 2022, provides:

The changes in law made by this Act apply only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 27.008. Effect of Arbitration on Limitations Period.

The submission of an action subject to this chapter to arbitration has the same effect on the running of a limitations period as a filing in a court in this state.

Added by Acts 2023, 88th Leg., R.S., HB 2022, §7, eff. Sept. 1, 2023.

Section 9 of Acts 2023, 88th Leg., R.S., provides:

The changes in law made by this Act apply only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 27.009. No Waiver.

An attempted waiver of the provisions of this chapter in a contract subject to this chapter is void.

Added by Acts 2023, 88th Leg., R.S., HB 2022, §7, eff. Sept. 1, 2023.

Section 9 of Acts 2023, 88th Leg., R.S., provides:

The changes in law made by this Act apply only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

6. Lemon Law

Texas Occupations Code

TITLE 14. REGULATION OF MOTOR VEHICLES AND TRANSPORTATION

SUBTITLE A. REGULATIONS RELATED TO MOTOR VEHICLES

CHAPTER 2301. SALE OR LEASE OF MOTOR VEHICLES

[CONSUMER COMPLAINTS COVERED BY GENERAL WARRANTY AGREEMENTS]

SUBCHAPTER E. PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES

§ 2301.204. Complaint Concerning Vehicle Defect.

(a) The owner of a motor vehicle or the owner's designated agent may make a complaint concerning a defect in a motor vehicle that is covered by a manufacturer's, converter's, or distributor's warranty agreement applicable to the vehicle.

(b) The complaint must be made in writing to the applicable dealer, manufacturer, converter, or distributor and must specify each defect in the vehicle that is covered by the warranty.

(c) The owner may also invoke the board's jurisdiction by sending a copy of the complaint to the board.

(d) A hearing may be scheduled on any complaint made under this section that is not privately resolved between the owner and the dealer, manufacturer, converter, or distributor.

Added by Acts 2001, 77th Leg., c. 1421, § 5, eff. June 1, 2003.

[LEMON LAW]

SUBCHAPTER M. WARRANTIES: RIGHTS OF VEHICLE OWNERS

§ 2301.601. Definitions.

In this subchapter:

(1) "Impairment of market value" means a substantial loss in market value caused by a defect specific to a motor vehicle.

(2) "Owner" means a person who is entitled to enforce a manufacturer's warranty with respect to a motor vehicle, and who:

(A) purchased the motor vehicle at retail from a license holder [and is entitled to enforce a manufacturer's warranty with respect to the vehicle];

(B) is a lessor or lessee, other than a sublessee, who purchased or leased the vehicle from a license holder;

(C) is a resident of this state and has registered the vehicle in this state;

(D) purchased or leased the vehicle at retail and is an active duty member of the United States armed forces stationed in this state at the time a proceeding is commenced under this subchapter; or

(E) is:

(i) the transferee or assignee of a person described by Paragraphs (A)-(D); [Paragraph (A) or (B),]

(ii) a resident of this state; and

(iii) the person who registered the vehicle in this state.

Added by Acts 2001, 77th Leg., c. 1421, § 5, eff. June 1, 2003. Amended by Acts 2011, 82nd Leg., R.S., c. 1290, § 17, eff Sept. 1, 2011.

§ 2301.602. Duty of Board.

(a) The board shall cause a manufacturer, converter, or distributor to perform an obligation imposed by this subchapter.

(b) The board shall adopt rules for the enforcement and implementation of this subchapter.

Added by Acts 2001, 77th Leg., c. 1421, § 5, eff. June 1, 2003.

§ 2301.603. Conformance with Warranty Required.

(a) A manufacturer, converter, or distributor shall make repairs necessary to conform a new motor vehicle to an applicable manufacturer's, converter's, or distributor's express warranty.

(b) Subsection (a) applies after the expiration date of a warranty if:

(1) during the term of the warranty, the owner or the owner's agent reported the nonconformity to the manufacturer, converter, or distributor, or to a designated agent or franchised dealer of the manufacturer, converter, or distributor; or

(2) a rebuttable presumption relating to the vehicle is created under Section 2301.605.

(c) This subchapter does not limit a remedy available to an owner under a new motor vehicle warranty that extends beyond the provisions of this subchapter.

Added by Acts 2001, 77th Leg., c. 1421, § 5, eff. June 1, 2003.

§ 2301.604. Replacement of or Refund for Vehicle.

(a) A manufacturer, converter, or distributor that is unable to conform a motor vehicle to an applicable express warranty by repairing or correcting a defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle after a reasonable number of attempts shall reimburse the owner for reasonable incidental costs resulting from loss of use of the motor vehicle because of the nonconformity or defect and:

(1) replace the motor vehicle with a comparable motor vehicle; or

(2) accept return of the vehicle from the owner and refund to the owner the full purchase price, less a reasonable allowance for the owner's use of the vehicle, and any other allowances or refunds payable to the owner.

(b) A refund made for a vehicle for which there is a lienholder shall be made to the owner and lienholder in proportion to each person's interest in the vehicle.

(c) As necessary to promote the public interest, the board by rule:

(1) shall define the incidental costs that are eligible for reimbursement;

(2) shall specify other requirements necessary to determine an eligible cost; and

(3) may set a maximum amount that is eligible for reimbursement, either by type of eligible cost or by a total for all costs.

Added by Acts 2001, 77th Leg., c. 1421, § 5, eff. June 1, 2003.

§ 2301.605. Rebuttable Presumption—Reasonable Number of Attempts.

(a) A rebuttable presumption that a reasonable number of attempts have been undertaken to conform a motor vehicle to an applicable express warranty is established if:

(1) the same nonconformity continues to exist after being subject to repair four or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and:

(A) two of the repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and

(B) the other two repair attempts were made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the second repair attempt;

(2) the same nonconformity creates a serious safety hazard and continues to exist after causing the vehicle to have been subject to repair two or more times by the manufacturer, converter, or distributor or an authorized agent or franchised dealer of a manufacturer, converter, or distributor and:

(A) at least one attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, following the date of original delivery to the owner; and

(B) at least one other attempt to repair the nonconformity was made in the 12 months or 12,000 miles, whichever occurs first, immediately following the date of the first repair attempt; or

(3) a nonconformity still exists that substantially impairs the vehicle's use or market value and:

(A) the vehicle is out of service for repair for a cumulative total of 30 or more days in the 24 months or 24,000 miles, whichever occurs first, following the date of original delivery to the owner; and

(B) at least two repair attempts were made in the 12 months or 12,000 miles following the date of original delivery to an owner.

(b) A period or a number of days or miles described by Subsection (a) is extended for any period that repair services are not available to the owner because of:

(1) a war, invasion, or strike; or

(2) a fire, flood, or other natural disaster.

(c) The 30 days described by Subsection (a)(3)(A) do not include any period during which the manufacturer or distributor lends the owner a comparable motor vehicle while the owner's vehicle is being repaired by a franchised dealer.

Added by Acts 2001, 77th Leg., c. 1421, § 5, eff. June 1, 2003.

§ 2301.606. Conduct of Proceedings.

(a) Repealed by Acts 2013, 83rd Leg., R.S., c. 1135, § 140(1), eff. Sept. 1, 2013, and Ch. 1379 (H.B. 1692), Sec. 12, eff. January 1, 2014.

(b) In a hearing under this subchapter, a manufacturer, converter, or distributor may plead and prove as an affirmative defense to a remedy under this subchapter that a nonconformity:

(1) is the result of abuse, neglect, or unauthorized modification or alteration of the motor vehicle; or

(2) does not substantially impair the use or market value of the motor vehicle.

(c) An order issued under this subchapter may not require a manufacturer, converter, or distributor to make a refund or to replace a motor vehicle unless:

(1) the owner, a person on behalf of the owner, or the department has provided written notice of the alleged defect or nonconformity to the manufacturer, converter, or distributor; and

(2) the manufacturer, converter, or distributor has been given an opportunity to cure the alleged defect or nonconformity.

(d) A proceeding under this subchapter must be commenced not later than six months after the earliest of:

(1) the expiration date of the express warranty term; or

(2) the dates on which 24 months or 24,000 miles have passed since the date of original delivery of the motor vehicle to an owner.

Added by Acts 2001, 77th Leg., c. 1421, § 5, eff. June 1, 2003. Amended by Acts 2013, 83rd Leg., R.S., c. 1135, § 19, eff Sept. 1, 2013; Acts 2013, 83rd Leg., R.S., c. 1135, § 140(1), eff. Sept. 1, 2013; Acts 2013, 83rd Leg., R.S., c. 1379, § 3, eff. Jan 1, 2014; Acts 2013, 83rd Leg., R.S., c. 1379, § 12, eff. Jan. 1, 2014; Acts 2017 85th Leg. R.S. ch. 354, § 2, eff. Sept. 1, 2017.

§ 2301.607. Exhaustion of Administrative Remedies; Right to Sue.

(a) A refund or replacement under this subchapter because a motor vehicle is alleged to not conform to an express warranty is not available to the owner of the vehicle unless the owner has exhausted the administrative remedies provided by this subchapter.

(b) A refund or replacement under this subchapter is not available to a party in an action against a seller under Chapter 2 or 17, Business & Commerce Code, but is available in an action against a manufacturer, converter, or distributor brought under Chapter 17, Business & Commerce Code, after the owner has exhausted the administrative remedies provided by this subchapter.

(c) If a final order is not issued before the 151st day after the date a complaint is filed under this subchapter, the department shall provide written notice by certified mail to the complainant and to the manufacturer, converter, or distributor of the expiration of the 150-day period and of the complainant's right to file a civil action. The department shall extend the 150-day period if a delay is requested or caused by the person who filed the complaint.

(d) Notwithstanding a requirement of this section that administrative remedies be exhausted, a person who receives notice under Subsection (c) may file a civil action against any person named in the complaint.

(e) The failure to issue notice under Subsection (c) does not affect a person's right to bring an action under this chapter.

(f) This subchapter does not limit a right or remedy otherwise available to an owner under another law.

(g) A contractual provision that excludes or modifies a remedy provided by this subchapter is prohibited and is void as against public policy unless the exclusion or modification is made under a settlement agreement between the owner and the manufacturer, converter, or distributor.

Added by Acts 2001, 77th Leg., c. 1421, § 5, eff. June 1, 2003. Amended by Laws 2007, 80th Leg., R.S., c. 1403, § 1, eff. Sept. 1, 2007; Acts 2013, 83rd Leg., c. 1135, § 20, eff. Sept. 1, 2013; Acts 2013, 83rd Leg., R.S., c. 1379, § 4, eff Jan. 1, 2014; Acts 2017, 85th Leg., R.S., c. 354, § 3, Sept. 1, 2017.

§ 2301.608. Assessment of Costs for Replacement or Refund.

(a) An order issued under this subchapter must name the person responsible for paying the cost of any refund or replacement. A manufacturer, converter, or distributor may not cause a franchised dealer to directly or indirectly pay any money not specifically required by the order.

(b) If the final order requires a manufacturer, converter, or distributor to make a refund or replace a motor vehicle under this subchapter, the final order may require the franchised dealer to reimburse the owner, lienholder, manufacturer, converter, or distributor only for an item or option added to the vehicle by the dealer to the extent that the item or option contributed to the defect that served as the basis for the order.

(c) In a case involving a leased vehicle, the final order may terminate the lease and apportion allowances or refunds, including the reasonable allowance for use, between the lessee and lessor of the vehicle.

Added by Acts 2001, 77th Leg., c. 1421, § 5, eff. June 1, 2003. Amended by Acts 2013, 83rd Leg., R.S., Ch. 1135, § 21, eff. September 1, 2013; Acts 2013, 83rd Leg., R.S., c. 1379, § 5, eff Jan. 1, 2014. Reenacted and amended by Acts 2017, 85th Leg., R.S., Ch. 354, § 4, eff. September 1, 2017.

§ 2301.609. Judicial Review.

(a) A party to a proceeding under this subchapter that is affected by a final order related to the proceeding is entitled to judicial review of the order under the substantial evidence rule in a district court of Travis County.

(b) Judicial review is subject to Chapter 2001, Government Code, to the extent that chapter is not inconsistent with this chapter.

Added by Acts 2001, 77th Leg., c. 1421, § 5, eff. June 1, 2003. Amended by Acts 2013, 83rd Leg., R.S., c. 1135, § 22, eff Sept. 1, 2013; Acts 2013, 83rd Leg., R.S., c. 1379, § 6, eff. Jan. 1, 2014.

§ 2301.610. Disclosure Statement.

(a) A manufacturer, distributor, or converter that has been ordered to repurchase or replace a vehicle shall, through its franchised dealer, issue a disclosure statement stating that the vehicle was repurchased or replaced by the manufacturer, distributor, or converter under this subchapter. The statement must accompany the vehicle through the first retail purchase following the issuance of the statement and must include the board's toll-free telephone number that will enable the purchaser to obtain information about the condition or defect that was the basis of the order for repurchase or replacement.

(b) The manufacturer, distributor, or converter must restore the cause of the repurchase or replacement to factory specifications and issue a new 12-month, 12,000-mile warranty on the vehicle.

(c) The board shall adopt rules for the enforcement of this section.

(d) The department shall maintain a toll-free telephone number to provide information to a person who requests information about a condition or defect that was the basis for repurchase or replacement by an order issued under this chapter. The department shall maintain an effective method of providing information to a person who makes a request.

Added by Acts 2001, 77th Leg., c. 1421, § 5, eff. June 1, 2003. Amended by Acts 2013, 83rd Leg., R.S., c. 1135, § 23, eff Sept. 1, 2013; Acts 2013, 83rd Leg., R.S., c. 1379, § 7, eff Jan. 1, 2014; Acts 2015, 84th Leg., c. 1236, eff. Sept. 1, 2015.

§ 2301.611. Annual Report on Repurchased or Replaced Vehicles.

(a) The department shall publish an annual report on the motor vehicles ordered repurchased or replaced under this subchapter.

(b) The report must list the number of vehicles by brand name and model and include a brief description of the conditions or defects that caused the repurchase or replacement.

(c) The department shall make the report available to the public and may charge a reasonable fee to cover the cost of the report.

Added by Acts 2001, 77th Leg., c. 1421, § 5, eff. June 1, 2003. Amended by Acts 2011, 82nd Leg., R.S., c. 1290, § 18, eff Sept. 1, 2011.

§ 2301.612. Open Records Exception.

Information filed with the department under this subchapter is not a public record and is not subject to disclosure under Chapter 552, Government Code, until the complaint is resolved by a final order of the department.

Added by Acts 2021, 87th Leg., R.S., c. 276, § 5, eff. Sept. 1, 2021.

§ 2301.613. Notice to Buyer.

(a) The department shall prepare, publish, and distribute information concerning an owner's rights under this subchapter. The retail seller of a new motor vehicle shall conspicuously post a copy of the information in the area where its customers usually pay for repairs.

(b) The failure to provide notice as required by this section is a violation of this chapter.

Added by Acts 2001, 77th Leg., c. 1421, § 5, eff. June 1, 2003. Amended by Acts 2011, 82nd Leg., R.S., c. 1290, § 19, eff Sept. 1, 2011.

7. Fraud in Real Estate and Stock Transactions

Texas Business and Commerce Code

TITLE 3. INSOLVENCY, FRAUDULENT TRANSFERS, AND FRAUD

CHAPTER 27. FRAUD

§ 27.01. Fraud in Real Estate and Stock Transactions.

(a) Fraud in a transaction involving real estate or stock in a corporation or joint stock company consists of a

(1) false representation of a past or existing material fact, when the false representation is

(A) made to a person for the purpose of inducing that person to enter into a contract; and

(B) relied on by that person in entering into that contract; or

(2) false promise to do an act, when the false promise is

(A) material;

(B) made with the intention of not fulfilling it;

(C) made to a person for the purpose of inducing that person to enter into a contract; and

(D) relied on by that person in entering into that contract.

(b) A person who makes a false representation or false promise commits the fraud described in Subsection (a) of this section and is liable to the person defrauded for actual damages.

(c) A person who makes a false representation or false promise with actual awareness of the falsity thereof commits the fraud described in Subsection (a) of this section and is liable to the person defrauded for exemplary damages. Actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

(d) A person who (1) has actual awareness of the falsity of a representation or promise made by another person and (2) fails to disclose the falsity of the representation or promise to the person defrauded, and (3) benefits from the false representation or promise commits the fraud described in Subsection (a) of this section and is liable to the person defrauded for exemplary damages. Actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

(e) Any person who violates the provisions of this section shall be liable to the person defrauded for reasonable and necessary attorney's fees, expert witness fees, costs for copies of depositions, and costs of court.

Added by Acts 1967, 60th Leg., vol. 2, p. 2343, c. 785, § 1. Amended by Acts 1983, 68th Leg., p. 5208, c. 949, §§ 1, 2, eff. Sept. 1, 1983.

§ 27.015. Deceptive Trade Practice; Public Remedy.

(a) In this section, "consumer protection division" has the meaning assigned by Section 17.45.

(b) A violation of Section 27.01 that relates to the transfer of title to real estate is a false, misleading, or deceptive act or practice as defined by Section 17.46(b), and any public remedy under Subchapter E, Chapter 17, is available for a violation of that section.

(c) It is the duty of city attorneys to lend the consumer protection division any reasonable assistance requested in the commencement and prosecution of actions under this section.

(d) To the same extent and in the same manner a district or county attorney may institute or prosecute an action under this section, a city attorney may institute or prosecute an action under this section.

(e) If a district, county, or city attorney brings an action under this section, 75 percent of any penalty recovered shall be deposited in the general fund of the county or municipality in which the violation occurred.

(f) This section does not apply to an action to recover damages that is subject to Chapter 27, Property Code.

Added by Acts 2015, 84th Leg., c. 1083, eff. Sept. 1, 2015.

Section 2 of Acts 2015, 84th Leg., c. 1083, provides:

The changes in law made by this Act apply only to a violation of Section 27.01, Business & Commerce Code, that occurs on or after the effective date of this Act. A violation of Section 27.01, Business & Commerce Code, that occurs before the effective date of this Act is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose. For purposes of this section, a violation occurs before the effective date of this Act if any element of the violation occurs before that date.

§ 27.02. Goods or Services Paid for by Insurance Proceeds: Payment of Deductible Required.

(a) In this section, "property insurance policy" has the meaning assigned by Section 707.001, Insurance Code.

(b) A contract to provide a good or service that is reasonably expected to be paid wholly or partly from the proceeds of a claim under a property insurance policy and that has a contract price of $1,000 or more must contain the following notice in at least 12-point boldfaced type: "Texas law requires a person insured under a property insurance policy to pay any deductible applicable to a claim made under the policy. It is a violation of Texas law for a seller of goods or services who reasonably expects to be paid wholly or partly from the proceeds of a property insurance claim to knowingly allow the insured person to fail to pay, or assist the insured person's failure to pay, the applicable insurance deductible."

(c) A person who sells goods or services commits an offense if the person:

(1) advertises or promises to provide a good or service to an insured under a property insurance policy in a transaction in which:

(A) the good or service will be paid for by the insured from the proceeds of a property insurance claim; and

(B) the person selling the good or service will, without the insurer's consent:

(i) pay, waive, absorb, or otherwise decline to charge or collect the amount of the insured's deductible;

(ii) provide a rebate or credit in connection with the sale of the good or service that will offset all or part of the amount paid by the insured as a deductible; or

(iii) in any other manner assist the insured in avoiding monetary payment of the required insurance deductible; or

(2) provides a good or service to an insured under a property insurance policy knowing that the insured will pay for the good or service with the proceeds of a claim under the policy and, without the insurer's consent:

(A) pays, waives, absorbs, or otherwise declines to charge or collect the amount of the insured's deductible;

(B) provides a rebate or credit in connection with the sale of the good or service that offsets all or part of the amount paid by the insured as a deductible; or

(C) in any other manner assists the insured in avoiding monetary payment of the required insurance deductible.

(d) An offense under this section is a Class B misdemeanor.

Added by Acts 1989, 71st Leg., c. 898, § 1, eff. Sept. 1, 1989. Amended by Acts 2019, 86th Leg., c. 1099, § 2, eff. Sept. 1, 2019.

Section 3 of Acts 2019, 86th Leg., c. 1099, provides:

The changes in law made by this Act to Section 27.02, Business & Commerce Code, apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

Section 4 of Acts 2019, 86th Leg., c. 1099, provides:

Section 27.02(b), Business & Commerce Code, as amended by this Act, applies only to a contract entered into on or after the effective date of this Act.

[Chapters 28 to 32 reserved for expansion]

8. Proportionate Responsibility

a. *Pre-September 1, 2003 version*

Texas Civil Practice and Remedies Code

TITLE 2. TRIAL, JUDGMENT, AND APPEAL

SUBTITLE C. JUDGMENTS

CHAPTER 33. PROPORTIONATE RESPONSIBILITY

SUBCHAPTER A. PROPORTIONATE RESPONSIBILITY

§ 33.001. Proportionate Responsibility.

In an action to which this chapter applies, a claimant may not recover damages if his percentage of responsibility is greater than 50 percent.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.04, eff. Sept. 2, 1987; Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995.

§ 33.002. Applicability.

(a) Except as provided by Subsections (b) and (c), this chapter applies to any cause of action based on tort in which a defendant, settling person, or responsible third party is found responsible for a percentage of the harm for which relief is sought.

(b) Notwithstanding Subsection (a), a defendant who, with the specific intent to do harm to others, acts in concert with another person to engage in the conduct described in the following sections of the Penal Code shall be jointly and severally liable with such other person for the damages legally recoverable by the claimant that were proximately caused by such conduct:

(1) Section 19.02 (murder);
(2) Section 19.03 (capital murder);
(3) Section 20.04 (aggravated kidnapping);
(4) Section 22.02 (aggravated assault);
(5) Section 22.011 (sexual assault);
(6) Section 22.021 (aggravated sexual assault);
(7) Section 22.04 (injury to child, elderly individual, or disabled individual);
(8) Section 32.21 (forgery);
(9) Section 32.43 (commercial bribery);
(10)Section 32.45 (misapplication of fiduciary property or property of financial institution);
(11) Section 32.46 (securing execution of document by deception);
(12) Section 32.47 (fraudulent destruction, removal, or concealment of writing); or
(13) conduct described in Chapter 31 the punishment level for which is a felony of the third degree or higher.

(c) This chapter does not apply to:

(1) an action to collect workers' compensation benefits under the workers' compensation laws of this state (Subtitle A, Title 5, Labor Code) or actions against an employer for exemplary damages arising out of the death of an employee; or
(2) a claim for exemplary damages included in an action to which this chapter otherwise applies; or
(3) a cause of action for damages arising from the manufacture of methamphetamine as described by Chapter 99.

(d) Notwithstanding anything to the contrary stated in the sections of the Penal Code listed in Subsection (b), that subsection shall not apply unless the claimant proves the defendant acted or failed to act with intent to do harm as defined in this section.

(e) For purposes of this section, a person acts with intent to do harm with respect to the nature of the person's conduct and the result of the person's conduct when it is the person's conscious effort or desire to engage in such conduct for the purpose of doing substantial harm to others.

(f) Nothing in this section shall require a submission to the jury of a question regarding conduct by any party absent sufficient evidence to support the submission.

(g) The jury shall not be made aware through voir dire, introduction into evidence, instruction, or any other means that the conduct to which Subsection (b) applies is defined by the Penal Code.

(h) This chapter applies to an action brought under the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code).

Added by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.05, eff. Sept. 2, 1987. Amended by Acts 1989, 71st Leg., c. 380, § 4, eff. Sept. 1, 1989; Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., c. 414, § 17, eff. Sept. 1, 1995.; Acts 2001, 77th Leg., c. 643, § 2, eff. Sept. 1, 2001.

§ 33.003. Determination of Percentage of Responsibility.

The trier of fact, as to each cause of action asserted, shall determine the percentage of responsibility, stated in whole numbers, for the following persons with respect to each person's causing or contributing to cause in any way the harm for which recovery of damages is sought, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard, or by any combination of these:

(1) each claimant;

(2) each defendant;

(3) each settling person; and

(4) each responsible third party who has been joined under Section 33.004.

Added by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.06, eff. Sept. 2, 1987. Amended by Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995.

§ 33.004. Joinder of Responsible Third Parties.

(a) Except as provided in Subsections (d) and (e), prior to the expiration of limitations on the claimant's claim for damages against the defendant and on timely motion made for that purpose, a defendant may seek to join a responsible third party who has not been sued by the claimant.

(b) Nothing in this section shall affect the third-party practice as previously recognized in the rules and statutes of this state with regard to the assertion by a defendant of rights to contribution or indemnity. Nothing in this section shall affect the filing of cross-claims or counterclaims.

(c) A seller eligible for indemnity under Section 82.002 shall not be joined as a responsible third party under this section unless there is alleged against the seller a claim for relief based on the seller's negligence, intentional misconduct, or other act or omission, such as negligently modifying or altering a product, for which the seller is independently liable to the claimant.

(d) A third party claim by a defendant under this section may be filed, even though the claimant's action against the responsible third party would be barred by limitations, if the third party claim is filed on or before 30 days after the date the defendant's answer is required to be filed. This section shall not apply if the limitations period governing the claimant's action against the defendant joining the responsible third party is longer than the limitations period governing the claimant's action against the responsible third party.

(e) A claimant may join a responsible third party, even though such joinder would otherwise be barred by limitations, if the claimant seeks to join the responsible third party not later than 60 days after a third party claim is filed under Subsection (d).

Added by Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995.

[Sections 33.005 to 33.010 reserved for expansion]

SUBCHAPTER B. CONTRIBUTION

§ 33.011. Definitions.

In this chapter:

(1) "Claimant" means a party seeking recovery of damages pursuant to the provisions of Section 33.001, including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff seeking recovery of damages. In an action in which a party seeks recovery of damages for injury to another person, damage to the property of another person, death of another person, or other harm to another person, "claimant" includes both that other person and the party seeking recovery of damages pursuant to the provisions of Section 33.001.

(2) "Defendant" includes any party from whom a claimant seeks recovery of damages pursuant to the provisions of Section 33.001 at the time of the submission of the case to the trier of fact.

(3) "Liable defendant" means a defendant against whom a judgment can be entered for at least a portion of the damages awarded to the claimant.

(4) "Percentage of responsibility" means that percentage, stated in whole numbers, attributed by the trier of fact to each claimant, each defendant, each settling person, or each responsible third party with respect to causing or contributing to cause in any way, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity violative of the applicable legal standard, or by any combination of the foregoing, the personal injury, property damage, death, or other harm for which recovery of damages is sought.

(5) "Settling person" means a person who at the time of submission has paid or promised to pay money or anything of monetary value to a claimant at any time in consideration of potential liability pursuant to the provisions of Section 33.001 with respect to the personal injury, property damage, death, or other harm for which recovery of damages is sought.

(6)(A) "Responsible third party" means any person to whom all of the following apply:

(i) the court in which the action was filed could exercise jurisdiction over the person;

(ii) the person could have been, but was not, sued by the claimant; and

(iii) the person is or may be liable to the plaintiff for all or a part of the damages claimed against the named defendant or defendants.

(B) The term "responsible third party" does not include:

(i) the claimant's employer, if the employer maintained workers' compensation insurance coverage, as defined by Section 401.011(44), Labor Code, at the time of the act, event, or occurrence made the basis of the claimant's suit; or

(ii) a person or entity that is a debtor in bankruptcy proceedings or a person or entity against whom this claimant's claim has been discharged in bankruptcy, except to the extent that liability insurance or other source of third party funding may be available to pay claims asserted against the debtor.

(7) "Toxic tort" means a cause of action in tort or for breach of implied warranty under Chapter 2, Business & Commerce Code, for damages of any kind arising out of or caused by exposure to or the deposit, discharge, or release into the environment of hazardous chemicals, hazardous wastes, hazardous hydrocarbons, similarly harmful organic or mineral substances, hazardous radiation sources, and other similarly harmful substances, including torts arising out of exposure to such substances in the work place, but not including any "drug" as defined in Section 82.005(d)(2).

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.07, eff. Sept. 2, 1987; Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995.

§ 33.012. Amount of Recovery.

(a) If the claimant is not barred from recovery under Section 33.001, the court shall reduce the amount of damages to be recovered by the claimant with respect to a cause of action by a percentage equal to the claimant's percentage of responsibility.

(b) If the claimant has settled with one or more persons, the court shall further reduce the amount of damages to be recovered by the claimant with respect to a cause of action by a credit equal to one of the following, as elected in accordance with Section 33.014:

(1) the sum of the dollar amounts of all settlements; or

(2) a dollar amount equal to the sum of the following percentages of damages found by the trier of fact:

(A) 5 percent of those damages up to $200,000;

(B) 10 percent of those damages from $200,001 to $400,000;

(C) 15 percent of those damages from $400,001 to $500,000; and

(D) 20 percent of those damages greater than $500,000.

(c) The amount of damages recoverable by the claimant may only be reduced once by the credit provided for in Subsection (b).

(d) This section shall not apply to benefits paid by or on behalf of an employer to an employee pursuant to workers' compensation insurance coverage, as defined in Section 401.011(44), Labor Code, in effect at the time of the act, event, or occurrence made the basis of claimant's suit.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.08, eff. Sept. 2, 1987; Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995.

§ 33.013. Amount of Liability.

(a) Except as provided in Subsections (b) and (c), a liable defendant is liable to a claimant only for the percentage of the damages found by the trier of fact equal to that defendant's percentage of responsibility with respect to the personal injury, property damage, death, or other harm for which the damages are allowed.

(b) Notwithstanding Subsection (a), each liable defendant is, in addition to his liability under Subsection (a), jointly and severally liable for the damages recoverable by the claimant under Section 33.012 with respect to a cause of action if the percentage of responsibility attributed to the defendant is greater than 50 percent.

(c) Notwithstanding Subsections (a) and (b), each liable defendant is, in addition to his liability under Subsection (a), jointly and severally liable for the damages recoverable by the claimant under Section 33.012 with respect to a cause of action if the percentage of responsibility attributed to the defendant is equal to or greater than 15 percent and:

(1) the claimant's personal injury, property damage, death, or other harm is caused by the depositing, discharge, or release into the environment of any hazardous or harmful substance as described in Section 33.011(7); or

(2) the claimant's personal injury, property damage, death, or other harm resulted from a toxic tort.

(d) This section does not create a cause of action.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.09, eff. Sept. 2, 1987; Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995.

§ 33.014. Election of Credit for Settlements.

If a claimant has settled with one or more persons, an election must be made as to which dollar credit is to be applied under Section 33.012(b). This election shall be made by any defendant filing a written election before the issues of the action are submitted to the trier of fact and, when made, shall be binding on all defendants. If no defendant makes this election or if conflicting elections are made, all defendants are considered to have elected Subdivision (2) of Section 33.012(b).

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.10, eff. Sept. 2, 1987; Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995.

§ 33.015. Contribution.

(a) If a defendant who is jointly and severally liable under Section 33.013 pays a percentage of the damages for which the defendant is jointly and severally liable greater than his percentage of responsibility, that defendant has a right of contribution for the overpayment against each other liable defendant to the extent that the other liable defendant has not paid the percentage of the damages found by the trier of fact equal to that other defendant's percentage of responsibility.

(b) As among themselves, each of the defendants who is jointly and severally liable under Section 33.013 is liable for the damages recoverable by the claimant under Section 33.012 in proportion to his respective percentage of responsibility. If a defendant who is jointly and severally liable pays a larger proportion of those damages than is required by his percentage of responsibility, that defendant has a right of contribution for the overpayment against each other defendant with whom he is jointly and severally liable under Section 33.013 to the extent that the other defendant has not paid the proportion of those damages required by that other defendant's percentage of responsibility.

(c) If for any reason a liable defendant does not pay or contribute the portion of the damages required by his percentage of responsibility, the amount of the damages not paid or contributed by that defendant shall be paid or contributed by the remaining defendants who are jointly and severally liable for those damages. The additional amount to be paid or contributed by each of the defendants who is jointly and severally liable for those damages shall be in proportion to his respective percentage of responsibility.

(d) No defendant has a right of contribution against any settling person.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.11, eff. Sept. 2, 1987; Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995.

§ 33.016. Claim Against Contribution Defendant.

(a) In this section, "contribution defendant" means any defendant, counterdefendant, or third-party defendant from whom any party seeks contribution with respect to any portion of damages for which that party may be liable, but from whom the claimant seeks no relief at the time of submission.

(b) Each liable defendant is entitled to contribution from each person who is not a settling person and who is liable to the claimant for a percentage of responsibility but from whom the claimant seeks no relief at the time of submission. A party may assert this contribution right against any such person as a contribution defendant in the claimant's action.

(c) The trier of fact shall determine as a separate issue or finding of fact the percentage of responsibility with respect to each contribution defendant and these findings shall be solely for purposes of this section and Section 33.015 and not as a part of the percentages of responsibility determined under Section 33.003. Only the percentage of responsibility of each defendant and contribution defendant shall be included in this determination.

(d) As among liable defendants, including each defendant who is jointly and severally liable under Section 33.013, each contribution defendant's percentage of responsibility is to be included for all purposes of Section 33.015. The amount to be contributed by each contribution defendant pursuant to Section 33.015 shall be in proportion to his respective percentage of responsibility relative to the sum of percentages of responsibility of all liable defendants and liable contribution defendants.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.11A, eff. Sept. 2, 1987; Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995.

§ 33.017. Preservation of Existing Rights of Indemnity.

Nothing in this chapter shall be construed to affect any rights of indemnity granted to a seller eligible for indemnity by Chapter 82, the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), or any other statute, nor shall it affect rights of indemnity granted by contract or at common law. To the extent of any conflict between this chapter and any right to indemnification granted by Section 82.002, the Texas Motor Vehicle Commission Code (Article 4413(36), Vernon's Texas Civil Statutes), or any other statute, contract, or common law, those rights of indemnification shall prevail over the provisions of this chapter.

Added by Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995.

b. Current version

Texas Civil Practice and Remedies Code

TITLE 2. TRIAL, JUDGMENT, AND APPEAL

SUBTITLE C. JUDGMENTS

CHAPTER 33. PROPORTIONATE RESPONSIBILITY

SUBCHAPTER A. PROPORTIONATE RESPONSIBILITY

§ 33.001. Proportionate Responsibility.

In an action to which this chapter applies, a claimant may not recover damages if his percentage of responsibility is greater than 50 percent.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.04, eff. Sept. 2, 1987; Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995.

§ 33.002. Applicability.

(a) This chapter applies to

(1) any cause of action based on tort in which a defendant, settling person, or responsible third party is found responsible for a percentage of the harm for which relief is sought; or

(2) any action brought under the Deceptive Trade Practices—Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code) in which a defendant, settling person, or responsible third party is found responsible for a percentage of the harm for which relief is sought.

(c) This chapter does not apply to:

(1) an action to collect workers' compensation benefits under the workers' compensation laws of this state (Subtitle A, Title 5, Labor Code) or actions against an employer for exemplary damages arising out of the death of an employee; or

(2) a claim for exemplary damages included in an action to which this chapter otherwise applies; or

(3) a cause of action for damages arising from the manufacture of methamphetamine as described by Chapter 99.

(d) Repealed by Acts 2003, 78th Leg., c. 204, § 4.10, eff. Sept. 1, 2003.

(e) Repealed by Acts 2003, 78th Leg., c. 204, § 4.10, eff. Sept. 1, 2003.

(f) Repealed by Acts 2003, 78th Leg., c. 204, § 4.10, eff. Sept. 1, 2003.

(g) Repealed by Acts 2003, 78th Leg., c. 204, § 4.10, eff. Sept. 1, 2003.

(h) Repealed by Acts 2003, 78th Leg., c. 204, § 4.10, eff. Sept. 1, 2003.

Added by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.05, eff. Sept. 2, 1987. Amended by Acts 1989, 71st Leg., c. 380, § 4, eff. Sept. 1, 1989; Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., c. 414, § 17, eff. Sept. 1, 1995.; Acts 2001, 77th Leg., c. 643, § 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., c. 204, § 4.01, eff. Sept. 1, 2003.

Section 4.11 of Acts 2003, 78th Leg., c. 204, provides:

Nothing in the changes to Chapter 33, Civil Practices and Remedies Code, made by this article allowing an employer covered by worker's compensation insurance to be designated as a responsible third party affects or impairs the immunity granted to the employer by workers' compensation law.

Section 4.12 of Acts 2003, 78th Leg., c. 204, provides:

The supreme court shall amend Rule 194.2, Texas Rules of Civil Procedure, as soon as practical following the effective date of this article, to include disclosures of the name, address, and telephone number of any person who may be designated as a responsible third party.

Section 23.02 of Acts 2003, 78th Leg., c. 204, provides:

(c) Articles 4, 5, and 8 of this Act apply to an action filed on or after July 1, 2003. An action filed before July 1, 2003, is governed by the law in effect immediately before the change in law made by Articles 4, 5, and 8, and that law is continued in effect for that purpose.

§ 33.003. Determination of Percentage of Responsibility.

(a) The trier of fact, as to each cause of action asserted, shall determine the percentage of responsibility, stated in whole numbers, for the following persons with respect to each person's causing or contributing to cause in any way the harm for which recovery of damages is sought, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard, or by any combination of these:

(1) each claimant;

(2) each defendant;

(3) each settling person; and

(4) each responsible third party who has been designated under Section 33.004.

(b) This section does not allow a submission to the jury or a question regarding conduct by any person without sufficient evidence to support submission.

Added by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.06, eff. Sept. 2, 1987. Amended by Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., c. 204, § 4.02, eff. Sept. 1, 2003.

Section 4.11 of Acts 2003, 78th Leg., c. 204, provides:

Nothing in the changes to Chapter 33, Civil Practices and Remedies Code, made by this article allowing an employer covered by worker's compensation insurance to be designated as a responsible third party affects or impairs the immunity granted to the employer by workers' compensation law.

Section 4.12 of Acts 2003, 78th Leg., c. 204, provides:

The supreme court shall amend Rule 194.2, Texas Rules of Civil Procedure, as soon as practical following the effective date of this article, to include disclosures of the name, address, and telephone number of any person who may be designated as a responsible third party.

Section 23.02 of Acts 2003, 78th Leg., c. 204, provides:

(c) Articles 4, 5, and 8 of this Act apply to an action filed on or after July 1, 2003. An action filed before July 1, 2003, is governed by the law in effect immediately before the change in law made by Articles 4, 5, and 8, and that law is continued in effect for that purpose.

§ 33.004. Designation of Responsible Third Party.

(a) A defendant may seek to designate a person as a responsible third party by filing a motion for leave to designate that person as a responsible third party. The motion must be filed on or before the 60th day before the trial date unless the court finds good cause to allow the motion to be filed at a later date.

(b) Nothing in this section affects the third-party practice as previously recognized in the rules and statutes of this state with regard to the assertion by a defendant of rights to contribution or indemnity. Nothing in this section affects the filing of cross-claims or counterclaims.

(c) Repealed by Acts 2003, 78th Leg., c. 204, § 4.10, eff. Sept. 1, 2003.

(d) A defendant may not designate a person as a responsible third party with respect to a claimant's cause of action after the applicable limitations period on the cause of action has expired with respect to the responsible third party if the defendant has failed to comply with its obligations, if any, to timely disclose that the person may be designated as a responsible third party under the Texas Rules of Civil Procedure.

(e) Repealed by Acts 2011, 82nd Leg., R.S., H.B. 274, eff. Sept. 1, 2011.

(f) A court shall grant leave to designate the named person as a responsible third party unless another party files an objection to the motion for leave on or before the 15th day after the date the motion is served.

(g) If an objection to the motion for leave is timely filed, the court shall grant leave to designate the person as a responsible third party unless the objecting party establishes:

(1) the defendant did not plead sufficient facts concerning the alleged responsibility of the person to satisfy the pleading requirement of the Texas Rules of Civil Procedure; and

(2) after having been granted leave to replead, the defendant failed to plead sufficient facts concerning the alleged responsibility of the person to satisfy the pleading requirements of the Texas Rules of Civil Procedure.

(h) By granting a motion for leave to designate a person as a responsible third party, the person named in the motion is designated as a responsible third party for purposes of this chapter without further action by the court or any party.

(i) The filing or granting of a motion for leave to designate a person as a responsible third party of a finding of fault against the person:

(1) does not by itself impose liability on the person;

(2) may not by used in any other proceeding, on the basis or res judicata, collateral estoppel, or any other legal theory, to impose liability on the person.

(j) Notwithstanding any other provision of this section, if, not later than 60 days after the filing of the defendant's original answer, the defendant alleges in an answer filed with the court that an unknown person committed a criminal act that was a cause for the loss or injury that is the subject of the lawsuit, the court shall grant a motion for leave to designate the unknown person as a responsible third party if:

(1) the court determines that the defendant has pleaded the facts sufficient for the court to determine that there is a reasonable probability that the act of the unknown person was criminal;

(2) the defendant has stated in the answer all identifying characteristics of the unknown person, known at the time of the answer; and

(3) the allegation satisfies the pleading requirements of the Texas Rules of Civil Procedure.

(k) An unknown person designated as a responsible third party under Subsection (j) is denominated by as "Jane Doe" or "John Doe" until the person's identity is known.

(l) After adequate time for discovery, a party may move to strike the designation of a responsible third party on the ground that there is no evidence that the designated person is responsible for any portion of the claimant's alleged injury or damage. The court shall grant the motion to strike unless a defendant produces sufficient evidence to raise a genuine issue of fact regarding the designated person's responsibility of the claimant's injury or damage.

Added by Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., c. 204, §§ 4.03, 4.04, eff. Sept. 1, 2003; Acts 2011 82nd Leg., R.S., c. 203, §§ 5.01, 5.02, eff. Sept. 1, 2011.

Section 4.11 of Acts 2003, 78th Leg., c. 204, provides:

Nothing in the changes to Chapter 33, Civil Practices and Remedies Code, made by this article allowing an employer covered by worker's compensation insurance to be designated as a responsible third party affects or impairs the immunity granted to the employer by workers' compensation law.

Section 4.12 of Acts 2003, 78th Leg., c. 204, provides:

The supreme court shall amend Rule 194.2, Texas Rules of Civil Procedure, as soon as practical following the effective date of this article, to include disclosures of the name, address, and telephone number of any person who may be designated as a responsible third party.

Section 23.02 of Acts 2003, 78th Leg., c. 204, provides:

(c) Articles 4, 5, and 8 of this Act apply to an action filed on or after July 1, 2003. An action filed before July 1, 2003, is governed by the law in effect immediately before the change in law made by Articles 4, 5, and 8, and that law is continued in effect for that purpose.

Section 6.01 of Acts 2011, 82nd Leg., R.S., c. 203, provides:

The changes in law made by this Act apply only to a civil action commenced on or after the effective date of the change in law as provided by this article. A civil action commenced before the effective date of the change in law as provided by this article is governed by the law in effect immediately before the effective date of the change in law, and that law is continued in effect for that purpose.

[Sections 33.005 to 33.010 reserved for expansion]

SUBCHAPTER B. CONTRIBUTION

§ 33.011. Definitions.

In this chapter:

(1) "Claimant" means a person seeking recovery of damages, including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff. In an action in which a party seeks recovery of damages for injury to another person, damage to the property of another person, death of another person, or other harm to another person, "claimant" includes:

(A) the person who was injured, was harmed, or died or whose property was damaged; and

(B) any person who is seeking, has sought, or could seek recovery of damages for the injury, harm, or death of that person or for the damage to the property of that person.

(2) "Defendant" includes any person from whom, at the time of the submission of the case to the trier of fact, a claimant seeks recovery of damages.

(3) "Liable defendant" means a defendant against whom a judgment can be entered for at least a portion of the damages awarded to the claimant.

(4) "Percentage of responsibility" means that percentage, stated in whole numbers, attributed by the trier of fact to each claimant, each defendant, each settling person, or each responsible third party with respect to causing or contributing to cause in any way, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity violative of the applicable legal standard, or by any combination of the foregoing, the personal injury, property damage, death, or other harm for which recovery of damages is sought.

(5) "Settling person" means a person who has, at any time, paid or promised to pay money or anything of monetary value to a claimant in consideration of potential liability with respect to the personal injury, property damage, death, or other harm for which recovery of damages is sought.

(6) "Responsible third party" means any person who is alleged to have caused or contributed to causing in any way the harm for which recovery of damages is sought, whether by negligent act or omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard, or by any combination of these. The term "responsible third party" does not include a seller eligible for indemnity under Section 82.002.

(7) Repealed by Acts 2003, 78th Leg., c. 204, § 4.10, eff. Sept. 1, 2003.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.07, eff. Sept. 2, 1987; Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., c. 204, § 4.05, eff. Sept. 1, 2003.

Section 4.11 of Acts 2003, 78th Leg., c. 204, provides:

Nothing in the changes to Chapter 33, Civil Practices and Remedies Code, made by this article allowing an employer covered by worker's compensation insurance to be designated as a responsible third party affects or impairs the immunity granted to the employer by workers' compensation law.

Section 4.12 of Acts 2003, 78th Leg., c. 204, provides:

The supreme court shall amend Rule 194.2, Texas Rules of Civil Procedure, as soon as practical following the effective date of this article, to include disclosures of the name, address, and telephone number of any person who may be designated as a responsible third party.

Section 23.02 of Acts 2003, 78th Leg., c. 204, provides:

(c) Articles 4, 5, and 8 of this Act apply to an action filed on or after July 1, 2003. An action filed before July 1, 2003, is governed by the law in effect immediately before the change in law made by Articles 4, 5, and 8, and that law is continued in effect for that purpose.

§ 33.012. Amount of Recovery.

(a) If the claimant is not barred from recovery under Section 33.001, the court shall reduce the amount of damages to be recovered by the claimant with respect to a cause of action by a percentage equal to the claimant's percentage of responsibility.

(b) If the claimant has settled with one or more persons, the court shall further reduce the amount of damages to be recovered by the claimant with respect to a cause of action by the sum of the dollar amounts of all settlements.

(c) Notwithstanding Subsection (b), if the claimant in a health care liability claim filed under Chapter 74 has settled with one or more persons, the court shall further reduce the amount of damages to be recovered by the claimant with respect to a cause of action by an amount equal to one of the following, as elected by the defendant:

(1) the sum of the dollar amounts of all settlements; or

(2) a percentage equal to each settling person's percentage of responsibility as found by the trier of fact.

(d) An election made under Subsection (c) shall be made by any defendant filing a written election before the issues of the action are submitted to the trier of fact and when made, shall be binding on all defendants. If no defendant makes this election or if conflicting elections are made, all defendants are considered to have elected Subsection (c)(1).

(e) This section shall not apply to benefits paid by or on behalf of an employer to an employee pursuant to workers' compensation insurance coverage, as defined in Section 401.011(44), Labor Code, in effect at the time of the act, event, or occurrence made the basis of claimant's suit.

Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.08, eff. Sept. 2, 1987; Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., c. 204, § 4.06, 4.10(4), eff. Sept. 1, 2003; Acts 2005, 79th Leg., c. 277, § 1, eff. June 9, 2005; Acts 2005, 79th Leg., c. 728, § 23.001(6), eff. Sept. 1, 2005.

§ 33.013. Amount of Liability.

(a) Except as provided in Subsection (b), a liable defendant is liable to a claimant only for the percentage of the damages found by the trier of fact equal to that defendant's percentage of responsibility with respect to the personal injury, property damage, death, or other harm for which the damages are allowed.

[Subsection (b) as amended by Acts 2021, 87th Leg., R.S., c. 221, § 2.02, eff. Sept. 1, 2021.]

(b) Notwithstanding Subsection (a), each liable defendant is, in addition to his liability under Subsection (a), jointly and severally liable for the damages recoverable by the claimant under Section 33.012 with respect to a cause of action if:

(1) the percentage of responsibility attributed to the defendant with respect to a cause of action is greater than 50 percent; or

(2) the defendant, with the specific intent to do harm to others, acted in concert with another person to engage in the conduct described in the following provisions of the Penal Code and in so doing proximately caused the damages legally recoverable by the claimant:

(A) Section 19.02 (murder);

(B) Section 19.03 (capital murder);

(C) Section 20.04 (aggravated kidnapping);

(D) Section 22.02 (aggravated assault);

(E) Section 22.011 (sexual assault);

(F) Section 22.021 (aggravated sexual assault);

(G) Section 22.04 (injury to a child, elderly individual, or disabled individual);

(H) Section 32.21 (forgery);

(I) Section 32.43 (commercial bribery);

(J) Section 32.45 (misapplication of fiduciary property or property of financial institution);

(K) Section 32.46 (securing execution of document by deception);

(L) Section 32.47 (fraudulent destruction, removal, or concealment of writing);

(M) conduct described in Chapter 31 the punishment level for which is a felony of the third degree or higher; or

(N) Section 21.02 (continuous sexual abuse of young child or disabled individual).

[Subsection (b) as amended by Acts 2021, 87th Leg., R.S., c. 837, § 4, eff. Sept. 1, 2021.]

(b) Notwithstanding Subsection (a), each liable defendant is, in addition to the defendant's liability under Subsection (a), jointly and severally liable for the damages recoverable by the claimant under Section 33.012 with respect to a cause of action if:

(1) the percentage of responsibility attributed to the defendant with respect to a cause of action is greater than 50 percent; or

(2) the defendant, with the specific intent to do harm to others, acted in concert with another person to engage in the conduct described in the following provisions of the Penal Code and in so doing proximately caused the damages legally recoverable by the claimant:

(A) Section 19.02 (murder);

(B) Section 19.03 (capital murder);

(C) Section 20.04 (aggravated kidnapping);

(D) Section 22.02 (aggravated assault);

(E) Section 22.011 (sexual assault);

(F) Section 22.021 (aggravated sexual assault);

(G) Section 22.04 (injury to a child, elderly individual, or disabled individual);

(H) Section 32.21 (forgery);

(I) Section 32.43 (commercial bribery);

(J) Section 32.45 (misapplication of fiduciary property or property of financial institution);

(K) Section 32.46 (fraudulent securing of document execution);

(L) Section 32.47 (fraudulent destruction, removal, or concealment of writing);

(M) conduct described in Chapter 31 the punishment level for which is a felony of the third degree or higher; or

(N) Section 21.02 (continuous sexual abuse of young child or children).

(c) Repealed by Acts 2003, 78th Leg., c. 204, § 4.10, eff. Sept. 1, 2003.

(d) This section does not create a cause of action.

(e) Notwithstanding anything to the contrary stated in the provisions of the Penal Code listed in Subsection (b)(2), that subsection applies only if the claimant proves the defendant acted or failed to act with specific intent to do harm. A defendant acts with specific intent to harm with respect to the nature of the defendant's conduct and the result of the person's conduct when it is the person's conscious effort or desire to engage in the conduct for the purpose of doing substantial harm to others.

(f) The jury may not be made aware through voir dire, introduction into evidence, instruction, or any other means that the conduct to which Subsection (b)(2) refers is defined by the Penal Code.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.09, eff. Sept. 2, 1987; Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., c. 204, § 4.06, eff. Sept. 1, 2003; Acts 2007, 80th Leg., c. 593, § 3.02, eff. Sept. 1, 2007; Acts 2021, 87th Leg., R.S., c. 221, § 2.02, eff. Sept. 1, 2021; Acts 2021, 87th Leg., R.S., c. 837, § 4, eff. Sept. 1, 2021.

Section 4.11 of Acts 2003, 78th Leg., c. 204, provides:

Nothing in the changes to Chapter 33, Civil Practices and Remedies Code, made by this article allowing an employer covered by worker's compensation insurance to be designated as a responsible third party affects or impairs the immunity granted to the employer by workers' compensation law.

Section 4.12 of Acts 2003, 78th Leg., c. 204, provides:

The supreme court shall amend Rule 194.2, Texas Rules of Civil Procedure, as soon as practical following the effective date of this article, to include disclosures of the name, address, and telephone number of any person who may be designated as a responsible third party.

Section 23.02 of Acts 2003, 78th Leg., c. 204, provides:

(c) Articles 4, 5, and 8 of this Act apply to an action filed on or after July 1, 2003. An action filed before July 1, 2003, is governed by the law in effect immediately before the change in law made by Articles 4, 5, and 8, and that law is continued in effect for that purpose.

Section 3.01 of Acts 2021, 87th Leg., c. 221, provides:

The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

Section 8 of Acts 2021, 87th Leg., c. 837, provides:

The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

§ 33.014. Repealed by Acts 2003, 78th Leg., c. 204, § 4.10, eff. Sept. 1, 2003.

§ 33.015. Contribution.

(a) If a defendant who is jointly and severally liable under Section 33.013 pays a percentage of the damages for which the defendant is jointly and severally liable greater than his percentage of responsibility, that defendant has a right of contribution for the overpayment against each other liable defendant to the extent that the other liable defendant has not paid the percentage of the damages found by the trier of fact equal to that other defendant's percentage of responsibility.

(b) As among themselves, each of the defendants who is jointly and severally liable under Section 33.013 is liable for the damages recoverable by the claimant under Section 33.012 in proportion to his respective percentage of responsibility. If a defendant who is jointly and severally liable pays a larger proportion of those damages than is required by his percentage of responsibility, that defendant has a right of contribution for the overpayment against each other defendant with whom he is jointly and severally liable under Section 33.013 to the extent that the other defendant has not paid the proportion of those damages required by that other defendant's percentage of responsibility.

(c) If for any reason a liable defendant does not pay or contribute the portion of the damages required by his percentage of responsibility, the amount of the damages not paid or contributed by that defendant shall be paid or contributed by the remaining defendants who are jointly and severally liable for those damages. The additional amount to be paid or contributed by each of the defendants who is jointly and severally liable for those damages shall be in proportion to his respective percentage of responsibility.

(d) No defendant has a right of contribution against any settling person.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.11, eff. Sept. 2, 1987; Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995.

§ 33.016. Claim Against Contribution Defendant.

(a) In this section, "contribution defendant" means any defendant, counterdefendant, or third-party defendant from whom any party seeks contribution with respect to any portion of damages for which that party may be liable, but from whom the claimant seeks no relief at the time of submission.

(b) Each liable defendant is entitled to contribution from each person who is not a settling person and who is liable to the claimant for a percentage of responsibility but from whom the claimant seeks no relief at the time of submission. A party may assert this contribution right against any such person as a contribution defendant in the claimant's action.

(c) The trier of fact shall determine as a separate issue or finding of fact the percentage of responsibility with respect to each contribution defendant and these findings shall be solely for purposes of this section and Section 33.015 and not as a part of the percentages of responsibility determined under Section 33.003. Only the percentage of responsibility of each defendant and contribution defendant shall be included in this determination.

(d) As among liable defendants, including each defendant who is jointly and severally liable under Section 33.013, each contribution defendant's percentage of responsibility is to be included for all purposes of Section 33.015. The amount to be contributed by each contribution defendant pursuant to Section 33.015 shall be in proportion to his respective percentage of responsibility relative to the sum of percentages of responsibility of all liable defendants and liable contribution defendants.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.11A, eff. Sept. 2, 1987; Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995.

§ 33.017. Preservation of Existing Rights of Indemnity. [Version 1.].

Nothing in this chapter shall be construed to affect any rights of indemnity granted any statute, by contract, or by common law. To the extent of any conflict between this chapter and any right to indemnification granted by statute, contract, or common law, those rights of indemnification shall prevail over the provisions of this chapter.

Added by Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., c. 204, § 4.08, eff. Sept. 1, 2003.

Section 4.11 of Acts 2003, 78th Leg., c. 204, provides:

Nothing in the changes to Chapter 33, Civil Practices and Remedies Code, made by this article allowing an employer covered by worker's compensation insurance to be designated as a responsible third party affects or impairs the immunity granted to the employer by workers' compensation law.

Section 4.12 of Acts 2003, 78th Leg., c. 204, provides:

The supreme court shall amend Rule 194.2, Texas Rules of Civil Procedure, as soon as practical following the effective date of this article, to include disclosures of the name, address, and telephone number of any person who may be designated as a responsible third party.

Section 23.02 of Acts 2003, 78th Leg., c. 204, provides:

(c) Articles 4, 5, and 8 of this Act apply to an action filed on or after July 1, 2003. An action filed before July 1, 2003, is governed by the law in effect immediately before the change in law made by Articles 4, 5, and 8, and that law is continued in effect for that purpose.

§ 33.017. Preservation of Existing Rights of Indemnity. [Version 2.].

Nothing in this chapter shall be construed to affect any rights of indemnity granted to a seller eligible for indemnity by Chapter 82 of this code, Chapter 2301, Occupations Code, or any other statute, nor shall it affect rights of indemnity granted by contract or at common law. To the extent of any conflict between this chapter and any right to indemnification granted by Section 82.002 of this code, Chapter 2301, Occupations Code, or any other statute, contract, or common law, those rights of indemnification shall prevail over the provisions of this chapter.

Added by Acts 1995, 74th Leg., c. 136, § 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., c. 1276, § 14A.755 eff. Sept. 1, 2003.

9. Exemplary Damages

a. *Pre-September 1, 2003 version*

Texas Civil Practice and Remedies Code

TITLE 2. TRIAL, JUDGMENT, AND APPEAL

SUBTITLE C. JUDGMENTS

CHAPTER 41. EXEMPLARY DAMAGES

§ 41.001. Definitions.

In this chapter:

(1) "Claimant" means a party, including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff, seeking recovery of exemplary damages. In a cause of action in which a party seeks recovery of exemplary damages related to injury to another person, damage to the property of another person, death of another person, or other harm to another person, "claimant" includes both that other person and the party seeking recovery of exemplary damages.

(2) "Clear and convincing" means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

(3) "Defendant" means a party, including a counterdefendant, cross-defendant, or third-party defendant, from whom a claimant seeks relief with respect to exemplary damages.

(4) "Economic damages" means compensatory damages for pecuniary loss; the term does not include exemplary damages or damages for physical pain and mental anguish, loss of consortium, disfigurement, physical impairment, or loss of companionship and society.

(5) "Exemplary damages" means any damages awarded as a penalty or by way of punishment. "Exemplary damages" includes punitive damages.

(6) "Fraud" means fraud other than constructive fraud.

(7) "Malice" means:

(A) a specific intent by the defendant to cause substantial injury to the claimant; or

(B) an act or omission:

(i) which when viewed objectively from the standpoint of the actor at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and

(ii) of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

Added by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.12, eff. Sept. 2, 1987. Amended by Acts 1995, 74th Leg., c. 19, § 1, eff. Sept. 1, 1995.

§ 41.002. Applicability.

(a) This chapter applies to any action in which a claimant seeks exemplary damages relating to a cause of action.

(b) This chapter establishes the maximum exemplary damages that may be awarded in an action subject to this chapter, including an action for which exemplary damages are awarded under another law of this state. This chapter does not apply to the extent another law establishes a lower maximum amount of exemplary damages for a particular claim.

(c) Except as provided by Subsections (b) and (d), in an action to which this chapter applies, the provisions of this chapter prevail over all other law to the extent of any conflict.

(d) Notwithstanding any provision to the contrary, this chapter does not apply to Section 15.21, Business & Commerce Code (Texas Free Enterprise and Antitrust Act of 1983), an action brought under the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code) except as specifically provided in Section 17.50 of that Act, or an action brought under Chapter 21, Insurance Code.

Added by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.12, eff. Sept. 2, 1987. Amended by Acts 1989, 71st Leg., c. 380, § 5, eff. Sept. 1, 1989; Acts 1989, 71st Leg., c. 1129, § 16, eff. Sept. 1, 1989; Acts 1995, 74th Leg., c. 19, § 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., c. 260, § 9, eff. May 30, 1995; Acts 1997, 75th Leg., c. 165, § 4.01, eff. Sept. 1, 1997.

§ 41.003. Standards for Recovery of Exemplary Damages.

(a) Except as provided by Subsection (c), exemplary damages may be awarded only if the claimant proves by clear and convincing evidence that the harm with respect to which the claimant seeks recovery of exemplary damages results from:

(1) fraud;

(2) malice; or

(3) wilful act or omission or gross neglect in wrongful death actions brought by or on behalf of a surviving spouse or heirs of the decedent's body, under a statute enacted pursuant to Section 26, Article XVI, Texas Constitution. In such cases, the definition of "gross neglect" in the instruction submitted to the jury shall be the definition stated in Section 41.001(7)(B).

(b) The claimant must prove by clear and convincing evidence the elements of exemplary damages as provided by this section. This burden of proof may not be shifted to the defendant or satisfied by evidence of ordinary negligence, bad faith, or a deceptive trade practice.

(c) If the claimant relies on a statute establishing a cause of action and authorizing exemplary damages in specified circumstances or in conjunction with a specified culpable mental state, exemplary damages may be awarded only if the claimant proves by clear and convincing evidence that the damages result from the specified circumstances or culpable mental state.

Added by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.12, eff. Sept. 2, 1987. Amended by Acts 1995, 74th Leg., c. 19, § 1, eff. Sept. 1, 1995.

§ 41.004. Factors Precluding Recovery.

(a) Except as provided by Subsection (b), exemplary damages may be awarded only if damages other than nominal damages are awarded.

(b) A claimant may recover exemplary damages, even if only nominal damages are awarded, if the claimant establishes by clear and convincing evidence that the harm with respect to which the claimant seeks recovery of exemplary damages results from malice as defined in Section 41.001(7)(A). Exemplary damages may not be awarded to a claimant who elects to have his recovery multiplied under another statute.

Added by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.12, eff. Sept. 2, 1987. Amended by Acts 1995, 74th Leg., c. 19, § 1, eff. Sept. 1, 1995.

§ 41.005. Harm Resulting From Criminal Act.

(a) In an action arising from harm resulting from an assault, theft, or other criminal act, a court may not award exemplary damages against a defendant because of the criminal act of another.

(b) The exemption provided by Subsection (a) does not apply if:

(1) the criminal act was committed by an employee of the defendant;

(2) the defendant is criminally responsible as a party to the criminal act under the provisions of Chapter 7, Penal Code;

(3) the criminal act occurred at a location where, at the time of the criminal act, the defendant was maintaining a common nuisance under the provisions of Chapter 125, Civil Practice and Remedies Code, and had not made reasonable attempts to abate the nuisance; or

(4) the criminal act resulted from the defendant's intentional or knowing violation of a statutory duty under Subchapter D, Chapter 92, Property Code, and the criminal act occurred after the statutory deadline for compliance with that duty.

(c) In an action arising out of a criminal act committed by an employee, the employer may be liable for punitive damages but only if:

(1) the principal authorized the doing and the manner of the act;

(2) the agent was unfit and the principal acted with malice in employing or retaining him;

(3) the agent was employed in a managerial capacity and was acting in the scope of employment; or

(4) the employer or a manager of the employer ratified or approved the act.

Amended by Acts 1995, 74th Leg., c. 19, § 1, eff. Sept. 1, 1995.

§ 41.006. Award Specific to Defendant.

In any action in which there are two or more defendants, an award of exemplary damages must be specific as to a defendant, and each defendant is liable only for the amount of the award made against that defendant.

Added by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.12, eff. Sept. 2, 1987. Renumbered from V.T.C.A., Civil Practice & Remedies Code § 41.005 by Acts 1995, 74th Leg., c. 19, § 1, eff. Sept. 1, 1995.

§ 41.007. Prejudgment Interest.

Prejudgment interest may not be assessed or recovered on an award of exemplary damages.

Added by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.12, eff. Sept. 2, 1987. Renumbered from V.T.C.A., Civil Practice & Remedies Code § 41.006 by Acts 1995, 74th Leg., c. 19, § 1, eff. Sept. 1, 1995.

§ 41.008. Limitation on Amount of Recovery.

(a) In an action in which a claimant seeks recovery of exemplary damages, the trier of fact shall determine the amount of economic damages separately from the amount of other compensatory damages.

(b) Exemplary damages awarded against a defendant may not exceed an amount equal to the greater of:

(1)(A) two times the amount of economic damages; plus

(B) an amount equal to any noneconomic damages found by the jury, not to exceed $750,000; or

(2) $200,000.

(c) Subsection (b) does not apply to a cause of action against a defendant from whom a plaintiff seeks recovery of exemplary damages based on conduct described as a felony in the following sections of the Penal Code if, except for Sections 49.07 and 49.08, the conduct was committed knowingly or intentionally:

(1) Section 19.02 (murder);

(2) Section 19.03 (capital murder);

(3) Section 20.04 (aggravated kidnapping);

(4) Section 22.02 (aggravated assault);

(5) Section 22.011 (sexual assault);

(6) Section 22.021 (aggravated sexual assault);

(7) Section 22.04 (injury to a child, elderly individual, or disabled individual);

(8) Section 32.21 (forgery);

(9) Section 32.43 (commercial bribery);

(10) Section 32.45 (misapplication of fiduciary property or property of financial institution);

(11) Section 32.46 (securing execution of document by deception);

(12) Section 32.47 (fraudulent destruction, removal, or concealment of writing);

(13) Chapter 31 (theft) the punishment level for which is a felony of the third degree or higher;

(14) Section 49.07 (intoxication assault); or

(15) Section 49.08 (intoxication manslaughter).

(d) In this section, “intentionally” and “knowingly” have the same meanings assigned those terms in Sections 6.03(a) and (b), Penal Code.

(e) The provisions of Subsections (a) and (b) may not be made known to a jury by any means, including voir dire, introduction into evidence, argument, or instruction.

(f) Subsection (b) does not apply to a cause of action for damages arising from the manufacture of methamphetamine as described in Chapter 99.

Added by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.12, eff. Sept. 2, 1987. Renumbered from V.T.C.A., Civil Practice & Remedies Code § 41.007 and amended by Acts 1995, 74th Leg., c. 19, § 1, eff. Sept. 1, 1995; Acts 2001, 77th Leg., c. 643, § 3, eff. Sept. 1, 2001.

§ 41.009. Bifurcated Trial.

(a) On motion by a defendant, the court shall provide for a bifurcated trial under this section. A motion under this subsection shall be made prior to voir dire examination of the jury or at a time specified by a pretrial court order issued under Rule 166, Texas Rules of Civil Procedure.

(b) In an action with more than one defendant, the court shall provide for a bifurcated trial on motion of any defendant.

(c) In the first phase of a bifurcated trial, the trier of fact shall determine:

(1) liability for compensatory and exemplary damages; and

(2) the amount of compensatory damages.

(d) If liability for exemplary damages is established during the first phase of a bifurcated trial, the trier of fact shall, in the second phase of the trial, determine the amount of exemplary damages to be awarded, if any.

Added by Acts 1995, 74th Leg., c. 19, § 1, eff. Sept. 1, 1995.

§ 41.010. Considerations in Making Award.

(a) Before making an award of exemplary damages, the trier of fact shall consider the definition and purposes of exemplary damages as provided by Section 41.001.

(b) The determination of whether to award exemplary damages and the amount of exemplary damages to be awarded is within the discretion of the trier of fact.

Added by Acts 1995, 74th Leg., c. 19, § 1, eff. Sept. 1, 1995.

§ 41.011. Evidence Relating to Amount of Exemplary Damages.

(a) In determining the amount of exemplary damages, the trier of fact shall consider evidence, if any, relating to:

(1) the nature of the wrong;

(2) the character of the conduct involved;

(3) the degree of culpability of the wrongdoer;

(4) the situation and sensibilities of the parties concerned;

(5) the extent to which such conduct offends a public sense of justice and propriety; and

(6) the net worth of the defendant.

(b) Evidence that is relevant only to the amount of exemplary damages that may be awarded is not admissible during the first phase of a bifurcated trial.

Added by Acts 1995, 74th Leg., c. 19, § 1, eff. Sept. 1, 1995.

§ 41.012. Jury Instructions.

In a trial to a jury, the court shall instruct the jury with regard to Sections 41.001, 41.003, 41.010, and 41.011.

Added by Acts 1995, 74th Leg., c. 19, § 1, eff. Sept. 1, 1995.

§ 41.013. Judicial Review of Award.

(a) Except as provided for in Subsection (b), an appellate court that reviews the evidence with respect to a finding by a trier of fact concerning liability for exemplary damages or with respect to the amount of exemplary damages awarded shall state, in a written opinion, the court's reasons for upholding or disturbing the finding or award. The written opinion shall address the evidence or lack of evidence with specificity, as it relates to the liability for or amount of exemplary damages, in light of the requirements of this chapter.

(b) This section does not apply to the supreme court with respect to its consideration of an application for writ of error.

Added by Acts 1995, 74th Leg., c. 19, § 1, eff. Sept. 1, 1995.

a. Current version

TexasCivil Practice and Remedies Code

TITLE 2. TRIAL, JUDGMENT, AND APPEAL

SUBTITLE C. JUDGMENTS

CHAPTER 41. DAMAGES

§ 41.001. Definitions.

In this chapter:

(1) "Claimant" means a party, including a plaintiff, counterclaimant, cross-claimant, or third-party plaintiff, seeking recovery of damages. In a cause of action in which a party seeks recovery of damages related to injury to another person, damage to the property of another person, death of another person, or other harm to another person, "claimant" includes both that other person and the party seeking recovery of damages.

(2) "Clear and convincing" means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

(3) "Defendant" means a party, including a counterdefendant, cross-defendant, or third-party defendant, from whom a claimant seeks relief.

(4) "Economic damages" means compensatory damages intended to compensate a claimant for actual economic or pecuniary loss; the term does not include exemplary damages or noneconomic damages.

(5) "Exemplary damages" means any damages awarded as a penalty or by way of punishment but not for compensatory purposes. Exemplary damages are neither economic nor noneconomic damages. "Exemplary damages" includes punitive damages.

(6) "Fraud" means fraud other than constructive fraud.

(7) "Malice" means a specific intent by the defendant to cause substantial injury to the claimant.

(7-a) "Net worth" means the total assets of a person minus the total liabilities of the person on a date determined appropriate by the trial court.

(8) "Compensatory damages" means economic and noneconomic damages. The term does not include exemplary damages.

(9) "Future damages" means damages that are incurred after the date of the judgment. Future damages do not include exemplary damages.

(10) "Future loss of earnings" means a pecuniary loss incurred after the date of the judgment, including:

(A) loss of income, wages, or earning capacity;

(B) loss of inheritance.

(11) "Gross negligence" means an act or omission:

(A) which when viewed objectively from the standpoint of the actor at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others, and

(B) of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

(12) "Noneconomic damages" means damages awarded for the purposes of compensating a claimant for physical pain and suffering, mental or emotional pain or anguish, loss of consortium, disfigurement, physical impairment, loss of companionship and society, inconvenience, loss of enjoyment of life, injury to reputation, and all other nonpecuniary losses of any kind other than exemplary damages.

(13) "Periodic payments" means the payment to money its equivalent to the recipient of future damages at defined internals.

Added by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.12, eff. Sept. 2, 1987. Amended by Acts 1995, 74th Leg., c. 19, § 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., c. 204, § 13.02, eff. Sept. 1, 2003; Acts 2015, 84th Leg., c. 1159, § 1, eff. Sept. 1, 2015.

Section 3 of Acts 2015, 84th Leg., c. 1159, provides:

The change in law made by this Act applies only to an action filed on or after the effective date of this Act.

§ 41.002. Applicability.

(a) This chapter applies to any action in which a claimant seeks damages relating to a cause of action.

(b) This chapter establishes the maximum damages that may be awarded in an action subject to this chapter, including an action for which damages are awarded under another law of this state. This chapter does not apply to the extent another law establishes a lower maximum amount of damages for a particular claim.

(c) Except as provided by Subsections (b) and (d), in an action to which this chapter applies, the provisions of this chapter prevail over all other law to the extent of any conflict.

(d) Notwithstanding any provision to the contrary, this chapter does not apply to:

(1) Section 15.21, Business & Commerce Code (Texas Free Enterprise and Antitrust Act of 1983);

(2) an action brought under the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code) except as specifically provided in Section 17.50 of that Act;

(3) an action brought under Chapter 36, Human Resources Code; or

(4) an action brought under Chapter 21, Insurance Code.

Added by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.12, eff. Sept. 2, 1987. Amended by Acts 1989, 71st Leg., c. 380, § 5, eff. Sept. 1, 1989; Acts 1989, 71st Leg., c. 1129, § 16, eff. Sept. 1, 1989; Acts 1995, 74th Leg., c. 19, § 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., c. 260, § 9, eff. May 30, 1995; Acts 1997, 75th Leg., c. 165, § 4.01, eff. Sept. 1, 1997; Acts 2003, 78th Leg., c. 204, § 13.03, eff. Sept. 1, 2003; Acts 2005, 79th Leg., c. 806, § 18, eff. Sept. 1, 2005.

§ 41.003. Standards for Recovery of Exemplary Damages.

(a) Except as provided by Subsection (c), exemplary damages may be awarded only if the claimant proves by clear and convincing evidence that the harm with respect to which the claimant seeks recovery of exemplary damages results from:

(1) fraud;

(2) malice; or

(3) gross negligence.

(b) The claimant must prove by clear and convincing evidence the elements of exemplary damages as provided by this section. This burden of proof may not be shifted to the defendant or satisfied by evidence of ordinary negligence, bad faith, or a deceptive trade practice.

(c) If the claimant relies on a statute establishing a cause of action and authorizing exemplary damages in specified circumstances or in conjunction with a specified culpable mental state, exemplary damages may be awarded only if the claimant proves by clear and convincing evidence that the damages result from the specified circumstances or culpable mental state.

(d) Exemplary damages may be awarded only if the jury was unanimous in regard to finding liability for and the amount of exemplary damages.

(e) In all cases where the issue of exemplary damages is submitted to the jury, the following instruction shall be included in the charge of the court:

"You are instructed that, in order for you to find exemplary damages, your answer to the question regarding the amount of such damages must be unanimous."

Added by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.12, eff. Sept. 2, 1987. Amended by Acts 1995, 74th Leg., c. 19, § 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., c. 204, § 13.04, eff. Sept. 1, 2003.

§ 41.004. Factors Precluding Recovery.

(a) Except as provided by Subsection (b), exemplary damages may be awarded only if damages other than nominal damages are awarded.

(b) Exemplary damages may not be awarded to a claimant who elects to have his recovery multiplied under another statute.

Added by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.12, eff. Sept. 2, 1987. Amended by Acts 1995, 74th Leg., c. 19, § 1, eff. Sept. 1, 1995; Acts 2003, 78th Leg., c. 204, § 13.05, eff. Sept. 1, 2003.

§ 41.005. Harm Resulting From Criminal Act.

(a) In an action arising from harm resulting from an assault, theft, or other criminal act, a court may not award exemplary damages against a defendant because of the criminal act of another.

(b) The exemption provided by Subsection (a) does not apply if:

(1) the criminal act was committed by an employee of the defendant;

(2) the defendant is criminally responsible as a party to the criminal act under the provisions of Chapter 7, Penal Code;

(3) the criminal act occurred at a location where, at the time of the criminal act, the defendant was maintaining a common nuisance under the provisions of Chapter 125, Civil Practice and Remedies Code, and had not made reasonable attempts to abate the nuisance; or

(4) the criminal act resulted from the defendant's intentional or knowing violation of a statutory duty under Subchapter D, Chapter 92, Property Code, and the criminal act occurred after the statutory deadline for compliance with that duty.

(c) In an action arising out of a criminal act committed by an employee, the employer may be liable for punitive damages but only if:

(1) the principal authorized the doing and the manner of the act;

(2) the agent was unfit and the principal acted with malice in employing or retaining him;

(3) the agent was employed in a managerial capacity and was acting in the scope of employment; or

(4) the employer or a manager of the employer ratified or approved the act.

Amended by Acts 1995, 74th Leg., c. 19, § 1, eff. Sept. 1, 1995.

§ 41.006. Award Specific to Defendant.

In any action in which there are two or more defendants, an award of exemplary damages must be specific as to a defendant, and each defendant is liable only for the amount of the award made against that defendant.

Added by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.12, eff. Sept. 2, 1987. Renumbered from V.T.C.A., Civil Practice & Remedies Code § 41.005 by Acts 1995, 74th Leg., c. 19, § 1, eff. Sept. 1, 1995.

§ 41.007. Prejudgment Interest.

Prejudgment interest may not be assessed or recovered on an award of exemplary damages.

Added by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.12, eff. Sept. 2, 1987. Renumbered from V.T.C.A., Civil Practice & Remedies Code § 41.006 by Acts 1995, 74th Leg., c. 19, § 1, eff. Sept. 1, 1995.

§ 41.008. Limitation on Amount of Recovery.

(a) In an action in which a claimant seeks recovery of damages, the trier of fact shall determine the amount of economic damages separately from the amount of other compensatory damages.

(b) Exemplary damages awarded against a defendant may not exceed an amount equal to the greater of:

(1)(A) two times the amount of economic damages; plus

(B) an amount equal to any noneconomic damages found by the jury, not to exceed $750,000; or

(2) $200,000.

[Subsection (c) as amended by Acts 2021, 87th Leg., R.S., c. 221, § 2.03, eff. Sept. 1, 2021.]

(c) This section does not apply to a cause of action against a defendant from whom a plaintiff seeks recovery of exemplary damages based on conduct described as a felony in the following sections of the Penal Code if, except for Sections 49.07 and 49.08, the conduct was committed knowingly or intentionally:

(1) Section 19.02 (murder);

(2) Section 19.03 (capital murder);

(3) Section 20.04 (aggravated kidnapping);

(4) Section 22.02 (aggravated assault);

(5) Section 22.011 (sexual assault);

(6) Section 22.021 (aggravated sexual assault);

(7) Section 22.04 (injury to a child, elderly individual, or disabled individual, but not if the conduct occurred while providing health care as defined by Section 74.001);

(8) Section 32.21 (forgery);

(9) Section 32.43 (commercial bribery);

(10) Section 32.45 (misapplication of fiduciary property or property of financial institution);

(11) Section 32.46 (securing execution of document by deception);

(12) Section 32.47 (fraudulent destruction, removal, or concealment of writing);

(13) Chapter 31 (theft) the punishment level for which is a felony of the third degree or higher;

(14) Section 49.07 (intoxication assault);

(15) Section 49.08 (intoxication manslaughter);

(16) Section 21.02 (continuous sexual abuse of young child or disabled individual); or

(17) Chapter 20A (trafficking of persons).

[Subsection (c) as amended by Acts 2021, 87th Leg., R.S., c. 837, § 5, eff. Sept. 1, 2021.]

(c) This section does not apply to a cause of action against a defendant from whom a plaintiff seeks recovery of exemplary damages based on conduct described as a felony in the following sections of the Penal Code if, except for Sections 49.07 and 49.08, the conduct was committed knowingly or intentionally:

(1) Section 19.02 (murder);

(2) Section 19.03 (capital murder);

(3) Section 20.04 (aggravated kidnapping);

(4) Section 22.02 (aggravated assault);

(5) Section 22.011 (sexual assault);

(6) Section 22.021 (aggravated sexual assault);

(7) Section 22.04 (injury to a child, elderly individual, or disabled individual, but not if the conduct occurred while providing health care as defined by Section 74.001 of this code);

(8) Section 32.21 (forgery);

(9) Section 32.43 (commercial bribery);

(10) Section 32.45 (misapplication of fiduciary property or property of financial institution);

(11) Section 32.46 (fraudulent securing of document execution);

(12) Section 32.47 (fraudulent destruction, removal, or concealment of writing);

(13) Chapter 31 (theft) the punishment level for which is a felony of the third degree or higher;

(14) Section 49.07 (intoxication assault);

(15) Section 49.08 (intoxication manslaughter);

(16) Section 21.02 (continuous sexual abuse of young child or children); or

(17) Chapter 20A (trafficking of persons).

(d) In this section, "intentionally" and "knowingly" have the same meanings assigned those terms in Sections 6.03(a) and (b), Penal Code.

(e) The provisions of this section may not be made known to a jury by any means, including voir dire, introduction into evidence, argument, or instruction.

(f) This section does not apply to a cause of action for damages arising from the manufacture of methamphetamine as described in Chapter 99.

Added by Acts 1987, 70th Leg., 1st C.S., c. 2, § 2.12, eff. Sept. 2, 1987. Renumbered from V.T.C.A., Civil Practice & Remedies Code § 41.007 and amended by Acts 1995, 74th Leg., c. 19, § 1, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., c. 643, § 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., c. 204, § 13.06, eff. Sept. 1, 2003; Acts 2007, 80th Leg., c. 593, § 3.03, eff. Sept. 1, 2007; Acts 2009, 81st Leg., R.S., c. 309, § 2, eff. June 19, 2009; Acts 2021, 87th Leg., R.S., c. 221, § 2.03, eff. Sept. 1, 2021; Acts 2021, 87th Leg., R.S., c. 837, § 5, eff. Sept. 1, 2021.

Section 3.01 of Acts 2021, 87th Leg., c. 221, provides:

The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

Section 8 of Acts 2021, 87th Leg., c. 837, provides:

The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

§ 41.009. Bifurcated Trial.

(a) On motion by a defendant, the court shall provide for a bifurcated trial under this section. A motion under this subsection shall be made prior to voir dire examination of the jury or at a time specified by a pretrial court order issued under Rule 166, Texas Rules of Civil Procedure.

(b) In an action with more than one defendant, the court shall provide for a bifurcated trial on motion of any defendant.

(c) In the first phase of a bifurcated trial, the trier of fact shall determine:

(1) liability for compensatory and exemplary damages; and

(2) the amount of compensatory damages.

(d) If liability for exemplary damages is established during the first phase of a bifurcated trial, the trier of fact shall, in the second phase of the trial, determine the amount of exemplary damages to be awarded, if any.

Added by Acts 1995, 74th Leg., c. 19, § 1, eff. Sept. 1, 1995.

§ 41.010. Considerations in Making Award.

(a) Before making an award of exemplary damages, the trier of fact shall consider the definition and purposes of exemplary damages as provided by Section 41.001.

(b) Subject to Section 41.008, the determination of whether to award exemplary damages and the amount of exemplary damages to be awarded is within the discretion of the trier of fact.

Added by Acts 1995, 74th Leg., c. 19, § 1, eff. Sept. 1, 1995. Amended by Acts 2003, 78th Leg., c. 204, § 13.07, eff. Sept. 1, 2003.

§ 41.0105. Evidence Relating to Amount of Economic Damages.

In addition to any other limitation under law, recovery of medical or health care expenses incurred is limited to the amount actually paid or incurred by or on behalf of the claimant.

Added by Acts 2003, 78th Leg., c. 204, § 13.08, eff. Sept. 1, 2003.

§ 41.011. Evidence Relating to Amount of Exemplary Damages.

(a) In determining the amount of exemplary damages, the trier of fact shall consider evidence, if any, relating to:

(1) the nature of the wrong;

(2) the character of the conduct involved;

(3) the degree of culpability of the wrongdoer;

(4) the situation and sensibilities of the parties concerned;

(5) the extent to which such conduct offends a public sense of justice and propriety; and

(6) the net worth of the defendant.

(b) Evidence that is relevant only to the amount of exemplary damages that may be awarded is not admissible during the first phase of a bifurcated trial.

Added by Acts 1995, 74th Leg., c. 19, § 1, eff. Sept. 1, 1995.

§ 41.012. Jury Instructions.

In a trial to a jury, the court shall instruct the jury with regard to Sections 41.001, 41.003, 41.010, and 41.011.

Added by Acts 1995, 74th Leg., c. 19, § 1, eff. Sept. 1, 1995.

§ 41.013. Judicial Review of Award.

(a) Except as provided for in Subsection (b), an appellate court that reviews the evidence with respect to a finding by a trier of fact concerning liability for exemplary damages or with respect to the amount of exemplary damages awarded shall state, in a written opinion, the court's reasons for upholding or disturbing the finding or award. The written opinion shall address the evidence or lack of evidence with specificity, as it relates to the liability for or amount of exemplary damages, in light of the requirements of this chapter.

(b) This section does not apply to the supreme court with respect to its consideration of an application for writ of error.

Added by Acts 1995, 74th Leg., c. 19, § 1, eff. Sept. 1, 1995.

§ 41.014. Interest on Damages Subject to Medicare Subrogation.

(a) Subject to this section, postjudgment interest does not accrue on the unpaid balance of an award of damages to a plaintiff attributable to any portion of the award to which the United States has a subrogation right under 42 U.S.C. Section 1395y(b)(2)(B) before the defendant receives a recovery demand letter issued by the Centers for Medicare and Medicaid Services or a designated contractor under 42 C.F.R. Section 411.22.

(b) Postjudgment interest under this section does not accrue if the defendant pays the unpaid balance before the 31st day after the date the defendant receives the recovery demand letter.

(c) If the defendant appeals the award of damages, this section does not apply.

(d) This section does not prevent the accrual of postjudgment interest on any portion of an award to which the United States does not have a subrogation right under 42 U.S.C. Section 1395y(b)(2)(B).

Added by Acts 2013, 83rd Leg., R.S., c. 870, § 1, eff. Sept. 1, 2013.

Section 3 of Acts 2013, 83rd Leg., R.S., c. 870 provides:

(a) Section 41.014, Civil Practice and Remedies Code, as added by this Act, applies only to an award of damages made on or after the effective date of this Act. An award of damages made before the effective date of this Act is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

§ 41.0115. Discovery of Evidence of Net Worth for Exemplary Damages Claim.

(a) On the motion of a party and after notice and a hearing, a trial court may authorize discovery of evidence of a defendant's net worth if the court finds in a written order that the claimant has demonstrated a substantial likelihood of success on the merits of a claim for exemplary damages. Evidence submitted by a party to the court in support of or in opposition to a motion made under this subsection may be in the form of an affidavit or a response to discovery.

(b) If a trial court authorizes discovery under Subsection (a), the court's order may only authorize use of the least burdensome method available to obtain the net worth evidence.

(c) When reviewing an order authorizing or denying discovery of net worth evidence under this section, the reviewing court may consider only the evidence submitted by the parties to the trial court in support of or in opposition to the motion described by Subsection (a).

(d) If a party requests net worth discovery under this section, the court shall presume that the requesting party has had adequate time for the discovery of facts relating to exemplary damages for purposes of allowing the party from whom net worth discovery is sought to move for summary judgment on the requesting party's claim for exemplary damages under Rule 166a(i), Texas Rules of Civil Procedure.

Added by Acts 2015, 84th Leg., c. 1159, § 2, eff. Sept. 1, 2015.

Section 3 of Acts 2015, 84th Leg., c. 1159, provides:
The change in law made by this Act applies only to an action filed on or after the effective date of this Act.

10. Settlement

TexasCivil Practice and Remedies Code

TITLE 2. TRIAL, JUDGMENT AND APPEAL

CHAPTER 42. SETTLEMENT

§ 42.001. Definitions.

In this chapter:

(1) "Claim" means a request, including a counterclaim, cross-claim, or third-party claim, to recover monetary damages.

(2) "Claimant" means a person making a claim.

(3) "Defendant" means a person from whom a claimant seeks recovery on a claim, including a counterdefendant, cross-defendant, or third-party defendant.

(4) "Governmental unit" means the state, a unit of state government, or a political subdivision of this state.

(5) "Litigation costs" means money actually spent and obligations actually incurred that are directly related to the action in which a settlement offer is made. The term includes:

(A) court costs;

(B) reasonable deposition costs;

(C) reasonable fees for not more than two testifying expert witnesses; and

(D) reasonable attorney's fees.

(6) "Settlement offer" means an offer to settle or compromise a claim made in compliance with Section 42.003.

Added by Acts 2003, 78th Leg., c. 204, § 2.01, eff. Sept. 1, 2003. Amended by Acts 2011, 82nd Leg., R.S., c. 203, § 4.01, eff. Sept. 1, 2011.

Section 2.02 of Acts 2003, 78th Leg., c. 204, provides:

The changes is law provided by this article apply only to an action filed on or after January 1, 2004.

Section 6.02 of Acts 2011, 82nd Leg., R.S., c. 203, provides:

The changes in law made by this Act apply only to a civil action commenced on or after the effective date of the change in law as provided by this article. A civil action commenced before the effective date of the change in law as provided by this article is governed by the law in effect immediately before the effective date of the change in law, and that law is continued in effect for that purpose.

§ 42.002. Applicability and Effect.

(a) The settlement procedures provided in this chapter apply only to claims for monetary relief.

(b) This chapter does not apply to:

(1) a class action;

(2) a shareholder's derivative action;

(3) an action by or against a governmental unit;

(4) an action brought under the Family Code;

(5) an action to collect workers' compensation benefits under Subtitle A, Title 5, Labor Code; or

(6) an action filed in a justice of the peace court or a small claims court.

(c) This chapter does not apply until a defendant files a declaration that the settlement procedure allowed by this chapter is available in the action. If there is more than one defendant, the settlement procedure allowed by this chapter is available only in relation to the defendant that filed the declaration and to the parties that make or receive offers of settlement in relation to that defendant.

(d) This chapter does not limit or affect the ability of any person to:

(1) make an offer to settle or compromise a claim that does not comply with Section 42.003; or

(2) offer to settle or compromise a claim in an action to which this chapter does not apply.

(e) An offer to settle or compromise that does not comply with Section 42.003 [is not made under this chapter] or an offer to settle or compromise made in an action to which this chapter does not apply does not entitle any party to recover litigation costs under this chapter.

Added by Acts 2003, 78th Leg., c. 204, § 2.01, eff. Sept. 1, 2003. Amended by Acts 2011, 82nd Leg., R.S., c. 203, § 4.02, eff. Sept. 1, 2011.

Section 2.02 of Acts 2003, 78th Leg., c. 204, provides:

The changes is law provided by this article apply only to an action filed on or after January 1, 2004.

Section 6.02 of Acts 2011, 82nd Leg., R.S., c. 203, provides:

The changes in law made by this Act apply only to a civil action commenced on or after the effective date of the change in law as provided by this article. A civil action commenced before the effective date of the change in law as provided by this article is governed by the law in effect immediately before the effective date of the change in law, and that law is continued in effect for that purpose.

§ 42.003. Making a Settlement Offer.

(a) A settlement offer must:

(1) be in writing;

(2) state that it is made under this chapter;

(3) state the terms by which the claims may be settled;

(4) state a deadline by which the settlement offer must be accepted; and

(5) be served on all parties to whom the settlement offer is made.

(b) The parties are not required to file a settlement offer with the court.

Added by Acts 2003, 78th Leg., c. 204, § 2.01, eff. Sept. 1, 2003. Amended by Acts 2011, 82nd Leg., R.S., c. 203, § 4.03, eff. Sept. 1, 2011.

Section 2.02 of Acts 2003, 78th Leg., c. 204, provides:

The changes is law provided by this article apply only to an action filed on or after January 1, 2004.

Section 6.02 of Acts 2011, 82nd Leg., R.S., c. 203, provides:

The changes in law made by this Act apply only to a civil action commenced on or after the effective date of the change in law as provided by this article. A civil action commenced before the effective date of the change in law as provided by this article is governed by the law in effect immediately before the effective date of the change in law, and that law is continued in effect for that purpose.

§ 42.004. Award Litigation Costs.

(a) If a settlement offer is made and rejected and the judgment to be rendered will be significantly less favorable to the rejecting party than was the settlement offer, the offering party shall recover litigation costs from the rejecting party.

(b) A judgment will be significantly less favorable to the rejecting party than is the settlement offer if:

(1) the rejecting party is a claimant and the award will be less than 80 percent of the rejected offer; or

(2) the rejecting party is a defendant and the award will be more than 120 percent of the rejected offer.

(c) The litigation costs that may be recovered by the offering party under this section are limited to those litigation costs incurred by the offering party after the date the rejecting party rejected the settlement offer.

(d) The litigation costs that may be awarded under this chapter to any party may not be greater than the total amount that the claimant recovers or would recover before adding an award of litigation costs under this chapter in favor of the claimant or subtracting as an offset an award of litigation costs under this chapter in favor of the defendant.

(e) If a claimant or defendant is entitled to recover fees and costs under another law, that claimant or defendant may not recover litigation costs in addition to the fees and costs recoverable under the other law.

(f) If a claimant or defendant is entitled to recover fees and costs under another law, the court must not include fees and costs incurred by that claimant or defendant after the date of rejection of the settlement offer when calculating the amount of the judgment to be rendered under Subsection (a).

(g) If litigation costs are to be awarded against a claimant, those litigation costs shall be awarded to the defendant in the judgment as an offset against the claimant's recovery from that defendant.

Added by Acts 2003, 78th Leg., c. 204, § 2.01, eff. Sept. 1, 2003. Amended by Acts 2011, 82nd Leg., R.S., c. 203, § 4.04, eff. Sept. 1, 2011.

Section 2.02 of Acts 2003, 78th Leg., c. 204, provides:

The changes is law provided by this article apply only to an action filed on or after January 1, 2004.

Section 6.02 of Acts 2011, 82nd Leg., R.S., c. 203, provides:

The changes in law made by this Act apply only to a civil action commenced on or after the effective date of the change in law as provided by this article. A civil action commenced before the effective date of the change in law as provided by this article is governed by the law in effect immediately before the effective date of the change in law, and that law is continued in effect for that purpose.

§ 42.005. Supreme Court to Make Rules.

(a) The supreme court shall promulgate rules implementing this chapter. The rules must be limited to settlement offers made under this chapter. The rules must be in effect on January 1, 2004.

(b) The rules promulgated by the supreme court must provide:

(1) the date by which a defendant or defendants must file the declaration required by Section 42.002(c) ;

(2) the date before which a party may not make a settlement offer;

(3) the date after which a party may not make a settlement offer; and

(4) procedures for:

(A) making an initial settlement offer;

(B) making successive settlement offers;

(C) withdrawing a settlement offer;

(D) accepting a settlement offer;

(E) rejecting a settlement offer; and

(F) modifying the deadline for making, withdrawing, accepting, or rejecting a settlement offer.

(c) The rules promulgated by the supreme court must address actions in which there are multiple parties and must provide that if the offering party joins another party or designates a responsible third party after making the settlement offer, the party to whom the settlement offer was made may declare the offer void.

(d) The rules promulgated by the supreme court may:

(1) designate other actions to which the settlement procedure of this chapter does not apply; and

(2) address other matters considered necessary by the supreme court to the implementation of this chapter.

Added by Acts 2003, 78th Leg., c. 204, § 2.01, eff. Sept. 1, 2003.

Section 2.02 of Acts 2003, 78th Leg., c. 204, provides:

The changes is law provided by this article apply only to an action filed on or after January 1, 2004.

11. Evidence

TexasCivil Practice and Remedies Code

TITLE 2. TRIAL, JUDGMENT AND APPEAL

CHAPTER 18. EVIDENCE

SUBCHAPTER D. CERTAIN LOSSES

§ 18.091. Proof of Certain Losses; Jury Instruction.

(a) Notwithstanding any other law, if any claimant seeks recovery for loss of earnings, loss of earning capacity, loss of contributions, loss of earning capacity, loss of contributions of a pecuniary value, or loss of inheritance, evidence to prove the loss must be presented in the form of a net loss after reduction of income tax payments or unpaid tax liability pursuant to any federal income tax law.

(b) In any claimant seeks recovery for loss of earnings, loss of earning capacity, loss of contributions of a pecuniary value, or loss of inheritance, the court shall instruct the jury as to whether any recovery for compensatory damages sought by the claimant is subject to federal or state income taxes.

Added by Acts 2003, 78th Leg., c. 204, § 13.09, eff. Sept. 1, 2003.

12. Limitations

TexasCivil Practice and Remedies Code

TITLE 2. TRIAL, JUDGMENT AND APPEAL

CHAPTER 16. LIMITATIONS

SUBCHAPTER A. LIMITATIONS OF PERSONAL ACTIONS

§ 16.001. Effect of Disability.

(a) For the purposes of this subchapter, a person is under a legal disability if the person is:

(1) younger than 18 years of age, regardless of whether the person is married; or

(2) of unsound mind.

(b) If a person entitled to bring a personal action is under a legal disability when the cause of action accrues, the time of the disability is not included in a limitations period.

(c) A person may not tack one legal disability to another to extend a limitations period.

(d) A disability that arises after a limitations period starts does not suspend the running of the period.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., c. 1049, § 56, eff. Sept. 1, 1987.

§ 16.002. One-Year Limitations Period.

(a) A person must bring suit for malicious prosecution, libel, slander, or breach of promise of marriage not later than one year after the day the cause of action accrues.

(b) A person must bring suit to set aside a sale of property seized under Subchapter E, Chapter 33, Tax Code, not later than one year after the date the property is sold.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., c. 1017, § 3, eff. Aug. 28, 1995.

§ 16.003. Two-Year Limitations Period.

(a) Except as provided by Sections 16.010, 16.0031, and 16.0045, a person must bring suit for trespass for injury to the estate or to the property of another, conversion of personal property, taking or detaining the personal property of another, personal injury, forcible entry and detainer, and forcible detainer not later than two years after the day the cause of action accrues.

(b) A person must bring suit not later than two years after the day the cause of action accrues in an action for injury resulting in death. The cause of action accrues on the death of the injured person.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1995, 74th Leg., c. 739, § 2, eff. June 15, 1995; Acts 1997, 75th Leg., c. 26, § 2, eff. May 1, 1997; Acts 2005, 79th Leg., c. 97, § 3, eff. Sept. 1, 2005.

§ 16.0031. Asbestos-Related or Silica-Related Injuries.

(a) In an action for personal injury or death resulting from an asbestos-related injury, as defined by Section 90.001, the cause of action accrues for purposes of Section 16.003 on the earlier of the following dates:

(1) the date of the exposed person's death; or

(2) the date that the claimant serves on a defendant a report complying with Section 90.003 or 90.010(f).

(b) In an action for personal injury or death resulting from a silica-related injury, as defined by Section 90.001, the cause of action accrues for purposes of Section 16.003 on the earlier of the following dates:

(1) the date of the exposed person's death; or

(2) the date that the claimant serves on a defendant a report complying with Section 90.004 or 90.010(f).

Added by Acts 2005, 79th Leg., c. 97, § 4, eff. Sept. 1, 2005.

Section 9 Acts 2005, 79th Leg., c. 97, provides:

(a) Sections 90.009 and 16.0031, Civil Practice and Remedies Code, as added by this Act, apply to an action commenced on or after the effective date of this Act or pending on the effective date of this Act and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, has not commenced on or before the effective date of this Act. An action commenced before the effective date of this Act in which trial has commenced on or before the effective date of this Act or in which there has been a final, unappealable disposition by order, judgment, voluntary dismissal, or otherwise is governed by the law applicable to the action immediately before the effective date of this Act, and that law is continued in effect for that purpose. Section 16.0031, Civil Practice and Remedies Code, as added by this Act, shall not operate to revive any claims that are barred by application of the law in effect immediately before the effective date of this Act.

(b) Article 21.53X, Insurance Code, as added by this Act, applies only to a health benefit plan or an annuity or life insurance policy or contract delivered, issued for delivery, or renewed on or after the effective date of this Act. A health benefit plan or an annuity or life insurance policy or contract delivered, issued for delivery, or renewed before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

Section 11 Acts 2005, 79th Leg., c. 97, provides:

Section 90.007, Civil Practice and Remedies Code, as added by this Act, allowing the dismissal of claims for failing to serve reports complying with the requirements of Sections 90.003 and 90.004, Civil Practice and Remedies Code, Subsection (d), Section 90.010, Civil Practice and Remedies Code, as added by this Act, setting standards for certain cases to be remanded for trial from MDL pretrial courts, and Section 16.0031, Civil Practice and Remedies Code, as added by this Act, relating to the limitations period for asbestos-related and silica-related causes of action, are not severable, and none of those sections would have been enacted without the others. If any of those provisions are held invalid, all of those provisions are invalid. If any other provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act, and to this end the provisions of this Act, other than Section 90.007, Subsection (d), Section 90.010, and Section 16.0031, Civil Practice and Remedies Code, as added by this Act, are declared severable.

§ 16.004. Four-Year Limitations Period.

(a) A person must bring suit on the following actions not later than four years after the day the cause of action accrues:

(1) specific performance of a contract for the conveyance of real property;

(2) penalty or damages on the penal clause of a bond to convey real property;

(3) debt;

(4) fraud; or

(5) breach of fiduciary duty.

(b) A person must bring suit on the bond of an executor, administrator, or guardian not later than four years after the day of the death, resignation, removal, or discharge of the executor, administrator, or guardian.

(c) A person must bring suit against his partner for a settlement of partnership accounts, and must bring an action on an open or stated account, or on a mutual and current account concerning the trade of merchandise between merchants or their agents or factors, not later than four years after the day that the cause of action accrues. For purposes of this subsection, the cause of action accrues on the day that the dealings in which the parties were interested together cease.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1999, 76th Leg., c. 950, § 1, eff. Aug. 30, 1999.

§ 16.0045. Limitations Period for Claims Arising From Certain Offenses.

[Subsection (a) as amended by Acts 2023, 88th Leg., R.S., HB 279, § 3, eff. Sept. 1, 2023.]

(a) A person must bring suit for personal injury not later than 30 years after the day the cause of action accrues if the injury arises as a result of conduct that violates:

(1) Section 22.011(a)(2), Penal Code (sexual assault of a child);

(2) Section 22.021(a)(1)(B), Penal Code (aggravated sexual assault of a child);

(3) Section 21.02, Penal Code (continuous sexual abuse of young child or disabled individual);

(4) Section 20A.02(a)(7)(A), (B), (C), (D), or (H) or Section 20A.02(a)(8), Penal Code, involving an activity described by Section 20A.02(a)(7)(A), (B), (C), (D), or (H) or sexual conduct with a child or disabled individual trafficked in the manner described by Section 20A.02(a)(7), Penal Code (certain sexual trafficking);

(5) Section 43.05(a)(2), Penal Code (compelling prostitution by a child); or

(6) Section 21.11, Penal Code (indecency with a child).

[Subsection (a) as amended by Acts 2023, 88th Leg., R.S., SB 1527, § 2.06, eff. Sept. 1, 2023.]

(a) A person must bring suit for personal injury not later than 30 years after the day the cause of action accrues if the injury arises as a result of conduct that violates:

(1) Section 22.011(a)(2), Penal Code (sexual assault of a child);

(2) Section 22.021(a)(1)(B), Penal Code (aggravated sexual assault of a child);

(3) Section 21.02, Penal Code (continuous sexual abuse of young child or disabled individual);

(4) Section 20A.02(a)(7)(A), (B), (C), (D), or (H) or Section 20A.02(a)(8), Penal Code, involving an activity described by Section 20A.02(a)(7)(A), (B), (C), (D), or (H) or sexual conduct with a child or disabled individual trafficked in the manner described by Section 20A.02(a)(7), Penal Code (certain sexual trafficking);

(5) Section 43.05(a)(2) or (3), Penal Code (compelling prostitution by a child or disabled individual); or

(6) Section 21.11, Penal Code (indecency with a child).

(b) A person must bring suit for personal injury not later than five years after the day the cause of action accrues if the injury arises as a result of conduct that violates:

(1) Section 22.011(a)(1), Penal Code (sexual assault);

(2) Section 22.021(a)(1)(A), Penal Code (aggravated sexual assault);

(3) Section 20A.02, Penal Code (trafficking of persons), other than conduct described by Subsection (a)(4); or

(4) Section 43.05(a)(1), Penal Code (compelling prostitution).

(c) In an action for injury resulting in death arising as a result of conduct described by Subsection (a) or (b), the cause of action accrues on the death of the injured person.

(d) A limitations period under this section is tolled for a suit on the filing of a petition by any person in an appropriate court alleging that the identity of the defendant in the suit is unknown and designating the unknown defendant as "John or Jane Doe." The person filing the petition shall proceed with due diligence to discover the identity of the defendant and amend the petition by substituting the real name of the defendant for "John or Jane Doe" not later than the 30th day after the date that the defendant is identified to the plaintiff. The limitations period begins running again on the date that the petition is amended.

Added by Acts 1995, 74th Leg., c. 739, § 1, eff. June 15, 1995. Amended by Acts 2007, 80th Leg., c. 593, § 3.01, eff. Sept. 1, 2007; Acts 2011, 82nd Leg., R.S., c. 1, § 3.01, eff Sept. 1, 2011; Acts 2015, 84th Leg., c. 918, § 1, eff. Sept. 1, 2015; Acts 2019, 86th Leg., c. 1306, § 1, eff. Sept. 1, 2019; Acts 2021 87th Leg., R.S., c. 221, § 2.01, eff. Sept. 1, 2021; Acts 2023, 88th Leg., R.S., HB 279, § 3, eff. Sept. 1, 2023; Acts 2023, 88th Leg., R.S., SB 1527, § 2.06, eff. Sept. 1, 2023.

Section 7.01 of Acts 2011, 82nd Leg., R.S., c. 1, provides:

The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

Section 3 of Acts 2015, 84th Leg., c. 918, provides:

Section 16.0045, Civil Practice and Remedies Code, as amended by this Act, applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law applicable to the cause of action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

Section 2 of Acts 2019, 86th Leg., c. 1306, provides:

The change in law made by this Act applies to a cause of action that accrues on or after the effective date of this Act or a cause of action that accrued before the effective date of this Act, if the limitations period applicable to the cause of action immediately before the effective date of this Act has not expired before the effective date of this Act.

Section 3.01 of Acts 2021, 87th Leg., c. 221, provides:

The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

Section 6 of Acts 2023, 88th Leg., R.S., HB 279, provides:

The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

Section 6.04 of Acts 2023, 88th Leg., R.S., SB 1527, provides:

The change in law made by this article applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

§ 16.005. Action for Closing Street or Road.

(a) A person must bring suit for any relief from the following acts not later than two years after the day the cause of action accrues:

(1) the passage by a governing body of an incorporated city or town of an ordinance closing and abandoning, or attempting to close and abandon, all or any part of a public street or alley in the city or town, other than a state highway; or

(2) the adoption by a commissioners court of an order closing and abandoning, or attempting to close and abandon, all or any part of a public road or thoroughfare in the county, other than a state highway.

(b) The cause of action accrues when the order or ordinance is passed or adopted.

(c) If suit is not brought within the period provided by this section, the person in possession of the real property receives complete title to the property by limitations and the right of the city or county to revoke or rescind the order or ordinance is barred.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 16.006. Carriers of Property.

(a) A carrier of property for compensation or hire must bring suit for the recovery of charges not later than three years after the day on which the cause of action accrues.

(b) Except as provided by Subsections (c) and (d), a person must bring suit for overcharges against a carrier of property for compensation or hire not later than three years after the cause of action accrues.

(c) If the person has presented a written claim for the overcharges within the three-year period, the limitations period is extended for six months from the date written notice is given by the carrier to the claimant of disallowance of the claim in whole or in part, as specified in the carrier's notice.

(d) If on or before the expiration of the three-year period, the carrier brings an action under Subsection (a) to recover charges relating to the service or, without beginning an action, collects charges relating to that service, the limitations period is extended for 90 days from the day on which the action is begun or the charges are collected.

(e) A cause of action regarding a shipment of property accrues on the delivery or tender of the property by the carrier.

(f) In this section, "overcharge" means a charge for transportation services in excess of the lawfully applicable amount.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 16.007. Return of Execution.

A person must bring suit against a sheriff or other officer or the surety of the sheriff or officer for failure to return an execution issued in the person's favor, not later than five years after the date on which the execution was returnable.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 16.008. Architects, Engineers, Interior Designers, and Landscape Architects Furnishing Design, Planning, or Inspection of Construction of Improvements.

(a) Except as provided by Subsection (a-1), a person must bring suit for damages for a claim listed in Subsection (b) against a registered or licensed architect, engineer, interior designer, or landscape architect in this state, who designs, plans, or inspects the construction of an improvement to real property or equipment attached to real property, not later than 10 years after the substantial completion of the improvement or the beginning of operation of the equipment in an action arising out of a defective or unsafe condition of the real property, the improvement, or the equipment.

(a-1) A governmental entity must bring suit for damages for a claim listed in Subsection (b) against a registered or licensed architect, engineer, interior designer, or landscape architect in this state, who designs, plans, or inspects the construction of an improvement to real property or equipment attached to real property, not later than eight years after the substantial completion of the improvement or the beginning of operation of the equipment in an action arising out of a defective or unsafe condition of the real property, the improvement, or the equipment. This subsection does not apply to a claim arising out of:

(1) a contract entered into by the Texas Department of Transportation;

(2) a project that receives money from the state highway fund or a federal fund designated for highway and mass transit spending; or

(3) a civil works project, as that term is defined under Section 2269.351, Government Code.

(b) This section applies to suit for:

(1) injury, damage, or loss to real or personal property;

(2) personal injury;

(3) wrongful death;

(4) contribution; or

(5) indemnity.

(c) If the claimant presents a written claim for damages, contribution, or indemnity to the architect, engineer, interior designer, or landscape architect within the applicable limitations period, the period is extended for:

(1) two years from the date the claim is presented, for a claim to which Subsection (a) applies; or

(2) one year from the date the claim is presented, for a claim to which Subsection (a-1) applies.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., c. 860, § 1, eff. Sept. 1, 1997; Acts 2021 87th Leg., R.S., c. 484, § 1, eff. June 14, 2021.

Section 3(a) and (b) of Acts 2021, 87th Leg., R.S., c. 484, provides:

(a) Except as provided by this section, Section 16.008, Civil Practice and Remedies Code, as amended by this Act, applies to a cause of action arising out of a design, plan, or inspection of the construction of an improvement to real property or equipment attached to real property that commences on or after the effective date of this

Act. Section 16.008, Civil Practice and Remedies Code, as amended by this Act, does not apply to a cause of action arising out of a design, plan, or inspection that commences on or after the effective date of this Act under a contract entered into before that date.

(b) A cause of action arising out of a design, plan, or inspection of the construction of an improvement to real property or equipment attached to real property that commenced before the effective date of this Act or arising out of a design, plan, or inspection of the construction of an improvement to real property or equipment attached to real property that commences on or after the effective date of this Act under a contract entered into before that date is governed by the law applicable to the cause of action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 16.009. Persons Furnishing Construction or Repair of Improvements.

(a) Except as provided by Subsection (a-1) or (a-2), a claimant must bring suit for damages for a claim listed in Subsection (b) against a person who constructs or repairs an improvement to real property not later than 10 years after the substantial completion of the improvement in an action arising out of a defective or unsafe condition of the real property or a deficiency in the construction or repair of the improvement.

(a-1) A governmental entity must bring suit for damages for a claim listed in Subsection (b) against a person who constructs or repairs an improvement to real property not later than eight years after the substantial completion of the improvement in an action arising out of a defective or unsafe condition of the real property or a deficiency in the construction or repair of the improvement. This subsection does not apply to a claim arising out of:

(1) a contract entered into by the Texas Department of Transportation;

(2) a project that receives money from the state highway fund or a federal fund designated for highway and mass transit spending; or

(3) a civil works project, as that term is defined under Section 2269.351, Government Code.

(a-2) Except as provided by this subsection, with respect to any claim arising out of the design, construction, or repair of a new residence, of an alteration of or repair or addition to an existing residence, or of an appurtenance to a residence, a claimant must bring suit for damages for a claim listed in Subsection (b) against a person who constructs or repairs an improvement to real property not later than 10 years after the substantial completion of the improvement in an action arising out of a defective or unsafe condition of the real property or a deficiency in the construction or repair of the improvement. If the person being sued is a contractor who has provided a written warranty for the residence that complies with Subsection (a-3), the claimant must bring the suit not later than six years after the substantial completion of the improvement.

(a-3) For purposes of Subsection (a-2), a written warranty must provide a minimum period of:

(1) one year for workmanship and materials;

(2) two years for plumbing, electrical, heating, and air-conditioning delivery systems; and

(3) six years for major structural components.

(a-4) For purposes of Subsection (a-2):

(1) "Contractor" has the meaning assigned by Section 27.001, Property Code.

(2) "Residence" means the real property and improvements for a detached one-family or two-family dwelling or a townhouse not more than three stories above grade plane in height with a separate means of egress or an accessory structure not more than three stories above grade plane in height.

(b) This section applies to suit for:

(1) injury, damage, or loss to real or personal property;

(2) personal injury;

(3) wrongful death;

(4) contribution; or

(5) indemnity.

(c) If the claimant presents a written claim for damages, contribution, or indemnity to the person performing or furnishing the construction or repair work during the applicable limitations period, the period is extended for:

(1) two years from the date the claim is presented, for a claim to which Subsection (a) applies; or

(2) one year from the date the claim is presented, for a claim to which Subsection (a-1) or (a-2) applies.

(d) If the damage, injury, or death occurs during the last year of the applicable limitations period, the claimant may bring suit not later than two years after the day the cause of action accrues.

(e) This section does not bar an action:

(1) on a written warranty, guaranty, or other contract that expressly provides for a longer effective period;

(2) against a person in actual possession or control of the real property at the time that the damage, injury, or death occurs; or

(3) based on wilful misconduct or fraudulent concealment in connection with the performance of the construction or repair.

(f) This section does not extend or affect a period prescribed for bringing an action under any other law of this state.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 2021 87th Leg., R.S., c. 484, § 2, eff. June 14, 2021; Acts 2023, 88th Leg., R.S., HB 2024, § 1, eff. Sept. 1, 2023.

Section 4(a) and (b) of Acts 2021, 87th Leg., R.S., c. 484, § 2, provides:

a) Except as provided by this section, Section 16.009, Civil Practice and Remedies Code, as amended by this Act, applies to a cause of action arising out of construction or repair of an improvement to real property that commences on or after the effective date of this Act. Section 16.009, Civil Practice and Remedies Code, as amended by this Act, does not apply to a cause of action arising out of construction or repair of an improvement to real property that commences on or after the effective date of this Act under a contract entered into before that date.

(b) A cause of action arising out of construction or repair of an improvement to real property that commenced before the effective date of this Act or arising out of construction or repair of an improvement to real property that commences on or after the effective date of this Act under a contract entered into before that date is governed by the law applicable to the cause of action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

Sections 29a) and (b) or Acts 2023, 88th Leg., R.S., HB 2024, provides:

(a) Except as provided by this section, Section 16.009, Civil Practice and Remedies Code, as amended by this Act, applies to a cause of action arising out of the design, construction, or repair of an improvement to real property that commences on or after the effective date of this Act. Section 16.009, Civil Practice and Remedies Code, as amended by this Act, does not apply to a cause of action arising out of the design, construction, or repair of an improvement to real property that commences on or after the effective date of this Act under a contract entered into before that date.

(b) A cause of action arising out of the design, construction, or repair of an improvement to real property that commenced before the effective date of this Act or arising out of the design, construction, or repair of an improvement to real property that commences on or after the effective date of this Act under a contract entered into before that date is governed by the law applicable to the cause of action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 16.010. Misappropriation of Trade Secrets.

(a) A person must bring suit for misappropriation of trade secrets not later than three years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered.

(b) A misappropriation of trade secrets that continues over time is a single cause of action and the limitations period described by Subsection (a) begins running without regard to whether the misappropriation is a single or continuing act.

Added by Added by Acts 1997, 75th Leg., c. 26, § 1, eff. May 1, 1997.

§ 16.011. Surveyors.

(a) A person must bring suit for damages arising from an injury or loss caused by an error in a survey conducted by a registered public surveyor or a licensed state land surveyor:

(1) not later than 10 years after the date the survey is completed if the survey is completed on or after September 1, 1989; or

(2) not later than September 1, 1991, or 10 years after the date the survey was completed, whichever is later, if the survey was completed before September 1, 1989.

(b) If the claimant presents a written claim for damages to the surveyor during the 10-year limitations period, the period is extended for two years from the date the claim is presented.

(c) This section is a statute of repose and is independent of any other limitations period.

Added by Acts 1989, 71st Leg., c. 1233, § 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., c. 1173, § 1, eff. Sept. 1, 2001.

§ 16.012. Products Liability.

(a) In this section:

(1) “Claimant,” “seller,” and “manufacturer” have the meanings assigned by Section 82.001.

(2) “Products liability action” means any action against a manufacturer or seller for recovery of damages or other relief for harm allegedly caused by a defective product, whether the action is based in strict tort liability, strict products liability, negligence, misrepresentation, breach of express or implied warranty, or any other theory or combination of theories, and whether the relief sought is recovery of damages or any other legal or equitable relief, including a suit for:

(A) injury or damage to or loss or real or personal property;

(B) personal injury;

(C) wrongful death;

(D) economic loss; or

(E) declaratory, injunctive, or other equitable relief

(b) Except as provided by Subsections (c), (d) and (d-1), a claimant must commence a products liability action against a manufacturer or seller of a product before the end of 15 years after the date of the sale of the product by the defendant.

(c) If a manufacturer or seller expressly warrants in writing that the product has a useful safe life of longer than 15 years, a claimant must commence a products liability action against that manufacturer or seller of the product before the end of the number of years warranted after the date of the sale of the product by that seller.

(d) This section does not apply to a products liability action seeking damages for personal injury or wrongful death in which the claimant alleges:

(1) the claimant was exposed to the product that is the subject of the action before the end of 15 years after the date the product was first sold;

(2) the claimant's exposure to the product caused the claimant's disease that is the basis of the action; and

(3) the symptoms of the claimant's disease did not, before the end of 15 years after the date of the first sale of the product by the defendant, manifest themselves to a degree and for a duration that would put a reasonable person on notice that the person suffered some injury.

(d-1) This section does not reduce a limitations period for a cause of action described by Subsection (d) that accrues before the end of the limitations period under this section.

(e) This section does not extend the limitations period within which a products liability action involving a product may be commenced under any other law.

(f) This section applies only to the sale and not to the lease of a product.

(g) This section does not apply to any claim to which the General Aviation Revitalization Act of 1994 (Pub. L. No. 103-298, 108 Stat. 1552 (1994), reprinted in note, 49 U.S.C. Section 40101) or its exceptions are applicable.

Added by Acts 1993, 73rd Leg., c. 5, § 2, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., c. 204, § 5.01, eff. Sept. 1, 2003; Acts 2021, 87th Leg., R.S., c. 328, § 1, eff. Sept. 1, 2021.

Section 5.03 of Acts 2003, 78th Leg., c. 204, provides:

As soon as practicable after the effective date of this Act, the supreme court shall amend Rule 407(a), Texas Rules of Evidence, to conform that rule to Rule 407, Federal Rules of Evidence.

Section 23.02(c) of Acts 2003, 78th Leg., c. 204, provides:

(c) Articles 4, 5, and 8 of this Act apply to an action filed on or after July 1, 2003. An action filed before July 1, 2003, is governed by the law in effect immediately before the change in law made by Articles 4, 5, and 8, and that law is continued in effect for that purpose.

Section 2 of Acts 2021, 87th Leg., R.S., c. 328, § 2, provides:

Section 16.013, Civil Practice and Remedies Code, as added by this Act, applies only to a cause of action that accrues on or after the effective date of this Act.

SUBCHAPTER B. LIMITATIONS OF REAL PROPERTY ACTIONS

§ 16.021. Definitions.

In this subchapter:

(1) "Adverse possession" means an actual and visible appropriation of real property, commenced and continued under a claim of right that is inconsistent with and is hostile to the claim of another person.

(2) "Color of title" means a consecutive chain of transfers to the person in possession that:

(A) is not regular because of a muniment that is not properly recorded or is only in writing or because of a similar defect that does not want of intrinsic fairness or honesty; or

(B) is based on a certificate of headright, land warrant, or land scrip.

(3) "Peaceable possession" means possession of real property that is continuous and is not interrupted by an adverse suit to recover the property.

(4) "Title" means a regular chain of transfers of real property from or under the sovereignty of the soil.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 16.022. Effect of Disability.

(a) For the purposes of this subchapter, a person is under a legal disability if the person is:

(1) younger than 18 years of age, regardless of whether the person is married;

(2) of unsound mind; or

(3) serving in the United States Armed Forces during time of war.

(b) If a person entitled to sue for the recovery of real property or entitled to make a defense based on the title to real property is under a legal disability at the time title to the property vests or adverse possession commences, the time of the disability is not included in a limitations period.

(c) Except as provided by Sections 16.027 and 16.028, after the termination of the legal disability, a person has the same time to present a claim that is allowed to others under this chapter.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., c. 1049, § 57, eff. Sept. 1, 1987.

§ 16.023. Tacking of Successive Interests.

To satisfy a limitations period, peaceable and adverse possession does not need to continue in the same person, but there must be privity of estate between each holder and his successor.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 16.024. Adverse Possession: Three-Year Limitations Period.

A person must bring suit to recover real property held by another in peaceable and adverse possession under title or color of title not later than three years after the day the cause of action accrues.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 16.025. Adverse Possession: Five-Year Limitations Period.

(a) A person must bring suit not later than five years after the day the cause of action accrues to recover real property held in peaceable and adverse possession by another who:

(1) cultivates, uses, or enjoys the property;

(2) pays applicable taxes on the property; and

(3) claims the property under a duly registered deed.

(b) This section does not apply to a claim based on a quitclaim deed, a forged deed, or a deed executed under a forged power of attorney.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 2021, 87th Leg., R.S., c. 94, § 1, eff. Sept. 1, 2021.

Section 3 of Acts 2021, 87th Leg., R.S., c. 94, § 3, provides:

The change in law made by this Act applies only to a quitclaim deed recorded on or after the effective date of this Act. A quitclaim deed recorded before that date is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 16.026. Adverse Possession: 10-Year Limitations Period.

(a) A person must bring suit not later than 10 years after the day the cause of action accrues to recover real property held in peaceable and adverse possession by another who cultivates, uses, or enjoys the property.

(b) Without a title instrument, peaceable and adverse possession is limited in this section to 160 acres, including improvements, unless the number of acres actually enclosed exceeds 160. If the number of enclosed acres exceeds 160 acres, peaceable and adverse possession extends to the real property actually enclosed.

(c) Peaceable possession of real property held under a duly registered deed or other memorandum of title that fixes the boundaries of the possessor's claim extends to the boundaries specified in the instrument.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., c. 764, § 1, eff. Sept. 1, 1989.

§ 16.0265. Adverse Possession by Cotenant Heir: 15-Year Combined Limitations Period.

(a) In this section, "cotenant heir" means one of two or more persons who simultaneously acquire identical, undivided ownership interests in, and rights to possession of, the same real property by operation of the applicable intestate succession laws of this state or a successor in interest of one of those persons.

(b) One or more cotenant heirs of real property may acquire the interests of other cotenant heirs in the property by adverse possession under this section if, for a continuous, uninterrupted 10-year period immediately preceding the filing of the affidavits required by Subsection (c):

(1) the possessing cotenant heir or heirs:

(A) hold the property in peaceable and exclusive possession;

(B) cultivate, use, or enjoy the property; and

(C) pay all property taxes on the property not later than two years after the date the taxes become due; and

(2) no other cotenant heir has:

(A) contributed to the property's taxes or maintenance;

(B) challenged a possessing cotenant heir's exclusive possession of the property;

(C) asserted any other claim against a possessing cotenant heir in connection with the property, such as the right to rental payments from a possessing cotenant heir;

(D) acted to preserve the cotenant heir's interest in the property by filing notice of the cotenant heir's claimed interest in the deed records of the county in which the property is located; or

(E) entered into a written agreement with the possessing cotenant heir under which the possessing cotenant heir is allowed to possess the property but the other cotenant heir does not forfeit that heir's ownership interest.

(c) To make a claim of adverse possession against a cotenant heir under this section, the cotenant heir or heirs claiming adverse possession must:

(1) file in the deed records of the county in which the real property is located an affidavit of heirship in the form prescribed by Section 203.002, Estates Code, and an affidavit of adverse possession that complies with the requirements of Subsection (d);

(2) publish notice of the claim in a newspaper of general circulation in the county in which the property is located for the four consecutive weeks immediately following the date the affidavits required by Subdivision (1) are filed; and

(3) provide written notice of the claim to the last known addresses of all other cotenant heirs by certified mail, return receipt requested.

(d) The affidavits required by Subsection (c) may be filed separately or combined into a single instrument. The affidavit of adverse possession must include:

(1) a legal description of the property that is the subject of the adverse possession;

(2) an attestation that each affiant is a cotenant heir of the property who has been in peaceable and exclusive possession of the property for a continuous, uninterrupted period during the 10 years preceding the filing of the affidavit;

(3) an attestation of cultivation, use, or enjoyment of the property by each affiant during the 10 years preceding the filing of the affidavit;

(4) evidence of payment by the affiant or affiants of all property taxes on the property as provided by Subsection (b) during the 10 years preceding the filing of the affidavit; and

(5) an attestation that there has been no action described by Subsection (b)(2) by another cotenant heir during the 10 years preceding the filing of the affidavit.

(e) A cotenant heir must file a controverting affidavit or bring suit to recover the cotenant heir's interest in real property adversely possessed by another cotenant heir under this section not later than the fifth anniversary of the date a right of adverse possession is asserted by the filing of the affidavits required by Subsection (c).

(f) If a controverting affidavit or judgment is not filed before the fifth anniversary of the date the affidavits required by Subsection (c) are filed and no notice described by Subsection (b)(2)(D) was filed in the 10-year period preceding the filing of the affidavits under Subsection (c), title vests in the adversely possessing cotenant heir or heirs in the manner provided by Section 16.030, precluding all claims by other cotenant heirs.

(g) A bona fide lender for value without notice accepting a voluntary lien against the real property to secure the adversely possessing cotenant heir's indebtedness or a bona fide purchaser for value without notice may conclusively rely on the affidavits required by Subsection (c) if:

(1) the affidavits have been filed of record for the period prescribed by Subsection (e); and

(2) a controverting affidavit or judgment has not been filed during that period.

(h) Without a title instrument, peaceable and adverse possession is limited in this section to 160 acres, including improvements, unless the number of acres actually enclosed exceeds 160 acres. If the number of enclosed acres exceeds 160 acres, peaceable and adverse possession extends to the real property actually enclosed.

(i) Peaceable possession of real property held under a duly registered deed or other memorandum of title that fixes the boundaries of the possessor's claim extends to the boundaries specified in the instrument.

Added by Acts 2017, 85th Leg., R.S., c. 742, § 1, eff. Sept. 1, 2017.

§ 16.027. Adverse Possession: 25-Year Limitations Period Notwithstanding Disability.

A person, regardless of whether the person is or has been under a legal disability, must bring suit not later than 25 years after the day the cause of action accrues to recover real property held in peaceable and adverse possession by another who cultivates, uses, or enjoys the property.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 16.028. Adverse Possession With Recorded Instrument: 25-Year Limitations Period.

(a) A person, regardless of whether the person is or has been under a legal disability, may not maintain an action for the recovery of real property held for 25 years before the commencement of the action in peaceable and adverse possession by another who holds the property in good faith and under a deed or other instrument purporting to convey the property that is recorded in the deed records of the county where any part of the real property is located.

(b) Adverse possession of any part of the real property held under a recorded deed or other recorded instrument that purports to convey the property extends to and includes all of the property described in the instrument, even though the instrument is void on its face or in fact.

(c) A person who holds real property and claims title under this section has a good and marketable title to the property regardless of a disability arising at any time in the adverse claimant or a person claiming under the adverse claimant.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 16.029. Evidence of Title to Land by Limitations.

(a) In a suit involving title to real property that is not claimed by this state, it is prima facie evidence that the title to the property has passed from the person holding apparent record title to an opposing party if it is shown that:

(1) for one or more years during the 25 years preceding the filing of the suit the person holding apparent record title to the property did not exercise dominion over or pay taxes on the property; and

(2) during that period the opposing parties and those whose estate they own have openly exercised dominion over and have asserted a claim to the land and have paid taxes on it annually before becoming delinquent for as long as 25 years.

(b) This section does not affect a statute of limitations, a right to prove title by circumstantial evidence under the case law of this state, or a suit between a trustee and a beneficiary of the trust.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 16.030. Title Through Adverse Possession.

(a) If an action for the recovery of real property is barred under this chapter, the person who holds the property in peaceable and adverse possession has full title, precluding all claims.

(b) A person may not acquire through adverse possession any right or title to real property dedicated to public use.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 16.031. Enclosed Land.

(a) A tract of land that is owned by one person and that is entirely surrounded by land owned, claimed, or fenced by another is not considered enclosed by a fence that encloses any part of the surrounding land.

(b) Possession of the interior tract by the owner or claimant of the surrounding land is not peaceable and adverse possession as described by Section 16.026 unless:

(1) the interior tract is separated from the surrounding land by a fence; or

(2) at least one-tenth of the interior tract is cultivated and used for agricultural purposes or is used for manufacturing purposes.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 16.032. Adjacent Land.

Possession of land that belongs to another by a person owning or claiming 5,000 or more fenced acres that adjoin the land is not peaceable and adverse as described by Section 16.026 unless:

(1) the land is separated from the adjacent enclosed tract by a substantial fence;

(2) at least one-tenth of the land is cultivated and used for agricultural purposes or used for manufacturing purposes; or

(3) there is actual possession of the land.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 16.033. Technical Defects in Instrument.

(a) A person with a right of action for the recovery of real property or an interest in real property conveyed by an instrument with one of the following defects must bring suit not later than two years after the day the instrument was filed for record with the county clerk of the county where the real property is located:

(1) lack of the signature of a proper corporate officer, partner, or company officer, manager, or member;

(2) lack of a corporate seal;

(3) failure of the record to show the corporate seal used;

(4) failure of the record to show authority of the board of directors or stockholders of a corporation, partners of a partnership, or officers, managers, or members of a company;

(5) execution and delivery of the instrument by a corporation, partnership, or other company that had been dissolved, whose charter had expired, or whose franchise had been canceled, withdrawn, or forfeited;

(6) acknowledgment of the instrument in an individual, rather than a representative or official, capacity;

(7) execution of the instrument by a trustee without record of the authority of the trustee or proof of the facts recited in the instrument;

(8) failure of the record or instrument to show an acknowledgment or jurat that complies with applicable law; or

(9) wording of the stated consideration that may or might create an implied lien in favor of the grantor.

(b) This section does not apply to a forged instrument.

(c) For the purposes of this section, an instrument affecting real property containing a ministerial defect, omission, or informality in the certificate of acknowledgment that has been filed for record for longer than two years in the office of the county recorder of the county in which the property is located is considered to have been lawfully recorded and to be notice of the existence of the instrument on and after the date the instrument is filed.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., c. 291, § 1, eff. Sept. 1, 1993; Acts 2007, 80th Leg., c. 819, § 1, eff. June 15, 2007.

Section 2 of Acts 2007, 80th Leg., c. 819, provides:

The change in law made by this Act applies only to an instrument filed for record on or after September 1, 2007. An instrument filed for record before September 1, 2007, is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

§ 16.034. Attorney's Fees.

(a) In a suit for the possession of real property between a person claiming under record title to the property and one claiming by adverse possession, if the prevailing party recovers possession of the property from a person unlawfully in actual possession, the court:

(1) shall award costs and reasonable attorney's fees to the prevailing party if the court finds that the person unlawfully in actual possession made a claim of adverse possession that was groundless and made in bad faith; and

(2) may award costs and reasonable attorney's fees to the prevailing party in the absence of a finding described by Subdivision (1).

(b) To recover attorney's fees, the person seeking possession must give the person unlawfully in possession a written demand for that person to vacate the premises. The demand must be given by registered or certified mail at least 10 days before filing the claim for recovery of possession.

(c) The demand must state that if the person unlawfully in possession does not vacate the premises within 10 days and a claim is filed by the person seeking possession, the court may enter a judgment against the person unlawfully in possession for costs and attorney's fees in an amount determined by the court to be reasonable.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 2009, 81st Leg., R.S., c. 901, § 1, eff. Sept. 1, 2009.

§ 16.035. Lien on Real Property.

(a) A person must bring suit for the recovery of real property under a real property lien or the foreclosure of a real property lien not later than four years after the day the cause of action accrues.

(b) A sale of real property under a power of sale in a mortgage or deed of trust that creates a real property lien must be made not later than four years after the day the cause of action accrues.

(c) The running of the statute of limitations is not suspended against a bona fide purchaser for value, a lienholder, or a lessee who has no notice or knowledge of the suspension of the limitations period and who acquires an interest in the property when a cause of action on an outstanding real property lien has accrued for more than four years, except as provided by:

(1) Section 16.062, providing for suspension in the event of death; or

(2) Section 16.036, providing for recorded extensions of real property liens.

(d) On the expiration of the four-year limitations period, the real property lien and a power of sale to enforce the real property lien become void.

(e) If a series of notes or obligations or a note or obligation payable in installments is secured by a real property lien, the four-year limitations period does not begin to run until the maturity date of the last note, obligation, or installment.

(f) The limitations period under this section is not affected by Section 3.118, Business & Commerce Code.

(g) In this section, "real property lien" means:

(1) a superior title retained by a vendor in a deed of conveyance or a purchase money note; or

(2) a vendor's lien, a mortgage, a deed of trust, a voluntary mechanic's lien, or a voluntary materialman's lien on real estate, securing a note or other written obligation.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., c. 219, § 1, eff. May 23, 1997.

§ 16.036. Extension of Real Property Lien.

(a) The party or parties primarily liable for a debt or obligation secured by a real property lien, as that term is defined in Section 16.035, may suspend the running of the four-year limitations period for real property liens through a written extension agreement as provided by this section.

(b) The limitations period is suspended and the lien remains in effect for four years after the extended maturity date of the debt or obligation if the extension agreement is:

(1) signed and acknowledged as provided by law for a deed conveying real property; and

(2) filed for record in the county clerk's office of the county where the real property is located.

(c) The parties may continue to extend the lien by entering, acknowledging, and recording additional extension agreements.

(d) The maturity date stated in the original instrument or in the date of the recorded renewal and extension is conclusive evidence of the maturity date of the debt or obligation.

(e) The limitations period under this section is not affected by Section 3.118, Business & Commerce Code.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., c. 219, § 2, eff. May 23, 1997.

§ 16.037. Effect of Extension of Real Property Lien on Third Parties.

An extension agreement is void as to a bona fide purchaser for value, a lienholder, or a lessee who deals with real property affected by a real property lien without actual notice of the agreement and before the agreement is acknowledged, filed, and recorded.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., c. 219, § 3, eff. May 23, 1997.

§ 16.038. Rescission or Waiver of Accelerated Maturity Date.

(a) If the maturity date of a series of notes or obligations or a note or obligation payable in installments is accelerated, and the accelerated maturity date is rescinded or waived in accordance with this section before the limitations period expires, the acceleration is deemed rescinded and waived and the note, obligation, or series of notes or obligations shall be governed by Section 16.035 as if no acceleration had occurred.

(b) Rescission or waiver of acceleration is effective if made by a written notice of a rescission or waiver served as provided in Subsection (c) by the lienholder, the servicer of the debt, or an attorney representing the lienholder on each debtor who, according to the records of the lienholder or the servicer of the debt, is obligated to pay the debt.

(c) Service of a notice under Subsection (b) must be by first class or certified mail and is complete when the notice is deposited in the United States mail, postage prepaid and addressed to the debtor at the debtor's last known address. The affidavit of a person knowledgeable of the facts to the effect that service was completed is prima facie evidence of service.

(d) A notice served under this section does not affect a lienholder's right to accelerate the maturity date of the debt in the future nor does it waive past defaults.

(e) This section does not create an exclusive method for waiver and rescission of acceleration or affect the accrual of a cause of action and the running of the related limitations period under Section 16.035(e) on any subsequent maturity date, accelerated or otherwise, of the note or obligation or series of notes or obligations.

Added by Acts 2015, 84th Leg., c. 759, § 1, eff. June 17, 2015.

Section 2 of Acts 2015, 84th Leg., c. 759, provides:

The change in law made by this Act applies with respect to a maturity date accelerated before, on, or after the effective date of this Act and any notice of a rescission or waiver of an accelerated maturity date served before, on, or after the effective date of this Act.

SUBCHAPTER C. RESIDUAL LIMITATIONS PERIOD

§ 16.051. Residual Limitations Period.

Every action for which there is no express limitations period, except an action for the recovery of real property, must be brought not later than four years after the day the cause of action accrues.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

SUBCHAPTER D. MISCELLANEOUS PROVISIONS

§ 16.061. Rights Not Barred.

(a) A right of action of this state or a political subdivision of the state, including a county, an incorporated city or town, a navigation district, a municipal utility district, a port authority, an entity acting under Chapter 54, Transportation Code, a school district, or an entity created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, is not barred by any of the following sections: 16.001-16.004, 16.006, 16.007, 16.021-16.028, 16.030-16.032, 16.035-16.037, 16.051, 16.062, 16.063, 16.065-16.067, 16.070, 16.071, 31.006, or 71.021.

(b) In this section:

(1) "Navigation district" means a navigation district organized under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

(2) "Port authority" has the meaning assigned by Section 60.402, Water Code.

(3) "Municipal utility district" means a municipal utility district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution.

Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., c. 2, § 4.02, eff. Aug. 28, 1989; Acts 1993, 73rd Leg., c. 782, § 1, eff. Aug. 30, 1993; Acts 1997, 75th Leg., c. 1070, § 47, eff. Sept. 1, 1997; Acts 2001, 77th Leg., c. 1420, § 8.204, eff. Sept. 1, 2001.

§ 16.062. Effect of Death.

(a) The death of a person against whom or in whose favor there may be a cause of action suspends the running of an applicable statute of limitations for 12 months after the death.

(b) If an executor or administrator of a decedent's estate qualifies before the expiration of the period provided by this section, the statute of limitations begins to run at the time of the qualification.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 16.063. Temporary Absence From State.

The absence from this state of a person against whom a cause of action may be maintained suspends the running of the applicable statute of limitations for the period of the person's absence.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 16.064. Effect of Lack of Jurisdiction.

(a) The period between the date of filing an action in a trial court and the date of a second filing of the same action in a different court suspends the running of the applicable statute of limitations for the period if:

(1) because of lack of jurisdiction in the trial court where the action was first filed, the action is dismissed or the judgment is set aside or annulled in a direct proceeding; and

(2) not later than the 60th day after the date the dismissal or other disposition becomes final, the action is commenced in a court of proper jurisdiction.

(b) This section does not apply if the adverse party has shown in abatement that the first filing was made with intentional disregard of proper jurisdiction.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 16.065. Acknowledgment of Claim.

An acknowledgment of the justness of a claim that appears to be barred by limitations is not admissible in evidence to defeat the law of limitations if made after the time that the claim is due unless the acknowledgment is in writing and is signed by the party to be charged.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 16.066. Action on Foreign Judgment.

(a) An action on a foreign judgment is barred in this state if the action is barred under the laws of the jurisdiction where rendered.

(b) An action against a person who has resided in this state for 10 years prior to the action may not be brought on a foreign judgment rendered more than 10 years before the commencement of the action in this state.

(c) In this section "foreign judgment" means a judgment or decree rendered in another state or a foreign country.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 16.067. Claim Incurred Prior to Arrival in This State.

(a) A person may not bring an action to recover a claim against a person who has moved to this state if the claim is barred by the law of limitations of the state or country from which the person came.

(b) A person may not bring an action to recover money from a person who has moved to this state and who was released from its payment by the bankruptcy or insolvency laws of the state or country from which the person came.

(c) A demand that is against a person who has moved to this state and was incurred prior to his arrival in this state is not barred by the law of limitations until the person has lived in this state for 12 months. This subsection does not affect the application of Subsections (a) and (b).

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 16.068. Amended and Supplemental Pleadings.

If a filed pleading relates to a cause of action, cross action, counterclaim, or defense that is not subject to a plea of limitation when the pleading is filed, a subsequent amendment or supplement to the pleading that changes the facts or grounds of liability or defense is not subject to a plea of limitation unless the amendment or supplement is wholly based on a new, distinct, or different transaction or occurrence.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 16.069. Counterclaim or Cross Claim.

(a) If a counterclaim or cross claim arises out of the same transaction or occurrence that is the basis of an action, a party to the action may file the counterclaim or cross claim even though as a separate action it would be barred by limitation on the date the party's answer is required.

(b) The counterclaim or cross claim must be filed not later than the 30th day after the date on which the party's answer is required.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 16.070. Contractual Limitations Period.

(a) Except as provided by Subsection (b), a person may not enter a stipulation, contract, or agreement that purports to limit the time in which to bring suit on the stipulation, contract, or agreement to a period shorter than two years. A stipulation, contract, or agreement that establishes a limitations period that is shorter than two years is void in this state.

(b) This section does not apply to a stipulation, contract, or agreement relating to the sale or purchase of a business entity if a party to the stipulation, contract, or agreement pays or receives or is obligated to pay or entitled to receive consideration under the stipulation, contract, or agreement having an aggregate value of not less than $500,000.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., c. 840, § 2, eff. Aug. 26, 1991.

§ 16.071. Notice Requirements.

(a) A contract stipulation that requires a claimant to give notice of a claim for damages as a condition precedent to the right to sue on the contract is not valid unless the stipulation is reasonable. A stipulation that requires notification within less than 90 days is void.

(b) If notice is required, the claimant may notify any convenient agent of the company that requires the notice.

(c) A contract stipulation between the operator of a railroad, street railway, or interurban railroad and an employee or servant of the operator is void if it requires as a condition precedent to liability:

(1) the employee or servant to notify the system of a claim for damages for personal injury caused by negligence; or

(2) the spouse, parent, or child of a deceased employee or servant to notify the system of a claim of death caused by negligence.

(d) This section applies to a contract between a federal prime contractor and a subcontractor, except that the notice period stipulated in the subcontract may be for a period not less than the period stipulated in the prime contract, minus seven days.

(e) In a suit covered by this section or Section 16.070, it is presumed that any required notice has been given unless lack of notice is specifically pleaded under oath.

(f) This section does not apply to a contract relating to the sale or purchase of a business entity if a party to the contract pays or receives or is obligated to pay or receive consideration under the contract having an aggregate value of not less than $500,000.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., c. 840, § 3, eff. Aug. 26, 1991.

§ 16.072. Saturday, Sunday, or Holiday.

If the last day of a limitations period under any statute of limitations falls on a Saturday, Sunday, or holiday, the period for filing suit is extended to include the next day that the county offices are open for business.

Added by Acts 1985, 69th Leg., c. 959, § 1, eff. Sept. 1, 1985.

§ 16.073. Applicability of Limitations Periods to Arbitration.

a) A party may not assert a claim in an arbitration proceeding if the party could not bring suit for the claim in court due to the expiration of the applicable limitations period.

(b) A party may assert a claim in an arbitration proceeding after expiration of the applicable limitations period if:

(1) the party brought suit for the claim in court before the expiration of the applicable limitations period; and

(2) the parties to the claim agreed to arbitrate the claim or a court ordered the parties to arbitrate the claim.

Added by Acts 2023, 88th Leg., R.S., HB 1255, § 1, eff. May 24, 2023.

13. Products Liability Act

Texas Civil Practice & Remedies Code

TITLE 4. LIABILITY IN TORT

CHAPTER 82. PRODUCTS LIABILITY

§ 82.001. Definitions.

In this chapter:

(1) "Claimant" means a party seeking relief, including a plaintiff, counterclaimant, or cross-claimant.

(2) "Products liability action" means any action against a manufacturer or seller for recovery of damages arising out of personal injury, death, or property damage allegedly caused by a defective product whether the action is based in strict tort liability, strict products liability, negligence, misrepresentation, breach of express or implied warranty, or any other theory or combination of theories.

(3) "Seller" means a person who is engaged in the business of distributing or otherwise placing, for any commercial purpose, in the stream of commerce for use or consumption a product or any component part thereof.

(4) "Manufacturer" means a person who is a designer, formulator, constructor, rebuilder, fabricator, producer, compounder, processor, or assembler of any product or any component part thereof and who places the product or any component part thereof in the stream of commerce.

Added by Acts 1993, 73rd Leg., c. 5, § 1, eff. Sept. 1, 1993.

§ 82.002. Manufacturer's Duty to Indemnify.

(a) A manufacturer shall indemnify and hold harmless a seller against loss arising out of a products liability action, except for any loss caused by the seller's negligence, intentional misconduct, or other act or omission, such as negligently modifying or altering the product, for which the seller is independently liable.

(b) For purposes of this section, "loss" includes court costs and other reasonable expenses, reasonable attorney fees, and any reasonable damages.

(c) Damages awarded by the trier of fact shall, on final judgment, be deemed reasonable for purposes of this section.

(d) For purposes of this section, a wholesale distributor or retail seller who completely or partially assembles a product in accordance with the manufacturer's instructions shall be considered a seller.

(e) The duty to indemnify under this section:

(1) applies without regard to the manner in which the action is concluded; and

(2) is in addition to any duty to indemnify established by law, contract, or otherwise.

(f) A seller eligible for indemnification under this section shall give reasonable notice to the manufacturer of a product claimed in a petition or complaint to be defective, unless the manufacturer has been served as a party or otherwise has actual notice of the action.

(g) A seller is entitled to recover from the manufacturer court costs and other reasonable expenses, reasonable attorney fees, and any reasonable damages incurred by the seller to enforce the seller's right to indemnification under this section.

Added by Acts 1993, 73rd Leg., c. 5, § 1, eff. Sept. 1, 1993.

§ 82.003. Liability of Nonmanufacturing Seller.

(a) A seller that did not manufacture a product is not liable for harm caused to the claimant by that product unless the claimant proves:

(1) that the seller participated in the design of the product;

(2) that the seller altered or modified the product and the claimant's harm resulted from that alteration or modification;

(3) that the seller installed the product, or had the product installed, on another product and the claimant's harm resulted from the product's installation onto the assembled product;

(4) that:

(A) the seller exercised substantial control over the content of a warning or instruction that accompanied the product;

(B) the warning or instruction was inadequate; and

(C) the claimant's harm resulted from the inadequacy of the warning or instruction;

(5) that:

(A) the seller made an express factual representation about an aspect of the product;

(B) the representation was incorrect;

(C) the claimant relied on the representation in obtaining or using the product; and

(D) if the aspect of the product had been as represented, the claimant would not have been harmed by the product or would not have suffered the same degree of harm;

(6) that:

(A) the seller actually knew of a defect to the product at the time the seller supplied the product; and

(B) the claimant's harm resulted from the defect; or

(7) that the manufacturer of the product is:

(A) insolvent; or

(B) not subject to the jurisdiction of the court.

(b) This section does not apply to a manufacturer or seller whose liability in a products liability action is governed by Chapter 2301, Occupations Code. In the event of a conflict, Chapter 2301, Occupations Code, prevails over this section.

(c) If after service on a nonresident manufacturer through the secretary of state in the manner prescribed by Subchapter C, Chapter 17, the manufacturer fails to answer or otherwise make an appearance in the time required by law, it is conclusively presumed for the purposes of Subsection (a)(7)(B) that the manufacturer is not subject to the jurisdiction of the court unless the seller is able to secure personal jurisdiction over the manufacturer in the action.

Added by Acts 2003, 78th Leg., c. 204, § 5.02, eff. Sept. 1, 2003. Amended by Acts 2009, 81st Leg., R.S., c. 1351, § 2(a), eff. Sept. 1, 2009.

Section 5.03 of Acts 2003, 78th Leg., c. 204, provides:

As soon as practicable after the effective date of this Act, the supreme court shall amend Rule 407(a), Texas Rules of Evidence, to conform that rule to Rule 407, Federal Rules of Evidence.

Section 23.02(c) of Acts 2003, 78th Leg., c. 204, provides:

(c) Articles 4, 5, and 8 of this Act apply to an action filed on or after July 1, 2003. An action filed before July 1, 2003, is governed by the law in effect immediately before the change in law made by Articles 4, 5, and 8, and that law is continued in effect for that purpose.

Section 2(b) of Acts 2009, 81st Leg., R.S., c. 1351, provides:

(b) The change in law made by this section applies to an action filed on or after the effective date of this Act or pending on the effective date of this Act.

§ 82.004. Inherently Unsafe Products.

(a) In a products liability action, a manufacturer or seller shall not be liable if:

(1) the product is inherently unsafe and the product is known to be unsafe by the ordinary consumer who consumes the product with the ordinary knowledge common to the community; and

(2) the product is a common consumer product intended for personal consumption, such as:

(A) sugar, castor oil, alcohol, tobacco, and butter, as identified in Comment i to Section 402A of the Restatement (Second) of Torts; or

(B) an oyster.

(b) For purposes of this section, the term "products liability action" does not include an action based on manufacturing defect or breach of an express warranty.

Added by Acts 1993, 73rd Leg., c. 5, § 1, eff. Sept. 1, 1993. Amended by Acts 2007, 80th Leg., c. 1146, § 1, eff. Sept. 1, 2007.

Section 2 of Acts 2007, 80th Leg., c. 1146, § 1, provides:.

Subsection (a), Section 82.004, Civil Practice and Remedies Code, as amended by this Act, applies only to a cause of action commenced on or after the effective date of this Act. A cause of action commenced before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for that purpose.

§ 82.005. Design Defects.

(a) In a products liability action in which a claimant alleges a design defect, the burden is on the claimant to prove by a preponderance of the evidence that:

(1) there was a safer alternative design; and

(2) the defect was a producing cause of the personal injury, property damage, or death for which the claimant seeks recovery.

(b) In this section, "safer alternative design" means a product design other than the one actually used that in reasonable probability:

(1) would have prevented or significantly reduced the risk of the claimant's personal injury, property damage, or death without substantially impairing the product's utility; and

(2) was economically and technologically feasible at the time the product left the control of the manufacturer or seller by the application of existing or reasonably achievable scientific knowledge.

(c) This section does not supersede or modify any statute, regulation, or other law of this state or of the United States that relates to liability for, or to relief in the form of, abatement of nuisance, civil penalties, cleanup costs, cost recovery, an injunction, or restitution that arises from contamination or pollution of the environment.

(d) This section does not apply to:

(1) a cause of action based on a toxic or environmental tort as defined by Sections 33.013(c)(2) and (3); or

(2) a drug or device, as those terms are defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321).

(e) This section is not declarative, by implication or otherwise, of the common law with respect to any product and shall not be construed to restrict the courts of this state in developing the common law with respect to any product which is not subject to this section.

Added by Acts 1993, 73rd Leg., c. 5, § 1, eff. Sept. 1, 1993.

§ 82.006. Firearms and Ammunition.

(a) In a products liability action brought against a manufacturer or seller of a firearm or ammunition that alleges a design defect in the firearm or ammunition, the burden is on the claimant to prove, in addition to any other elements that the claimant must prove, that:

(1) the actual design of the firearm or ammunition was defective, causing the firearm or ammunition not to function in a manner reasonably expected by an ordinary consumer of firearms or ammunition; and

(2) the defective design was a producing cause of the personal injury, property damage, or death.

(b) The claimant may not prove the existence of the defective design by a comparison or weighing of the benefits of the firearm or ammunition against the risk of personal injury, property damage, or death posed by its potential to cause such injury, damage, or death when discharged.

Added by Acts 1993, 73rd Leg., c. 5, § 1, eff. Sept. 1, 1993.

§ 82.007. Medicines.

(a) In a products liability action alleging that an injury was caused by a failure to provide adequate warnings or information with regard to a pharmaceutical product, there is a rebuttable presumption that the defendant or defendants, including a health care provider, manufacturer, distributor, and prescriber, are not liable with respect to the allegations involving failure to provide adequate warnings or information if:

(1) the warnings or information that accompanied the product in its distribution were those approved by the United States Food and Drug Administration for a product approved under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.), as amended, or Section 351, Public Health Service Act (42 U.S.C. Section 262), as amended; or

(2) the warnings provided were those stated in monographs developed by the United States Food and Drug Administration for pharmaceutical products that may be distributed without an approved new drug application.

(b) The claimant may rebut the presumption in Subsection (a) as to each defendant by establishing that:

(1) the defendant, before or after pre-market approval or licensing of the product, withheld from or misrepresented to the United States Food and Drug Administration required information that was material and relevant to the performance of the product and was causally related to the claimant's injury;

(2) the pharmaceutical product was sold or prescribed in the United States by the defendant after the effective date of an order of the United States Food and Drug Administration to remove the product from the market or to withdraw its approval of the product;

(3)(A) the defendant recommended, promoted, or advertised the pharmaceutical product for an indication not approved by the United States Food and Drug Administration;

(B) the product was used as recommended, promoted, or advertised; and

(C) the claimant's injury was causally related to the recommended, promoted, or advertised use of the product;

(4)(A) the defendant prescribed the pharmaceutical product for an indication not approved by the United States Food and Drug Administration;

(B) the product was used as prescribed; and

(C) the claimant's injury was causally related to the prescribed use of the product; or

(5) the defendant, before or after pre-market approval or licensing of the product, engaged in conduct that would constitute a violation of 18 U.S.C. Section 201 and that conduct caused the warnings or instructions approved for the product by the United States Food and Drug Administration to be inadequate.

Added by Acts 2003, 78th Leg., c. 204, § 5.02, eff. Sept. 1, 2003.

Section 5.03 of Acts 2003, 78th Leg., c. 204 provides:

As soon as practicable after the effective date of this Act, the supreme court shall amend Rule 407(a), Texas Rules of Evidence, to conform that rule to Rule 407, Federal Rules of Evidence.

Section 23.02(c) of Acts 2003, 78th Leg., c. 204 provides:

(c) Articles 4, 5, and 8 of this Act apply to an action filed on or after July 1, 2003. An action filed before July 1, 2003, is governed by the law in effect immediately before the change in law made by Articles 4, 5, and 8, and that law is continued in effect for that purpose.

§ 82.008. Compliance with Government Standards.

(a) In a products liability action brought against a product manufacturer or seller, there is a rebuttable presumption that the product manufacturer or seller is not liable for any injury to a claimant caused by some aspect of the formulation, labeling, or design of a product if the product manufacturer or seller establishes that the product's formula, labeling, or design complied with mandatory safety standards or regulations adopted and promulgated by the federal government, or an agency of the federal government, that were applicable to the product at the time of manufacture and that governed the product risk that allegedly caused harm.

(b) The claimant may rebut the presumption in Subsection (a) by establishing that:

(1) the mandatory federal safety standards or regulations applicable to the product were inadequate to protect the public from unreasonable risks of injury or damage; or

(2) the manufacturer, before or after marketing the product, withheld or misrepresented information or material relevant to the federal government's or agency's determination of adequacy of the safety standards or regulations at issue in the action.

(c) In a products liability action brought against a product manufacturer or seller, there is a rebuttable presumption that the product manufacturer or seller is not liable for any injury to a claimant allegedly caused by some aspect of the formulation, labeling, or design of a product if the product manufacturer or seller establishes that the product was subject to pre-market licensing or approval by the federal government, or an agency of the federal government, that the manufacturer complied with all of the government's or agency's procedures and requirements with respect to pre-market licensing or approval, and that after full consideration of the product's risks and benefits the product was approved or licensed for sale by the government or agency. The claimant may rebut this presumption by establishing that:

(1) the standards or procedures used in the particular pre-market approval or licensing process were inadequate to protect the public from unreasonable risks of injury or damage; or

(2) the manufacturer, before or after pre-market approval or licensing of the product, withheld from or misrepresented to the government or agency information that was material and relevant to the performance of the product and was causally related to the claimant's injury.

(d) This section does not extend to manufacturing flaws or defects even though the product manufacturer has complied with all quality control and manufacturing practices mandated by the federal government or an agency of the federal government.

(e) This section does not extend to products covered by Section 82.007.

Added by Acts 2003, 78th Leg., c. 204, § 5.02, eff. Sept. 1, 2003.

Section 5.03 of Acts 2003, 78th Leg., c. 204, provides:

As soon as practicable after the effective date of this Act, the supreme court shall amend Rule 407(a), Texas Rules of Evidence, to conform that rule to Rule 407, Federal Rules of Evidence.

Section 23.02(c) of Acts 2003, 78th Leg., c. 204, provides:

(c) Articles 4, 5, and 8 of this Act apply to an action filed on or after July 1, 2003. An action filed before July 1, 2003, is governed by the law in effect immediately before the change in law made by Articles 4, 5, and 8, and that law is continued in effect for that purpose.

14. Unfair Methods of Competition and Unfair or Deceptive Acts or Practices

Texas Insurance Code

TITLE 5. PROTECTION OF CONSUMER INTERESTS

SUBTITLE C. DECEPTIVE, UNFAIR, AND PROHIBITED ACTS

CHAPTER 541. UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES

SUBCHAPTER A. GENERAL PROVISIONS

§ 541.001. Purpose.

The purpose of this chapter is to regulate trade practices in the business of insurance by:

(1) defining or providing for the determination of trade practices in this state that are unfair methods of competition or unfair or deceptive acts or practices; and

(2) prohibiting those trade practices.

(Formerly Ins. Code Art. 21.21, Sec. 1(a).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.002. Definitions.

In this chapter:

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

(2) "Person" means an individual, corporation, association, partnership, reciprocal or interinsurance exchange, Lloyd's plan, fraternal benefit society, or other legal entity engaged in the business of insurance, including an agent, broker, or adjuster.

(Formerly Ins. Code Art. 21.21, Secs. 2(a), (c).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005. Amended by Acts 2021, 87th Leg., R.S., c. 355, § 3, eff. Sept. 1, 2021.

§ 541.003. Unfair Methods of Competition and Unfair or Deceptive Acts or Practices Prohibited.

A person may not engage in this state in a trade practice that is defined in this chapter as or determined under this chapter to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

(Formerly Ins. Code Art. 21.21, Sec. 3.). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.004. Venue for Actions Involving Department or Commissioner.

An action under this chapter in which the department or commissioner is a party must be brought in a district court in Travis County.

(Formerly Ins. Code Art. 21.21, Sec. 21.). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.005. Applicability to Risk Retention or Purchasing Group.

(a) A risk retention group or purchasing group described by Subchapter B, Chapter 2201, or Section 2201.251 that is not chartered in this state may not engage in a trade practice in this state that is defined as unlawful under this chapter.

(b) A risk retention group or purchasing group is subject to this chapter and rules adopted under this chapter.

(Formerly Ins. Code Art. 21.21B.). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005. Amended by Acts 2007, 80th Leg., R.S., c. 730, § 2D.005, eff. April. 1, 2009.

§ 541.006. Prohibited Content of Certain Insurance Policies.

Notwithstanding any other provision of this code, it is unlawful for an insurer engaged in the business of life, accident, or health insurance to issue or deliver in this state a policy containing the words "Approved by the Texas Department of Insurance" or words of a similar meaning.

(Formerly Ins. Code Art. 21.21, Sec. 9(a).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.007. Immunity from Prosecution.

(a) This section applies to a person who requests to be excused from attending and testifying at a hearing or from producing books, papers, records, correspondence, or other documents at the hearing on the ground that the testimony or evidence may:

(1) tend to incriminate the person; or

(2) subject the person to a penalty or forfeiture.

(b) A person who, notwithstanding a request described by Subsection (a), is directed to provide the testimony or produce the documents shall comply with that direction. Except as provided by Subsection (c), the person may not be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter, or thing about which the person testifies or produces documents, and the testimony or documents produced may not be received against the person in a criminal action, investigation, or proceeding.

(c) A person who complies with a direction to testify or produce documents is not exempt from prosecution or punishment for perjury committed while testifying and the testimony or evidence given or produced is admissible against the person in a criminal action, investigation, or proceeding concerning the perjury, and the person is not exempt from the denial, revocation, or suspension of any license, permission, or authority conferred or to be conferred under this code.

(d) A person may waive the immunity or privilege granted by this section by executing, acknowledging, and filing with the department a statement expressly waiving the immunity or privilege for a specified transaction, matter, or thing. On filing the statement:

(1) the testimony or documents produced by the person in relation to the transaction, matter, or thing may be received by or produced before a judge or justice or a court, grand jury, or other tribunal; and

(2) the person is not entitled to immunity or privilege for the testimony or documents received or produced under Subdivision (1).

(Formerly Ins. Code Art. 21.21, Sec. 12.). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.008. Liberal Construction.

This chapter shall be liberally construed and applied to promote the underlying purposes as provided by Section 541.001.

(Formerly Ins. Code Art. 21.21, Sec. 1(b).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

[Sections 541.009-541.050 reserved for expansion]

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

§ 541.051. Misrepresentation Regarding Policy or Insurer.

It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to:

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

(A) the terms of the policy;

(B) the benefits or advantages promised by the policy; or

(C) the dividends or share of surplus to be received on the policy;

(2) make a false or misleading statement regarding the dividends or share of surplus previously paid on a similar policy;

(3) make a misleading representation or misrepresentation regarding:

(A) the financial condition of an insurer; or

(B) the legal reserve system on which a life insurer operates;

(4) use a name or title of a policy or class of policies that misrepresents the true nature of the policy or class of policies; or

(5) make a misrepresentation to a policyholder insured by any insurer for the purpose of inducing or that tends to induce the policyholder to allow an existing policy to lapse or to forfeit or surrender the policy.

(Formerly Ins. Code Art. 21.21, Sec. 4 (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.052. False Information and Advertising.

(a) It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to make, publish, disseminate, circulate, or place before the public or directly or indirectly cause to be made, published, disseminated, circulated, or placed before the public an advertisement, announcement, or statement containing an untrue, deceptive, or misleading assertion, representation, or statement regarding the business of insurance or a person in the conduct of the person's insurance business.

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

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

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

(3) over a radio or television station;

(4) through the Internet; or

(5) in any other manner.

(Formerly Ins. Code Art. 21.21, Sec. 4 (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005. Amended by Acts 2007, 80th Leg., c. 475, § 2, eff. Sept. 1, 2007.

§ 541.053. Defamation of Insurer.

(a) It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to directly or indirectly make, publish, disseminate, or circulate or to aid, abet, or encourage the making, publication, dissemination, or circulation of a statement that:

(1) is false, maliciously critical of, or derogatory to the financial condition of an insurer; and

(2) is calculated to injure a person engaged in the business of insurance.

(b) This section applies to any oral or written statement, including a statement in any pamphlet, circular, article, or literature.

(Formerly Ins. Code Art. 21.21, Sec. 4 (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.054. Boycott, Coercion, or Intimidation.

It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to commit through concerted action or to enter into an agreement to commit an act of boycott, coercion, or intimidation that results in or tends to result in the unreasonable restraint of or a monopoly in the business of insurance.

(Formerly Ins. Code Art. 21.21, Sec. 4 (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.055. False Financial Statement.

(a) It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to, with intent to deceive:

(1) file with a supervisory or other public official a false statement of financial condition of an insurer; or

(2) make, publish, disseminate, circulate, deliver to any person, or place before the public or directly or indirectly cause to be made, published, disseminated, circulated, delivered to any person, or placed before the public a false statement of financial condition of an insurer.

(b) It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to make a false entry in an insurer's book, report, or statement or wilfully omit to make a true entry of a material fact relating to the insurer's business in the insurer's book, report, or statement with intent to deceive:

(1) an agent or examiner lawfully appointed to examine the insurer's condition or affairs; or

(2) a public official to whom the insurer is required by law to report or who has authority by law to examine the insurer's condition or affairs.

(Formerly Ins. Code Art. 21.21, Sec. 4 (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.056. Prohibited Rebates and Inducements.

(a) Subject to Section 541.058 and except as otherwise expressly provided by law, it is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to knowingly permit the making of, offer to make, or make a life insurance contract, life annuity contract, or accident and health insurance contract or an agreement regarding the contract, other than as plainly expressed in the issued contract, or directly or indirectly pay, give, or allow or offer to pay, give, or allow as inducement to enter into a life insurance contract, life annuity contract, or accident and health insurance contract a rebate of premiums payable on the contract, a special favor or advantage in the dividends or other benefits of the contract, or a valuable consideration or inducement not specified in the contract, or give, sell, or purchase or offer to give, sell, or purchase in connection with a life insurance, life annuity, or accident and health insurance contract or as inducement to enter into the contract stocks, bonds, or other securities of an insurer or other corporation, association, or partnership, dividends or profits accrued from the stocks, bonds, or securities, or anything of value not specified in the contract.

(b) It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to issue or deliver or to permit an agent, officer, or employee to issue or deliver as an inducement to insurance:

(1) company stock or other capital stock;

(2) a benefit certificate or share in a corporation;

(3) securities; or

(4) a special or advisory board contract or any other contract promising returns or profits.

(c) Subsection (b) does not prohibit issuing or delivering a participating insurance policy otherwise authorized by law.

(Formerly Ins. Code Art. 21.21, Sec. 4 (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.057. Unfair Discrimination in Life Insurance and Annuity Contracts.

Subject to Section 541.058, it is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to make or permit with respect to a life insurance or life annuity contract an unfair discrimination between individuals of the same class and equal life expectancy regarding:

(1) the rates charged;

(2) the dividends or other benefits payable; or

(3) any of the other terms and conditions of the contract.

(Formerly Ins. Code Art. 21.21, Sec. 4 (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.058. Certain Practices Not Considered Discrimination or Inducement.

(a) In this section:

(1) "Health-related services" means services that are available in connection with an accident and health insurance policy or certificate or an evidence of coverage and that are directed to an individual's health improvement or maintenance.

(2) "Health-related information" means that information that is directed to an individual's health improvement or maintenance or to costs associated with particular options available in connection with an accident and health insurance policy or certificate or an evidence of coverage.

(b) It is not a rebate or discrimination prohibited by Section 541.056(a) or 541.057:

(1) for a life insurance or life annuity contract, to pay a bonus to a policyholder or otherwise abate the policyholder's premiums in whole or in part out of surplus accumulated from nonparticipating insurance policies if the bonus or abatement:

(A) is fair and equitable to policyholders; and

(B) is in the best interests of the insurer and its policyholders;

(2) for a life insurance policy issued on the industrial debit plan, to make to a policyholder who has continuously for a specified period made premium payments directly to the insurer's office an allowance in an amount that fairly represents the saving in collection expenses;

(3) for a group insurance policy, to readjust the rate of premium based on the loss or expense experience under the policy at the end of a policy year if the adjustment is retroactive for only that policy year;

(4) for a life annuity contract, to waive surrender charges under the contract when the contract holder exchanges that contract for another annuity contract issued by the same insurer or an affiliate of the same insurer that is part of the same holding company group if:

(A) the waiver and the exchange are fully, fairly, and accurately explained to the contract holder in a manner that is not deceptive or misleading; and

(B) the contract holder is given credit for the time that the previous contract was held when determining any surrender charges under the new contract;

(5) in connection with an accident and health insurance policy, to provide to policy or certificate holders, in addition to benefits under the terms of the insurance contract, health-related services or health-related information, or to disclose the availability of those additional services and information to prospective policy or certificate holders;

(6) in connection with a health maintenance organization evidence of coverage, to provide to enrollees, in addition to benefits under the evidence of coverage, health-related services or health-related information, or to disclose the availability of those additional services and information to prospective enrollees or contract holders; or

(7) in connection with an offer or sale of a life insurance policy or contract, accident and health insurance policy or contract, or annuity contract, to give, provide, or allow or offer to give, provide, or allow an item that is a promotional advertising item, educational item, or traditional courtesy commonly extended to consumers and that is valued at $25 or less.

(Formerly Ins. Code Art. 21.21, Sec. 4 (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005. Amended by Acts 2007, 80th Leg., c. 112, § 1, eff. May 17, 2007; Acts 2011, 82nd Leg., R.S., c. 1156, § 1, eff Sept. 1, 2011; Acts 2013, 83rd Leg., R.S., c. 28, § 1, eff. Sept. 1, 2013.

Section 17 of Acts 2011, 82nd Leg., R.S., c. 1156, provides:

(a) Section 541.058(b), Insurance Code, as amended by this Act, applies only to an exchange of life annuity contracts on or after the effective date of this Act. An exchange of life annuity contracts before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

Section 7 of Acts 2013, 83rd Leg., R.S., c. 28, provides:

The change in law made by this Act applies only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law applicable to the conduct immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 541.059. Deceptive Name, Word, Symbol, Device, or Slogan.

(a) Except as provided by Subsection (b), it is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to use, display, publish, circulate, distribute, or cause to be used, displayed, published, circulated, or distributed in a letter, pamphlet, circular, contract, policy, evidence of coverage, article, poster, or other document, literature, or public media:

(1) a name as the corporate or business name of a person or entity engaged in the business of insurance or in an insurance-related business in this state that is the same as or deceptively similar to the name adopted and used by an insurance entity, health maintenance organization, third-party administrator, or group hospital service corporation authorized to engage in business under the laws of this state; or

(2) a word, symbol, device, or slogan, either alone or in combination and regardless of whether registered, and including the titles, designations, character names, and distinctive features of broadcast or other advertising, that is the same as or deceptively similar to a word, symbol, device, or slogan adopted and used by an insurance entity, health maintenance organization, third-party administrator, or group hospital service corporation to distinguish the entity or the entity's products or services from another entity.

(b) If more than one person or entity uses names, words, symbols, devices, or slogans, either alone or in combination, that are the same or deceptively similar and are likely to cause confusion or mistake, the person or entity that demonstrates the first continuous actual use of the name, word, symbol, device, slogan, or combination has not engaged in an unfair method of competition or deceptive act or practice under this section.

(Formerly Ins. Code Art. 21.21, Sec. 4 (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.060. Unfair Settlement Practices.

(a) It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to engage in the following unfair settlement practices with respect to a claim by an insured or beneficiary:

(1) misrepresenting to a claimant a material fact or policy provision relating to coverage at issue;

(2) failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of:

(A) a claim with respect to which the insurer's liability has become reasonably clear; or

(B) a claim under one portion of a policy with respect to which the insurer's liability has become reasonably clear to influence the claimant to settle another claim under another portion of the coverage unless payment under one portion of the coverage constitutes evidence of liability under another portion;

(3) failing to promptly provide to a policyholder a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or offer of a compromise settlement of a claim;

(4) failing within a reasonable time to:

(A) affirm or deny coverage of a claim to a policyholder; or

(B) submit a reservation of rights to a policyholder;

(5) refusing, failing, or unreasonably delaying a settlement offer under applicable first-party coverage on the basis that other coverage may be available or that third parties are responsible for the damages suffered, except as may be specifically provided in the policy;

(6) undertaking to enforce a full and final release of a claim from a policyholder when only a partial payment has been made, unless the payment is a compromise settlement of a doubtful or disputed claim;

(7) refusing to pay a claim without conducting a reasonable investigation with respect to the claim;

(8) with respect to a Texas personal automobile insurance policy, delaying or refusing settlement of a claim solely because there is other insurance of a different kind available to satisfy all or part of the loss forming the basis of that claim; or

(9) requiring a claimant as a condition of settling a claim to produce the claimant's federal income tax returns for examination or investigation by the person unless:

(A) a court orders the claimant to produce those tax returns;

(B) the claim involves a fire loss; or

(C) the claim involves lost profits or income.

(b) Subsection (a) does not provide a cause of action to a third party asserting one or more claims against an insured covered under a liability insurance policy.

(Formerly Ins. Code Art. 21.21, Sec. 4 (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.061. Misrepresentation of Insurance Policy.

It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to misrepresent an insurance policy by:

(1) making an untrue statement of material fact;

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

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

(4) making a material misstatement of law; or

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

(Formerly Ins. Code Art. 21.21, Sec. 4 (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

SUBCHAPTER B-1. ADVERTISING REQUIREMENTS

§ 541.082. Advertising and Internet Websites.

(a) In this section, "insurer" includes:

(1) a life insurance company;

(2) a health insurance company;

(3) an accident insurance company;

(4) a general casualty company;

(5) a mutual life insurance company or other mutual insurance company;

(6) a mutual or natural premium life insurance company;

(7) a Lloyd's plan;

(8) a county mutual insurance company;

(9) a farm mutual insurance company;

(10) a reciprocal or interinsurance exchange;

(11) a fraternal benefit society;

(12) a local mutual aid association;

(13) a health maintenance organization;

(14) a group hospital service corporation; or

(15) a multiple employer welfare arrangement that holds a certificate of coverage under Chapter 846.

(b) A web page of an insurer's Internet website must include all appropriate disclosures and information required by applicable rules adopted by the commissioner relating to advertising only if the web page:

(1) describes specific policies or coverage available in this state; or

(2) includes an opportunity for an individual to apply for coverage or obtain a quote from an insurer for an insurance policy or certificate or an evidence of coverage.

(c) As may be permitted by commissioner rule, an insurer may comply with Subsection (b) by including a link to a web page that includes the information necessary to comply with the applicable rules relating to advertising. The link must be prominently placed on the insurer's web page.

(d) Web pages of an Internet website that do not refer to a specific insurance policy, certificate of coverage, or evidence of coverage or that do not provide an opportunity for an individual to apply for coverage or request a quote from an insurer are considered to be institutional advertisements subject to rules adopted by the commissioner relating to advertising.

(e) Web pages or navigation aids within an insurer's Internet website that provide a link to a web page described by Subsection (b) but that do not otherwise contain content described in Subsection (b) are considered to be institutional advertisements subject to rules adopted by the commissioner relating to advertising.

Added by Acts 2007, 80th Leg., c. 475, § 1, eff. Sept. 1, 2007.

§ 541.083. Advertisements to Certain Associations.

An insurer may advertise to the general public policies or coverage available only to members of an association described by Section 1251.052.

Added by Acts 2007, 80th Leg., c. 475, § 1, eff. Sept. 1, 2007.

§ 541.084. Advertisements Relating to Medicare Program.

A person may not use an advertisement for an insurance product relating to Medicare coverage unless the advertisement includes in a prominent place the following language or similar language: "Not connected with or endorsed by the United States government or the federal Medicare program."

Added by Acts 2007, 80th Leg., c. 475, § 1, eff. Sept. 1, 2007.

§ 541.085. Advertisements Relating to Preferred Provider Benefit Plans.

It is sufficient for an insurer to use the term "PPO plan" in advertisements when referring to a preferred provider benefit plan offered under Chapter 1301.

Added by Acts 2007, 80th Leg., c. 475, § 1, eff. Sept. 1, 2007.

§ 541.086. Advertising Regarding Guaranteed Renewable Coverage.

(a) An advertisement for a guaranteed renewable accident and health insurance policy must include, in a prominent place, a statement indicating that rates for the policy may change if the advertisement suggests or implies that rates for the product will not change.

(b) If an advertisement is required to include the statement described by Subsection (a), the statement must generally identify the manner in which rates may change, such as by age, by health status, by class, or through application of other general criteria.

Added by Acts 2007, 80th Leg., c. 475, § 1, eff. Sept. 1, 2007.

§ 541.087. Advertisements Exempt From Filing Requirements.

An advertisement subject to requirements regarding filing of the advertisement with the department for department review under this code or commissioner rule and that is the same as or substantially similar to an advertisement previously reviewed and accepted by the department is not required to be filed for department review.

Added by Acts 2007, 80th Leg., c. 475, § 1, eff. Sept. 1, 2007.

[Sections 541.089-541.100 reserved for expansion]

SUBCHAPTER C. DETERMINATION OF UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES; SANCTIONS AND PENALTIES

§ 541.101. Examination and Investigation.

The department may examine and investigate the affairs of a person engaged in the business of insurance in this state to determine whether the person has or is engaged in an unfair method of competition or unfair or deceptive act or practice prohibited by Section 541.003.

(Formerly Ins. Code Art. 21.21, Sec. 5.). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.102. Statement of Charges; Notice of Hearing.

(a) When the department has reason to believe that a person engaged in the business of insurance in this state has engaged or is engaging in this state in an unfair method of competition or unfair or deceptive act or practice defined by Subchapter B and that a proceeding by the department regarding the charges is in the interest of the public, the department shall issue and serve on the person:

(1) a statement of the charges; and

(2) a notice of the hearing on the charges, including the time and place for the hearing.

(b) The department may not hold the hearing before the sixth day after the date the notice is served.

(Formerly Ins. Code Art. 21.21, Sec. 6(a).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.103. Hearing.

A person against whom charges are made under Section 541.102 is entitled at the hearing on the charges to have an opportunity to be heard and show cause why the department should not issue an order requiring the person to cease and desist from the unfair method of competition or unfair or deceptive act or practice described in the charges.

(Formerly Ins. Code Art. 21.21, Sec. 6(b) (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.104. Hearing Procedures.

(a) Nothing in this chapter requires the observance of formal rules of pleading or evidence at a hearing under this subchapter.

(b) At a hearing under this subchapter, the department, on a showing of good cause, shall permit any person to intervene, appear, and be heard by counsel or in person.

(Formerly Ins. Code Art. 21.21, Secs. 6(b) (part), (c).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.105. Record of Hearing.

(a) At a hearing under this subchapter, the department may, and at the request of a party to the hearing shall, make a stenographic record of the proceedings and the evidence presented at the hearing.

(b) If the department does not make a stenographic record and a person seeks judicial review of the decision made at the hearing, the department shall prepare a statement of the evidence and proceeding for use on review.

(Formerly Ins. Code Art. 21.21, Sec. 6(d) (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.106. Compliance with Subpoena.

(a) If a person refuses to comply with a subpoena issued in connection with a hearing under this subchapter or refuses to testify with respect to a matter about which the person may be lawfully interrogated, on application of the department, a district court in Travis County or in the county in which the person resides may order the person to comply with the subpoena or testify.

(b) A court may punish as contempt a person's failure to obey an order under this section.

(Formerly Ins. Code Art. 21.21, Sec. 6(d) (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.107. Determination of Violation.

After a hearing under this subchapter, the department shall determine whether:

(1) the method of competition or the act or practice considered in the hearing is defined as:

(A) an unfair method of competition or deceptive act or practice under Subchapter B or a rule adopted under this chapter; or

(B) a false, misleading, or deceptive act or practice under Section 17.46, Business & Commerce Code; and

(2) the person against whom the charges were made engaged in the method of competition or act or practice in violation of:

(A) this chapter or a rule adopted under this chapter; or

(B) Subchapter E, Chapter 17, Business & Commerce Code, as specified in Section 17.46, Business & Commerce Code.

(Formerly Ins. Code Art. 21.21, Sec. 7(a) (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.108. Cease and Desist Order.

On determining that a person committed a violation described by Section 541.107, the department shall:

(1) make written findings; and

(2) issue and serve on the person an order requiring the person to cease and desist from engaging in the method of competition or act or practice determined to be a violation.

(Formerly Ins. Code Art. 21.21, Sec. 7(a) (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.109. Modification or Setting Aside or Order.

On the notice and in the manner the department determines proper, the department may modify or set aside in whole or in part a cease and desist order issued under Section 541.108 at any time before a petition appealing the order is filed in accordance with Subchapter D, Chapter 36.

(V.T.I.C. Art. 21.21, Sec. 7(b).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.110. Administrative Penalty.

(a) A person who violates a cease and desist order issued under Section 541.108 is subject to an administrative penalty under Chapter 84.

(b) In determining whether a person has violated a cease and desist order, the department shall consider the maintenance of procedures reasonably adapted to ensure compliance with the order.

(c) An administrative penalty imposed under this section may not exceed:

(1) $1,000 for each violation; or

(2) $5,000 for all violations.

(d) An order of the department imposing an administrative penalty under this section applies only to a violation of the cease and desist order committed before the date the order imposing the penalty is issued.

(Formerly Ins. Code Art. 21.21, Secs. 7(c), (d).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.111. Civil Penalty for Violation of Cease and Desist Order.

(a) A person who is found by a court to have violated a cease and desist order issued under Section 541.108 is liable to the state for a penalty. The state may recover the penalty in a civil action.

(b) The penalty may not exceed $50 unless the court finds the violation to be wilful, in which case the penalty may not exceed $500.

(Formerly Ins. Code Art. 21.21, Sec. 10.). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

[Sections 541.112-541.150 reserved for expansion]

SUBCHAPTER D. PRIVATE ACTION FOR DAMAGES

§ 541.151. Private Action for Damages Authorized.

A person who sustains actual damages may bring an action against another person for those damages caused by the other person engaging in an act or practice:

(1) defined by Subchapter B to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance; or

(2) specifically enumerated in Section 17.46(b), Business & Commerce Code, as an unlawful deceptive trade practice if the person bringing the action shows that the person relied on the act or practice to the person's detriment.

(Formerly Ins. Code Art. 21.21, Sec. 16(a).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005. Amended by Acts 2011, 82nd Leg., Ist C.S., c. 2, § 2, eff. Sept. 28, 2011.

§ 541.152. Damages, Attorney's Fees, and Other Relief.

(a) A plaintiff who prevails in an action under this subchapter may obtain:

(1) the amount of actual damages, plus court costs and reasonable and necessary attorney's fees;

(2) an order enjoining the act or failure to act complained of; or

(3) any other relief the court determines is proper.

(b) Except as provided by Subsection (c), on a finding by the trier of fact that the defendant knowingly committed the act complained of, the trier of fact may award an amount not to exceed three times the amount of actual damages.

(c) Subsection (b) does not apply to an action under this subchapter brought against the Texas Windstorm Insurance Association.

(Formerly Ins. Code Art. 21.21, Sec. 16(b).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.153. Frivolous Action.

A court shall award to the defendant court costs and reasonable and necessary attorney's fees if the court finds that an action under this subchapter is groundless and brought in bad faith or brought for the purpose of harassment.

(V.T.I.C. Art. 21.21, Sec. 16(c).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.154. Prior Notice of Action.

(a) A person seeking damages in an action against another person under this subchapter must provide written notice to the other person not later than the 61st day before the date the action is filed.(b) The notice must advise the other person of:

(1) the specific complaint; and

(2) the amount of actual damages and expenses, including attorney's fees reasonably incurred in asserting the claim against the other person.

(c) The notice is not required if giving notice is impracticable because the action:

(1) must be filed to prevent the statute of limitations from expiring; or

(2) is asserted as a counterclaim.

(Formerly Ins. Code Art. 21.21, Secs. 16(e), (f).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.155. Abatement.

(a) A person against whom an action under this subchapter is pending who does not receive the notice as required by Section 541.154 may file a plea in abatement not later than the 30th day after the date the person files an original answer in the court in which the action is pending.

(b) The court shall abate the action if, after a hearing, the court finds that the person is entitled to an abatement because the claimant did not provide the notice as required by Section 541.154.

(c) An action is automatically abated without a court order beginning on the 11th day after the date a plea in abatement is filed if the plea:

(1) is verified and alleges that the person against whom the action is pending did not receive the notice as required by Section 541.154; and

(2) is not controverted by an affidavit filed by the claimant before the 11th day after the date the plea in abatement is filed.

(d) An abatement under this section continues until the 60th day after the date notice is provided in compliance with Section 541.154.

(e) This section does not apply if Section 541.154(c) applies.

(Formerly Ins. Code Art. 21.21, Secs. 16(g), (h), (i).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.156. Settlement Offer.

(a) A person who receives notice provided under Section 541.154 or 542A.003 may make a settlement offer during a period beginning on the date notice under Section 541.154 or 542A.003 is received and ending on the 60th day after that date.

(b) In addition to the period described by Subsection (a), the person may make a settlement offer during a period:

(1) if mediation is not conducted under Section 541.161, beginning on the date an original answer is filed in the action and ending on the 90th day after that date; or

(2) if mediation is conducted under Section 541.161, beginning on the day after the date the mediation ends and ending on the 20th day after that date.

(Formerly Ins. Code Art. 21.21, Secs. 16A(a), (b), (c).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005. Amended by Acts 2017, 85th Leg., R.S., c. 151, § 1, eff. Sept. 1, 2017.

Section 4 of Acts 2017, 85th Leg., R.S., c. 151, provides:

(a) Section 541.156, Insurance Code, as amended by this Act, and Chapter 542A, Insurance Code, as added by this Act, apply only to an action filed on or after the effective date of this Act. An action that is filed before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 541.157. Contents of Settlement Offer.

A settlement offer made by a person against whom a claim under this subchapter is pending must include an offer to pay the following amounts, separately stated:

(1) an amount of money or other consideration, reduced to its cash value, as settlement of the claim for damages; and

(2) an amount of money to compensate the claimant for the claimant's reasonable and necessary attorney's fees incurred as of the date of the offer.

(Formerly Ins. Code Art. 21.21, Sec. 16A(d).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.158. Rejection of Settlement Offer.

(a) A settlement offer is rejected unless both parts of the offer required under Section 541.157 are accepted by the claimant not later than the 30th day after the date the offer is made.

(b) A settlement offer made by a person against whom a claim under this subchapter is pending that complies with this subchapter and is rejected by the claimant may be filed with the court accompanied by an affidavit certifying the offer's rejection.

(Formerly Ins. Code Art. 21.21, Secs. 16A(e), (f).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.159. Limit on Recovery After Settlement Offer.

(a) If the court finds that the amount stated in the settlement offer for damages under Section 541.157(1) is the same as, substantially the same as, or more than the amount of damages found by the trier of fact, the claimant may not recover as damages any amount in excess of the lesser of:

(1) the amount of damages stated in the offer; or

(2) the amount of damages found by the trier of fact.

(b) If the court makes the finding described by Subsection (a), the court shall determine reasonable and necessary attorney's fees to compensate the claimant for attorney's fees incurred before the date and time the rejected settlement offer was made. If the court finds that the amount stated in the offer for attorney's fees under Section 541.157(2) is the same as, substantially the same as, or more than the amount of reasonable and necessary attorney's fees incurred by the claimant as of the date of the offer, the claimant may not recover any amount of attorney's fees in excess of the amount of fees stated in the offer.

(c) This section does not apply if the court finds that the offering party:

(1) could not perform the offer at the time the offer was made; or

(2) substantially misrepresented the cash value of the offer.

(d) The court shall award:

(1) damages as required by Section 541.152 if Subsection (a) does not apply; and

(2) attorney's fees as required by Section 541.152 if Subsection (b) does not apply.

(Formerly Ins. Code Art. 21.21, Secs. 16A(g), (h), (i), (j).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.160. Effect of Settlement Offer.

A settlement offer is not an admission of engaging in an act or practice defined by Subchapter B to be an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

(Formerly Ins. Code Art. 21.21, Sec. 16A(k).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.161. Mediation.

(a) A party may, not later than the 90th day after the date a pleading seeking relief under this subchapter is served, file a motion to compel mediation of the dispute in the manner provided by this section.

(b) The court shall, not later than the 30th day after the date a motion under this section is filed, sign an order setting the time and place of the mediation.

(c) The court shall appoint a mediator if the parties do not agree on a mediator.

(d) The mediation must be held not later than the 30th day after the date the order is signed, unless:

(1) the parties agree otherwise; or

(2) the court determines that additional time not to exceed 30 days is warranted.

(e) Each party who has appeared in the action, except as agreed to by all parties who have appeared, shall:

(1) participate in the mediation; and

(2) except as provided by Subsection (f), share the mediation fee.

(f) A party may not compel mediation under this section if the amount of actual damages claimed is less than $15,000 unless the party seeking to compel mediation agrees to pay the costs of the mediation.

(g) Except as provided by this section, the following apply to the appointment of a mediator and the mediation process provided by this section:

(1) Section 154.023, Civil Practice and Remedies Code; and

(2) Subchapters C and D, Chapter 154, Civil Practice and Remedies Code.

(Formerly Ins. Code Art. 21.21, Sec. 16B.). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.162. Limitations Period.

(a) A person must bring an action under this chapter before the second anniversary of the following:

(1) the date the unfair method of competition or unfair or deceptive act or practice occurred; or

(2) the date the person discovered or, by the exercise of reasonable diligence, should have discovered that the unfair method of competition or unfair or deceptive act or practice occurred.

(b) The limitations period provided by Subsection (a) may be extended for 180 days if the person bringing the action proves that the person's failure to bring the action within that period was caused by the defendant's engaging in conduct solely calculated to induce the person to refrain from or postpone bringing the action.

(Formerly Ins. Code. Art. 21.21, Sec. 16(d).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

[Sections 541.163-541.200 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT BY ATTORNEY GENERAL

§ 541.201. Injunctive Relief.

(a) The attorney general may bring an action under this section if the attorney general has reason to believe that:

(1) a person engaged in the business of insurance in this state is engaging in, has engaged in, or is about to engage in an act or practice defined as unlawful under:

(A) this chapter or a rule adopted under this chapter; or

(B) Section 17.46, Business & Commerce Code; and

(2) the action is in the public interest.

(b) The attorney general may bring the action in the name of the state to restrain by temporary or permanent injunction the person's use of the method, act, or practice.

(Formerly Ins. Code Art. 21.21, Sec. 15(a).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.202. Venue for Injunctive Action.

An action for an injunction under this subchapter may be commenced in a district court in:

(1) the county in which the person against whom the action is brought:

(A) resides;

(B) has the person's principal place of business; or

(C) is engaging in business;

(2) the county in which the transaction or a substantial portion of the transaction occurred; or

(3) Travis County.

(Formerly Ins. Code Art. 21.21, Sec. 15(b) (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.203. Issuance of Injunction.

(a) The court may issue an appropriate temporary or permanent injunction.

(b) The court shall issue the injunction without bond.

(Formerly Ins. Code Art. 21.21, Sec. 15(b) (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.204. Civil Penalty.

In addition to requesting a temporary or permanent injunction under Section 541.201, the attorney general may request a civil penalty of not more than $10,000 for each violation on a finding by the court that the defendant has engaged in or is engaging in an act or practice defined as unlawful under:

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

(2) Section 17.46, Business & Commerce Code.

(Formerly Ins. Code Art. 21.21, Sec. 15(c).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.205. Compensation or Restoration.

The court may make an additional order or judgment as necessary to compensate an identifiable person for actual damages or for restoration of money or property that may have been acquired by means of an enjoined act or practice.

(Formerly Ins. Code Art. 21.21, Sec. 15(d).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.206. Civil Penalty for Violation of Injunction.

(a) A person who violates an injunction issued under this subchapter is liable for and shall pay to the state a civil penalty of not more than $10,000 for each violation.

(b) The attorney general may, in the name of the state, petition the court for recovery of the civil penalty against the person who violates the injunction.

(c) The court shall consider the maintenance of procedures reasonably adapted to ensure compliance with the injunction in determining whether a person has violated an injunction.

(d) The court issuing the injunction retains jurisdiction and the cause is continued for the purpose of assessing a civil penalty under this section.

(V.T.I.C. Art. 21.21, Sec. 15(e).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.207. Remedies not Exclusive.

The remedies provided by this subchapter are:

(1) not exclusive; and

(2) in addition to any other remedy or procedure provided by another law or at common law.

(Formerly Ins. Code Art. 21.21, Sec. 15(f).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

[Sections 541.208-541.250 reserved for expansion]

SUBCHAPTER F. CLASS ACTIONS BY ATTORNEY GENERAL OR PRIVATE INDIVIDUAL

§ 541.251. Class Action Authorized.

(a) If a member of the insurance buying public has been damaged by an unlawful method, act, or practice defined in Subchapter B as an unlawful deceptive trade practice, the department may request the attorney general to bring a class action or the individual damaged may bring an action on the individual's own behalf and on behalf of others similarly situated to recover damages and obtain relief as provided by this subchapter.

(b) A class action may not be maintained under this subchapter if the department and attorney general have initiated an action under Subchapter G or an action under that subchapter has resulted in a final determination regarding the same act or practice and the same defendant in the action under this subchapter.

(Formerly Ins. Code Art. 21.21, Secs. 17(a), (e).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.252. Recovery.

A plaintiff who prevails in a class action under this subchapter may recover:

(1) court costs and attorney's fees reasonable in relation to the amount of work expended in addition to actual damages;

(2) an order enjoining the act or failure to act; and

(3) any other relief the court determines is proper.

(V.T.I.C. Art. 21.21, Sec. 17(b).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.253. Frivolous Action.

The court may award to the defendant court costs and reasonable attorney's fees in relation to the work expended on a finding by the court that a class action under this subchapter was brought by an individual plaintiff in bad faith or for the purpose of harassment.

(Formerly Ins. Code Art. 21.21, Sec. 17(c).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.254. Statute of Limitations Tolled.

The filing of a class action under this subchapter tolls the statute of limitations for bringing an action by an individual under Section 541.162.

(Formerly Ins. Code Art. 21.21, Sec. 18(k) (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.255. Prior Notice.

(a) Not later than the 31st day before the date a class action for damages is commenced under this subchapter, the prospective plaintiff must:

(1) notify the intended defendant of the complaint; and

(2) demand that the defendant provide relief to the prospective plaintiff and others similarly situated.

(b) The notice must be in writing and be sent by certified or registered mail, return receipt requested, to:

(1) the place where the transaction occurred;

(2) the intended defendant's principal place of business in this state; or

(3) if notice to the place described by Subdivision (1) or (2) does not effect notice, the office of the secretary of state.

(c) A copy of the notice must also be sent to the commissioner.

(d) A class action for injunctive relief may be commenced under this subchapter without complying with Subsection (a).

(e) A plaintiff in a class action for injunctive relief under this subchapter may, on or after the 31st day after the date the action is commenced and after complying with Subsection (a), amend the complaint without leave of court to include a request for damages.

(Formerly Ins. Code Art. 21.21, Secs. 19(a), (b), (c).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.256. Prerequisites to Class Action.

The court shall permit one or more members of a class to sue or be sued as representative parties on behalf of the class only if:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

(Formerly Ins. Code Art. 21.21, Sec. 18(a).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.257. Class Actions Maintainable.

(a) An action may be maintained as a class action under this subchapter if the prerequisites of Section 541.256 are satisfied and, in addition:

(1) the prosecution of separate actions by or against individual members of the class would create a risk of:

(A) inconsistent or varying adjudications with respect to individual members of the class that would establish incompatible standards of conduct for the party opposing the class; or

(B) adjudication with respect to individual members of the class that would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

(2) the party opposing the class has acted or refused to act on grounds generally applicable to the class, making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

(b) Matters pertinent to a finding under Subsection (a)(3) include:

(1) the interest of members of the class in individually controlling the prosecution or defense of separate actions;

(2) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(3) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(4) the difficulties likely to be encountered in the management of a class action.

(c) In construing this section, the courts of this state shall be guided by the decisions of the federal courts interpreting Rule 23, Federal Rules of Civil Procedure, as amended.

(Formerly Ins. Code Art. 21.21, Secs. 18(b), (c).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.258. Class Actions: Issues and Subclasses Authorized.

When appropriate, an action may be brought or maintained as a class action under this subchapter with respect to particular issues or a class may be divided into subclasses and each subclass treated as a class, and the provisions of this subchapter shall be construed and applied accordingly.

(Formerly Ins. Code Art. 21.21, Sec. 18(h).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.259. Determination Regarding Whether Class Action May Be Maintained.

(a) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be maintained as a class action under this subchapter.

(b) An order under this section may be altered or amended before a decision on the merits.

(c) An order determining whether the action may be maintained as a class action under this subchapter is an interlocutory order that is appealable. The procedures applicable to accelerated appeals in the Texas Rules of Appellate Procedure apply to the appeal.

(Formerly Ins. Code Art. 21.21, Sec. 18(d).).. Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.260. Effect of Denial of Class Action.

A court order denying that an action under this subchapter may be brought as a class action does not affect whether an individual may bring the same or a similar action under Subchapter D.

(Formerly Ins. Code Art. 21.21, Sec. 18(k) (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.261. Notice of Class Action.

(a) If an action is permitted as a class action under this subchapter, the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.

(b) The notice must contain a statement that:

(1) the court will exclude from the class a notified member if the member requests exclusion by a specified date;

(2) the judgment, whether favorable or not, includes all members who do not request exclusion; and

(3) a member who does not request exclusion may enter an appearance through counsel.

(Formerly Ins. Code Art. 21.21, Secs. 18(e), (f).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.262. Procedures in Class Action.

In a class action under this subchapter, the court may make appropriate orders:

(1) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(2) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in a manner the court directs to some or all of the members or the attorney general of:

(A) any step in the action;

(B) the proposed extent of the judgment; or

(C) the opportunity for members to:

(i) signify whether the members consider the representation to be fair and adequate;

(ii) intervene and present claims or defenses; or

(iii) otherwise come into the action;

(3) imposing conditions on the representative parties or intervenors;

(4) requiring that the pleadings be amended to eliminate allegations relating to representation of absent persons, and that the action proceed accordingly; or

(5) dealing with similar procedural matters.

(Formerly Ins. Code Art. 21.21, Sec. 18(j).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.263. Effect of Settlement Offer.

(a) Damages may not be awarded to a class under this subchapter if, not later than the 30th day after the date the intended defendant receives notice under Section 541.255, the intended defendant provides to the plaintiff by certified or registered mail, return receipt requested, a written settlement offer.

(b) The settlement offer must include:

(1) a statement that all persons similarly situated have been adequately identified or a reasonable effort to identify those persons has been made;

(2) a description of the class identified and the method used to identify that class;

(3) a statement that all persons identified have been notified that, on request, the intended defendant will provide relief to those persons and all others similarly situated;

(4) a complete explanation of the relief being afforded;

(5) a copy of the notice or communication the intended defendant is providing to the members of the class;

(6) a statement that the relief being afforded the consumer has been or, if the offer is accepted by the consumer, will be given within a stated reasonable time; and

(7) a statement that the practice complained of has ceased.

(c) Except as provided by Subsection (d), an attempt to comply with this section by a person receiving a demand is:

(1) an offer to compromise;

(2) not admissible as evidence; and

(3) not an admission of engaging in an unlawful act or practice.

(d) A defendant may introduce evidence of compliance or an attempt to comply with this section for the purpose of:

(1) establishing good faith; or

(2) showing compliance with this section.

(Formerly Ins. Code Art. 21.21, Secs. 19(d), (e).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.264. Defenses.

Damages may not be awarded in a class action under this subchapter if the defendant:

(1) proves that the action complained of resulted from a bona fide error, notwithstanding the use of reasonable procedures adopted to avoid an error; and

(2) made restitution of any consideration received from any member of the class.

(Formerly Ins. Code Art. 21.21, Sec. 20.). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.265. Limitations Period for Damages.

In a class action under this subchapter, damages may not include any damages incurred more than two years before the date the action is commenced.

(Formerly Ins. Code Art. 21.21, Sec. 17(d).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.266. Disposition.

(a) A class action under this subchapter may not be dismissed, settled, or compromised without the approval of the court.

(b) Notice of the proposed dismissal, settlement, or compromise shall be given to all members of the class in the manner the court directs.

(Formerly Ins. Code Art. 21.21, Sec. 18(g).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.267. Contents of Judgment; Notice.

(a) The judgment in a class action under this subchapter must describe those to whom the notice under Section 541.261 was directed and who have not requested exclusion and those the court finds to be members of the class.

(b) The court shall direct to the members of the class the best notice of the judgment practicable under the circumstances, including individual notice to each member who can be identified through reasonable effort.

(Formerly Ins. Code Art. 21.21, Sec. 18(i).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

[Sections 541.268-541.300 reserved for expansion]

SUBCHAPTER G. DEPARTMENT ACTION FOR REFUND OF PREMIUMS

§ 541.301. Refund of Premiums.

(a) After notice and hearing as provided in Subchapter C, the department may require a person to make an accounting under Subsection (b):

(1) in connection with a method of competition or act or practice that is the basis of a cease and desist order issued under Section 541.108; or

(2) on application of an aggrieved person, in connection with a determination by the department that the aggrieved person and other persons similarly situated were induced to purchase an insurance policy as a result of the person engaging in a method of competition or act or practice in violation of:

(A) this chapter or a rule adopted under this chapter; or

(B) Section 17.46, Business & Commerce Code.

(b) A person required to make an accounting under this section must account for all premiums collected for policies issued by the person during the preceding two years in connection with the acts in violation of this chapter described by Subsection (a)(1) or (2).

(c) The department may require the person described by Subsection (a) to:

(1) give notice to all persons from whom the premiums were collected; and

(2) refund the total of all premiums collected from each person who elects to accept a premium refund in exchange for cancellation of the insurance policy issued.

(d) A person who refunds premiums under this section shall deduct from the amount of premiums refunded the amount of benefits actually paid by the person while the insurance policy was in force.

(V.T.I.C. Art. 21.21, Sec. 14(a) (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.302. Time to Make Refunds.

The department shall specify a reasonable time within which a person required to make premium refunds under Section 541.301 must make the refunds.

(Formerly Ins. Code Art. 21.21, Sec. 14(a) (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.303. Sanction.

(a) The department may report to the attorney general a person's failure to comply with the department's requirement to refund premiums within the time specified under Section 541.302. The department may request that the attorney general file an action to enforce the department's requirement to refund premiums.

(b) Venue for the action is in a district court in Travis County.

(c) The court shall enter an appropriate order to enforce the department's requirement to refund premiums if the court finds that:

(1) the requirement was lawfully entered; and

(2) the person failed to comply with the requirement.

(d) The court may enforce its order through contempt proceedings.

(e) The sanction provided by this section is in addition to any other sanctions provided in this code or other applicable laws.

(Formerly Ins. Code Art. 21.21, Sec. 14(b).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.304. Evidentiary Use of Compliance or Attempt to Comply.

(a) Compliance or an attempt to comply with the department's requirement to refund premiums is:

(1) an offer to compromise;

(2) not admissible as evidence; and

(3) not an admission of engaging in an unlawful act or practice.

(b) A defendant may introduce evidence of compliance or an attempt to comply with the department's requirement for the purpose of:

(1) establishing good faith; or

(2) showing compliance with the department's requirement.

(Formerly Ins. Code Art. 21.21, Sec. 14(c).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

[Sections 541.305-541.350 reserved for expansion]

SUBCHAPTER H. ASSURANCE OF VOLUNTARY COMPLIANCE

§ 541.351. Acceptance of Assurance.

(a) In administering this chapter, the department may accept assurance of voluntary compliance from a person who is engaging in, has engaged in, or is about to engage in an act or practice in violation of:

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

(2) Section 17.46, Business & Commerce Code.

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

(c) The department may 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 in Subsection (a).

(Formerly Ins. Code Art. 21.21, Secs. 22(a), (b).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.352. Effect of Assurance.

(a) An assurance of voluntary compliance is not an admission of a prior violation of:

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

(2) Section 17.46, Business & Commerce Code.

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

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

(2) Section 17.46, Business & Commerce Code.

(Formerly Ins. Code Art. 21.21, Sec. 22(c).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.353. Reopening.

A matter closed by the filing of an assurance of voluntary compliance may be reopened at any time.

(Formerly Ins. Code Art. 21.21, Sec. 22(d) (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.354. Right to Bring Action Not Affected.

An assurance of voluntary compliance does not affect the right of an individual to bring an action under this chapter, except that the right of an individual in relation to money received according to a stipulation under Section 541.351(c) is governed by the terms of the assurance.

(Formerly Ins. Code Art. 21.21, Sec. 22(d) (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

[Sections 541.355-541.400 reserved for expansion]

SUBCHAPTER I. RULEMAKING

§ 541.401. Rulemaking Authority.

(a) The commissioner may adopt and enforce reasonable rules the commissioner determines necessary to accomplish the purposes of this chapter.

(b) Notwithstanding a previous definition or interpretation of a term used in this chapter contained in or derived from the common law or other statutory law of this state, the commissioner may adopt an express provision necessary to accomplish the purposes of this chapter, including a provision the commissioner considers necessary to:

(1) achieve necessary uniformity with the laws of other states or the United States; or

(2) conform to the adopted procedures of the National Association of Insurance Commissioners.

(Formerly Ins. Code Art. 21.21, Sec. 13(a) (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.402. Petition.

(a) A petition may be submitted to the commissioner to adopt, amend, or repeal a rule. The petition must be:

(1) signed by 100 interested persons; and

(2) supported by evidence that:

(A) a particular act or practice has been or could be false, misleading, or deceptive to the insurance buying public; or

(B) an act or practice defined by department rule to be false, misleading, or deceptive is not false, misleading, or deceptive.

(b) Not later than the 30th day after the date the department receives the petition, the department shall:

(1) deny the petition as provided by Section 541.403; or

(2) initiate hearing proceedings under Section 541.404.

(Formerly Ins. Code Art. 21.21, Sec. 13(b).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.403. Denial of Petition.

(a) The department must state in writing the reason for denying a petition to adopt, amend, or repeal a rule.

(b) The department is expressly authorized to deny the petition if the action sought would:

(1) destroy uniformity with the laws of other states or the United States; or

(2) not conform to the adopted procedures of the National Association of Insurance Commissioners.

(Formerly Ins. Code Art. 21.21, Sec. 13(c).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.404. Hearing on Petition.

(a) A hearing held by the department in response to a petition to adopt, amend, or repeal a rule must be open to the public.

(b) At the hearing, any person may present to the department in writing or orally testimony, data, or other information regarding the act or practice under consideration.

(Formerly Ins. Code Art. 21.21, Sec. 13(d).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.405. Judicial Review of Department Action.

(a) A person aggrieved by the denial of a petition under Section 541.402 or the adoption, amendment, or repeal of or failure to adopt a rule under this subchapter may file a petition in a district court in Travis County for:

(1) a declaratory judgment on the validity or applicability of an adopted, amended, or repealed rule; or

(2) review of the denial of a petition under Section 541.402.

(b) The commissioner must be made a party to the action.

(c) An action of the commissioner under this subchapter in adopting, amending, repealing, or failing to adopt a rule or denying a petition may be invalidated only if the court finds that the action:

(1) violates a constitutional or state statutory provision;

(2) exceeds the commissioner's statutory authority;

(3) is arbitrary or capricious or characterized by abuse of discretion or unwarranted exercise of discretion;

(4) is so vague that it does not establish sufficiently definite standards to which conduct can be conformed;

(5) is made following unlawful procedure; or

(6) is clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record as submitted.

(d) The court may issue an injunction in an action under this section.

(Formerly Ins. Code Art. 21.21, Secs. 13(e), (f).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

[Sections 541.406-541.450 reserved for expansion]

SUBCHAPTER J. CONSTRUCTION OF CHAPTER WITH OTHER LAWS

§ 541.451. Liability Under Other Law.

An order of the department under this chapter or an order by a court to enforce that order does not relieve or absolve a person affected by either order from liability under another law of this state.

(Formerly Ins. Code Art. 21.21, Sec. 8.). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.452. Powers in Addition to Other Powers Authorized by Law.

The powers vested in the department and the commissioner by this chapter are in addition to any other powers to enforce a penalty, fine, or forfeiture authorized by law with respect to a method of competition or act or practice defined as unfair or deceptive.

(Formerly Ins. Code Art. 21.21, Sec. 11.). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.453. Double Recovery Prohibited.

A person may not recover damages and penalties for the same act or practice under both this chapter and another law.

(Formerly Ins. Code Art. 21.21, Sec. 11A.). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 541.454. Penalties and Related Payments by Insurer.

(a) Civil penalties, premium refunds, judgments, compensatory judgments, individual recoveries, orders, class action awards, costs, damages, or attorney's fees assessed or awarded under this chapter:

(1) may be paid only from the capital or surplus funds of the offending insurer; and

(2) may not take precedence over, be in priority to, or in any other manner apply to:

(A) Chapter 462 or 463 or any other insurance guaranty act; or

(B) Chapter 422.

(b) The statutes described by Subsection (a)(2) and the priorities of funds created by those statutes are exempt from the provisions of this chapter.

(Formerly Ins. Code Art. 21.21, Sec. 23.). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005. Amended by Acts 2007, 80th Leg., R.S., c. 730, § 2D.006, eff. Sept. 1, 2007

15. Prohibited Acts Related to Policy or Certificate of Membership

Texas Insurance Code

TITLE 5. PROTECTION OF CONSUMER INTERESTS

SUBTITLE C. DECEPTIVE, UNFAIR, AND PROHIBITED ACTS

CHAPTER 543. PROHIBITED PRACTICES RELATED TO POLICY OR CERTIFICATE OF MEMBERSHIP

SUBCHAPTER A. PROHIBITIONS

§ 543.001. Misrepresentation Prohibited.

(a) In this section, "life, health, or casualty insurer" includes a corporation operating on a cooperative or assessment plan, a mutual insurance company, a fraternal benefit society, and any other society or association authorized to issue an insurance policy in this state.

(b) A life, health, or casualty insurer, an officer, director, agent, or representative of that insurer, or any other person, corporation, or copartnership may not:

(1) issue, circulate, or cause or permit to be issued or circulated any statement, including an illustration or estimate, that misrepresents:

(A) the terms of a policy or certificate of membership issued by a life, health, or casualty insurer;

(B) other benefits or advantages provided by the policy or certificate; or

(C) the dividends or share of surplus to be received on the policy or certificate;

(2) use a name or title of a policy, policy class, certificate of membership, or certificate class that misrepresents the policy, certificate, or class; or

(3) make a misleading representation or incomplete comparison of a policy or certificate of membership to an insured or member for the purpose of inducing or tending to induce the insured or member to forfeit, surrender, or allow the lapse of the insurance or membership.

(c) The commissioner may adopt and enforce reasonable rules as provided by Subchapter I, Chapter 541, to accomplish the purposes of Subsection (b)(1) as those purposes relate to life insurance companies.

(Formerly Ins. Code Art. 21.20; Art. 21.21, Sec. 13 (part); Art. 21.21A, Sec. 2.). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 543.002. Contract Expressed in Policy Only.

An insurer or an agent of an insurer may not make an insurance contract or an agreement relating to an insurance contract other than as expressed in the policy issued in connection with the contract.

(Formerly Ins. Code Art. 21.21A, Sec. 1 (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 543.003. Thing of Value Not Specified in Policy.

An insurer or an officer, agent, or representative of an insurer may not:

(1) directly or indirectly pay, allow, or give or offer to pay, allow, or give as an inducement to insurance a thing of value or other inducement that is not specified in the policy, including:

(A) a rebate of premium payable on the policy;

(B) a special favor or advantage in the dividends or other benefits to accrue on the policy; or

(C) paid employment or a contract for service; or

(2) give, sell, or purchase or offer to give, sell, or purchase as an inducement to insurance or in connection with insurance a thing of value that is not specified in the policy, including:

(A) stocks, bonds, or other securities of an insurer or other corporation, association, or partnership; or

(B) dividends or profits to accrue on the stocks, bonds, or other securities of an insurer or other corporation, association, or partnership.

(Formerly Ins. Code Art. 21.21A, Sec. 1 (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 543.004. Sharing of a Participation in Special Fund Prohibited.

An insurer or an officer, agent, or representative of an insurer may not issue a policy that contains a special or board contract or similar provision by the terms of which the policy will share or participate in a special fund derived from a tax or a charge against any portion of the premium on another policy.

(Formerly Ins. Code Art. 21.21A, Sec. 1 (part).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

[Sections 543.005-543.050 reserved for expansion]

SUBCHAPTER B. ENFORCEMENT; PENALTY

§ 543.051. Suspension or Revocation of Certificate, Charter, Permit, or License.

(a) On a hearing, the commissioner may suspend or revoke the certificate, charter, permit, or license to engage in the business of insurance of a society, association, corporation, or person that violates Subchapter A.

(b) The commissioner must give 10 days' notice of the hearing by certified mail to the society, association, corporation, or person.

(Formerly Ins. Code Art. 21.21A, Sec. 4.). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 543.052. Criminal Penalty.

(a) A person commits an offense if the person violates Subchapter A.

(b) An offense under this section is a Class A misdemeanor.

(c) The penalty provided by this section is in addition to any other penalty specifically provided by law.

(Formerly Ins. Code Art. 21.21A, Sec. 3.). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April. 1, 2005.

16. Processing and Settlement of Claims

Texas Insurance Code

TITLE 5. PROTECTION OF CONSUMER INTERESTS

SUBTITLE C. DECEPTIVE, UNFAIR, AND PROHIBITED ACTS

CHAPTER 542. PROCESSING AND SETTLEMENT OF CLAIMS

SUBCHAPTER A. UNFAIR CLAIM SETTLEMENT PRACTICES

§ 542.001. Short Title.

This subchapter may be cited as the Unfair Claim Settlement Practices Act.

(Formerly Ins. Code Art. 21.21-2, Sec. 1.). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 542.002. Applicability of Subchapter.

This subchapter applies to the following insurers whether organized as a proprietorship, partnership, stock or mutual corporation, or unincorporated association:

(1) a life, health, or accident insurance company;
(2) a fire or casualty insurance company;
(3) a hail or storm insurance company;
(4) a title insurance company;
(5) a mortgage guarantee company;
(6) a mutual assessment company;
(7) a local mutual aid association;
(8) a local mutual burial association;
(9) a statewide mutual assessment company;
(10) a stipulated premium company;
(11) a fraternal benefit society;
(12) a group hospital service corporation;
(13) a county mutual insurance company;
(14) a Lloyd's plan;
(15) a reciprocal or interinsurance exchange; and
(16) a farm mutual insurance company.

(Formerly Ins. Code Art. 21.21-2, Sec. 7.). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 542.003. Unfair Claim Settlement Practices Prohibited.

(a) An insurer engaging in business in this state may not engage in an unfair claim settlement practice.

(b) Any of the following acts by an insurer constitutes unfair claim settlement practices:

(1) knowingly misrepresenting to a claimant pertinent facts or policy provisions relating to coverage at issue;

(2) failing to acknowledge with reasonable promptness pertinent communications relating to a claim arising under the insurer's policy;

(3) failing to adopt and implement reasonable standards for the prompt investigation of claims arising under the insurer's policies;

(4) not attempting in good faith to effect a prompt, fair, and equitable settlement of a claim submitted in which liability has become reasonably clear;

(5) compelling a policyholder to institute a suit to recover an amount due under a policy by offering substantially less than the amount ultimately recovered in a suit brought by the policyholder;

(6) failing to maintain the information required by Section 542.005; or

(7) committing another act the commissioner determines by rule constitutes an unfair claim settlement practice.

(Formerly Ins. Code Art. 21.21-2, Secs. 2(a), (b) (part).). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 542.004. Examination of Tax Returns Prohibited.

(a) An insurer regulated under this code may not require a claimant, as a condition of settling a claim, to produce the claimant's federal income tax returns for examination or investigation by the insurer unless:

(1) the claimant is ordered to produce the tax returns by a court; or

(2) the claim involves:

(A) a fire loss; or

(B) a loss of profits or income.

(b) An insurer that violates this section commits:

(1) a prohibited practice under this subchapter; and

(2) a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code.

(c) A claimant affected by a violation of this section is entitled to remedies under Subchapter E, Chapter 17, Business & Commerce Code.

(Formerly Ins. Code Art. 21.21-2, Sec. 2(c).). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 542.005. Record of Complaints.

(a) In this section, "complaint" means any written communication primarily expressing a grievance.

(b) An insurer shall maintain a complete record of all complaints received by the insurer during the preceding three years or since the date of the insurer's last examination by the department, whichever period is shorter. The record must indicate:

(1) the total number of complaints;

(2) the classification of complaints by line of insurance;

(3) the nature of each complaint;

(4) the disposition of the complaints; and

(5) the time spent processing each complaint.

(Formerly Ins. Code Art. 21.21-2, Sec. 2(b) (part).). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 542.006. Periodic Reporting Requirement.

(a) In this section, "claim" means a written claim filed by a resident of this state with an insurer engaging in business in this state.

(b) If, based on complaints of unfair claim settlement practices under this subchapter, the department finds that an insurer should be subjected to closer supervision with respect to the insurer's claim settlement practices, the department may require the insurer to file periodic reports at intervals the department determines necessary.

(c) Repealed by Acts 2015, 84th Leg., c. 42, § 3.01(4), eff. Sept. 1, 2015.

(d) If at any time the department determines that the requirement to file a periodic report is no longer necessary to accomplish the objectives of this subchapter, the department may rescind the reporting requirement.

(Formerly Ins. Code Art. 21.21-2, Sec. 3.). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005. Amended by Acts 2015, 84th Leg., c. 42, § 3.01(4), eff. Sept. 1, 2015.

§ 542.007. Comparison of Certain Insurers to Minimum Standard of Performance; Investigation.

(a) The department shall compile the information received from an insurer under Section 542.006 in a manner that enables the department to compare the insurer's performance to a minimum standard of performance adopted by the commissioner.

(b) If the department determines that the insurer does not meet the minimum standard of performance, the department shall investigate the insurer to determine the reason, if any, that the insurer does not meet the minimum standard.

(Formerly Ins. Code Art. 21.21-2, Sec. 4(b).). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 542.008. Complaints Against Insurers; Investigation. .

(a) The department shall establish a system for receiving and processing individual complaints alleging a violation of this subchapter by an insurer regardless of whether the insurer is required to file a periodic report under Section 542.006.

(b) The department shall investigate an insurer if the department determines that:

(1) based on the number and type of complaints against an insurer, the insurer does not meet the minimum standard of performance adopted under Section 542.007; or

(2) the number and type of complaints against the insurer are not proportionate to the number and type of complaints against other insurers writing similar lines of insurance.

(Formerly Ins. Code Art. 21.21-2, Sec. 4(c).). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 542.009. Review of Investigation Results; Hearing. .

(a) On receiving the results of an investigation instituted under Section 542.007 or 542.008, the department shall review those results considering the standards of this subchapter to determine whether further action is necessary.

(b) If the department determines that further action is necessary, the department shall:

(1) set a date for a hearing to review the alleged violations of this subchapter; and

(2) notify the insurer of:

(A) the date of the hearing; and

(B) the nature of the charges.

(c) The department shall provide the notice required by Subsection (b)(2) not later than the 30th day before the date of the hearing.

(d) At a hearing under this section, the insurer may present the insurer's case with the assistance of counsel.

(e) Evidence relating to the number and type of complaints or claims prepared by the department from information received or compiled under Section 542.006, 542.007, or 542.008 is admissible in evidence at:

(1) the hearing; and

(2) any related judicial proceeding.

(f) The hearing shall be conducted in accordance with this code and rules adopted by the commissioner.

(g) An insurer may not be found to be in violation of this subchapter solely because of the number and type of complaints or claims against the insurer.

(Formerly Ins. Code Art. 21.21-2, Sec. 5(a).). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 542.010. Cease and Desist Order; Enforcement.

(a) If the department determines that an insurer has violated this subchapter, the department shall issue a cease and desist order to the insurer directing the insurer to stop the unlawful practice.

(b) If the insurer fails to comply with the cease and desist order, the department may:

(1) revoke or suspend the insurer's certificate of authority; or

(2) limit, regulate, and control:

(A) the insurer's line of business;

(B) the insurer's writing of policy forms or other particular forms; and

(C) the volume of the insurer's:

(i) line of business; or

(ii) writing of policy forms or other particular forms.

(c) The department shall exercise authority under this section to the extent that the department determines is necessary to obtain the insurer's compliance with the cease and desist order.

(d) At the request of the department, the attorney general shall assist the department in enforcing the cease and desist order.

(Formerly Ins. Code Art. 21.21-2, Sec. 6(a).). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 542.011. Time Limit to Appeal.

An insurer affected by a ruling or order of the department under this subchapter may appeal the ruling or order, in accordance with Subchapter D, Chapter 36, by filing a petition for judicial review not later than the 20th day after the date of the ruling or order.

(Formerly Ins. Code Art. 21.21-2, Sec. 6(b) (part).). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 542.012. Attorney's Fees.

The department is entitled to reasonable attorney's fees if judicial action is necessary to enforce an order of the department under this subchapter.

(Formerly Ins. Code Art. 21.21-2, Sec. 6(b) (part).). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 542.013. Personnel.

The department may hire employees and examiners as needed to enforce this subchapter.

(Formerly Ins. Code Art. 21.21-2, Sec. 4(a).). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005.

§ 542.014. Rules.

The commissioner shall adopt reasonable rules as necessary to implement and augment the purposes and provisions of this subchapter.

(Formerly Ins. Code Art. 21.21-2, Sec. 8.). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April. 1, 2005.

[Sections 542.015-542.050 reserved for expansion]

SUBCHAPTER B. PROMPT PAYMENT OF CLAIMS

§ 542.051. Definitions.

In this subchapter:

(1) "Business day" means a day other than a Saturday, Sunday, or holiday recognized by this state.

(2) "Claim" means a first-party claim that:

(A) is made by an insured or policyholder under an insurance policy or contract or by a beneficiary named in the policy or contract; and

(B) must be paid by the insurer directly to the insured or beneficiary.

(3) "Claimant" means a person making a claim.

(4) "Notice of claim" means any written notification provided by a claimant to an insurer that reasonably apprises the insurer of the facts relating to the claim.

(Formerly Ins. Code Art. 21.55, Secs. 1(1), (2), (3), (5).). Recodified by Acts 2003, 78 Leg., c. 1274, § 2, eff. April 1, 2005.

§ 542.052. Applicability of Subchapter.

This subchapter applies to any insurer authorized to engage in business as an insurance company or to provide insurance in this state, including:

(1) a stock life, health, or accident insurance company;
(2) a mutual life, health, or accident insurance company;
(3) a stock fire or casualty insurance company;
(4) a mutual fire or casualty insurance company;
(5) a Mexican casualty insurance company;
(6) a Lloyd's plan;
(7) a reciprocal or interinsurance exchange;
(8) a fraternal benefit society;
(9) a stipulated premium company;
(10) a nonprofit legal services corporation;
(11) a statewide mutual assessment company;
(12) a local mutual aid association;
(13) a local mutual burial association;
(14) an association exempt under Section 887.102;
(15) a nonprofit hospital, medical, or dental service corporation, including a corporation subject to Chapter 842;
(16) a county mutual insurance company;
(17) a farm mutual insurance company;
(18) a risk retention group;
(19) a purchasing group;

(20) an eligible surplus lines insurer; and

(21) except as provided by Section 542.053(b), a guaranty association operating under Chapter 462 or 463.

(Formerly Ins. Code Art. 21.55, Sec. 1(4).). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April 1, 2005. Amended by Laws 2007, 80th Leg., R.S., c. 730, § 2D.007, eff. Sept. 1, 2007.

§ 542.053. Exception.

(a) This subchapter does not apply to:

(1) workers' compensation insurance;

(2) mortgage guaranty insurance;

(3) title insurance;

(4) fidelity, surety, or guaranty bonds;

(5) marine insurance as defined by Section 1807.001; or

(6) a guaranty association created and operating under Chapter 2602.

(b) A guaranty association operating under Chapter 462 or 463 is not subject to the damage provisions of Section 542.060.

(c) This subchapter does not apply to a health maintenance organization except as provided by Section 1271.005(c).

(d) This subchapter does not apply to a claim governed by Subchapter C, Chapter 1301.

(Formerly Ins. Code Art. 21.55, Secs. 5(a), (b) (part), (c).). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April 1, 2005. Amended by Acts 2005, 79th Leg., c. 728, § 11.009, eff. Sept. 1, 2005; Acts 2007, 80th Leg., R.S., c. 730, § 2D.008, eff. Sept. 1, 2007.

§ 542.054. Liberal Construction.

This subchapter shall be liberally construed to promote the prompt payment of insurance claims.

(V.T.I.C. Art. 21.55, Sec. 8.). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April 1, 2005.

§ 542.055. Receipt of Notice of Claim.

(a) Not later than the 15th day or, if the insurer is an eligible surplus lines insurer, the 30th business day after the date an insurer receives notice of a claim, the insurer shall:

(1) acknowledge receipt of the claim;

(2) commence any investigation of the claim; and

(3) request from the claimant all items, statements, and forms that the insurer reasonably believes, at that time, will be required from the claimant.

(b) An insurer may make additional requests for information if during the investigation of the claim the additional requests are necessary.

(c) If the acknowledgment of receipt of a claim is not made in writing, the insurer shall make a record of the date, manner, and content of the acknowledgment.

(Formerly Ins. Code Art. 21.55, Sec. 2.). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April 1, 2005.

§ 542.056. Notice of Acceptance or Rejection of Claim.

(a) Except as provided by Subsection (b) or (d), an insurer shall notify a claimant in writing of the acceptance or rejection of a claim not later than the 15th business day after the date the insurer receives all items, statements, and forms required by the insurer to secure final proof of loss.

(b) If an insurer has a reasonable basis to believe that a loss resulted from arson, the insurer shall notify the claimant in writing of the acceptance or rejection of the claim not later than the 30th day after the date the insurer receives all items, statements, and forms required by the insurer.

(c) If the insurer rejects the claim, the notice required by Subsection (a) or (b) must state the reasons for the rejection.

(d) If the insurer is unable to accept or reject the claim within the period specified by Subsection (a) or (b), the insurer, within that same period, shall notify the claimant of the reasons that the insurer needs additional time. The insurer shall accept or reject the claim not later than the 45th day after the date the insurer notifies a claimant under this subsection.

(Formerly Ins. Code Art. 21.55, Secs. 3(a), (b), (c), (d), (e).). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April 1, 2005.

§ 542.057. Payment of Claim.

(a) Except as otherwise provided by this section, if an insurer notifies a claimant under Section 542.056 that the insurer will pay a claim or part of a claim, the insurer shall pay the claim not later than the fifth business day after the date notice is made.

(b) If payment of the claim or part of the claim is conditioned on the performance of an act by the claimant, the insurer shall pay the claim not later than the fifth business day

after the date the act is performed.

(c) If the insurer is an eligible surplus lines insurer, the insurer shall pay the claim not later than the 20th business day after the notice or the date the act is performed, as applicable.

(Formerly Ins. Code Art. 21.55, Sec. 4.). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April 1, 2005.

§ 542.058. Delay in Payment of Claim.

(a) Except as otherwise provided, if an insurer, after receiving all items, statements, and forms reasonably requested and required under Section 542.055, delays payment of the claim for a period exceeding the period specified by other applicable statutes or, if other statutes do not specify a period, for more than 60 days, the insurer shall pay damages and other items as provided by Section 542.060.

(b) Subsection (a) does not apply in a case in which it is found as a result of arbitration or litigation that a claim received by an insurer is invalid and should not be paid by the insurer.

(c) A life insurer that receives notice of an adverse, bona fide claim to all or part of the proceeds of the policy before the applicable payment deadline under Subsection (a) shall pay the claim or properly file an interpleader action and tender the benefits into the registry of the court not later than the 90th day after the date the insurer receives all items, statements, and forms reasonably requested and required under Section 542.055. A life insurer that delays payment of the claim or the filing of an interpleader and tender of policy proceeds for more than 90 days shall pay damages and other items as provided by Section 542.060 until the claim is paid or an interpleader is properly filed.

(Formerly Ins. Code Art. 21.55, Secs. 3(f), (g).). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April 1, 2005. Amended by Acts 2009, 81st Leg., R.S., c. 833, § 1, eff. June 19, 2009.

§ 542.059. Extension of Deadlines.

(a) A court may grant a request by a guaranty association for an extension of the periods under this subchapter on a showing of good cause and after reasonable notice to policyholders.

(b) In the event of a weather-related catastrophe or major natural disaster, as defined by the commissioner, the claim-handling deadlines imposed under this subchapter are extended for an additional 15 days.

(Formerly Ins. Code Art. 21.55, Secs. 5(b) (part), (d).). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April 1, 2005.

§ 542.060. Liability for Violation of Subchapter.

(a) Except as provided by Subsection (c), if an insurer that is liable for a claim under an insurance policy is not in compliance with this subchapter, the insurer is liable to pay the holder of the policy or the beneficiary making the claim under the policy, in addition to the amount of the claim, interest on the amount of the claim at the rate of 18 percent a year as damages, together with reasonable and necessary attorney's fees. Nothing in this subsection prevents the award of prejudgment interest on the amount of the claim, as provided by law.

(b) If a suit is filed, the attorney's fees shall be taxed as part of the costs in the case.

(c) In an action to which Chapter 542A applies, if an insurer that is liable for a claim under an insurance policy is not in compliance with this subchapter, the insurer is liable to pay the holder of the policy, in addition to the amount of the claim, simple interest on the amount of the claim as damages each year at the rate determined on the date of judgment by adding five percent to the interest rate determined under Section 304.003, Finance Code, together with reasonable and necessary attorney's fees. Nothing in this subsection prevents the award of prejudgment interest on the amount of the claim, as provided by law. Interest awarded under this subsection as damages accrues beginning on the date the claim was required to be paid.

(V.T.I.C. Art. 21.55, Sec. 6.). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April 1, 2005. Amended by Acts 2017, 85th Leg., R.S., c. 151, § 2, eff. Sept. 1, 2017.

Section 4 of Acts 2017, 85th Leg., R.S., c. 151, provides:

Section 542.060(c), Insurance Code, as added by this Act, applies only to a claim, as defined by Section 542A.001, Insurance Code, as added by this Act, made on or after the effective date of this Act. A claim made before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 542.061. Remedies Not Exclusive.

The remedies provided by this subchapter are in addition to any other remedy or procedure provided by law or at common law.

(Formerly Ins. Code Art. 21.55, Sec. 7.). Recodified by Acts 2003, 78th Leg., c. 1274, § 2, eff. April 1, 2005.

[Sections 542.062-542.100 reserved for expansion]

SUBCHAPTER F. WATER DAMAGE CLAIMS

§ 542.251. Purposes.

The purposes of this subchapter are to:

(1) provide for the prompt, efficient, and effective handling and processing of water damage claims filed under residential property insurance policies, including claims involving losses due to mold;

(2) reduce the confusion and inconvenience policyholders experience in filing and resolving water damage claims filed under residential property insurance policies, including claims involving losses due to mold; and

(3) reduce claim costs and premiums for residential property insurance issued in this state.

Added by Acts 2005, 79th Leg., c. 728, § 11.011, eff. Sept. 1, 2005.

§ 542.252. Applicability of Subchapter.

This subchapter applies to any insurer that handles or processes water damage claims filed under residential property insurance policies.

Added by Acts 2005, 79th Leg., c. 728, § 11.011, eff. Sept. 1, 2005.

§ 542.253. Rules.

(a) The commissioner may adopt rules that identify the types of water damage claims that require more prompt, efficient, and effective processing and handling than the processing and handling required under Subchapter B.

(b) The commissioner by rule may regulate the following aspects of water damage claims:

(1) required notice;

(2) acceptance and rejection of a claim;

(3) claim handling and processing procedures and time frames;

(4) claim investigation requirements, procedures, and time frames;

(5) settlement of claims; and

(6) any other area of claim processing, handling, and response determined to be relevant and necessary by the commissioner.

(c) A rule adopted under this section supersedes the minimum standards described by Subchapter B.

Added by Acts 2005, 79th Leg., c. 728, § 11.011, eff. Sept. 1, 2005.

CHAPTER 542A. CERTAIN CONSUMER ACTIONS RELATED TO CLAIMS FOR PROPERTY DAMAGE

§ 542A.001. Definitions.

In this chapter:

(1) ”Agent” means an employee, agent, representative, or adjuster who performs any act on behalf of an insurer.

(2) ”Claim” means a first-party claim that:

(A) is made by an insured under an insurance policy providing coverage for real property or improvements to real property;

(B) must be paid by the insurer directly to the insured; and

(C) arises from damage to or loss of covered property caused, wholly or partly, by forces of nature, including an earthquake or earth tremor, a wildfire, a flood, a tornado, lightning, a hurricane, hail, wind, a snowstorm, or a rainstorm.

(3) ”Claimant” means a person making a claim.

(4) "Insurer" means a corporation, association, partnership, or individual, other than the Texas Windstorm Insurance Association, engaged as a principal in the business of insurance and authorized or eligible to write property insurance in this state, including:

(A) an insurance company;

(B) a reciprocal or interinsurance exchange;

(C) a mutual insurance company;

(D) a capital stock insurance company;

(E) a county mutual insurance company;

(F) a farm mutual insurance company;

(G) a Lloyd's plan;

(H) an eligible surplus lines insurer; or

(I) the FAIR Plan Association, unless a claim-related dispute resolution procedure is available to policyholders under Chapter 2211.

(5) "Person" means a corporation, association, partnership, or other legal entity or individual.

Added by Acts 2017, 85th Leg., R.S., c. 151, § 3, eff. Sept. 1, 2017.

§ 542A.002. Applicability of Chapter.

(a) Except as provided by Subsection (b), this chapter applies to an action on a claim against an insurer or agent, including:

(1) an action alleging a breach of contract;

(2) an action alleging negligence, misrepresentation, fraud, or breach of a common law duty; or

(3) an action brought under:

(A) Subchapter D, Chapter 541;

(B) Subchapter B, Chapter 542; or

(C) Subchapter E, Chapter 17, Business & Commerce Code.

(b) This chapter does not apply to an action against the Texas Windstorm Insurance Association or to an action relating to or arising from a policy ceded to an insurer by the Texas Windstorm Insurance Association under Subchapter O, Chapter 2210. This chapter applies to an action that relates to or arises from a policy renewed under Section 2210.703.

Added by Acts 2017, 85th Leg., R.S., c. 151, § 3, eff. Sept. 1, 2017.

§ 542A.003. Notice Required.

(a) In addition to any other notice required by law or the applicable insurance policy, not later than the 61st day before the date a claimant files an action to which this chapter applies in which the claimant seeks damages from any person, the claimant must give written notice to the person in accordance with this section as a prerequisite to filing the action.

(b) The notice required under this section must provide:

(1) a statement of the acts or omissions giving rise to the claim;

(2) the specific amount alleged to be owed by the insurer on the claim for damage to or loss of covered property; and

(3) the amount of reasonable and necessary attorney's fees incurred by the claimant, calculated by multiplying the number of hours actually worked by the claimant's attorney, as of the date the notice is given and as reflected in contemporaneously kept time records, by an hourly rate that is customary for similar legal services.

(c) If an attorney or other representative gives the notice required under this section on behalf of a claimant, the attorney or representative shall:

(1) provide a copy of the notice to the claimant; and

(2) include in the notice a statement that a copy of the notice was provided to the claimant.

(d) A presuit notice under Subsection (a) is not required if giving notice is impracticable because:

(1) the claimant has a reasonable basis for believing there is insufficient time to give the presuit notice before the limitations period will expire; or

(2) the action is asserted as a counterclaim.

(e) To ensure that a claimant is not prejudiced by having given the presuit notice required by this chapter, a court shall dismiss without prejudice an action relating to the claim for which notice is given by the claimant and commenced:

(1) before the 61st day after the date the claimant provides presuit notice under Subsection (a);

(2) by a person to whom presuit notice is given under Subsection (a); and

(3) against the claimant giving the notice.

(f) A claimant who gives notice in accordance with this chapter is not relieved of the obligation to give notice under any other applicable law. Notice given under this chapter may be combined with notice given under any other law.

(g) Notice given under this chapter is admissible in evidence in a civil action or alternative dispute resolution proceeding relating to the claim for which the notice is given.

(h) The giving of a notice under this chapter does not provide a basis for limiting the evidence of attorney's fees, damage, or loss a claimant may offer at trial.

Added by Acts 2017, 85th Leg., R.S., c. 151, § 3, eff. Sept. 1, 2017.

§ 542A.004. Inspection.

Not later than the 30th day after receiving a presuit notice given under Section 542A.003(a), a person to whom notice is given may send a written request to the claimant to inspect, photograph, or evaluate, in a reasonable manner and at a reasonable time, the property that is the subject of the claim. If reasonably possible, the inspection, photography, and evaluation must be completed not later than the 60th day after the date the person receives the presuit notice.

Added by Acts 2017, 85th Leg., R.S., c. 151, § 3, eff. Sept. 1, 2017.

§ 542A.005. Abatement.

(a) In addition to taking any other act allowed by contract or by any other law, a person against whom an action to which this chapter applies is pending may file a plea in abatement not later than the 30th day after the date the person files an original answer in the court in which the action is pending if the person:

(1) did not receive a presuit notice complying with Section 542A.003; or

(2) requested under Section 542A.004 but was not provided a reasonable opportunity to inspect, photograph, or evaluate the property that is the subject of the claim.

(b) The court shall abate the action if the court finds that the person filing the plea in abatement:

(1) did not, for any reason, receive a presuit notice complying with Section 542A.003; or

(2) requested under Section 542A.004 but was not provided a reasonable opportunity to inspect, photograph, or evaluate the property that is the subject of the claim.

(c) An action is automatically abated without a court order beginning on the 11th day after the date a plea in abatement is filed if the plea:

(1) is verified and alleges that the person against whom the action is pending:

(A) did not receive a presuit notice complying with Section 542A.003; or

(B) requested under Section 542A.004 but was not provided a reasonable opportunity to inspect, photograph, or evaluate the property that is the subject of the claim; and

(2) is not controverted by an affidavit filed by the claimant before the 11th day after the date the plea in abatement is filed.

(d) An affidavit described by Subsection (c)(2) controverting whether the person against whom the action is pending received a presuit notice complying with Section 542A.003 must:

(1) include as an attachment a copy of the document the claimant sent to give notice of the claimant's action; and

(2) state the date on which the notice was given.

(e) An abatement under this section continues until the later of:

(1) the 60th day after the date a notice complying with Section 542A.003 is given; or

(2) the 15th day after the date of the requested inspection, photographing, or evaluating of the property is completed.

(f) If an action is abated under this section, a court may not compel participation in an alternative dispute resolution proceeding until after the abatement period provided by Subsection (e) has expired.

Added by Acts 2017, 85th Leg., R.S., c. 151, § 3, eff. Sept. 1, 2017.

§ 542A.006. Action Against Agent; Insurer Election of Legal Responsibility.

(a) Except as provided by Subsection (h), in an action to which this chapter applies, an insurer that is a party to the action may elect to accept whatever liability an agent might have to the claimant for the agent's acts or omissions related to the claim by providing written notice to the claimant.

(b) If an insurer makes an election under Subsection (a) before a claimant files an action to which this chapter applies, no cause of action exists against the agent related to the claimant's claim, and, if the claimant files an action against the agent, the court shall dismiss that action with prejudice.

(c) If a claimant files an action to which this chapter applies against an agent and the insurer thereafter makes an election under Subsection (a) with respect to the agent, the court shall dismiss the action against the agent with prejudice.

(d) If an insurer makes an election under Subsection (a) but, after having been served with a notice of intent to take a deposition of the agent who is the subject of the election, fails to make that agent available at a reasonable time and place to give deposition testimony, Sections 542A.007(a), (b), and (c) do not apply to the action with respect to which the insurer made the election unless the court finds that:

(1) it is impracticable for the insurer to make the agent available due to a change in circumstances arising after the insurer made the election under Subsection (a);

(2) the agent whose liability was assumed would not have been a proper party to the action; or

(3) obtaining the agent's deposition testimony is not warranted under the law.

(e) An insurer's election under Subsection (a) is ineffective to obtain the dismissal of an action against an agent if the insurer's election is conditioned in a way that will result in the insurer avoiding liability for any claim-related damage caused to the claimant by the agent's acts or omissions.

(f) An insurer may not revoke, and a court may not nullify, an insurer's election under Subsection (a).

(g) If an insurer makes an election under Subsection (a) and the agent is not a party to the action, evidence of the agent's acts or omissions may be offered at trial and, if supported by sufficient evidence, the trier of fact may be asked to resolve fact issues as if the agent were a defendant, and a judgment against the insurer must include any liability that would have been assessed against the agent. To the extent there is a conflict between this subsection and Chapter 33, Civil Practice and Remedies Code, this subsection prevails.

(h) If an insurer is in receivership at the time the claimant commences an action against the insurer, the insurer may not make an election under Subsection (a), and the court shall disregard any prior election made by the insurer relating to the claimant's claim.

(i) In an action tried by a jury, an insurer's election under Subsection (a) may not be made known to the jury.

Added by Acts 2017, 85th Leg., R.S., c. 151, § 3, eff. Sept. 1, 2017.

§ 542A.007. Award of Attorney's Fees.

(a) Except as otherwise provided by this section, the amount of attorney's fees that may be awarded to a claimant in an action to which this chapter applies is the lesser of:

(1) the amount of reasonable and necessary attorney's fees supported at trial by sufficient evidence and determined by the trier of fact to have been incurred by the claimant in bringing the action;

(2) the amount of attorney's fees that may be awarded to the claimant under other applicable law; or

(3) the amount calculated by:

(A) dividing the amount to be awarded in the judgment to the claimant for the claimant's claim under the insurance policy for damage to or loss of covered property by the amount alleged to be owed on the claim for that damage or loss in a notice given under this chapter; and

(B) multiplying the amount calculated under Paragraph (A) by the total amount of reasonable and necessary attorney's fees supported at trial by sufficient evidence and determined by the trier of fact to have been incurred by the claimant in bringing the action.

(b) Except as provided by Subsection (d), the court shall award to the claimant the full amount of reasonable and necessary attorney's fees supported at trial by sufficient evidence and determined by the trier of fact to have been incurred by the claimant in bringing the action if the amount calculated under Subsection (a)(3)(A) is:

(1) greater than or equal to 0.8;

(2) not limited by this section or another law; and

(3) otherwise recoverable under law.

(c) The court may not award attorney's fees to the claimant if the amount calculated under Subsection (a)(3)(A) is less than 0.2.

(d) If a defendant in an action to which this chapter applies pleads and proves that the defendant was entitled to but was not given a presuit notice stating the specific amount alleged to be owed by the insurer under Section 542A.003(b)(2) at least 61 days before the date the action was filed by the claimant, the court may not award to the claimant any attorney's fees incurred after the date the defendant files the pleading with the court. A pleading under

this subsection must be filed not later than the 30th day after the date the defendant files an original answer in the court in which the action is pending.

Added by Acts 2017, 85th Leg., R.S., c. 151, § 3, eff. Sept. 1, 2017.

17. Warranty Provisions

Texas Business and Commerce Code

CHAPTER 2. SALES

SUBCHAPTER C. GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

§ 2.301. General Obligations of Parties.

The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

Added by Acts 1967, 60th Leg., p. 2343, c. 785, § 1, eff. Sept. 1, 1967.

§ 2.302. Unconscionable Contract or Clause.

(a) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(b) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

Added by Acts 1967, 60th Leg., p. 2343, c. 785, § 1, eff. Sept. 1, 1967.

§ 2.312. Warranty of Title and Against Infringement; Buyer's Obligation Against Infringement.

(a) Subject to Subsection (b) there is in a contract for sale a warranty by the seller that

(1) the title conveyed shall be good, and its transfer rightful; and

(2) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.

(b) A warranty under Subsection (a) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(c) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

Added by Acts 1967, 60th Leg., p. 2343, c. 785, § 1, eff. Sept. 1, 1967.

§ 2.313. Express Warranties by Affirmation, Promise, Description, Sample.

(a) Express warranties by the seller are created as follows:

(1) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(2) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(3) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(b) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

Added by Acts 1967, 60th Leg., p. 2343, c. 785, § 1, eff. Sept. 1, 1967.

§ 2.314. Implied Warranty: Merchantability; Usage of Trade.

(a) Unless excluded or modified (Section 2.316), a warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(b) Goods to be merchantable must be at least such as

(1) pass without objection in the trade under the contract description; and

(2) in the case of fungible goods, are of fair average quality within the description; and

(3) are fit for the ordinary purposes for which such goods are used; and

(4) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(5) are adequately contained, packaged, and labeled as the agreement may require; and

(6) conform to the promises or affirmations of fact made on the container or label if any.

(c) Unless excluded or modified (Section 2.316) other implied warranties may arise from course of dealing or usage of trade.

Added by Acts 1967, 60th Leg., p. 2343, c. 785, § 1, eff. Sept. 1, 1967.

§ 2.315. Implied Warranty: Fitness for Particular Purpose.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

Added by Acts 1967, 60th Leg., p. 2343, c. 785, § 1, eff. Sept. 1, 1967.

§ 2.316. Exclusion or Modification of Warranties.

(a) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this chapter on parol or extrinsic evidence (Section 2.202) negation or limitation is inoperative to the extent that such construction is unreasonable.

(b) Subject to Subsection (c), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(c) Notwithstanding Subsection (b)

(1) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(2) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(3) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

(d) Remedies for breach of warranty can be limited in accordance with the provisions of this chapter on liquidation or limitation of damages and on contractual modification of remedy (Sections 2.718 and 2.719).

(e) The implied warranties of merchantability and fitness shall not be applicable to the furnishing of human blood, blood plasma, or other human tissue or organs from a blood bank or reservoir of such other tissues or organs. Such blood, blood plasma or tissue or organs shall not for the purpose of this Title be considered commodities subject to sale or barter, but shall be considered as medical services.

(f) The implied warranties of merchantability and fitness do not apply to the sale or barter of livestock or its unborn young.

Added by Acts 1967, 60th Leg., p. 2343, c. 785, § 1, eff. Sept. 1, 1967. Amended by Acts 1979, 66th Leg., p. 190, c. 99, § 1, eff. May 2, 1979.

§ 2.317. Cumulation and Conflict of Warranties Express or Implied.

Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(1) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(2) A sample from an existing bulk displaces inconsistent general language of description.

(3) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

Added by Acts 1967, 60th Leg., p. 2343, c. 785, § 1, eff. Sept. 1, 1967.

§ 2.318. Chapter Neutral on Question of Third Party Beneficiaries of Warranties of Quality and on Need for Privity of Contract.

This chapter does not provide whether anyone other than a buyer may take advantage of an express or implied warranty of quality made to the buyer or whether the buyer or anyone entitled to take advantage of a warranty made to the buyer may sue a third party other than the immediate seller for deficiencies in the quality of the goods. These matters are left to the courts for their determination.

Added by Acts 1967, 60th Leg., p. 2343, c. 785, § 1, eff. Sept. 1, 1967.

SUBCHAPTER F. BREACH, REPUDIATION AND EXCUSE

§ 2.608. Revocation of Acceptance in Whole or in Part.

(a) The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it

(1) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or

(2) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(b) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(c) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

Added by Acts 1967, 60th Leg., p. 2343, c. 785, § 1, eff. Sept. 1, 1967.

SUBCHAPTER G. REMEDIES

§ 2.718. Liquidation or Limitation of Damages; Deposits.

(a) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(b) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds

(1) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with Subsection (a), or

(2) in the absence of such terms, twenty percent of the value of the total performance for which the buyer is obligated under the contract or $500, whichever is smaller.

(c) The buyer's right to restitution under Subsection (b) is subject to offset to the extent that the seller establishes

(1) a right to recover damages under the provisions of this chapter other than Subsection (a), and

(2) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(d) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of Subsection (b); but if the seller has notice of the buyer's breach before reselling

goods received in part performance, his resale is subject to the conditions laid down in this chapter on resale by an aggrieved seller (Section 2.706).

Added by Acts 1967, 60th Leg., p. 2343, c. 785, § 1, eff. Sept. 1, 1967.

§ 2.719. Contractual Modification or Limitation of Remedy.

(a) Subject to the provisions of Subsections (b) and (c) of this section and of the preceding section on liquidation and limitation of damages,

(1) the agreement may provide for remedies in addition to or in substitution for those provided in this chapter and may limit or alter the measure of damages recoverable under this chapter, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of non-conforming goods or parts; and

(2) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(b) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this title.

(c) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

Added by Acts 1967, 60th Leg., p. 2343, c. 785, § 1, eff. Sept. 1, 1967.

§ 2.725. Statute of Limitations in Contracts for Sale.

(a) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

(b) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breac. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(c) Where an action commenced within the time limited by Subsection (a) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(d) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this title becomes effective.

Added by Acts 1967, 60th Leg., p. 2343, c. 785, § 1, eff. Sept. 1, 1967.

18. Consumer Credit Commissioner (*Selected Provisions*)

Texas Finance Code

CHAPTER 14. CONSUMER CREDIT COMMISSIONER

SUBCHAPTER A. GENERAL PROVISIONS

§ 14.001. Definitions.

(a) In this chapter:

(1) "Document" includes books, accounts, correspondence, records, and papers.

(2) "Office" means the Office of Consumer Credit Commissioner.

(b) The definitions provided by Section 341.001 apply to this chapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

SUBCHAPTER B. OPERATION OF OFFICE

§ 14.051. Consumer Credit Commissioner.

(a) The finance commission shall appoint the commissioner.

(b) The commissioner:

(1) serves at the will of the commission; and

(2) is subject to orders and directions of the commission.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., c. 867, § 17, eff. Sept. 1, 2001.

§ 14.052. Division of Consumer Protection.

The division of consumer protection is a division in the office and is under the direction of the commissioner.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 14.053. Repealed by Acts 2009, 81st Leg., R.S., c. 1317, § 28(i), eff. Sept. 1, 2009.

§ 14.054. Oath of Office.

Before assuming the duties of office, the commissioner and each assistant commissioner, examiner, and other employee of the office must take an oath of office.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., c. 285, § 7, eff. Sept. 1. 2003.

§ 14.055. Liability.

(a) The commissioner or an assistant commissioner, examiner, or other employee of the office is not personally liable for damages arising from the person's official act or omission unless the act or omission is corrupt or malicious.

(b) The attorney general shall defend an action brought against a person because of an official act or omission under Subsection (a) regardless of whether the person has terminated service with the office when the action is instituted.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 14.056. Conflict of Interest.

(a) In this section,

"Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be an employee of the office employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in an industry regulated by the office; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in an industry regulated by the office.

(c) A person may not act as the general counsel to the office if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the office.

Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., c. 1235, § 1, eff. Sept. 1, 2001.

§ 14.057. Performance Evaluations; Merit Pay.

(a) The commissioner or a person designated by the commissioner shall develop a system of annual employee performance evaluations based on measurable job tasks.

(b) Merit pay for employees of the office must be based on the system established under this section.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 14.058. Equal Employment Opportunity.

(a) The commissioner or the commissioner's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the office to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the office's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office

Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., c. 1235, § 2, eff. Sept. 1, 2001.

§ 14.059. Intra-Agency Career Ladder.

(a) The commissioner or a person designated by the commissioner shall develop an intra-agency career ladder program.

(b) The program must require intra-agency posting of all nonentry level positions concurrently with any public posting.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2019, 86th Leg., c. 767, § 2, eff. Sept. 1, 2019.

§ 14.060. Repealed by Acts 2009, 81st Leg., R.S., c. 1317, § 28(i), eff. Sept. 1, 2009.

§ 14.061. Cost of Audit.

The cost of an audit of the office under Chapter 321, Government Code, shall be paid to the state auditor from the funds of the office.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 14.062. Consumer Information and Complaints.

(a) The office shall maintain a system to promptly and efficiently act on complaints filed with the office. The office shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The office shall make information available describing its procedures for complaint investigation and resolution.

(c) The office shall periodically notify the complaint parties of the status of the complaint until final disposition.

Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., c. 1235, § 3, eff. Sept. 1, 2001; Acts 2019, 86th Leg., c. 767, § 3, eff. Sept. 1, 2019.

§ 14.063. Application of Open Meetings Law.

The office is a governmental body subject to Chapter 551, Government Code.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 14.064. Consumer Information.

The commissioner shall:

(1) prepare information of consumer interest describing:

(A) the regulatory functions of the office; and

(B) the office's procedures by which consumer complaints are filed with and resolved by the office; and

(2) make the information available to the public and appropriate state agencies.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 14.065. Office Employees.

The commissioner may appoint, remove, and prescribe the duties of assistant commissioners, examiners, and other employees as necessary to maintain and operate the office, including the division of consumer protection.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 14.066. Sunset Provision.

The office is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished September 1, 2031.

Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., c. 1235, § 4, eff. Sept. 1, 2001; Acts 2011, 82nd Leg., R.S., c. 1232, § 2.05, eff. June 17, 2011; Acts 2013, 83rd Leg., R.S., c. 1279, § 3.05, eff. June 14, 2013; Acts 2019, 86th Leg., c. 767, § 4, eff. Sept. 1, 2019.

§ 14.067. Repealed by Acts 2009, 81st Leg., R.S., c. 614, § 4(5), eff. June 19, 2009.

[Sections 14.067 to 14.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES OF COMMISSIONER

§ 14.101. General Duties of Commissioner.

The commissioner shall enforce this chapter, Subtitles B and C of Title 4, Chapter 393 with respect to a credit access business, and Chapter 394 in person or through an assistant commissioner, examiner, or other employee of the office.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2011, 82nd Leg., R.S., c. 1302, § 3, eff. Jan. 1, 2012; Acts 2013, 83rd Leg., R.S., c. 63, § 2, eff Sept. 1, 2013; Acts 2017, 85th Leg., R.S., c. 196, § 3, eff. Sept. 1, 2017.

Amendment by Acts 1997, 75th Leg., c. 1396, § 3, provides:

Government Code Sec. 311.031(c) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

Section 3 of Acts 1997, 75th Leg., c. 1396, eff. Sept. 1, 1997, amends Sec. (1) of Vernon's Ann.Civ.St. art. 5069-2.02A [now this section] without reference to the repeal of said article by Acts 1997, 75th Leg., c. 1008, § 6. As so amended, Sec. (1) reads:

The Consumer Credit Commissioner shall enforce Chapters 2, 3A, 6, 6A, 7, 8, 9, and 15 of this title and the Texas Pawnshop Act (Article 5069-51.01 et seq., Vernon's Texas Civil Statutes) in person or through assistant commissioners or any examiner or employee.

Section 8 of Acts 2013, 83rd Leg., R.S., c. 63, provides:

The change in law made by this Act applies only to a violation of Section 339.001, Finance Code, as amended by this Act, that occurs on or after the effective date of this Act. A violation that occurs before that date is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 14.102. Educational and Debt Counseling Programs.

The commissioner shall coordinate, encourage, and assist public and private agencies, organizations, groups, and consumer credit institutions in developing and operating voluntary educational and debt counseling programs designed to promote prudent and beneficial use of consumer credit by residents of this state.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 14.1025. Financial Literacy Program Information.

(a) In this section:

(1) "Financial literacy" means proficiency at managing personal finances.

(2) "Health and human services agencies" has the meaning assigned by Section 531.001, Government Code.

[Subsection (2) as amended by Acts 2023, 88th Leg., R.S., HB 4611, § 2.12, eff. Sept. 1, 2025.]

(2) "Health and human services agencies" has the meaning assigned by Section 531.0001, Government Code.

(b) The commissioner shall collect information on programs, including classes, and other resources available to the public that focus on teaching financial literacy, compile the information into a one-page document, and post the document on the office's Internet website.

(c) A health and human services agency shall ensure that the document under Subsection (b) is offered to persons who receive services from the agency at locations at which those persons frequently access services provided by the agency.

(d) The commissioner shall periodically update the information contained in the document described by Subsection (b).

Added by Acts 2011, 82nd Leg., R.S., c. 538, § 1, eff. Sept. 1, 2011. Amended by Acts 2023, 88th Leg., R.S., HB 4611, § 2.12, eff. Sept. 1, 2023.

§ 14.103. Consumer Protection Programs.

The commissioner, through the division of consumer protection, shall coordinate, encourage, and assist public and private agencies, organizations, groups, and consumer protection institutions in developing and operating voluntary educational consumer protection programs designed to promote prudent and informed consumer action by residents of this state.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 14.104. Lender Contracts.

A written contract of an authorized lender subject to regulation by the office must contain the name, mailing address, and telephone number of the office.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 14.105. Gifts and Grants.

(a) The commissioner may accept money, gifts, or grants on behalf of the state for a purpose related to a consumer credit educational opportunity or to assist a local government in the exercise of its police power unless the acceptance is prohibited by Subsection (b) or other law. Acceptance and use of money under this subsection must be approved by the finance commission.

(b) he commissioner may not accept or use money offered by:

(1) person for investigating or prosecuting a matter; or

(2) a person who is affiliated with an industry that is regulated by the finance commission.

(c) Money received under Subsection (a) may be appropriated only for the purpose for which the money was given.

(d) The commissioner is not prohibited by Subsection (b) from receiving and using money from a person under the jurisdiction of the commissioner if the receipt and use is expressly authorized by other law.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 14.106. Information Regarding Employment Requirements.

The commissioner or the commissioner's designee shall provide to agency employees, as often as necessary, information regarding the requirements for employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state employees.

Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., c. 1235, § 6, eff. Sept. 1, 2001.

§ 14.107. Fees.

(a) The finance commission shall establish reasonable and necessary fees for carrying out the commissioner's powers and duties under this chapter, Title 4, Chapter 393 with respect to a credit access business, and Chapters 371, 392, and 394 and under Chapters 51, 302, 601, and 621, Business & Commerce Code.

(b) The finance commission by rule shall set the fees for licensing and examination, as applicable, under Chapter 393 with respect to a credit access business or Chapter 342, 347, 348, 351, 353, or 371 at amounts or rates necessary to recover the costs of administering those chapters. The rules may provide that the amount of a fee charged to a license holder is based on the volume of the license holder's regulated business and other key factors. The commissioner may provide for collection of a single fee for the term of the license from a person licensed under Subchapter G of Chapter 393 or Chapter 342, 347, 348, 351, or 371. The fee must include amounts due for both licensing and examination.

Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., c. 867, § 18, eff. Sept. 1, 2001; Acts 2001, 77th Leg., c. 1235, § 7, eff. Sept. 1, 2001; Acts 2007, 80th Leg., R.S., c. 885, § 2.15, eff. Sept. 1, 2009; Acts 2999, 81st Leg., R.S., c. 1104, § 2, eff. June 19, 2009; Acts 2011, 82 nd Leg. R.S., c. 117, § 1, eff. Sept. 1, 2011; Acts 2011, 82nd Leg., R.S., c. 1302, § 4, eff. Jan. 1, 2012; Acts 2019, 86th Leg., c. 767, § 5, eff. Sept. 1, 2019.

§ 14.108. Interpretations of Law.

(a) The commissioner may issue an interpretation of this chapter or Subtitle A or B, Title 4, after approval of the interpretation by the finance commission.

(b) The provisions of Chapter 2001, Government Code, that relate to the adoption of an administrative rule do not apply to the issuance of an interpretation under this section.

(c) The commissioner shall publish in the Texas Register, in a form prescribed by the finance commission, a request for an interpretation not later than the 10th day after the date on which the commissioner receives the request.

(d) An interpretation approved by the finance commission shall be published in the Texas Register, in a form prescribed by the finance commission, not later than the 10th day after the date on which the finance commission has approved the interpretation.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 14.109. Use of the Nationwide Mortgage Licensing System and Registry.

(a) In this section, "Nationwide Mortgage Licensing System and Registry" or "nationwide registry" means a licensing system developed and maintained by the Conference of State Bank Supervisors and an affiliated organization to manage mortgage licenses and other financial services licenses or a successor registry.

(b) This section applies only to:

(1) this chapter; and

(2) Chapter 342, 348, 351, 393, or 394.

(c) The commissioner may require that a person submit through the Nationwide Mortgage Licensing System and Registry in the form and manner prescribed by the commissioner and acceptable to the registry any information or document or payment of a fee required to be submitted to the commissioner under:

(1) a chapter to which this section applies; or

(2) rules adopted under the chapter.

(d) The commissioner may use the nationwide registry as a channeling agent for obtaining information required for licensing or registration purposes under a chapter listed in Subsection (b)(2) or rules adopted under the chapter, including:

(1) criminal history record information from the Federal Bureau of Investigation, the United States Department of Justice, or any other agency or entity at the commissioner's discretion;

(2) information related to any administrative, civil, or criminal findings by a governmental jurisdiction; and

(3) information requested by the commissioner under Section 342.101(a)(4), 348.502(a)(3), 351.101(a)(4), 393.604(a)(5), or 394.204(c)(8).

Added by Act 2013, 83rd Leg., R.S., c. 943, § 1, eff. Sept. 1, 2013 and c. 737, § 1, eff. Sept. 1, 2013.

§ 14.110. Alternative Rulemakng and Dispute Resolution.

(a) The finance commission by rule shall develop a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of rules by the finance commission applicable to the office; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the office's jurisdiction.

(b) The procedures applicable to the office relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The office shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

Added by Acts 2019, 86th Leg., c. 767, § 6, eff. Sept. 1, 2019.

§ 14.111. Advisory Committees.

(a) The commissioner may appoint advisory committees to assist the office and commissioner in performing their duties.

(b) The commissioner shall specify each committee's purpose, powers, and duties and shall require each committee to report to the commissioner or office in the manner specified by the commissioner concerning the committee's activities and the results of its work.

Added by Acts 2019, 86th Leg., c. 767, § 6, eff. Sept. 1, 2019.

§ 14.112. Licensing and Registration Terms.

(a) The finance commission by rule shall prescribe the licensing or registration period for licenses and registrations issued under Chapters 342, 345, 347, 348, 351, 352, 353, 371, 393, and 394 of this code and Chapter 1956, Occupations Code, not to exceed two years.

(b) In adopting rules under Subsection (a), the finance commission shall set terms for licenses that comply with Chapter 180 and the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

(c) If the finance commission prescribes the term of a license or registration under Subsection (a) for a period other than one year, the commissioner shall prorate the applicable fee required under a chapter specified in Subsection (a) as necessary to reflect the term of the license or registration.

Added by Acts 2019, 86th Leg., c. 767, § 6, eff. Sept. 1, 2019.

§ 14.113. Texsa Financial Education Endowment.

(a) As part of the licensing fee and procedures described under Subchapter G, Chapter 393, each credit access business or holder of a credit access business license shall pay to the commissioner an annual assessment to improve consumer credit, financial education, and asset-building opportunities in this state. The annual assessment may not exceed $200 for each license as specified by the finance commission.

(b) The commissioner shall remit to the comptroller amounts received under Subsection (a) for deposit in an interest-bearing deposit account in the Texas Treasury Safekeeping Trust Company. Money in the account may be spent by the finance commission only for the purposes provided by this section. Amounts in the account may be invested and reinvested under the prudent person standard described by Section 11b, Article VII, Texas Constitution, and the interest from those investments shall be deposited to the credit of the account.

(b-1) The expenses of managing the investments may be paid from the deposit account described by Subsection (b).

(c) The Texas Financial Education Endowment shall be administered by the finance commission to support statewide financial education and consumer credit building activities and programs, including:

(1) production and dissemination of approved financial education materials at licensed locations;

(2) advertising, marketing, and public awareness campaigns to improve the credit profiles and credit scores of consumers in this state;

(3) school and youth-based financial literacy and capability;

(4) credit building and credit repair;

(5) financial coaching and consumer counseling;

(6) bank account enrollment and incentives for personal savings; and

(7) other consumer financial education and asset-building initiatives as considered appropriate by the finance commission.

(d) In implementing this section, the finance commission may malke grants and may solicit gifts, grants, and donations for this purpose.

(e) The finance commission may partner with other state agencies and entities to implement this section.

(f) The finance commission shall adopt rules to administer this section.

Added by Acts 2011, 82nd Leg., R.S., c. 1302, § 2, eff. Jan. 1, 2012. Amended and redesignated from § 393.628, Tex. Fin. Code, by Acts 2023, 88th Leg., R.S., SB 1371, § 1, eff. Sept. 1,, 2023.

[Sections 14.109 to 14.150 reserved for expansion]

SUBCHAPTER D. CRIMINAL HISTORY RECORD INFORMATION

§ 14.151. Obtaining Information.

(a) The commissioner or an assistant commissioner, examiner, or other employee of the office shall obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation Identification Division, or another law enforcement agency relating to a person described by Section 411.095(a), Government Code.

(b) For an applicant for a license or registration, license holder, or registrant that is a business entity, the criminal history record information requirement of this section applies to an officer, director, owner, or employee of the entity or another person having a substantial relationship with the entity.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2015, 84th Leg., c. 256, § 2, eff. Sept. 1, 2015; Acts 2023, 88th Leg., R.S., HB 4123, § 7, eff. May 30, 2023.

§ 14.152. Fingerprint Requirement; Penalty.

The commissioner may refuse to grant a license or registration to, or may suspend or revoke the license or registration of, an applicant, license holder, or registrant described by Section 411.095(a)(1), Government Code, who fails to provide, on request, a complete set of legible fingerprints on a fingerprint card format approved by the Department of Public Safety and the Federal Bureau of Investigation.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2015, 84th Leg., c. 256, § 3, eff. Sept. 1, 2015.

§ 14.153. Action by Law Enforcement Agencies.

(a) The commissioner shall send fingerprints and other identification information to the Department of Public Safety to be retained by that department.

(b) The Department of Public Safety shall use the information to perform a search of the state criminal history files and shall report the findings to the office.

(c) The Department of Public Safety shall send fingerprints and other identification information to the Federal Bureau of Investigation so that the bureau can perform a search of its criminal history files.

(d) The Department of Public Safety shall notify the office of activity reported to the crime records division that identifies a person with a record maintained under this subchapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 14.154. Confidentiality.

(a) Criminal history record information received by the office is confidential and is for the exclusive use of the office.

(b) Repealed by Acts 2015, 84th Leg., c. 256, § 7 eff. Sept. 1, 2015.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2015, 84th Leg., c. 256, § 7, eff. Sept. 1, 2015.

§ 14.155. Disclosure.

(a) The office may not release or disclose criminal history record information obtained from the Department of Public Safety, Federal Bureau of Investigation Identification Division, or other law enforcement agency, except as provided by Section 411.095(b), Government Code.

(b) Repealed by Acts 2015, 84th Leg., c. 256, § 7 eff. Sept. 1, 2015.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2015, 84th Leg., c. 256, §§ 4, 5, 7, eff. Sept. 1, 2015.

§ 14.156. Recovery of Costs.

In addition to an investigation fee paid to the commissioner by an applicant for a license or registration, the commissioner is entitled to recover from an applicant, license holder, or registrant the cost of processing an inquiry to determine whether the person has a criminal history record.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2015, 84th Leg., c. 256, § 6, eff. Sept. 1, 2015.

§ 14.157. Rules.

The finance commission shall adopt rules governing the custody and use of information obtained under this subchapter.

Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., c. 867, § 19, eff. Sept. 1, 2001.

[Sections 14.158 to 14.200 reserved for expansion]

SUBCHAPTER E. INVESTIGATION AND ENFORCEMENT

§ 14.201. Investigation and Enforcement Authority.

Investigative and enforcement authority under this subchapter applies only to:

(1) this chapter;

(2) Subtitles B and C, Title 4;

(3) Chapter 393 with respect to a credit access business;

(4) Chapter 394; and

(5) Subchapter B, Chapter 1956, Occupations Code.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2011, 82nd Leg., R.S., c. 1302, § 5, eff. Jan. 1, 2012; Act 2013, 83rd Leg., R.S., c. 63, § 3, eff, Sept. 1, 2013; Acts 2017, 85th Leg., R.S., c. 196, § 4, eff. Sept. 1, 2017; Acts 2019, 86th Leg., c. 767, § 7, eff. Sept. 1, 2019.

Amendment by Acts 1997, 75th Leg., c. 1396, § 4

V.T.C.A., Government Code Sec. 311.031(c) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

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

The investigative and enforcement authority under this Article applies only to Chapters 2, 3A, 6, 6A, 7, 8, 9, and 15 of this title and the Texas Pawnshop Act (Article 5069-51.01 et seq., Vernon's Texas Civil Statutes). Upon receipt of written complaint or other reasonable cause to believe that any provision of those statutes are being violated by any person, the Consumer Credit Commissioner may request such person to furnish information in regard to a specific loan or retail transaction or business practice alleged to be in violation of those statutes.

Section 8 of Acts 2013, 83rd Leg., R.S., c. 63 provides:

The change in law made by this Act applies only to a violation of Section 339.001, Finance Code, as amended by this Act, that occurs on or after the effective date of this Act. A violation that occurs before that date is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 14. 2015. Confidentiality of Certain Information.

(a) Except as provided by Subsection (b), information or material obtained or compiled by the commissioner in relation to an examination or investigation by the commissioner or the commissioner's representative of a license holder, registrant, applicant, or other person under Subtitle B or C, Title 4, Subchapter G of Chapter 393, or Chapter 394 of this code or Subchapter B, Chapter 1956, Occupations Code, is confidential and may not be disclosed by the commissioner or an officer or employee of the office [Office of Consumer Credit Commissioner], including:

(1) information obtained from a license holder, registrant, applicant, or other person examined or investigated under Subtitle B or C, Title 4, Subchapter G of Chapter 393, or Chapter 394 of this code or Subchapter B, Chapter 1956, Occupations Code;

(2) work performed by the commissioner or the commissioner's representative on information obtained from a license holder, registrant, applicant, or other person for the purposes of an examination or investigation conducted under Subtitle B or C, Title 4, Chapter 393 with respect to a credit access business, or Chapter 394 of this code or Subchapter B, Chapter 1956, Occupations Code;

(3) a report on an examination or investigation of a license holder, registrant, applicant, or other person conducted under Subtitle B or C, Title 4, Chapter 393 with respect to a credit access business, or Chapter 394 of this code or Subchapter B, Chapter 1956, Occupations Code; and

(4) any written communications between the license holder, registrant, applicant, or other person, as applicable, and the commissioner or the commissioner's representative relating to or referencing an examination or investigation

conducted under Subtitle B or C, Title 4, Chapter 393 with respect to a credit access business, or Chapter 394 of this code or Subchapter B, Chapter 1956, Occupations Code.

(b) The commissioner or the commissioner's representative may disclose the confidential information or material described by Subsection (a):

(1) to a department, agency, or instrumentality of this state or the United States if the commissioner considers disclosure to be necessary or proper to the enforcement of the laws of this state or the United States and in the best interest of the public;

(2) if the information was previously provided to or provided by the license holder, registrant, applicant, or other person, and the person consents to the release of the information or has published the information contained in the release; [or]

(3) if the commissioner determines that release of the information is required for an administrative hearing; or

(4) to provide a summary of investigation information to the person who filed the complaint with the office.

Added by Acts 2009, 81st Leg., R.S., c. 1382, § 3, eff. Sept. 1, 2009. Amended by Acts 2011, 82nd Leg., R.S., c. 1302, § 6, eff. Jan. 1, 2011; Acts 2011, 82nd Leg., R.S., c. 1182, § 5, eff. Sept. 1, 2011; Acts 2013, 83rd Leg., c. 63, § 4, eff. Sept. 1, 2013; Acts 2013, 83rd Leg., c. 161, § 8.001, eff. Sept. 1, 2013; Acts 2017, 85th Leg., R.S., c. 196, § 5, eff. Sept. 1, 2017; Acts 2019, 86th Leg., c. 767, § 8, eff. Sept. 1, 2019.

Section 8 of Acts 2013, 83rd Leg., R.S., c. 63 provides:

The change in law made by this Act applies only to a violation of Section 339.001, Finance Code, as amended by this Act, that occurs on or after the effective date of this Act. A violation that occurs before that date is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 14. 2016. Information Sharing with Departments and Agencies.

To ensure consistent enforcement of law and minimization of regulatory burdens, the commissioner may share information, including criminal history or confidential information, relating to a license holder, registrant, applicant, or other person investigated or examined under the commissioner's authority with a department, agency, or instrumentality of this state, another state, or the United States if the commissioner considers the disclosure of the information to be necessary or proper to the enforcement of the laws of this state or the United States and in the best interest of the public. Information otherwise confidential remains confidential after the information is shared under this section.

Added by Acts 2011, 82nd Leg., R.S., c. 1182, § 2, eff. Sept. 1, 2011.

§ 14.202. Request for Information; Investigation Authority.

On receipt of a written complaint or other reasonable cause to believe that a person is violating a statute listed by Section 14.201, the commissioner may:

(1) require the person to furnish information regarding a specific loan, retail transaction, or business practice to which the violation relates; and

(2) conduct an investigation to determine whether a violation exists.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2019, 86th Leg., c. 767, § 9, eff. Sept. 1, 2019.

§ 14.203. Issuance of Subpoena or Summons.

(a) During an investigation, the commissioner may issue a subpoena or summons that is addressed to a peace officer of this state and requires the attendance and testimony of a witness or the production of a document.

(b) A document that is necessary to continue the business of a person under investigation may not be removed from the office or place of business of that person, but the commissioner may:

(1) examine, or cause to be examined, the document at the office or place of business; and

(2) require a copy to be made of a part of the document related to a matter under investigation.

(c) A copy of a document made under Subsection (b)(2) must be verified by the affidavit of the person under investigation or by an officer of that person.

(d) On the commissioner's certification, a copy of a document made under Subsection (b)(2) is admissible in evidence in an:

(1) investigation or hearing under this subchapter or under a statute to which this subchapter applies; or

(2) appeal to the district court.

(e) To implement this section, the commissioner may sign a subpoena, administer an oath or affirmation, examine a witness, or receive evidence.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 14.204. Enforcement of Subpoena; Contempt.

(a) If a person disobeys a subpoena or if a witness appearing before the commissioner refuses to testify, the commissioner may petition the district court of a jurisdiction in which the person or witness may be found, and the court on this petition may issue an order requiring the person or witness to obey the subpoena, testify, or produce a document relating to the matter in issue, as applicable. The court shall treat the application in the same manner as a motion in a civil suit.

(b) The court shall promptly set an application to enforce a subpoena under Subsection (a) for hearing and shall cause notice of the application and the hearing to be served on the person to whom the subpoena is directed. Notice may be served by a peace officer of this state.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 14.205. Investigation by Hearing Officer.

(a) During an investigation described by this subchapter, the commissioner may appoint a hearing officer to conduct the investigation.

(b) On appointment, a hearing officer has the same authority as the commissioner to conduct the investigation, except that the hearing officer may not issue an order on the subject of the investigation.

(c) The commissioner may consider the record of an investigation conducted before a hearing officer in the same manner and to the same extent as in a hearing before the commissioner.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 14.206. Fees and Expenses.

(a) The fee for serving a subpoena under this subchapter is the same as that paid a sheriff or constable for performing a similar service.

(b) A witness required to attend a hearing before the commissioner shall receive for each day's attendance a fee and a travel and transportation allowance as authorized by law or a rule adopted by the finance commission.

(c) A fee under Subsection (b) is not payable until the witness appears at the hearing.

(d) A disbursement made in payment of a fee under this section shall be included in, and paid in the same manner that is provided for, other expenses incurred in the administration and enforcement of the statutes to which this subchapter applies.

Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., c. 867, § 20, eff. Sept. 1, 2001.

§ 14.207. Imposition of Costs on Parties.

The commissioner may impose on a party in interest of record fees, expenses, or costs incurred in connection with a hearing or may divide the fee or expense among any or all interested parties as determined by the commissioner.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 14.208. Injunction; Appeal.

(a) If the commissioner has reasonable cause to believe that a person is violating a statute to which this chapter applies, the commissioner, in addition to any other authorized action, may issue an order to cease and desist from the violation or an order to take affirmative action, or both, to enforce compliance.

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

(c) If a hearing is not timely requested under Subsection (b), the order is considered final and becomes enforceable. The commissioner, after giving notice, may impose against a person who violates a cease and desist order an administrative penalty in an amount not to exceed $1,000 for each day of violation. In addition to any other remedy provided by law, the commissioner on relation of the attorney general may institute in district court a suit for injunctive relief and to collect an administrative penalty. A bond is not required of the commissioner with respect to injunctive relief granted under this section. In the action, the court may enter as proper an order awarding a preliminary or final injunction.

(d) Repealed by Acts 2109, 86th Leg., c. 767, § 95(1), eff. Sept. 1, 2019.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2005, c. 1018, § 4.01, eff. Sept. 1, 2005; Acts 2019, 86th Leg., c. 767, § 10, eff. Sept. 1, 2019.

§ 14.209. Appointment of Receiver.

(a) In addition to other remedies for the enforcement of a restraining order or injunction, the court in which an action is brought under Section 14.208(c) may impound and appoint a receiver for the defendant's property and business, including a document relating to the property or business, as the court considers reasonably necessary to prevent a violation through use of the property and business.

(b) On appointment and qualification, a receiver has the powers and duties of a receiver under Chapter 64, Civil Practice and Remedies Code.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2023, 88th Leg., R.S., SB 1371, § 2, eff. Sept. 1, 2023.

[Sections 14.210 to 14.250 reserved for expansion]

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

§ 14.251. Assessment of Penalty; Restitution Order.

(a) The commissioner may assess an administrative penalty against a person who knowingly and wilfully violates or causes a violation of this chapter, Chapter 394, or Subtitle B, Title 4, or a rule adopted under this chapter, Chapter 394, or Subtitle B, Title 4.

(a-1) The commissioner shall assess an administrative penalty against a credit access business who knowingly and wilfully violates or causes a violation of Chapter 393, or a rule adopted under Chapter 393.

(b) The commissioner may order the following businesses or other persons to pay restitution to an identifiable person:

(1) a person who violates or causes a violation of this chapter, Chapter 394, or Subtitle B, Title 4, or a rule adopted under this chapter, Chapter 394, or Subtitle B, Title 4;

(2) a credit access business who violates or causes a violation of Chapter 393 or a rule adopted under Chapter 393; or

(3) a person who violates or causes a violation of Subchapter B, Chapter 1956, Occupations Code, or a rule adopted under that subchapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.29, eff. Sept. 1, 1999; Acts 2011, 82nd Leg., R.S., c. 1302, § 7, eff. Jan. 1, 2012; Acts 2013, 83rd Leg., R.S., c. 63, § 5, eff. Sept. 1, 2013; Acts 2017, 85th Leg., R.S., c. 196, § 6, eff. Sept. 1, 2017; Acts 2019, 86th Leg., c. 767, § 11, eff. Sept. 1, 2019.

Section 8 of Acts 2013, 83rd Leg., R.S., c. 63 provides:

The change in law made by this Act applies only to a violation of Section 339.001, Finance Code, as amended by this Act, that occurs on or after the effective date of this Act. A violation that occurs before that date is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 14.252. Amount of Penalty.

(a) The commissioner may assess an administrative penalty for a violation in an amount not to exceed $1,000 for each day of the violation.

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

(1) $100,000; or

(2) an amount that is equal to the greater of five percent of the net worth of the creditor or $5,000.

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

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

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

(3) the history of violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2005, c. 1018, § 4.03, eff. Sept. 1, 2005.

§ 14.253. Report on Violation.

If the commissioner determines that a violation occurred, the commissioner may issue a report that states:

(1) the facts on which the determination is based; and

(2) the commissioner's recommendation on imposition of a penalty, including a recommendation on the amount of the penalty.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 14.254. Notice of Report on Violation and Penalty Recommendation.

(a) Not later than the 14th day after the date on which a report is issued, the commissioner shall give written notice of the report by certified mail to the person charged with committing or causing the violation.

(b) The notice must:

(1) include a brief summary of the alleged violation;

(2) include a statement of the amount of the recommended penalty; and

(3) inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 14.255. Response of Person Receiving Notice.

Not later than the 20th day after the date on which a person receives notice under Section 14.254, the person may:

(1) accept in writing the determination and recommended penalty of the commissioner; or

(2) make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 14.256. Acceptance of Penalty; Default.

If a person accepts the determination and recommended penalty of the commissioner or fails to make a timely written request for a hearing, the commissioner by order shall approve the determination and impose the recommended penalty.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2019, 86th Leg., c. 767, § 12, eff. Sept. 1, 2019.

§ 14.257. Hearing on Penalty; Order.

(a) If a person makes a timely written request for a hearing, the commissioner shall set a hearing and give notice of the hearing to the person by certified mail.

(b) The hearing shall be held by a hearings officer who shall make findings of fact and conclusions of law and promptly issue a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

(c) According to the findings of fact, conclusions of law, and proposal for a decision, the commissioner by order may find:

(1) that a violation has occurred and impose a penalty; or

(2) a violation has not occurred.

(d) Notice of the commissioner's order, given to the person under Chapter 2001, Government Code, must include a statement of the person's right to judicial review of the order.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2019, 86th Leg., c. 767, § 13, eff. Sept. 1, 2019.

§ 14.258. Stay of Penalty; Suit by Attorney General.

(a) The enforcement of the penalty may 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. A person who cannot afford to pay the penalty or file the bond may 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 commissioner to contest the affidavit as provided by those rules.

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

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

(d) A court that does not sustain the occurrence of a violation shall order that no penalty is owed.

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

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2005, c. 1018, § 4.04, eff. Sept. 1, 2005.

Amendment by Acts 1997, 75th Leg., c. 1396, Sec. 5

V.T.C.A., Government Code Sec. 311.031(c) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

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

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

§ 14.259. Recovery of Costs.

In addition to the administrative penalty or restitution amount, the court may authorize the commissioner to recover from a person who pays an administrative penalty or restitution amount, or both, reasonable expenses incurred in obtaining the ordered amount, including the cost of investigation, witness fees, and deposition expenses.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 14.260. Administrative Procedure Act.

A proceeding under this subchapter is subject to Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 14.261. Acceptance of Assurance.

(a) In administering this chapter, the commissioner may accept assurance of voluntary compliance from a person who is engaging in or has engaged in an act or practice in violation of:

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

(2) Chapter 393, if the person is a credit access business, or Chapter 394; or

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

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

(c) The commissioner may 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 Subsection (a).

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

Added by Acts 2005, 79th Leg., c. 1018, § 4.05, eff. Sept. 1, 2005. Amended by Acts 2011, 82nd Leg., R.S., c. 1302, § 8, eff. Jan. 1, 2012; Acts 2013, 83rd Leg., R.S., c. 63, § 6, eff. Sept. 1, 2013; Acts 2017, 85th Leg., R.S., c. 196, § 7, eff. Sept. 1, 2017.

Section 8 of Acts 2013, 83rd Leg., R.S., c. 63 provides:

The change in law made by this Act applies only to a violation of Section 339.001, Finance Code, as amended by this Act, that occurs on or after the effective date of this Act. A violation that occurs before that date is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 14.262. Effect of Assurance.

(a) An assurance of voluntary compliance is not an admission of a violation of:

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

(2) Chapter 393 with respect to a credit access business or Chapter 394; or

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

(b) 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:

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

(2) Chapter 393 with respect to a credit access business or Chapter 394; or

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

Added by Acts 2005, 79th Leg., c. 1018, § 4.05, eff. Sept. 1, 2005. Amended by Acts 2011, 82nd Leg., R.S., c. 1302, § 9, eff. Jan. 1, 2012; Acts 2013, 83rd Leg., R.S., c. 63, § 7, eff. Sept. 1, 2013; Acts 2017, 85th Leg., R.S., c. 196, § 8, eff. Sept. 1, 2017.

Section 8 of Acts 2013, 83rd Leg., R.S., c. 63 provides:

The change in law made by this Act applies only to a violation of Section 339.001, Finance Code, as amended by this Act, that occurs on or after the effective date of this Act. A violation that occurs before that date is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

§ 14.263. Reopening.

A matter closed by the filing of an assurance of voluntary compliance may be reopened at any time.

Added by Acts 2005, 79th Leg., c. 1018, § 4.05, eff. Sept. 1, 2005.

§ 14.264. Right to Bring Action Not Affected.

(a) 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.

(b) A person entering into an assurance of voluntary compliance may, not later than the 60th day after the date of filing of the assurance, correct the violation under Section 349.201. Amounts paid as restitution and other acts taken in accordance with an assurance of voluntary compliance shall 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:

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

(2) written notice; and

(3) filing of the action alleging the violation.

Added by Acts 2005, 79th Leg., c. 1018, § 4.05, eff. Sept. 1, 2005.

[Sections 14.265 to 14.300 reserved for expansion]

SUBCHAPTER G. JUDICIAL REVIEW

§ 14.301. Appeal of Final Decision of Commissioner.

A party in interest aggrieved by a final decision of the commissioner is entitled to judicial review.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 14.302. Appeal of License Withholding or Revocation.

An appeal of a decision of the commissioner refusing to grant a license to an applicant or revoking the license of a license holder shall be under the substantial evidence rule as provided by Chapter 2001, Government Code.

Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., c. 1235, § 8, eff. Sept. 1, 2001.

§ 14.303. Stay of Order Pending Appeal.

On a showing of good cause, the commissioner or the reviewing court may enter an order staying the effect of a final decision of the commissioner pending appeal by a party in interest.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

19. Texas Credit Title—Regulation of Interest, Loans, and Financed Transactions

Texas Finance Code

TITLE 4. REGULATION OF INTEREST, LOANS, AND FINANCED TRANSACTIONS

SUBTITLE A. INTEREST

CHAPTER 301. GENERAL PROVISIONS

§ 301.001. Short Title.

This title may be cited as the Texas Credit Title.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999. Acts 1997, 75th Leg., c. 1396, § 1, c. 81, § 1, c. 906, § 4, c. 1111, § 7, repealed by Acts 1999, 76th Leg., c. 62, § 7.18(b).

§ 301.002. Definitions.

(a) In this subtitle:

(1) "Contract interest" means interest that an obligor has paid or agreed to pay to a creditor under a written contract of the parties. The term does not include judgment interest.

(2) "Credit card transaction" means a transaction for personal, family, or household use in which a credit card, plate, coupon book, or credit card cash advance check may be used or is used to debit an open-end account in connection with:

(A) a purchase or lease of goods or services; or

(B) a loan of money.

(3) "Creditor" means a person who loans money or otherwise extends credit. The term does not include a judgment creditor.

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

(5) "Judgment creditor" means a person to whom a money judgment is payable.

(6) "Judgment debtor" means a person obligated to pay a money judgment.

(7) "Judgment interest" means interest on a money judgment, whether the interest accrues before, on, or after the date the judgment is rendered.

(8) "Legal interest" means interest charged or received in the absence of any agreement by an obligor to pay contract interest. The term does not include judgment interest.

(9) "Lender credit card agreement":

(A) means an agreement between a creditor and an obligor that provides that:

(i) the obligor, by means of a credit card transaction for personal, family, or household use, may:

(a) obtain loans from the creditor directly or through other participating persons; and

(b) lease or purchase goods or services from more than one participating lessor or seller who honors the creditor's credit card;

(ii) the creditor or another person acting in cooperation with the creditor is to reimburse the participating persons, lessors, or sellers for the loans or the goods or services purchased or leased;

(iii) the obligor is to pay the creditor the amount of the loan or cost of the lease or purchase;

(iv) the unpaid balance of the loan, lease, or purchase and interest on that unpaid balance are debited to the obligor's account under the agreement;

(v) interest may be computed on the balances of the obligor's account but is not precomputed; and

(vi) the obligor and the creditor may agree that payment of part of the balance may be deferred;

(B) includes an agreement under Section 342.455 or Section 346.003(b) or (c) for an open-end account under which credit card transactions may be made or a merchant discount may be taken; and

(C) does not include:

(i) an agreement, including an open-end account credit agreement, between a seller and a buyer or between a lessor and a lessee; or

(ii) an agreement under which:

(a) the entire balance is due in full each month; and

(b) no interest is charged if the obligor pays the entire balance each month.

(10) "Loan" means an advance of money that is made to or on behalf of an obligor, the principal amount of which the obligor has an obligation to pay the creditor. The term does not include a judgment.

(11) "Merchant discount" means the consideration, including a fee, charge, discount, or compensating balance, that a creditor requires, or that a creditor, subsidiary, or parent company of the creditor, or subsidiary of the creditor's parent company, receives directly or indirectly from a person other than the obligor in connection with a credit card transaction under a lender credit card agreement between the obligor and the creditor. The term does not include consideration received by a creditor from the obligor in connection with the credit card transaction.

(12) "Money judgment" means a judgment for money. For purposes of this subtitle, the term includes legal interest or contract interest, if any, that is payable to a judgment creditor under a judgment.

(13) "Obligor" means a person to whom money is loaned or credit is otherwise extended. The term does not include:

(A) a judgment debtor; or

(B) a surety, guarantor, or similar person.

(14) "Open-end account":

(A) means an account under a written contract between a creditor and an obligor in connection with which:

(i) the creditor reasonably contemplates repeated transactions and the obligor is authorized to make purchases or borrow money;

(ii) interest or time price differential may be charged from time to time on an outstanding unpaid balance; and

(iii) the amount of credit that may be extended during the term of the account is generally made available to the extent that any outstanding balance is repaid; and

(B) includes an account under an agreement described by Section 342.455 or Chapter 345 or 346.

(15) "Prepayment penalty" means consideration agreed on and contracted for a discharge of a loan, other than a loan governed by Chapter 306, before its maturity or a regularly scheduled date of payment, as a result of an obligor's election to pay all of the principal amount before its stated maturity or a regularly scheduled date of payment.

(16) "Time price differential" means an amount, however denominated or expressed, that is:

(A) added to the price at which a seller offers to sell services or property to a purchaser for cash payable at the time of sale; and

(B) paid or payable to the seller by the purchaser for the privilege of paying the offered sales price after the time of sale.

(17) "Usurious interest" means interest that exceeds the applicable maximum amount allowed by law.

(b) The Finance Commission of Texas by rule may adopt other definitions to accomplish the purposes of this title.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., c. 909, § 2.01, eff. Sept. 1, 1999. Acts 1997, 75th Leg., c. 1396, § 1, c. 81, § 1, c. 906, § 4, c. 1111, § 7, repealed by Acts 1999, 76th Leg., c. 62, § 7.18(b). Amended by Acts 2005, 79th Leg., c. 1018, § 2.01, eff. Sept. 1, 2005.

CHAPTER 302. INTEREST RATES

SUBCHAPTER A. USURIOUS INTEREST

§ 302.001. Contracting For, Charging, or Receiving Interest or Time Price Differential; Usurious Interest.

(a) A creditor may contract for, charge, and receive from an obligor interest or time price differential.

(b) The maximum rate or amount of interest is 10 percent a year except as otherwise provided by law. A greater rate of interest than 10 percent a year is usurious unless otherwise provided by law. All contracts for usurious interest are contrary to public policy and subject to the appropriate penalty prescribed by Chapter 305.

(c) To determine the interest rate of a loan under this subtitle, all interest at any time contracted for shall be aggregated and amortized using the actuarial method during the stated term of the loan.

(d) In addition to interest authorized by Subsection (b), a loan providing for a rate of interest that is 10 percent a year or less may provide for a delinquency charge on the amount of any payment in default for a period of not less than 10 days in an amount not to exceed the greater of five percent of the amount of the payment or $7.50. The charging of the delinquency charge does not make the loan subject to Chapter 342 or any other provision of Subtitle B.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999. Acts 1997, 75th Leg., c. 1396, § 1, c. 81, § 1, c. 906, § 4, c. 1111, § 7, repealed by Acts 1999, 76th Leg., c. 62, § 7.18(b). Amended by Acts 2001, 77th Leg., c. 916, § 8, eff. Sept. 1, 2001.

§ 302.002. Accrual of Interest When no Rate Specified.

If a creditor has not agreed with an obligor to charge the obligor any interest, the creditor may charge and receive from the obligor legal interest at the rate of six percent a year on the principal amount of the credit extended beginning on the 30th day after the date on which the amount is due. If an obligor has agreed to pay to a creditor any compensation that constitutes interest, the obligor is considered to have agreed on the rate produced by the amount of that interest, regardless of whether that rate is stated in the agreement.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999. Acts 1997, 75th Leg., c. 1396, § 1, c. 81, § 1, c. 906, § 4, c. 1111, § 7, repealed by Acts 1999, 76th Leg., c. 62, § 7.18(b).

SUBCHAPTER B. OTHER RATES AND PROVISIONS ON LOANS SECURED BY REAL PROPERTY

§ 302.101. Determining Rates of Interest by Spreading.

(a) To determine whether a loan secured in any part by an interest in real property, including a lien, mortgage, or security interest, is usurious, the interest rate is computed by amortizing or spreading, using the actuarial method during the stated term of the loan, all interest at any time contracted for, charged, or received in connection with the loan.

(b) If a loan described by Subsection (a) is paid in full before the end of the stated term of the loan and the amount of interest received for the period that the loan exists exceeds the amount that produces the maximum rate authorized by law for that period, the lender shall:

(1) refund the amount of the excess to the borrower; or

(2) credit the amount of the excess against amounts owing under the loan.

(c) A lender who complies with Subsection (b) is not subject to any of the penalties provided by law for contracting for, charging, or receiving interest in excess of the maximum rate authorized.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999. Acts 1997, 75th Leg., c. 1396, § 1, c. 81, § 1, c. 906, § 4, c. 1111, § 7, repealed by Acts 1999, 76th Leg., c. 62, § 7.18(b).

§ 302.102. Prohibition on Prepayment Penalty.

If the interest rate on a loan for property that is or is to be the residential homestead of the borrower is greater than 12 percent a year, a prepayment penalty may not be collected on the loan unless the penalty is required by an agency created by federal law.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., c. 909, § 2.02, eff. Sept. 1, 1999. Acts 1997, 75th Leg., c. 1396, § 1, c. 81, § 1, c. 906, § 4, c. 1111, § 7, repealed by Acts 1999, 76th Leg., c. 62, § 7.18(b).

§ 302.103. Effect of Federal Preemption on Late Charges.

On loans subject to 12 U.S.C. Sections 1735f–7 and 1735f–7a, as amended, any late charges assessed are interest that is included in computing the amount or rate of interest on the loan and, therefore, covered by the federal preemption of state interest rate limitations.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999. Acts 1997, 75th Leg., c. 1396, § 1, c. 81, § 1, c. 906, § 4, c. 1111, § 7, repealed by Acts 1999, 76th Leg., c. 62, § 7.18(b).

§ 302.104. Loan to Purchase Interest in Entity With Foreign Real Property as Principal Asset.

(a) A loan the proceeds of which are used primarily to purchase an interest in a trust or other entity that has as its principal asset real property located outside the United States is:

(1) not subject to Subtitle B; and

(2) subject to the interest rate limitations of Chapter 303.

(b) For the purpose of determining the interest rate on a loan to which this section applies, all interest contracted for, charged, or received shall be amortized, prorated, allocated, and spread over the full stated term of the loan.

(c) This section does not affect application of a law of this state governing collateral that may be used to secure a loan to which this section applies.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999. Acts 1997, 75th Leg., c. 1396, § 1, c. 81, § 1, c. 906, § 4, c. 1111, § 7, repealed by Acts 1999, 76th Leg., c. 62, § 7.18(b).

CHAPTER 303. OPTIONAL RATE CEILINGS

SUBCHAPTER A. RATE CEILINGS: APPLICABILITY, COMPUTATION, AND PUBLICATION

§ 303.001. Use of Ceilings.

(a) Except as provided by Subchapter B, a person may contract for, charge, or receive a rate or amount that does not exceed the applicable interest rate ceiling provided by this chapter. The use of a ceiling provided by this chapter for any contract is optional, and a contract may provide for a rate or amount allowed by other applicable law.

(b) A contract that is subject to Chapter 342, 345, 347, 348, or 353, including a contract for an open-end account, may, as an alternative to an interest rate or amount of time price differential allowed under that chapter, provide for a simple or precomputed rate or amount of time price differential that does not exceed the applicable ceiling provided by this chapter or by the equivalent yield authorized by Chapter 342, 345, 347, 348, or 353.

(c) Except as inconsistent with this chapter, a party to a contract that is subject to Chapter 342, 345, 347, 348, or 353, or the party's assignee, has all rights, duties, and obligations under the applicable chapter, including those relating to refund credits on prepayment or acceleration.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999. Acts 1997, 75th Leg., c. 1396, § 1, c. 81, § 1, c. 906, § 4, c. 1111, § 7, repealed by Acts 1999, 76th Leg., c. 62, § 7.18(b). Amended by Acts 2011, 82nd Leg., R.S., c. 117, § 2, eff. Sept. 1, 2011.

§ 303.002. Weekly Ceiling.

The parties to a written agreement may agree to an interest rate, or in an agreement described by Chapter 345, 347, 348, or 353, an amount of time price differential producing a rate, that does not exceed the applicable weekly ceiling.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999. Acts 1997, 75th Leg., c. 1396, § 1, c. 81, § 1, c. 906, § 4, c. 1111, § 7, repealed by Acts 1999, 76th Leg., c. 62, § 7.18(b). Amended by Acts 2011, 82nd Leg., R.S., c. 117, § 3, eff. Sept. 1, 2011.

§ 303.003. Computation of Weekly Ceiling.

(a) The weekly ceiling is computed by:

(1) multiplying the auction rate by two; and

(2) rounding the result obtained under Subdivision (1) to the nearest one-quarter of one percent.

(b) The weekly rate ceiling becomes effective on Monday of each week and remains in effect through the following Sunday.

(c) In this subchapter, "auction rate" means the auction average rate quoted on a bank discount basis for 26-week treasury bills issued by the United States government, as published by the Federal Reserve Board, for the week preceding the week in which the weekly rate ceiling is to take effect.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., c. 909, § 2.03, eff. Sept. 1, 1999. Acts 1997, 75th Leg., c. 1396, § 1, c. 81, § 1, c. 906, § 4, c. 1111, § 7, repealed by Acts 1999, 76th Leg., c. 62, § 7.18(b).

§ 303.004. Monthly Ceiling.

(a) The monthly ceiling may be used as an alternative to the weekly ceiling only for a contract that:

(1) provides for a variable rate, including a contract for an open-end account; and

(2) is not made for personal, family, or household use.

(b) A contract that provides for the use of the monthly ceiling may not provide for the use of another rate ceiling provided under this subchapter.

(c) If the parties agree that the rate may be adjusted monthly, they may agree that the rate from time to time in effect may not exceed the monthly ceiling from time to time in effect, and the monthly ceiling is the ceiling on those contracts.

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 303.005. Computation of Monthly Ceiling.

(a) The consumer credit commissioner shall compute the monthly ceiling on the first business day of the calendar month in which the rate applies. The monthly ceiling is effective for one month beginning on the first calendar day of each month.

(b) The monthly ceiling is computed by averaging all of the weekly ceilings computed using rates from auctions held during the calendar month preceding the computation date of the monthly ceiling.

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 303.006. Quarterly Ceiling.

(a) A written contract, including a contract that involves an open-end account, may, as an alternative to the weekly ceiling, provide for an interest rate or an amount of time price differential producing a rate that does not exceed the applicable quarterly ceiling.

(b) A variable rate contract authorized under Section 303.015 may not provide for use of both the weekly ceiling and the quarterly ceiling.

(c) Notwithstanding other provisions of this subchapter, the rate of interest on an open-end account authorized under Section 342.455 or 346.003, or an amount owed for a credit card transaction under another type of credit card agreement, in connection with which a merchant discount is imposed or received by the creditor may not exceed the applicable quarterly ceiling.

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 303.007. Annualized Ceiling.

The annualized ceiling may be used as an alternative to the weekly ceiling only for a written contract that involves an open-end account.

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 303.008. Computation of Quarterly and Annualized Ceiling.

(a) On December 1, March 1, June 1, and September 1 of each year, the consumer credit commissioner shall compute the quarterly ceiling and annualized ceiling for the calendar quarter effective the following January 1, April 1, July 1, and October 1, respectively. The quarterly ceiling becomes effective for three-month periods beginning on the effective dates set out in this subsection and is subject to adjustment after each three-month period. The annualized ceiling becomes effective on each of the effective dates set out in this subsection and remains in effect for a period of 12 months, after which it is subject to adjustment.

(b) The quarterly ceiling and annualized ceiling are computed by averaging all of the weekly ceilings computed using average auction rates during the three calendar months preceding the computation date of the ceiling.

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 303.009. Maximum and Minimum Weekly, Monthly, Quarterly, or Annualized Ceiling.

(a) If the rate computed for the weekly, monthly, quarterly, or annualized ceiling is less than 18 percent a year, the ceiling is 18 percent a year.

(b) Except as provided by Subsection (c), if the rate computed for the weekly, monthly, quarterly, or annualized ceiling is more than 24 percent a year, the ceiling is 24 percent a year.

(c) For a contract made, extended, or renewed under which credit is extended for a business, commercial, investment, or similar purpose, the limitation on the ceilings determined by those computations is 28 percent a year.

(d) For an open-end account credit agreement that provides for credit card transactions on which a merchant discount is not imposed or received by the creditor or a retail charge agreement under Chapter 345 without a merchant discount, the ceiling is 21 percent a year.

(e) Repealed by Acts 1999, 76th Leg., c. 1348, § 5, eff. Sept. 1, 1999.

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

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., c. 1348, § 5, eff. Sept. 1, 1999; Acts 2005, 79th Leg., c. 1018, § 2.02, eff. Sept. 1, 2005; Acts 2011, 82nd Leg., R.S., c. 1182, § 4, eff. Sept. 1, 2011.

§ 303.010. Computation of Ceiling if Information Unavailable.

If any of the information required to compute a ceiling is discontinued or is otherwise not available to the consumer credit commissioner from the Federal Reserve Board in the time required for the computation, the ceiling last computed remains in effect until the information becomes available and a new ceiling is computed from the obtained information.

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 303.011. Publication of Rate Ceilings.

(a) The consumer credit commissioner shall send the rate ceilings computed under this subchapter to the secretary of state for publication in the Texas Register.

(b) The monthly, quarterly, or annualized ceiling shall be published before the 11th day after the date on which the ceiling is computed.

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 303.012. Judicial Notice.

A court may take judicial notice of interpretations issued by the consumer credit commissioner or information published in the Texas Register under Section 303.011.

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 303.013. Determination of Ceiling for Contract to Renew or Extend Debt Payment.

The rate ceiling for a contract to renew or extend the terms of payment of a debt is the ceiling in effect under this chapter when the contract for renewal or extension is made, regardless of when the debt is incurred.

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 303.014. Rate for Lender Credit Card Agreement With Merchant Discount.

On an amount owed for a credit card transaction under a lender credit card agreement that imposes or allows the creditor to receive a merchant discount, the creditor may not contract for, charge, or receive:

(1) a rate that exceeds the ceiling provided under Section 303.006(c); or

(2) a fee or charge that:

(A) is not allowed under Chapter 346; or

(B) exceeds the amount allowed under Chapter 346.

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 303.015. Variable Rate.

(a) The parties to a contract, including a contract for an open-end account, may agree to any index, formula, or provision of law by which the interest rate or amount of time price differential will be determined, but the agreed rate of interest or yield from an amount of time price differential may not exceed the amount that would be produced by the rate ceiling applicable to the contract.

(b) A variable contract rate described by this section may not be used in a contract in which the interest or time price differential is precomputed and added into the amount of the contract at the time the contract is made.

(c) A variable rate agreement for credit extended primarily for personal, family, or household use must include the disclosures identified for variable rate contracts required by regulations issued by the Federal Reserve Board and the Consumer Financial Protection Bureau under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.), as amended, except that if that Act does not apply because of the amount of the transaction, the following disclosure must be

included in a size equal to at least 10-point type that is boldface, capitalized, underlined, or otherwise set out from surrounding material so as to be conspicuous:

"NOTICE TO CONSUMER: UNDER TEXAS LAW, IF YOU CONSENT TO THIS AGREEMENT, YOU MAY BE SUBJECT TO A FUTURE RATE AS HIGH AS 24 PERCENT PER YEAR."

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999. Amended by Acts 2023, 88th Leg., R.S., SB 1371, § 5, eff. Sept. 1, 2023.

§ 303.016. Charging of Rate Lower Than Agreed Rate.

A creditor may charge an interest rate or amount of time price differential that is lower than the rate or amount agreed to in the contract.

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 303.017. Various Charges on Consumer Loans Made by Particular Lenders.

Notwithstanding Section 342.005, a bank, savings association, savings bank, or credit union making a loan primarily for personal, family, or household use under authority of this chapter may 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. Those reasonable expenses and fees paid to third parties are not interest.

Added by Acts 2005, 79th Leg, c. 1018, § 2.03, eff. Sept. 1, 2005.

SUBCHAPTER B. OPEN-END ACCOUNTS

§ 303.101. Open-End Account: Ceilings.

(a) To use the quarterly or annualized ceiling for setting the interest rate on current and future open-end account balances, the agreement must provide for use of the ceiling, and the creditor must give notice of the interest rate after the date on which the quarterly or annualized ceiling is computed but before the last day of the next succeeding calendar quarter.

(b) If the annualized ceiling is used, the rate is effective for the 12-month period beginning on the date on which the rate takes effect for the account.

(c) If the quarterly ceiling is used, the rate is effective for the three-month period beginning on the date on which the rate takes effect for the account. For an open-end account authorized under Section 342.455 or 346.003, in connection with which credit card transactions are authorized or a merchant discount is imposed or received by the creditor, the quarterly ceiling shall be adjusted, at the option of the creditor, on:

(1) the effective dates provided by Section 303.008; or

(2) the first day of the first billing cycle of the account beginning after those dates.

(d) If a quarterly or annualized ceiling is being used for an account and if the rate for the applicable period is less than or equal to the ceiling to be in effect for the succeeding period of equal length, the creditor may leave that rate in effect for the succeeding period.

(e) A creditor who has disclosed to an obligor that an election may be renewed under Subsection (d) is not required to give additional notice of a renewal under that subsection.

(f) To increase a previously agreed rate, a creditor shall comply with Section 303.103 before the end of the last calendar quarter of the period in which the rate previously agreed to is in effect. The ceiling in effect for that period remains the ceiling until the parties to the agreement agree to a new rate.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 303.102. Variable Rate Open-End Account: Ceilings.

The applicable rate ceiling for an open-end account agreement that provides for a variable rate or amount according to an index, formula, or provision of law disclosed to the obligor, other than a variable rate commercial contract that is subject to Section 303.004, is the annualized, quarterly, or weekly ceiling as disclosed to the obligor. The annualized ceiling shall be adjusted after each 12-month period, the quarterly ceiling shall be adjusted after each three-month period, and the weekly ceiling shall be adjusted weekly.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 303.103. Open-End Account: Change of Agreement Term.

(a) An agreement covering an open-end account may provide that the creditor may change the terms of the agreement for current and future balances of that account by giving notice of the change to the obligor.

(b) A notice under this section to change a provision of an account, including the rate, or the index or formula used to compute the rate, must include:

(1) the new provision, the new rate, or the index or formula to be used to compute the rate;

(2) the date on which the change is to take effect;

(3) the period for which the change is to be effective or after which the rate will be adjusted;

(4) a statement of whether the change is to affect current and future balances; and

(5) the obligor's rights under this section and the procedures for the obligor to exercise those rights.

(c) A creditor who increases a rate shall include with a notice required by this section a form that may be returned at the expense of the creditor and on which the obligor may indicate by checking or marking an appropriate box or by a similar arrangement the obligor's decision not to continue the account. The form may be included on a part of the account statement that is to be returned to the creditor or on a separate sheet. In addition to the requirements of Subsection (b), the notice must include:

(1) the address to which the obligor may send notice of the obligor's election not to continue the open-end account; and

(2) the following statement printed in not less than 10-point type or computer equivalent:

"YOU MAY TERMINATE THIS AGREEMENT IF YOU DO NOT WISH TO PAY THE NEW RATE."

(d) An obligor is considered to have agreed to a change under this section if the creditor mails a notice required by this section to the obligor's most recent address shown in the creditor's records and:

(1) the obligor chooses to retain the privilege of using the open-end account;

(2) the obligor or a person authorized by the obligor accepts or uses an extension of credit after the fifth day after the date on which the notice is mailed; or

(3) the obligor does not notify the creditor in writing before the 21st day after the date on which the notice is mailed that the obligor does not wish to continue to use the open-end account.

(e) An obligor who rejects a rate change in accordance with this section is entitled to pay the balance on the open-end account at the rate and over the period in effect immediately before the date of the proposed change and under the same minimum payment terms provided by the agreement. Rejection of a new rate does not accelerate payment of the balance due.

(f) The procedure provided by this section for changing the terms of an agreement is in addition to other means of amending the agreement provided by law.

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 303.104. Disclosure of Decrease in Interest Rate Not Required on Open-End Accounts Involving Credit Card Transaction or Merchant Discount.

On an open-end account authorized under Section 342.455 or 346.003, in connection with which credit card transactions are authorized or a merchant discount is imposed or received by the creditor and on which interest is charged under this chapter, the creditor is not required to disclose a decrease in the applicable interest rate.

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 303.105. Open-End Account: Disclosure of Certain Rate Variations.

(a) Except as provided by Subsection (b), a variation in an interest rate on an account resulting from operation of the previously disclosed index, formula, or provision of law is not required to be disclosed under Section 303.101 or 303.103.

(b) Except as inconsistent with federal law, the creditor on an open-end account agreement that provides for a variable interest rate according to an index, formula, or provision of law, that is primarily for personal, family, or household use, and that is subject to this chapter shall give to the obligor notice of a change in the rate resulting from operation of the index, formula, or provision of law. The notice must be given:

(1) by a document mailed on or before the beginning of the first cycle for which the change becomes effective; or

(2) on or with:

(A) the billing statement for a billing cycle that precedes the cycle for which the change becomes effective, if the account is covered by Section 303.006(c); or

(B) any billing statement, if the account is not covered by Section 303.006(c).

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 303.106. Open-End Account: Ceiling for Plan or Arrangement.

If a creditor implements a quarterly or annualized ceiling for a majority of the creditor's open-end accounts that are under a particular plan or arrangement and that are for obligors in this state, that ceiling is also the ceiling for all open-end accounts that are opened or activated under that plan for obligors in this state during the period that the election is in effect.

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

SUBCHAPTER C. PROVISIONS APPLICABLE TO CERTAIN CONSUMER LOANS AND SECONDARY MORTGAGE LOANS

§ 303.201. License Required.

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

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999; Acts 2005, 79th Leg., c. 1018, § 2.04, eff. Sept. 1, 2005.

§ 303.202. Applicability of Subtitle B.

Except as inconsistent with this chapter:

(1) a person engaged in the business of extending open-end credit primarily for personal, family, or household use and who charges on an open-end account a rate or amount under authority of this chapter is subject to the applicable chapter in Subtitle B; and

(2) a party to an account described by Subdivision (1) or the party's assignees have all the rights, duties, and obligations under that applicable chapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 303.203. Automobile Club Membership Offered in Connection with a Loan.

(a) A lender may, at the time or after a loan is made, offer to sell to the borrower and finance in a loan contract subject to this subtitle a charge for an automobile club membership.

(b) The lender may not require the purchase of the membership authorized under Subsection (a) as a condition for approval of the loan.

(c) The borrower shall provide the lender with written acknowledgment of the borrower's intent to purchase the membership.

(d) The amount charged for a membership as authorized by Subsection (a) must be reasonable.

Added by Acts 2005, 79th Leg., c. 252, § 1, eff. Sept. 1, 2005. Amended by Acts 2011, 82nd Leg., R.S., c. 1182, § 4, eff. Sept. 1, 2011.

Section 3 of Acts 2005, 79th Leg., c. 252, provides:

The change in law made by this Act applies only to a loan contract made on or after the effective date of this Act. A loan contract made before the effective date of this Act is governed by the law in effect when the loan contract was made, and the former law is continued in effect for that purpose.

SUBCHAPTER D. LIMITATIONS ON APPLICABILITY OF CHAPTER

§ 303.301. Agreement to Which Chapter Does Not Apply.

The rate ceilings provided by this chapter do not apply to an agreement:

(1) under which credit is extended by the seller, or an owner, subsidiary, or corporate affiliate of the seller, for a transaction governed by Chapter 601, Business & Commerce Code; and

(2) that is secured by a lien on the obligor's homestead.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999; Acts 2007, 80th, R.S., c. 885, § 2.16, eff. April 1, 2009.

§ 303.302. Requirements Inconsistent With Federal Law.

(a) A person is not required to comply with a disclosure or notice requirement of this chapter that is inconsistent with federal statute or regulation.

(b) A creditor may modify a disclosure or notice requirement of this chapter to conform to federal law.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

SUBCHAPTER E. ENFORCEMENT

§ 303.401. When Act or Omission Not Violation.

An act or omission does not violate this title if the act or omission conforms to an interpretation of this title that is in effect at the time of the act or omission and that was made by:

(1) the consumer credit commissioner under Section 14.108; or

(2) an appellate court of this state or the United States.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 303.402. Penalty for Violation of Chapter for Certain Contracts Subject to Subtitle B.

(a) A person who contracts for, charges, or receives under a contract subject to Chapter 342, 345, 346, 347, 348, or 353, including a contract for an open-end account, a rate or amount of interest or time price differential that exceeds the maximum applicable rate or amount authorized by the applicable chapter or this chapter is subject to a penalty for that violation determined under Chapter 349.

(b) For a contract described by Subsection (a) that contains a rate or amount authorized under this chapter, the failure to perform a duty or comply with a prohibition provided by this chapter is subject to Chapter 349 as if this chapter were in Subtitle B.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999; Acts 2011, 82nd Leg., R.S., c. 117, § 4, eff. Sept. 1, 2011; Acts 2023, 88th Leg., R.S., SB 1371, § 6, eff. Sept. 1, 2023..

§ 303.403. Penalty for Violation of Ceiling in Certain Contracts.

A written contract, other than a contract to which Section 303.402 applies, that directly or indirectly provides for a rate that exceeds the rate authorized by this chapter and that is not otherwise authorized by law, is subject to the penalty prescribed by Chapter 305.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 303.404. Enforcement by Consumer Credit Commissioner.

Subject to Subchapter B, Chapter 341, the consumer credit commissioner shall enforce Subtitles B and C as they apply to contracts subject to those chapters.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 303.405. Examination of Records; Inspections; Rules.

(a) Section 342.552 applies to a transaction:

(1) that is made by a person who holds a license under Chapter 342;

(2) that is subject to Chapter 342 or 346; and

(3) the rate of which is authorized by this chapter.

(b) Subchapter L, Chapter 342, applies to a loan:

(1) that is subject to Chapter 342; and

(2) the rate of which is authorized by this chapter.

Added by Acts1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 303.406. Enforcement by Credit Union Commissioner.

The credit union commissioner shall enforce this chapter as it applies to contracts subject to Subtitle D, Title 3.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 303.407. Enforcement by Texas Department of Insurance.

The Texas Department of Insurance shall enforce this chapter as it applies to contracts subject to Chapter 651, Insurance Code.

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., c. 728, § 11.113, eff. Sept. 1, 2005.

SUBCHAPTER F. EFFECT ON OTHER STATUTES OF USING OPTIONAL RATE

§ 303.501. Applicability of Credit Union Act.

Except as inconsistent with this chapter:

(1) a person subject to Subtitle D, Title 3, who contracts for, charges, or receives a rate or amount authorized by this chapter remains subject to that subtitle; and

(2) a party to a transaction described by Subdivision (1) has all the rights provided by that subtitle.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 303.502. Applicability of Chapter 651, Insurance Code.

(a) Except as inconsistent with this chapter:

(1) a person subject to Chapter 651, Insurance Code, who contracts for, charges, or receives an interest rate authorized by this chapter remains subject to that chapter; and

(2) a party to an insurance premium finance agreement, including an agreement for an open-end account, has all the rights provided by Chapter 651, Insurance Code.

(b) The licensing requirements of Chapter 342 do not apply to a transaction described by Subsection (a)(1). The penalty provisions of this title do not apply to a transaction described by Subsection (a)(1).

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999; Acts 2005, 79th Leg., c. 728, § 11.113, eff. Sept. 1, 2005.

CHAPTER 304. JUDGMENT INTEREST

SUBCHAPTER A. GENERAL PROVISIONS

§ 304.001. Interest Rate Required in Judgment.

A money judgment of a court in this state must specify the postjudgment interest rate applicable to that judgment.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 304.002. Judgment Interest Rate: Interest Rate or Time Price Differential in Contract.

A money judgment of a court of this state on a contract that provides for interest or time price differential earns postjudgment interest at a rate equal to the lesser of:

(1) the rate specified in the contract, which may be a variable rate; or

(2) 18 percent a year.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 304.003. Judgment Interest Rate: Interest Rate or Time Price Differential Not in Contract.

(a) A money judgment of a court of this state to which Section 304.002 does not apply, including court costs awarded in the judgment and prejudgment interest, if any, earns postjudgment interest at the rate determined under this section.

(b) On the 15th day of each month, the consumer credit commissioner shall determine the postjudgment interest rate to be applied to a money judgment rendered during the succeeding calendar month.

(c) The postjudgment interest rate is:

(1) the prime rate as published by the Board of Governors of the Federal Reserve System on the date of computation;

(2) 5 percent a year if the prime rate as published by the Board of Governors of the Federal Reserve System described by Subdivision (1) is less than 5 percent; or

(3) 15 percent a year if prime rate as published by the Board of Governors of the Federal Reserve System described by Subdivision (1) is more than 15 percent.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999; Acts 2003, 78th Leg., c. 204, § 6.01, eff. Sept. 1, 2003; Acts 2003, 78th Leg., c. 676, § 1, eff. Sept. 1, 2003; Acts 2005, 79th Leg., c. 1018, § 7.01, eff. Sept. 1, 2005; Acts 2005, 79th Leg., c. 387, § 1, eff. Sept. 2005.

Acts 2003, 78th Leg., c. 204, § 6.04, provides:

The changes in law made by this article apply in any case in which a final judgment is signed or subject to appeal on or after the effective date of this Act.

Acts 2003, 78th Leg., ch 676, § 2, provides:

(a) The changes is law made by this Act apply in a case in which a final judgment is signed or subject to appeal on or after the effective date of this Act.

§ 304.004. Publication of Judgment Interest Rate.

The consumer credit commissioner shall send to the secretary of state the postjudgment interest rate for publication, and the secretary shall publish the rate in the Texas Register.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 304.005. Accrual of Judgment Interest.

(a) Except as provided by Subsection (b), postjudgment interest on a money judgment of a court in this state accrues during the period beginning on the date the judgment is rendered and ending on the date the judgment is satisfied.

(b) If a case is appealed and a motion for extension of time to file a brief is granted for a party who was a claimant at trial, interest does not accrue for the period of extension.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 304.006. Compounding of Judgment Interest.

Postjudgment interest on a judgment of a court in this state compounds annually.

Added by Act 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 304.007. Judicial Notice of Judgment Interest Rate.

A court of this state shall take judicial notice of a published postjudgment interest rate.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

SUBCHAPTER B. PREJUDGMENT INTEREST IN WRONGFUL DEATH, PERSONAL INJURY, OR PROPERTY DAMAGE CASE

§ 304.101. Applicability of Subchapter.

This subchapter applies only to a wrongful death, personal injury, or property damage case of a court of this state.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 304.102. Prejudgment Interest Required in Certain Cases.

A judgment in a wrongful death, personal injury, or property damage case earns prejudgment interest.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 304.103. Prejudgment Interest Rate for Wrongful Death, Personal Injury, or Property Damage Case.

The prejudgment interest rate is equal to the postjudgment interest rate applicable at the time of judgment.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., c. 909, § 2.03, eff. Sept. 1, 1999. Acts 1997, 75th Leg., c. 1396, § 1, c. 81, § 1, c. 906, § 4, c. 1111, § 7, repealed by Acts 1999, 76th Leg., c. 62, § 7.18(b).

§ 304.104. Accrual of Prejudgment Interest.

Except as provided by Section 304.105 or 304.108, prejudgment interest accrues on the amount of a judgment during the period beginning on the earlier of the 180th day after the date the defendant receives written notice of a

claim or the date the suit is filed and ending on the day preceding the date judgment is rendered. Prejudgment interest is computed as simple interest and does not compound.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 304.1045. Future Damages.

Prejudgment interest may not be assessed or recovered on an award of future damages.

Added by Acts 2003, 78th Leg., c. 204, § 6.02, eff. Sept. 1, 2003.

Acts 2003, 78th Leg., c. 204, § 6.04, provides:
The changes in law made by this article apply in any case in which a final judgment is signed or subject to appeal on or after the effective date of this Act.

§ 304.105. Effect of Settlement Offer on Accrual of Prejudgment Interest.

(a) If judgment for a claimant is equal to or less than the amount of a settlement offer of the defendant, prejudgment interest does not accrue on the amount of the judgment during the period that the offer may be accepted.

(b) If judgment for a claimant is more than the amount of a settlement offer of the defendant, prejudgment interest does not accrue on the amount of the settlement offer during the period that the offer may be accepted.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 304.106. Settlement Offer Requirements to Prevent Prejudgment Interest Accrual.

To prevent the accrual of prejudgment interest under this subchapter, a settlement offer must be in writing and delivered to the claimant or the claimant's attorney or representative.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 304.107. Value of Settlement Offer for Computing Prejudgment Interest.

If a settlement offer does not provide for cash payment at the time of settlement, the amount of the settlement offer for the purpose of computing prejudgment interest is the cost or fair market value of the settlement offer at the time it is made.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 304.108. Repealed by Acts 2003, 78th Leg., c. 204, § 6.03, eff. Sept. 1, 2003.

SUBCHAPTER C. OTHER PREJUDGMENT INTEREST PROVISIONS

§ 304.201. Prejudgment Interest Rate for Condemnation Case.

The prejudgment interest rate in a condemnation case is equal to the postjudgment interest rate at the time of judgment and is computed as simple interest.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., c. 909, § 2.03, eff. Sept. 1, 1999. Acts 1997, 75th Leg., c. 1396, § 1, c. 81, § 1, c. 906, § 4, c. 1111, § 7, repealed by Acts 1999, 76th Leg., c. 62, § 7.18(b).

SUBCHAPTER D. EXCEPTIONS TO APPLICATION OF CHAPTER

§ 304.301. Exception for Delinquent Taxes.

This chapter does not apply to a judgment:

(1) in favor of a taxing unit in a delinquent tax suit under Subchapter C, Chapter 33, Tax Code; or

(2) that earns interest at a rate set by Title 2, Tax Code.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 304.302. Exception for Delinquent Child Support.

This chapter does not apply to interest that accrues on an amount of unpaid child support under Section 157.265, Family Code.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

CHAPTER 305. PENALTIES AND LIABILITIES

SUBCHAPTER A. CIVIL LIABILITY; CRIMINAL PENALTY

§ 305.001. Liability for Usurious Interest.

(a) 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 an amount that is equal to the greater of:

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

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

(a-1) 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 computed by subtracting the amount of interest allowed by law from the total amount of interest contracted for or received.

(b) This section applies only to a contract or transaction subject to this subtitle.

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

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999; Acts 2005, 79th Leg., c. 1018, § 2.05, eff. Sept. 1, 2005.

§ 305.002. Additional Liability for More Than Twice Authorized Rate of Interest.

(a) In addition to the amount determined under Section 305.001, a creditor who charges and receives interest that is greater than twice the amount authorized by this subtitle is liable to the obligor for:

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

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

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

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999; Acts 2005, 79th Leg., c. 1018, § 2.06, eff. Sept. 1, 2005.

§ 305.003. Liability for Usurious Legal Interest.

(a) A creditor who charges or receives legal interest that is greater than the amount authorized by this subtitle is liable to the obligor for an amount that is equal to the greater of:

(1) three times the amount computed by subtracting the amount of legal interest allowed by law from the total amount of interest charged or received; or

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

(b) This section applies only to a transaction subject to this subtitle.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 305.004. Additional Liability for More Than Twice Authorized Rate of Legal Interest.

(a) In addition to the amount determined under Section 305.003, a creditor who charges and receives legal interest that is greater than twice the amount authorized by this subtitle is liable to the obligor for:

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

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

(b) This section applies only to a transaction subject to this subtitle.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 305.005. Attorney's Fees.

A creditor who is liable under Section 305.001 or 305.003 is also liable to the obligor for reasonable attorney's fees set by the court.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 305.006. Limitation on Filing Suit.

(a) An action under this chapter must be brought within four years after the date on which the usurious interest was contracted for, charged, or received. The action must be brought in the county in which:

(1) the transaction was entered into;

(2) the usurious interest was charged or received;

(3) the creditor resides at the time of the cause of action, if the creditor is an individual;

(4) the creditor maintains its principal office, if the creditor is not an individual; or

(5) the obligor resides at the time of the accrual of the cause of action.

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

(c) A creditor who receives a notice under this section may correct the violation as provided by Section 305.103 during the period beginning on the date the notice is received and ending on the 60th day after that date. A creditor who corrects a violation as provided by this section is not liable to an obligor for the violation.

(d) With respect to a defendant filing a counterclaim action alleging usurious interest in an original action by the creditor, the defendant shall provide notice complying with Subsection (b) at the time of filing the counterclaim and, on application of the creditor to the court, the action is subject to abatement for a period of 60 days from the date of the court order. During the abatement period the creditor may correct a violation. As part of the correction of the violation, the creditor shall 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. A creditor who corrects a violation as provided by this subsection is not liable to an obligor for the violation.

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., c. 1018, § 2.07, eff. Sept. 1, 2005.

§ 305.007. Penalties Exclusive.

The penalties provided by this chapter are the only penalties for violation of this subtitle for contracting for, charging, or receiving interest in an amount that produces a rate in excess of the maximum rate allowed by law. Common law penalties do not apply.

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 305.008. Criminal Penalty.

(a) A person commits an offense if the person contracts for, charges, or receives interest on a transaction for personal, family, or household use that is greater than twice the amount authorized by this subtitle.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $1,000.

(c) Each contract or transaction that violates this section is a separate offense.

(d) This section applies only to a contract or transaction subject to this subtitle.

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

SUBCHAPTER B. EXCEPTION FROM LIABILITY

§ 305.101. Accidental and Bona Fide Error.

A creditor is not subject to penalty under this chapter for any usurious interest that results from an accidental and bona fide error.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 305.102. Legal Interest During Interest-Free Period.

A person is not liable to an obligor solely because the person charges or receives legal interest before the 30th day after the date on which the debt is due.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 305.103. Correction of Violation.

(a) A creditor is not liable to an obligor for a violation of this subtitle if:

(1) not later than the 60th day after the date the creditor actually discovered the violation, the creditor corrects the violation as to that obligor by taking any necessary action and making any necessary adjustment, including the payment of interest on a refund, if any, at the applicable rate provided for in the contract of the parties; and

(2) the creditor gives written notice to the obligor of the violation before the obligor gives written notice of the violation or files an action alleging the violation.

(b) For the purposes of Subsection (a), a violation is actually discovered at the time of the discovery of the violation in fact and not at the time when an ordinarily prudent person, through reasonable diligence, could or should have discovered or known of the violation. Actual discovery of a violation in one transaction may constitute actual discovery of the same violation in other transactions if the violation is of such a nature that it would necessarily be repeated and would be clearly apparent in the other transactions without the necessity of examining all the other transactions.

(c) For purposes of Subsection (a), written notice is given when the notice is delivered to the person or to the person's authorized agent or attorney of record personally, by telecopier, or by United States mail to the address shown on the most recent documents in the transaction. Deposit of the notice as registered or certified mail in a postage paid, properly addressed wrapper in a post office or official depository under the care and custody of the United States Postal Service is prima facie evidence of the delivery of the notice to the person to whom the notice is addressed.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 305.104. Correction Exception Available to All Similarly Situated.

If in a single transaction more than one creditor may be liable for a violation of this subtitle, compliance with Section 305.103 by any of those creditors entitles each to the same protection provided by that section.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 305.105. Amounts Payable Pursuant to a Final Judgment.

A creditor is not liable to an obligor for a violation of this subtitle if the creditor receives interest that has been awarded pursuant to a final judgment that is no longer subject to modification or reversal.

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

CHAPTER 306. COMMERCIAL TRANSACTIONS

SUBCHAPTER A. GENERAL PROVISIONS

§ 306.001. Definitions.

In this chapter:

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

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

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

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

(B) are secured by a pledge of, or represent an undivided ownership interest in:

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

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

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

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

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

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

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

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

(C) agrees to purchase or to advance consideration to purchase an obligation of another person or property that is security for the payment or performance of the obligation.

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

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

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

(8) "Prepayment premium" means compensation paid by or that is or will become due from an obligor to a creditor solely as a result or condition of the payment or maturity of all or a portion of the principal amount of a loan before its stated maturity or a regularly scheduled date of payment, as a result of the obligor's election to pay all or a portion of the principal amount before its stated maturity or a regularly scheduled date of payment.

(9) "Qualified commercial loan":

(A) means:

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

(a) $3 million or more if the commercial loan is secured by real property; or

(b) $250,000 or more if the commercial loan is not secured by real property and, if the aggregate value of the commercial loan is less than $500,000, the loan documents contain a written certification from the borrower that:

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

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

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

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

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., c. 531, § 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., c. 994, § 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., c. 531, § 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., c. 1276, § 14A.772, eff. Sept. 1, 2003; Acts 2005, 79th Leg., c. 1018, § 2.08, eff. Sept. 1, 2005.

§ 306.002. Interest; Application of Other Provisions of Subtitle.

(a) A creditor may contract for, charge, and receive from an obligor on a commercial loan a rate or amount of interest that does not exceed the applicable ceilings computed in accordance with Chapter 303.

(b) All other applicable provisions, remedies, and penalties of this subtitle apply to a commercial loan unless this chapter expressly provides otherwise.

(c) The provisions of this chapter providing authorizations with respect to certain transactions do not affect or negatively impact any rules of law applicable either to other transactions subject to this chapter or to any transactions not subject to this chapter.

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999. Amended by Acts 2013, 83rd Leg., R.S., c. 973, § 1, eff. Sept. 1, 2013.

Section 3 of Acts 2013, 83rd Leg., R.S., c. 973 provides:

The changes in law made by this Act apply only to a loan agreement entered into on or after the effective date of this Act. A loan agreement entered into before the effective date of this Act is governed by the law in effect on the date the agreement was entered into, and the former law is continued in effect for that purpose.

§ 306.003. Computation of Loan Terms.

(a) In addition to any other method otherwise permitted under this title, a creditor and an obligor may agree to compute an annual interest rate on a commercial loan on a 365/360 basis or a 366/360 basis, as applicable, determined by applying the ratio of the percentage annual interest rate agreed to by the parties over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. A

creditor and an obligor may also agree to compute the term and rate of a commercial loan based on a 360-day year consisting of 12 30-day months. Each interest rate ceiling under Chapters 302 and 303 expressed as a rate per year may mean a rate per year computed in accordance with this section.

(b) A creditor and an obligor may agree that one or more payments of interest due or that are scheduled to be due with respect to a commercial loan may be paid on a periodic basis when due wholly or partly by adding to the principal balance of the loan the amount of unpaid interest due or scheduled to be due, regardless of whether the interest added to the principal balance is evidenced by an existing or a separate promissory note or other agreement. On and after the date an amount of interest is added to the principal balance under this subsection, that amount no longer constitutes interest, but instead constitutes part of the principal for purposes of calculating the maximum lawful rate or amount of interest on the loan.

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999. Amended by Acts 2013, 83rd Leg., R.S., c. 973, § 2, eff. Sept. 1, 2013.

Section 3 of Acts 2013, 83rd Leg., R.S., c. 973 provides:

The changes in law made by this Act apply only to a loan agreement entered into on or after the effective date of this Act. A loan agreement entered into before the effective date of this Act is governed by the law in effect on the date the agreement was entered into, and the former law is continued in effect for that purpose.

§ 306.004. Determining Rates of Interest by Spreading.

(a) To determine whether a commercial loan is usurious, the interest rate is computed by amortizing or spreading, using the actuarial method during the stated term of the loan, all interest at any time contracted for, charged, or received in connection with the loan.

(b) If a commercial loan is paid in full before the end of the stated term of the loan and the amount of interest received for the period that the loan exists exceeds the amount that produces the maximum rate authorized by law for that period, the lender shall:

(1) refund the amount of the excess to the borrower; or

(2) credit the amount of the excess against amounts owing under the loan.

(c) A lender who complies with Subsection (b) is not subject to any of the penalties provided by law for contracting for, charging, or receiving interest in excess of the maximum rate authorized.

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 306.005. Prepayment Premiums and Similar Amounts.

With respect to a loan subject to this chapter, a creditor and an obligor may 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.

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., c. 1018, § 2.12, eff. Sept. 1, 2005.

§ 306.006. Certain Authorized Charges on Commercial Loans.

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

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

(2) a returned check fee in an amount that does not exceed the maximum fee authorized in Section 3.506, Business & Commerce Code, on any check, draft, order, or other instrument or form of remittance that is returned unpaid or dishonored for any reason.

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., c. 1018, § 2.13, eff. Sept. 1, 2005.

§ 306.007. Guaranty, Assumption, Payment, or Other Agreement.

With respect to a commercial loan, an obligor 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. 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.

Added by Acts 2005, 79th Leg., c. 1018, § 2.14, eff. Sept. 1, 2005.

SUBCHAPTER B. PROVISIONS RELATING TO SPECIFIC TYPES OF COMMERCIAL LOANS OR TRANSACTIONS

§ 306.101. Qualified Commercial Loan.

(a) The parties to a qualified commercial loan agreement may contract for a rate or amount of interest that does not exceed the applicable rate ceiling.

(b) The parties to a qualified commercial loan agreement may contract for the following charges:

(1) a discount or commission that an obligor has paid or agreed to pay to one or more underwriters of securities issued by the obligor;

(2) an option or right to exchange, redeem, or convert all or a portion of the principal amount of the loan, or interest on the principal amount, for or into capital stock or other equity securities of an obligor or of an affiliate of an obligor;

(3) an option or right to purchase capital stock or other equity securities of an obligor or of an affiliate of an obligor;

(4) an option or other right created by contract, conveyance, or otherwise, to participate in or own a share of the income, revenues, production, or profits:

(A) of an obligor or of an affiliate of an obligor;

(B) of any segment of the business or operations of an obligor or of an affiliate of an obligor; or

(C) derived or to be derived from ownership rights of an obligor or of an affiliate of an obligor in property, including any proceeds of the sale or other disposition of ownership rights; or

(5) compensation realized as a result of the receipt, exercise, sale, or other disposition of an option or other right described by this subsection.

(c) A charge under Subsection (b) is not interest.

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 306.102. Asset-Backed Securities Transaction.

An amount that is paid, passed through, or obligated to be paid or to be passed through in connection with asset-backed securities or that is not paid as a result of a discounted sale price to the holders of asset-backed securities by a pass-through entity is not interest. This section does not affect interest that is agreed on and fixed by the parties to a written contract and paid, charged, or received on the ultimate underlying assets pledged to or held for the benefit of holders of asset-backed securities.

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 306.103. Account Purchase Transaction.

(a) An amount of a discount in, or charged under, an account purchase transaction is not interest.

(b) For the purposes of this chapter, the parties' characterization of an account purchase transaction as a purchase is conclusive that the account purchase transaction is not a transaction for the use, forbearance, or detention of money.

Added by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

CHAPTER 307. COLLATERAL PROTECTION INSURANCE

SUBCHAPTER A. GENERAL PROVISIONS

§ 307.001. Definitions.

In this chapter:

(1) "Collateral" means property pledged or used to secure payment, repayment, or performance under a credit or lease agreement, including personal property, real property, fixtures, inventory, receivables, rights, or privileges.

(2) "Collateral protection insurance" means insurance coverage described by Section 307.051.

(3) "Credit agreement" means a written document that sets forth the terms of a credit transaction.

(4) "Credit transaction" means a transaction with terms that require the payment of money, goods, services, property, rights, or privileges on a future date and in which the obligation for payment is secured by collateral.

(5) "Creditor" means a person who is a lender of money or a vendor or lessor of goods, services, property, rights, or privileges for which a payment is arranged through a credit transaction and includes any successor to the rights, title, interest, or liens of the lender, vendor, or lessor.

(6) "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights, or privileges for which payment is arranged through a credit agreement. The term does not include a person who is not a primary obligor under a credit transaction or who is not jointly and severally liable with the debtor for the obligation.

(7) "Title insurance" means insurance that may be issued only by persons regulated under Title 11, Insurance Code, and that insures:

(A) a lender or owner against loss caused by:

(i) defective title held by the mortgagor or owner or insured;

(ii) unknown mortgages or defective recording of mortgages or liens on real property;

(iii) failure of any person to pay ad valorem taxes resulting in a lien; or

(iv) failure to research properly title, taxes, liens, or other matters relative to the validity of loans or liens secured by real property or insurance; or

(B) the validity, enforceability, or priority of any lien or title on real property.

Added by Acts 2001, 77th Leg., c. 726, § 1, eff. Sept. 1, 2001. Amended by Acts 2005, 79th Leg., c. 728, § 11.115, eff. Sept. 1, 2005.

SUBCHAPTER B. REQUIREMENTS FOR COLLATERAL PROTECTION INSURANCE

§ 307.051. Collateral Protection Insurance.

(a) Collateral protection insurance is insurance coverage that:

(1) is purchased by a creditor after the date of a credit agreement;

(2) provides monetary protection against loss of or damage to the collateral or against liability arising out of the ownership or use of the collateral; and

(3) is purchased according to the terms of a credit agreement as a result of a debtor's failure to provide evidence of insurance or failure to obtain or maintain insurance covering the collateral, with the costs of the collateral protection insurance, including interest and any other charges incurred by the creditor in connection with the placement of collateral protection insurance, payable by a debtor.

(b) Collateral protection insurance includes insurance coverage that is purchased to protect:

(1) only the interest of the creditor; or

(2) both the interest of the creditor and some or all of the interest of a debtor.

(c) The term of a collateral protection insurance policy may be:

(1) not greater than 12 months; or

(2) the remaining term of the credit transaction if the remaining term is less than or equal to 24 months.

(d) The effective date of coverage for collateral protection insurance may be earlier than the date of issuance of the policy. The effective date may not be earlier than the date the collateral became uninsured.

(e) A premium for collateral protection insurance covering collateral other than real property may not be based on an amount that exceeds the actual amount of unpaid indebtedness of the debtor as of the effective date of the policy. This condition applies without regard to whether the coverage under the policy limits the insurer's liability to:

(1) the amount of unpaid debt;

(2) the cash value of the collateral; or

(3) the cost of repair of the collateral.

(e-1) With respect to collateral protection insurance covering real property, a creditor, at the creditor's option, may obtain insurance that will cover either the replacement cost of improvements or the amount of unpaid indebtedness, subject to policy limits. The debtor shall be obligated to reimburse the creditor for the premium, finance charges, and any other charges incurred by the creditor in connection with the placement of the insurance. The creditor may use the previous evidence of insurance coverage furnished by the debtor to determine the sufficient level of replacement cost coverage to be provided.

(f) Collateral protection insurance does not include insurance coverage that:

(1) is purchased by the creditor for which the debtor is not charged;

(2) is purchased at the inception of a credit transaction in which the debtor is a party or to which the debtor agrees, whether or not costs are included in a payment plan under the credit transaction;

(3) is maintained by the creditor for the protection of collateral that comes into the possession or control of the creditor through foreclosure, repossession, or a similar event;

(4) is credit insurance, mortgage protection insurance, insurance issued to cover the life or health of the debtor, or any other insurance maintained to cover the inability or failure of the debtor to make payment under the credit agreement;

(5) is title insurance;

(6) is flood insurance required to be placed by creditors under Section 102, National Flood Insurance Act of 1968 (42 U.S.C. Section 4012a); or

(7) is insurance on a commercial vehicle securing a retail installment contract under Chapter 353.

Added by Acts 2001, 77th Leg., c. 726, § 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., c. 1219, § 1, eff. June 20, 2003; Acts 2009, 81st Leg., R.S., c. 238, § 1, eff. Sept. 1, 2009; Acts 2011, 82nd Leg., R.S., c. 117, § 5, eff. Sept. 1, 2011.

§ 307.052. Creditor Duties.

(a) A creditor who requires collateral protection insurance that is paid for directly or indirectly by a debtor may place collateral protection insurance if:

(1) the debtor has entered into a credit transaction with the creditor for which a credit agreement exists;

(2) the credit agreement requires the debtor to maintain insurance on the collateral; and

(3) a notice has been included in the credit agreement or a separate document provided to the debtor at the time the credit agreement is executed that states that:

(A) the debtor is required to:

(i) keep the collateral insured against damage in the amount the creditor specifies;

(ii) purchase the insurance from an insurer that is authorized to do business in this state or an eligible surplus lines insurer; and

(iii) name the creditor as the person to be paid under the policy in the event of a loss;

(B) the debtor must, if required by the creditor, deliver to the creditor a copy of the policy and proof of the payment of premiums; and

(C) if the debtor fails to meet any requirement listed in Paragraph (A) or (B), the creditor may obtain collateral protection insurance on behalf of the debtor at the debtor's expense.

(b) Not later than the 31st day after the date the collateral protection insurance is charged to the debtor, the creditor, by prepaid, first class mail, shall mail to each debtor at the last known address on file with the creditor a notice that states:

(1) that the creditor has purchased or will purchase collateral protection insurance on behalf of the debtor and at the debtor's expense as provided by the credit agreement;

(2) the type of insurance that the creditor has obtained or will obtain, the extent of the coverage, and whose interest the policy protects;

(3) the beginning and ending dates of the policy period;

(4) the total cost of the policy to the debtor;

(5) the annual interest rate charged on the cost of insurance if that rate is different from the rate charged in the related credit transaction;

(6) the manner in which the debtor may pay the cost of insurance, interest, or finance charge relating to the purchase of the collateral protection insurance;

(7) at the option of the creditor, other repayment options to which the debtor has agreed in the original credit transaction; and

(8) if collateral protection insurance covering real property is obtained under Section 307.051(e-1):

(A) that coverage may be available to the debtor through the Texas FAIR plan at a lower cost; and

(B) contact information about the Texas FAIR plan.

(c) The creditor shall mail the notice required under Subsection (b) to each person who is a cosigner or guarantor to the debt, if the last known address of that person differs from the last known address of the debtor.

(d) The creditor may delegate the notice requirements under Subsections (b) and (c) to the insurer or the insurer's agent.

(e) The notice required by Subsection (b) must be printed in type that is:

(1) underlined;

(2) in all capital letters;

(3) in all bold letters; or

(4) otherwise conspicuous.

(f) If the required notice to any debtor, cosigner, or guarantor is returned to the creditor undelivered, the creditor shall:

(1) locate the person by using the procedures the creditor regularly uses for locating debtors; and

(2) mail a second notice at the time the person is located.

(g) The terms for payment of the costs of the collateral protection insurance, including interest and any other charges actually incurred that the creditor may impose in connection with the placement of the collateral protection insurance, must include one or more of the following:

(1) a final balloon payment on or before the 30th day after the date of the last scheduled payment required by the credit agreement;

(2) full amortization over the term of the credit transaction, the term of the collateral protection insurance coverage, or the term for which the amortization is used by the creditor; or

(3) any other repayment terms agreed to by a debtor in the original credit transaction.

Added by Acts 2001, 77th Leg., c. 726, § 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., c. 1219, § 2, eff. June 20, 2003.

§ 307.053. Amortization of Debt.

If any form of amortization is used by the creditor, the creditor shall send to each debtor notice of the terms of the amortization and any change in the debtor's periodic payment.

Added by Acts 2001, 77th Leg., c. 726, § 1, eff. Sept. 1, 2001.

§ 307.054. Cancellation of Collateral Protection Insurance.

A debtor may at any time cause the cancellation of collateral protection insurance by providing proper evidence to the creditor that the debtor has obtained insurance as required by the credit agreement. If a debtor provides the creditor with proper evidence that the debtor had insurance on the collateral as required by the credit agreement on or before the date the collateral protection insurance is effective and that the debtor continues to have insurance on the collateral as required by the credit agreement, the creditor shall cancel the insurance that it purchased and may not charge the debtor any costs, interest, or other charges in connection with the insurance.

Added by Acts 2001, 77th Leg., c. 726, § 1, eff. Sept. 1, 2001.

§ 307.055. Refund of Unearned Premiums.

(a) On the date the collateral protection insurance is canceled or expires, the amount of unearned premiums, as computed by the Texas Automobile Rules and Rating Manual for collateral to which that manual applies and pro rata for all other types of collateral, shall be refunded to the creditor. Except as otherwise provided in Subsection (b), not later than the 14th day after the date the creditor receives the refund, the creditor shall distribute a refund of unearned premiums by any method selected by the creditor, including:

(1) payment to the debtor by check; or

(2) an adjustment to a credit transaction of the debtor.

(b) If not later than the 28th day after the date the creditor receives the refund the creditor distributes the refund of the unearned premiums by an adjustment to a credit transaction of the debtor that is made effective not later than the 14th day after the date the creditor receives the refund, the creditor shall be in compliance with this section.

Added by Acts 2001, 77th Leg., c. 726, § 1, eff. Sept. 1, 2001.

§ 307.056. Choice of Carrier.

Collateral protection insurance may be placed with an insurer that is authorized to write insurance in this state or an eligible surplus lines insurer selected by the creditor. The insurance shall be evidenced by an individual policy or a certificate of insurance.

Added by Acts 2001, 77th Leg., c. 726, § 1, eff. Sept. 1, 2001.

§ 307.057. Creditor Liability.

(a) A creditor, its insurer, or the insurer's agent that places collateral protection insurance in substantial compliance with the terms of this chapter is not directly or indirectly liable to a debtor, cosigner, or guarantor or any other person in connection with the placement of the collateral protection insurance.

(b) This chapter does not impose a fiduciary relationship between the creditor and debtor. Placement of collateral protection insurance is for the principal purpose of protecting the interest of the creditor if the debtor fails to insure collateral as required by the credit agreement.

(c) A creditor is not required under this chapter to purchase collateral protection insurance or to otherwise insure collateral. A creditor is not liable to a debtor or any other person for failing to purchase collateral protection insurance, failing to purchase a certain amount or level of coverage of collateral protection insurance, or purchasing collateral protection insurance that protects only the interests of the creditor or less than all the interest of a debtor. This chapter does not create a cause of action for damages on behalf of a debtor or any other person in connection with the placement of collateral protection insurance.

Added by Acts 2001, 77th Leg., c. 726, § 1, eff. Sept. 1, 2001.

§ 307.058. Rights of Creditor and Debtor.

(a) The obligations and rights of the creditor and debtor with respect to the collateral under Chapters 1 through 9, Business & Commerce Code, are not affected by this chapter.

(b) This chapter does not impair other remedies, rights, or options available to a creditor under any law, rule, regulation, ruling, court order, or agreement.

(c) This chapter does not impair or alter other requirements of this code or other law that may apply to a credit transaction.

Added by Acts 2001, 77th Leg., c. 726, § 1, eff. Sept. 1, 2001.

CHAPTER 308. CONSUMER CREDIT PROTECTIONS

§ 308.001. Applicability.

This chapter applies to a person regularly engaged in the business of extending credit under this subtitle primarily for personal, family, or household use and not for a business, commercial, investment, or agricultural purpose. This chapter does not apply to a transaction primarily for a business, commercial, investment, or agricultural purpose.

Added by Acts 2005, 79th Leg., c. 1018, § 1.01, eff. Sept. 1, 2005.

§ 308.002. False, Misleading, or Deceptive Advertising.

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

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

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

(1) Part C of the Truth in Lending Act (15 U.S.C. Section 1661 et seq.);

(2) Regulation Z (12 C.F.R. Parts 226 and 1026)adopted by the Board of Governors of the Federal Reserve System; and

(3) the Official Staff Commentary and other interpretations of that statute and regulation by the Board of Governors of the Federal Reserve System, the Consumer Financial Protection Bureau, and the staff of those agencies.

(d) 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) A creditor who complies with the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) and Regulation Z (12 C.F.R. Parts 226 and 1026) in advertising a credit transaction is considered to have fully complied with this section.

Added by Acts 2005, 79th Leg., c. 1018, § 1.01, eff. Sept. 1, 2005. Amended by Acts 2023, 88th Leg., R.S., SB 1371, § 7, eff. Sept. 1, 2023.

§ 308.003. No Double Liability or Enforcement for Same Act or Practice.

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.

Added by Acts 2005, 79th Leg., c. 1018, § 1.01, eff. Sept. 1, 2005.

CHAPTER 339. MISCELLANEOUS PROVISIONS RELATING TO INTEREST

§ 339.001. Transferred to Chapter 604A, Business & Commerce Code, redesignated as Section 604A.0021 by Act 2017, 85th Leg. R.S., c. 196, § 9, eff. Sept. 1, 2017.

§ 339.002. Billing Cycle Interest Limitation on Open-End Account Without Merchant Discount.

(a) This section applies to an open-end account agreement that provides for credit card transactions:

(1) in which the creditor relies on one of the ceilings authorized by Chapter 303 for the rate of interest; and

(2) in connection with which the creditor does not impose or receive a merchant discount.

(b) Interest or time price differential may not be charged for a billing cycle of an open-end account credit agreement if:

(1) the total amount of the obligor's payments during the cycle equal or exceed the balance owed under the agreement at the end of the preceding billing cycle; or

(2) an amount is not owed under the agreement at the end of the preceding billing cycle.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 339.003. Sale of Open-End Account Without Merchant Discount.

A seller or lessor may sell an open-end account credit agreement described by Section 339.002(a) or any balance under that agreement to a purchaser who purchases a substantial part of the seller's or lessor's open-end account credit agreements or balances under those agreements in accordance with Subchapter G, Chapter 345. A charge, fee, or discount on that sale:

(1) is not a merchant discount;

(2) does not disqualify the open-end account credit agreement or a balance under that agreement from being subject to Chapter 303 or from coverage under this section; and

(3) does not subject the account to the limitations provided by Section 303.006(c).

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 339.004. Application of Licensing Requirement and Subtitle B to Credit Union or Employee Benefit Plan.

(a) A credit union is not subject to Subtitle B and is not required to obtain a license under this title.

(b) With respect to a loan that an employee benefit plan that is subject to Title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Sections 1001–1114) makes to a participant in the plan or a participant's beneficiary, the plan is not subject to Subtitle B and is not required to obtain a license under this title.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.18(a), eff. Sept. 1, 1999.

§ 339.005. Applicability of Certain Federal Law.

This title does not override or restrict the applicability of 12 U.S.C. Section 1735f-7a.

Added by Acts 2001, 77th Leg., c. 916, § 9, eff. Sept. 1, 2001.

CHAPTER 341. GENERAL PROVISIONS

SUBCHAPTER A. DEFINITIONS AND TIME COMPUTATION

§ 341.001. Definitions.

In this subtitle:

(1) "Authorized lender" means a person who holds a license issued under Chapter 342, a bank, or a savings association.

(2) "Bank" means a person:

(A) organized as a state bank under Subtitle A, Title 3, or under similar laws of another state if the deposits of a bank from another state are insured by the Federal Deposit Insurance Corporation; or

(B) organized as a national bank under 12 U.S.C. Section 21 et seq., as subsequently amended.

(3) "Cash advance" means the total of the amount of cash or its equivalent that the borrower receives and the amount that is paid at the borrower's direction or request, on the borrower's behalf, or for the borrower's benefit.

(4) "Commissioner" means the consumer credit commissioner.

(5) "Credit union" means a person:

(A) doing business under Subtitle D, Title 3; or

(B) organized under the Federal Credit Union Act (12 U.S.C. Section 1751 et seq.), as subsequently amended.

(6) "Deferred presentment transaction" means a transaction in which:

(A) a cash advance in whole or part is made in exchange for a personal check or authorization to debit a deposit account;

(B) the amount of the check or authorized debit equals the amount of the advance plus a fee; and

(C) the person making the advance agrees that the check will not be cashed or deposited or the authorized debit will not be made until a designated future date.

(7) "Finance commission" means the Finance Commission of Texas or a subcommittee created by rule of the Finance Commission of Texas.

(8) "Interest" has the meaning assigned by Section 301.002.

(9) "Loan" has the meaning assigned by Section 301.002 and includes a sale-leaseback transaction and a deferred presentment transaction.

(10) "Sale-leaseback transaction" means a transaction in which a person sells personal property used primarily for personal, family, or household use and the buyer of the property agrees to lease the property back to the seller. In a sale-leaseback transaction:

(A) the buyer is a creditor and the seller is an obligor;

(B) an agreement to defer payment of a debt and an obligation to pay the debt are established; and

(C) any amount received by the buyer in excess of the price paid for the property by the buyer is interest subject to this subtitle.

(11) "Savings association" means a person:

(A) organized as a state savings and loan association or savings bank under Subtitle B or C, Title 3, or under similar laws of another state if the deposits of the savings association from another state are insured by the Federal Deposit Insurance Corporation; or

(B) organized as a federal savings and loan association or savings bank under the Home Owners' Loan Act (12 U.S.C. Section 1461 et seq.), as subsequently amended.

Added by Acts 1997, 75th Leg., c. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 344, § 2.033, eff. Sept. 1, 1999; Acts 2001, 77th Leg., c. 1235, § 9, eff. Sept. 1, 2001.

§ 341.002. Computation on Month.

(a) For the computation of time in this subtitle, a month is the period from a date in a month to the corresponding date in the succeeding month. If the succeeding month does not have a corresponding date, the period ends on the last day of the succeeding month.

(b) For the computation of a fraction of a month, a day is equal to one-thirtieth of a month.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

SUBCHAPTER B. REGULATING OFFICIAL

§ 341.101. Consumer Credit Commissioner.

The consumer credit commissioner has the powers and shall perform all duties relating to the issuance of a license under this subtitle and is responsible for the other administration of this subtitle except as provided by this subchapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 341.102. Regulation of Banks.

(a) The banking commissioner shall enforce this subtitle relating to the regulation of a state bank operating under this subtitle.

(b) The official exercising authority over the operations of national banks equivalent to the authority exercised by the banking commissioner over state banks may enforce this subtitle relating to the regulation of a national bank operating under this subtitle.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 341.103. Regulation of Savings Institutions and Licensed Mortgage Brokers and Loan Officers, and Registered Mortgage Bankers and Licensed Loan Officers.

(a) The savings and mortgage lending commissioner shall enforce this subtitle relating to the regulation of:

(1) state savings associations operating under this subtitle;

(2) state savings banks operating under this subtitle; and

(3) persons licensed under Chapter 156; and

(4) persons registered or licensed under Chapter 157.

(b) The official exercising authority over the operation of federal savings associations equivalent to the authority exercised by the savings and mortgage lending commissioner over state savings associations may enforce this subtitle relating to the regulation of a federal savings association operating under this subtitle.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 344, § 2.034, eff. Sept. 1, 1999; Acts 2007, 80th Leg., R.S., c. 905, §§ 11, 12, eff. Sept. 1, 2007; Acts 2007, 80th Leg., R.S., c. 921, § 6.060, eff. Sept. 1, 2007; Laws 2009, 81st Leg., R.S., c. 1147, §§ 9, 10, eff. April 1, 2010.

§ 341.104. Regulation of Credit Unions.

(a) The credit union commissioner shall enforce this subtitle relating to the regulation of state credit unions operating under this subtitle.

(b) The official exercising authority over federal credit unions equivalent to the authority exercised by the credit union commissioner may enforce this subtitle relating to the regulation of a federal credit union operating under this subtitle.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

SUBCHAPTER C. REVISED CEILINGS AND BRACKETS

§ 341.201. Definitions of Indexes.

In this subchapter:

(1) "Consumer price index" means the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items, 1967=100, compiled by the Bureau of Labor Statistics, United States Department of Labor, or, if that index is canceled or superseded, the index chosen by the Bureau of Labor Statistics as most accurately reflecting the changes in the purchasing power of the dollar for consumers.

(2) "Reference base index" means the consumer price index for December 1967.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 341.202. Revision of Ceiling or Bracket. .

(a) Each year the commissioner shall compute, in accordance with Section 341.203, the amount of each:

(1) ceiling on a cash advance regulated under this subtitle that is required to be revised; and

(2) bracket that establishes a range of cash advances or balances to which a maximum charge provided by this subtitle applies and that is required to be revised.

(b) The revised ceiling or bracket amount takes effect on July 1 of the year of its computation.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

Amendment by Acts 1997, 75th Leg., c. 1396, § 7

V.T.C.A., Government Code § 311.031(c) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

Section 7 of Acts 1997, 75th Leg., c. 1396, eff. Sept. 1, 1997, amends § (1) of Vernon's Ann.Civ.St. art. 5069-2.08 [now this section] without reference to the repeal of said article by Acts 1997, 75th Leg., c. 1008, § 6. As so amended, § (1) reads:

"The dollar amount of the ceilings on the cash advance, and the brackets establishing ranges of cash advances or balances to which certain rates of charges apply in this Title, except the brackets in Articles 3A.401, 3A.402, and 3A.858; Section (9)(e), Article 6.02; Section (12)(a), Article 6.02; and Article 15.02, are changed as of the effective date of this Act and shall be, subject to Subsections (a) and (b), Section (2) of this Article, changed from time to time in accordance with the changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items, 1967=100, compiled by the Bureau of Labor Statistics, United States Department of Labor, and referred to in this Article as the Index. The Index for December 1967 is the Reference Base Index period for the purpose of determining the adjustment to be made in the rate brackets and ceilings."

§ 341.203. Computation of Revised Ceiling or Bracket.

(a) The amount of a revised ceiling or bracket is computed by:

(1) dividing the reference base index into the consumer price index at the end of the preceding year;

(2) computing the percentage of change under Subdivision (1) to the nearest whole percent;

(3) rounding the result computed under Subdivision (2) to the next lower multiple of 10 percent unless the result computed under Subdivision (2) is a multiple of 10 percent in which event that result is used; and

(4) multiplying the reference amount of the ceiling or bracket provided by this subtitle by the result under Subdivision (3).

(b) If the consumer price index is revised, the revised index shall be used to compute amounts under this section after that revision takes effect. If the revision changes the reference base index, a revised reference base index shall be used. The revised reference base index shall bear the same ratio to the reference base index as the revised consumer price index for the first month in which it is available bears to the consumer price index for the first month in which the revised consumer price index is available.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 341.204. Publication of Revised Ceiling, Bracket, or Index Information.

(a) The commissioner shall send the amount of a revised ceiling or bracket computed under Section 341.203 to the secretary of state for publication in the Texas Register before May 1 of the year in which the amount of the bracket or ceiling is to change.

(b) If the consumer price index is revised or superseded, the commissioner promptly shall send the revised index, the numerical equivalent of the reference base index under a revised reference base index, or the designation of the index that supersedes the consumer price index, as appropriate, to the secretary of state for publication in the Texas Register.

(c) A court may take judicial notice of information published under this section.

Added by Acts 1997, 75th Leg., c. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER D. ADVERTISING REQUIREMENTS

§ 341.301. Information About Advertisers.

(a) In each advertisement that purports to offer credit regulated by this subtitle, Subtitle C, or Chapter 394, the advertiser shall disclose the legal or registered name of the advertiser and:

(1) shall disclose the street address of the advertiser's place of business unless the advertisement:

(A) is located on the premises of the advertiser's place of business; or

(B) is broadcast by radio or television; or

(2) if the advertisement is broadcast by radio or television, shall:

(A) disclose the telephone number of the advertiser; and

(B) comply with the applicable disclosure requirements of Regulation Z (12 C.F.R. Parts 226 and 1026).

(b) This section does not apply to:

(1) a federally insured depository institution; or

(2) a person engaged in interstate commerce who advertises under a generally recognized trade name, abbreviated form of a trade name, or logo.

Added by Acts 1997, 75th Leg., c. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2023, 88th Leg., R.S., SB 1371, § 8, eff. Sept. 1, 2023.

SUBCHAPTER E. PROHIBITIONS AND VIOLATIONS

§ 341.401. Discrimination Prohibited.

(a) An authorized lender or other person involved in a transaction subject to this title may not deny to an individual who has the capacity to contract an extension of credit, including a loan, in the individual's name or restrict or limit the credit extended:

(1) because of sex, race, color, religion, national origin, marital status, or age;

(2) because all or part of the individual's income derives from a public assistance program in the form of social security or supplemental security income; or

(3) because the individual has in good faith exercised a right under the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.; 18 U.S.C. Section 891 et seq.).

(b) In interpreting this section, a court or administrative agency shall be guided by the Equal Credit Opportunity Act (15 U.S.C. Section 1691 et seq.) and regulations under and interpretations of that Act by the Federal Reserve Board and the Consumer Financial Protection Bureau to the extent that Act and those regulations and interpretations can be made applicable to conduct prohibited by this section.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2023, 88th Leg., R.S., SB 1371, § 9, eff. Sept. 1, 2023.

Amendment by Acts 1997, 75th Leg., c. 1396, § 6

V.T.C.A., Government Code § 311.031(c) provides, in part, that the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code and that the amendment is preserved and given effect as part of the code provision.

Section 6 of Acts 1997, 75th Leg., c. 1396, eff. Sept. 1, 1997, amends Vernon's Ann.Civ.St. art. 5069-2.07 [now this section] without reference to the repeal of said article by Acts 1997, 75th Leg., c. 1008, § 6. As so amended, art. 5069-2.07 reads:

"No authorized lender under Chapter 3A of this Title or other person involved in transactions subject to this Title may deny an individual who has the capacity to contract credit or loans in his or her name, or restrict or limit the credit or loan granted on the basis of sex, race, color, religion, national origin, marital status, or age or because all or part of the individual's income derives from a public assistance program in the form of social security or supplemental security income, or the individual has in good faith exercised any right under the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.; 18 U.S.C. Section 891 et seq.). In interpreting this section, the courts and administrative agencies shall be guided by the federal Equal Credit Opportunity Act and regulations thereunder and interpretations thereof by the Federal Reserve Board to the extent that that Act and those regulations and interpretations pertain to conduct prohibited by this section."

§ 341.402. Penalties for Prohibited Discrimination.

(a) A person who violates Section 341.401 is liable to the aggrieved individual for:

(1) the actual damages caused by the violation;

(2) punitive damages not to exceed $10,000 in an action brought by the aggrieved individual; and

(3) court costs.

(b) The liability of a person under this section is instead of and not in addition to that person's liability under the Equal Credit Opportunity Act (15 U.S.C. Section 1691 et seq.). If the same act or omission violates Section 341.401 and applicable federal law, the person aggrieved by that conduct may bring a legal action to recover monetary damages either under this section or under that federal law, but not both.

(c) In addition to the other liabilities prescribed by this section, a person holding a license issued under this subtitle who violates Section 341.401 is subject to revocation or suspension of the license or the assessment of civil penalties by the commissioner.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2005, 79th Leg., c. 1018, § 1.02, eff. Sept. 1, 2005; Acts 2023, 88th Leg., R.S., SB 1371, § 10, eff. Sept. 1, 2023..

§ 341.403. False, Misleading, or Deceptive Advertising.

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

(b) If a rate or charge is stated in advertising, the rate or charge shall be stated fully and clearly.

(c) The finance commission may not adopt rules restricting advertising or competitive bidding by a license holder regulated by the Office of Consumer Credit Commissioner except to prohibit false, misleading, or deceptive practices.

(d) In its rules to prohibit false, misleading, or deceptive practices, the finance commission may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a license holder's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the license holder; or

(4) restricts the license holder's advertisement under a trade name, unless the trade name is deceptive.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., c. 1235, § 10, eff. Sept. 1, 2001; Acts 2005, 79th Leg., c. 1018, § 1.03, eff. Sept. 1, 2005.

§ 341.404. Prohibited Acts Relating to a Loan.

A person may not perform an act, including advertising, or offer a service that would cause another to believe that the person is offering to make, arrange, or negotiate a loan that is subject to this subtitle, Subtitle C, or Chapter 394 unless the person is authorized to perform the act or offer the service as:

(1) a credit service organization under Chapter 393;

(2) a pawnbroker under Chapter 371; or

(3) an authorized lender.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 341.405. Penalty for Making Illegal Offer.

(a) A person commits an offense if the person violates Section 341.404. An offense under that section is a Class C misdemeanor.

(b) A person who violates Section 341.404:

(1) may be prosecuted for the offense; or

(2) may be held liable for:

(A) the penalties under Chapter 349; and

(B) civil penalties assessed by the consumer credit commissioner.

(c) A person is not subject to both prosecution and the penalties described by Subsection (b)(2).

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 341.406. When Act or Omission Not Violation.

An act or omission does not violate this title if the act or omission conforms to:

(1) Subchapter C;

(2) a provision determined by the commissioner; or

(3) an interpretation of this title that is in effect at the time of the act or omission and that was made by:

(A) the commissioner under Section 14.108; or

(B) an appellate court of this state or the United States.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

SUBCHAPTER F. LICENSING AND REGULATION IN GENERAL

§ 341.501. Staggered Renewal.

The finance commission by rule may adopt a system under which licenses under this subtitle expire on various dates during the year. For the year in which the license expiration date is changed, the Office of Consumer Credit Commissioner shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Added by Acts 2001, 77th Leg., c. 1235, § 11, eff. Sept. 1, 2001.

§ 341.502. Form of Loan Contract and Related Documents.

(a) A contract for a loan under Chapter 342, a retail installment transaction under Chapter 348, or a home equity loan regulated by the Office of Consumer Credit Commissioner must be:

(1) written in plain language designed to be easily understood by the average consumer; and

(2) printed in an easily readable font and type size.

(a-1) If the terms of the agreement for a loan under Subsection (a) were negotiated in Spanish, a copy of a summary of those terms and other pertinent information shall be provided to the debtor in Spanish in a form identical to disclosures required for a closed-end transaction under 12 C.F.R. Section 1026.18.

(b) The finance commission shall adopt rules governing the form of contracts to which this section applies. The rules must include model contracts complying with the rules and this section.

(c) A person governed by this section is not required to use a model contract. The person, however, may not use a contract other than a model contract unless the person has submitted the contract to the commissioner. The commissioner shall issue an order disapproving the contract if the commissioner determines that the contract does not comply with this section or rules adopted under this section.

(d) The person may begin using a contract submitted under Subsection (c) on the date it is submitted for review. If the commissioner issues an order disapproving the contract, the person may not use the contract after the order takes effect.

(e) A person may not represent that the commissioner's failure to disapprove a contract constitutes an approval of the contract by the commissioner, the Office of Consumer Credit Commissioner, or the finance commission.

Added by Acts 2001, 77th Leg., c. 1235, § 11, eff. Sept. 1, 2001. Amended by Acts 2005, 79th Leg., c. 1071, §§ 1 and 2, eff. Sept. 1, 2005; Acts 2009, 81st Leg., R.S., c. 238, § 2, eff. Sept. 1, 2009; Acts 2011, 82nd Leg., R.S., c. 117, § 6, eff. Sept. 1, 2011; Acts 2023, 88th Leg., R.S., SB 1371, § 11, eff. Sept. 1, 2023..

SUBCHAPTER G. STATE-LICENSED RESIDENTIAL MORTGAGE LOAN ORIGINATOR RECOVERY FUND

§ 341.601. Definition.

In this subchapter, "fund" means the state-licensed residential mortgage loan originator recovery fund.

Added by Acts 2009, 81st Leg., R.S., c. 1104, § 9, eff. June 19, 2009.

§ 341.602. State-Licensed Residential Mortgage Loan Originator Recovery Fund.

(a) The commissioner under Chapter 180 shall establish, administer, and maintain a state-licensed residential mortgage loan originator recovery fund as provided by this subchapter. The amounts received by the commissioner for deposit in the fund shall be held by the commissioner in trust for carrying out the purposes of the fund.

(b) Subject to this subsection, the fund shall be used to reimburse residential mortgage loan applicants for actual damages incurred because of acts committed by a state-licensed residential mortgage loan originator who was licensed under Chapter 342, 347, 348, or 351 when the act was committed. The use of the fund is limited to reimbursement for out-of-pocket losses caused by an act that constitutes a violation of Chapter 180 or this subtitle. Payments from the fund may not be made to a lender who makes a residential mortgage loan originated by the state-licensed residential mortgage loan originator or who acquires a residential mortgage loan originated by the state-licensed residential mortgage loan originator.

(c) The fund may be used at the discretion of the commissioner to reimburse expenses incurred to secure and destroy residential mortgage loan documents that have been abandoned by a current or former state-licensed residential mortgage loan originator under the regulatory authority of the agency.

(d) Payments from the fund shall be reduced by the amount of any recovery from the state-licensed residential mortgage loan originator or from any surety, insurer, or other person or entity making restitution to the applicant on behalf of the originator.

(e) The commissioner, as manager of the fund, is entitled to reimbursement for reasonable and necessary costs and expenses incurred in the management of the fund, including costs and expenses incurred with regard to applications filed under Section 341.605.

(f) The commissioner shall remit to the comptroller amounts received under Section 341.603(a) for deposit in an interest-bearing deposit account in the Texas Treasury Safekeeping Trust Company. Amounts in the fund may be invested and reinvested under the prudent person standard described by Section 11b, Article VII, Texas Constitution, and the interest from those investments shall be deposited to the credit of the fund. An investment may not be made under this subsection if the investment will impair the necessary liquidity required to satisfy payment of claims under this subchapter.

Added by Acts 2009, 81st Leg., R.S., c. 1104, § 9, eff. June 19, 2009. Amended by Acts 2023, 88th Leg., R.S., SB 1371, § 12, eff. Sept. 1, 2023.

§ 341.603. Funding.

(a) An applicant for an original residential mortgage loan originator license issued under Chapter 342, 347, 348, or 351 or for renewal of a residential mortgage loan originator license issued under Chapter 342, 347, 348, or 351 shall, in addition to paying the original application fee or renewal fee, pay a fee in an amount determined by the commissioner. The fee shall be deposited in the fund.

(b) If the balance remaining in the fund at the end of a calendar year is more than $2.5 million, the amount of money in excess of that amount shall be available to the commissioner to offset the expenses of participating in and sharing information with the Nationwide Mortgage Licensing System and Registry in accordance with Chapter 180.

Added by Acts 2009, 81st Leg., R.S., c. 1104, § 9, eff. June 19, 2009.

§ 341.604. Statute of Limitations.

(a) An application for the recovery of actual damages from the fund under Section 341.605 may not be filed after the second anniversary of the date of the alleged act or omission causing the actual damages or the date the act or omission should reasonably have been discovered.

(b) This section does not apply to a subrogation claim brought by the commissioner for recovery of money paid out of the fund.

Added by Acts 2009, 81st Leg., R.S., c. 1104, § 9, eff. June 19, 2009.

§ 341.605. Procedure for Recovery.

(a) To recover from the fund, a residential mortgage loan applicant must file a written sworn application with the commissioner in the form prescribed by the commissioner. A person who knowingly makes a false statement in connection with applying for money out of the fund may be subject to criminal prosecution under Section 37.10, Penal Code.

(b) The residential mortgage loan applicant is required to show:

(1) that the applicant's claim is based on facts allowing recovery under Section 341.602; and

(2) that the applicant:

(A) is not a spouse of the state-licensed residential mortgage loan originator;

(B) is not a child, parent, grandchild, grandparent, or sibling, including relationships by adoption, of the state-licensed residential mortgage loan originator;

(C) is not a person sharing living quarters with the state-licensed residential mortgage loan originator or a current or former employer, employee, or associate of the originator;

(D) is not a person who has aided, abetted, or participated other than as a victim with the state-licensed residential mortgage loan originator in any activity that is illegal under this subtitle or Chapter 180 or is not the personal representative of a state-licensed residential mortgage loan originator; and

(E) is not licensed as a state-licensed residential mortgage loan originator who is seeking to recover any compensation in the transaction or transactions for which the application for payment is made.

(c) On receipt of the verified application, the commissioner's staff shall:

(1) notify each appropriate license holder and the issuer of any surety bond issued in connection with their licenses; and

(2) investigate the application and issue a preliminary determination, giving the applicant, the license holder, and any surety an opportunity to resolve the matter by agreement or to dispute the preliminary determination.

(d) If the preliminary determination under Subsection (c)(2) is not otherwise resolved by agreement and is not disputed by written notice to the commissioner before the 31st day after the notification date, the preliminary determination automatically becomes final and the commissioner shall make payment from the fund, subject to the limits of Section 341.606.

(e) If the preliminary determination under Subsection (c)(2) is disputed by the applicant, license holder, or any surety by written notice to the commissioner before the 31st day after the notification date, the matter shall be set for a hearing governed by Chapter 2001, Government Code, and the hearing rules of the finance commission.

Added by Acts 2009, 81st Leg., R.S., c. 1104, § 9, eff. June 19, 2009.

§ 341.606. Recovery Limits.

(a) A person entitled to receive payment out of the fund is entitled to receive reimbursement of actual, out-of-pocket damages as provided by this section.

(b) A payment from the fund may be made as provided by Section 341.605 and this section. A payment for claims:

(1) arising out of the same transaction, including interest, is limited in the aggregate to $25,000, regardless of the number of claimants; and

(2) against a single person licensed as a residential mortgage loan originator under Chapter 342, 347, 348, or 351 is limited in the aggregate to $50,000 until the fund has been reimbursed for all amounts paid.

(c) In the event there are concurrent claims under Subsections (b)(1) and (2) that exceed the amounts available under the fund, the commissioner shall prorate recovery based on the amount of damage suffered by each claimant.

Added by Acts 2009, 81st Leg., R.S., c. 1104, § 9, eff. June 19, 2009.

§ 341.607. Revocation of License for Payment From Fund.

(a) The commissioner may revoke a residential mortgage loan originator license issued under this subtitle on proof that the commissioner has made a payment from the fund of any amount toward satisfaction of a claim against a state-licensed residential mortgage loan originator under this subchapter.

(b) The commissioner may seek to collect from a state-licensed residential mortgage loan originator the amount paid from the fund on behalf of the originator and any costs associated with investigating and processing the claim against the fund or with collection of reimbursement for payments from the fund, plus interest at the current legal rate

until the amount has been repaid in full. Any amount, including interest, recovered by the commissioner shall be deposited to the credit of the fund.

(c) The commissioner may probate an order revoking a license under this section.

(d) A state-licensed residential mortgage loan originator on whose behalf payment was made from the fund is not eligible to receive a new license until the originator has repaid in full, plus interest at the current legal rate, the amount paid from the fund on the originator's behalf and any costs associated with investigating and processing the claim against the fund or with collection of reimbursement from the fund.

(e) This section does not limit the authority of the commissioner to take disciplinary action against a state-licensed residential mortgage loan originator for a violation of the chapter under which the license was issued or the rules adopted by the finance commission under that chapter. The repayment in full to the fund of all obligations of a state-licensed residential mortgage loan originator does not nullify or modify the effect of any other disciplinary proceeding.

Added by Acts 2009, 81st Leg., R.S., c. 1104, § 9, eff. June 19, 2009.

§ 341.608. Subrogation.

When the commissioner has paid an applicant an amount from the fund under Section 341.605, the commissioner is subrogated to all of the rights of the applicant to the extent of the amount paid. The applicant shall assign the applicant's right, title, and interest in any subsequent judgment against the state-licensed residential mortgage loan originator up to the amount paid by the commissioner. Any amount, including interest, recovered by the commissioner on the assignment shall be deposited to the credit of the fund.

Added by Acts 2009, 81st Leg., R.S., c. 1104, § 9, eff. June 19, 2009.

§ 341.609. Failure to Comply with Subchapter or Rule Adopted by Finance Commission.

The failure of an applicant under Section 341.605 to comply with a provision of this subchapter or a rule adopted by the finance commission relating to the fund constitutes a waiver of any rights under this subchapter.

Added by Acts 2009, 81st Leg., R.S., c. 1104, § 9, eff. June 19, 2009.

§ 341.610. Rulemaking.

The finance commission may adopt rules on the commissioner's recommendation to promote a fair and orderly administration of the fund consistent with the purposes of this subchapter.

Added by Acts 2009, 81st Leg., R.S., c. 1104, § 9, eff. June 19, 2009.

CHAPTER 342. CONSUMER LOANS

SUBCHAPTER A. GENERAL PROVISIONS; APPLICABILITY OF CHAPTER

§ 342.001. Definitions.

In this chapter:

(1) "Irregular transaction" means a loan:

(A) that is payable in installments that are not consecutive, monthly, and substantially equal in amount; or

(B) the first scheduled installment of which is due later than one month and 15 days after the date of the loan.

(2) "Regular transaction" means a loan:

(A) that is payable in installments that are consecutive, monthly, and substantially equal in amount; and

(B) the first scheduled installment of which is due within one month and 15 days after the date of the loan.

(3) "Regulated loan license" means a consumer loan license.

(4) "Secondary mortgage loan" means a loan that is:

(A) secured in whole or in part by an interest, including a lien or security interest, in real property that is:

(i) improved by a dwelling designed for occupancy by four or fewer families; and

(ii) subject to one or more liens, security interests, prior mortgages, or deeds of trust; and

(B) not to be repaid before the 91st day after the date of the loan.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., c. 909, § 2.04, eff. Sept. 1, 1999.

§ 342.002. Interest Computation Methods.

(a) The scheduled installment earnings method is a method to compute an interest charge by applying a daily rate to the unpaid balance of the principal amount as if each payment will be made on its scheduled installment date. A payment received before or after the due date does not affect the amount of the scheduled principal reduction.

(b) The true daily earnings method is a method to compute an interest charge by applying a daily rate to the unpaid balance of the principal amount. The earned finance charge is computed by multiplying the daily rate by the number of days the principal balance is outstanding.

(c) For the purposes of Subsections (a) and (b), the daily rate is 1/365th of the equivalent contract rate.

(d) Interest under the scheduled installment earnings method or true daily earnings method may not be compounded.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., c. 909, § 2.04, eff. Sept. 1, 1999; Acts 2013, 83rd Leg., R.S., c. 784, § 1, eff. Sept. 1, 2013.

Section 8 of Acts 2013, 83rd Leg., R.S., c. 784 provides:

The changes in law made by this Act apply only to a loan made on or after the effective date of this Act. A loan made before the effective date of this Act is governed by the law in effect on the date the loan was made, and the former law is continued in effect for that purpose.

§ 342.003. Purchase From Mortgagee.

For the purposes of this chapter, a purchase from a mortgagee of an interest in a secondary mortgage loan that was made to secure that loan is treated as if it were a secondary mortgage loan.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.004. Constitutional Interest; Exemption for Loan With Interest Rate of 10 Percent or Less.

(a) Except as otherwise fixed by law, the maximum rate of interest is 10 percent a year.

(b) A loan providing for a rate of interest that is 10 percent a year or less is not subject to this chapter.

(c) A loan described by Section 302.001(d) may provide for a delinquency charge as provided by that section without being subject to this chapter or any other provision of this subtitle.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., c. 916, § 10, eff. Sept. 1, 2001.

§ 342.005. Applicability of Chapter.

Except as provided by Sections 302.001(d) and 342.004(c), a loan is subject to this chapter if the loan:

(1) provides for interest in excess of 10 percent a year;

(2) is extended primarily for personal, family, or household use to a person who is located in this state at the time the loan is made;

(3) is made by a person engaged in the business of making, arranging, or negotiating those types of loans; and

(4) either:

(A) is not secured by a lien on real property; or

(B) is described by Section 342.001(4), 342.301, or 342.456 and is predominantly payable in monthly installments.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., c. 916, § 11, eff. Sept. 1, 2001; Acts 2001, 77th Leg., c. 1235, § 12, eff. Sept. 1, 2001; Acts 2019, 86th Leg., c. 767, § 14, eff. Sept. 1, 2019.

§ 342.006. Exemption for Certain Secondary Mortgage Loans.

This chapter does not apply to a secondary mortgage loan made by a seller of property to secure all or part of the unpaid purchase price.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.007. Deferred Presentment Transaction.

The finance commission shall adopt rules providing for the regulation of deferred presentment transactions.

Added by Acts 2001, 77th Leg., c. 1235, § 13, eff. Sept. 1, 2001.

§ 342.008. Attempt to Evade Law.

A person who is a party to a deferred presentment transaction may not evade the application of this subtitle or a rule adopted under this subchapter by use of any device, subterfuge, or pretense. Characterization of a required fee as a purchase of a good or service in connection with a deferred presentment transaction is a device, subterfuge, or pretense for the purposes of this section.

Added by Acts 2001, 77th Leg., c. 1235, § 13, eff. Sept. 1, 2001.

§ 342.009. Return of Property in Sale-Leaseback Transaction.

The seller in a sale-leaseback agreement may terminate the agreement at any time by returning the property to the buyer in substantially the same condition as when the agreement was entered, less reasonable wear. On return of the property the seller is liable only for rental and other allowed charges under the agreement accruing before the date of the return.

Added by Acts 2001, 77th Leg., c. 1235, § 13, eff. Sept. 1, 2001.

SUBCHAPTER B. AUTHORIZED ACTIVITIES; LICENSE

§ 342.051. License Required.

(a) A person must hold a license issued under this chapter to:

(1) engage in the business of making, transacting, or negotiating loans subject to this chapter; or

(2) contract for, charge, or receive, directly or indirectly, in connection with a loan subject to this chapter, a charge, including interest, compensation, consideration, or another expense, authorized under this chapter that in the aggregate exceeds the charges authorized under other law.

(b) A person may not use any device, subterfuge, or pretense to evade the application of this section.

(c) A person is not required to obtain a license under Subsection (a) if the person is:

(1) a bank, savings bank, or savings and loan association organized under the laws of the United States or under the laws of the institution's state of domicile; or

(2) subject to Chapter 651, Insurance Code.

(c-1) A person who is licensed or registered under Chapter 156 or 157 is not required to obtain a license under this section to make, negotiate, or transact a residential mortgage loan, as defined by Section 180.002.

(d) An insurance agent licensed under Subchapter B, C, D, or E, Chapter 4051, Insurance Code, is not required to obtain a license to negotiate or arrange a loan on behalf of a bank, savings bank, or savings and loan association provided that the insurance agent or the bank, savings bank, or savings and loan association does not make the provision of insurance a condition to apply for or obtain a loan or service from the bank, savings bank, or savings and loan association.

(e) An electronic return originator who is an authorized Internal Revenue Service e-file provider is not required to obtain a license to make, negotiate, or transact a loan that is based on a person's federal income tax refund on behalf of a bank, savings bank, savings and loan association, or credit union.

(f) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 655, Sec. 65(a)(15), eff. September 1, 2011.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., c. 909, § 2.06, eff. Sept. 1, 1999; Acts 2001, 77th Leg., c. 604, § 1, eff. Sept. 1, 2001; Acts 2005, 79th Leg., c. 728, § 11.116, eff. Sept. 1, 2005; Acts 2007, 80th Leg., R.S., c. 905, § 13, eff. Sept. 1, 2007; Acts 2011, 82nd Leg., R.S., c. 655, §§ 64, 65(a)(15), eff. Sept. 1, 2011.

§ 342.0515. Residential Mortgage Loan Originator Activities.

(a) In this section, "Nationwide Mortgage Licensing System and Registry" and "residential mortgage loan originator" have the meanings assigned by Section 180.002.

[Text of subsection (b) as amended by Acts 2019, 86th Leg., c. 695, § 4, eff. Nov. 24, 2019.]

(b) Unless exempt under Section 180.003, or acting under the temporary authority described under Section 180.0511, an individual who acts as a residential mortgage loan originator in the making, transacting, or negotiating of a loan subject to this chapter must:

(1) be individually licensed to engage in that activity under this chapter;

(2) be enrolled with the Nationwide Mortgage Licensing System and Registry as required by Section 180.052; and

(3) comply with other applicable requirements of Chapter 180 and rules adopted under that chapter.

[Text of subsection (c) as amended by Acts 2019, 86th Leg., c. 767, § 15, eff. Sept. 1, 2019.]

(c) Subject to Section 14.112, the finance commission shall adopt rules establishing procedures for issuing, renewing, and enforcing an individual license under this section. In adopting rules under this subsection, the finance commission shall ensure that:

(1) the minimum eligibility requirements for issuance of an individual license are the same as the requirements of Section 180.055;

(2) the minimum eligibility requirements for renewal of an individual license are the same as the requirements of Section 180.059; and

(3) the applicant pays:

(A) an investigation fee in a reasonable amount determined by the commissioner; and

(B) a license fee in an amount determined as provided by Section 14.107.

(d) The finance commission may adopt rules under this chapter as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

Added by Acts 2009, 81st Leg., R.S., c. 1104, § 9, eff. June 19, 2009. Amended by Acts, 2019, 86th Leg., c. 767, eff. Sept. 1, 2019; Acts 2019, 86th Leg., c. 695, § 4, eff. Nov. 24, 2019.

§ 342.052. Issuance of More Than One License for a Person.

(a) The commissioner may issue more than one license to a person on compliance with this chapter for each license.

(b) A person who is required to hold a license under this chapter must hold a separate license for each office at which loans are made, negotiated, serviced, held, or collected under this chapter.

(c) A license is not required under this chapter for a place of business:

(1) devoted to accounting or other recordkeeping; and

(2) at which loans are not made, negotiated, serviced, held, or collected under this chapter or Chapter 346.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., c. 909, § 2.07, eff. Sept. 1, 1999.

§ 342.053. Area of Business; Loans by Mail or Online.

(a) A lender is not limited to making loans to residents of the community in which the office for which the license or other authority is granted.

(b) A lender may make, negotiate, arrange, and collect loans by mail or online from a licensed office.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999. Amended by Acts 2019, 86th Leg., c. 767, §§ 16, 17, eff. Sept. 1, 2019.

SUBCHAPTER C. APPLICATION FOR AND ISSUANCE OF LICENSE

§ 342.101. Application Requirements.

(a) The application for a license under this chapter must:

(1) be under oath;

(2) give the approximate location from which business is to be conducted;

(3) identify the business's principal parties in interest; and

(4) contain other relevant information that the commissioner requires for the findings required under Section 342.104.

(b) On the filing of one or more license applications, the applicant shall pay to the commissioner an investigation fee of $200.

(c) On the filing of each license application, the applicant shall pay to the commissioner a license fee in an amount determined as provided by Section 14.107.

Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999; Acts 2001, 77th Leg., c. 1235, § 14, eff. Sept. 1, 2001; Acts 2019, 86th Leg., c. 767, § 18, eff. Sept. 1, 2019.

§ 342.102. Bond.

(a) If the commissioner requires, an applicant for a license under this chapter shall file with the application a bond that is:

(1) in an amount not to exceed the total of:

(A) $50,000 for the first license; and

(B) $10,000 for each additional license;

(2) satisfactory to the commissioner; and

(3) issued by a surety company qualified to do business as a surety in this state.

(b) The bond must be in favor of this state for the use of this state and the use of a person who has a cause of action under this chapter against the license holder.

(c) The bond must be conditioned on:

(1) the license holder's faithful performance under this chapter and rules adopted under this chapter; and

(2) the payment of all amounts that become due to the state or another person under this chapter during the period for which the bond is given.

(d) The aggregate liability of a surety to all persons damaged by the license holder's violation of this chapter may not exceed the amount of the bond.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999; Acts 2019, 86th Leg., c. 767, § 19, eff. Sept. 1, 2019.

§ 342.103. Investigation of Application.

On the filing of an application and, if required, a bond, and on payment of the required fees, the commissioner shall conduct an investigation to determine whether to issue the license.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.104. Approval or Denial of Application.

(a) The commissioner shall approve the application and issue to the applicant a license to make loans under this chapter if the commissioner finds that:

(1) the financial responsibility, experience, character, and general fitness of the applicant are sufficient to:

(A) command the confidence of the public; and

(B) warrant the belief that the business will be operated lawfully and fairly, within the purposes of this chapter; and

(2) the applicant has net assets of at least $25,000 available for the operation of the business.

(b) If the commissioner does not find the eligibility requirements of Subsection (a), the commissioner shall notify the applicant.

(c) If an applicant requests a hearing on the application not later than the 30th day after the date of notification under Subsection (b), the applicant is entitled to a hearing not later than the 60th day after the date of the request.

(d) The commissioner shall approve or deny the application not later than the 60th day after the date of the filing of a completed application with payment of the required fees, or if a hearing is held, after the date of the completion of the hearing on the application. The commissioner and the applicant may agree to a later date in writing.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.105. Disposition of Fees on Denial of Application.

If the commissioner denies the application, the commissioner shall retain the investigation fee and shall return to the applicant the license fee submitted with the application.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.106. License Term.

A license issued under this chapter is valid for the period prescribed by finance commission rule adopted under Section 14.112.

Added by Acts 2019, 86th Leg., c. 767, § 20, eff. Sept. 1, 2019.

SUBCHAPTER D. LICENSE

§ 342.151. Name and Place on License.

(a) A license must state:

(1) the name of the license holder; and

(2) the address of the office from which the business is to be conducted.

(b) A license holder may not conduct business under this chapter under a name or at a place of business in this state other than the name or office stated on the license.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999. Acts 1997, 75th Leg., c. 1396, § 2 and c. 164, § 2 repealed by Acts 1999, 76th Leg., c. 63, § 7.19(b), eff. Sept. 1, 1999.

§ 342.152. License Display.

A license holder shall display a license at the place of business provided on the license.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.153. Minimum Assets for License.

(a) Except as provided by Subsection (b) or (c), a license holder shall maintain for each office for which a license is held net assets of at least $25,000 that are used or readily available for use in conducting the business of that office.

(b) A license holder who held a license under the Texas Regulatory Loan Act and was issued a license to make loans under that chapter as provided by Section 4, Chapter 274, Acts of the 60th Legislature, Regular Session, 1967, shall maintain for the office for which that license is held net assets of at least $15,000 that are used or readily available for use in conducting the business of that office.

(c) A license holder who paid the pawnbroker's occupational tax for 1967 and was issued a license to make loans under that chapter as provided by Section 4, Chapter 274, Acts of the 60th Legislature, Regular Session, 1967, is exempt from the minimum assets requirement of Subsection (a) for the office for which that license is held.

(d) If a license holder holds a license to which Subsection (b) or (c) applies and subsequently transfers the license to another person, the minimum assets required under Subsection (a) shall apply to the license and the subsequent license holder.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.154. License Fee.

Not later than 30 days before the date the license expires, a license holder shall pay to the commissioner for each license held a fee in an amount determined as provided by Section 14.107.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999; Acts 2001, 77th Leg., c. 1235, § 15, eff. Sept. 1, 2001; Acts 2019, 86th Leg., c. 767, § 21, eff. Sept. 1, 2019.

§ 342.155. Expiration of License on Failure to Pay Fee.

If the fee for a license is not paid before the 16th day after the date on which the written notice of delinquency of payment has been given to the license holder, the license expires on that day.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999; Acts 2019, 86th Leg., c. 767, § 22, eff. Sept. 1, 2019.

§ 342.1555. Grounds for Refusing Renewal.

The commissioner may refuse to renew the license of a person who fails to comply with an order issued by the commissioner to enforce this chapter.

Added by Acts 2019, 86th Leg., c. 767, § 23, eff. Sept. 1, 2019

§ 342.156. License Suspension or Revocation.

After notice and opportunity for a hearing, the commissioner may suspend or revoke a license if the commissioner finds that:

(1) the license holder failed to pay the license fee, an examination fee, an investigation fee, or another charge imposed by the commissioner under this chapter;

(2) the license holder, knowingly or without the exercise of due care, violated this chapter or a rule adopted or order issued under this chapter; or

(3) a fact or condition exists that, if it had existed or had been known to exist at the time of the original application for the license, clearly would have justified the commissioner's denial of the application; or

(4) the license holder has failed to ensure that an individual acting as a residential mortgage loan originator, as defined by Section 180.002, in the making, transacting, or negotiating of a loan subject to this chapter is licensed under this chapter in accordance with Section 342.0515.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999; Acts 2009, 81st Leg., R.S., c. 1104, § 11, eff. June 19, 2009; Acts 2019, 86th Leg., c. 767, § 24, eff. Sept. 1, 2019.

§ 342.157. Corporate Charter Forfeiture.

(a) A license holder who violates this chapter is subject to revocation of the holder's license and, if the license holder is a corporation, forfeiture of its charter.

(b) When the attorney general is notified of a violation of this chapter and revocation of a license, the attorney general shall file suit in a district court in Travis County, if the license holder is a corporation, for forfeiture of the license holder's charter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999

§ 342.158. License Suspension or Revocation Filed With Public Records.

The decision of the commissioner on the suspension or revocation of a license and the evidence considered by the commissioner in making the decision shall be filed in the public records of the commissioner.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999

§ 342.159. Reinstatement of Suspended License; Issuance of New License After Revocation.

The commissioner may reinstate a suspended license or issue a new license on application to a person whose license has been revoked if at the time of the reinstatement or issuance no fact or condition exists that clearly would have justified the commissioner's denial of an original application for the license.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.160. Surrender of License.

A license holder may surrender a license issued under this chapter by complying with the commissioner's written instructions relating to license surrender.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999; Acts 2023, 88th Leg., R.S., SB 1371, § 13, eff. Sept. 1, 2023..

§ 342.161. Effect of License Suspension, Revocation, or Surrender.

(a) The suspension, revocation, or surrender of a license issued under this chapter does not affect the obligation of a contract between the license holder and a debtor entered into before the revocation, suspension, or surrender.

(b) Surrender of a license does not affect the license holder's civil or criminal liability for an act committed before surrender.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.162. Moving an Office.

(a) A license holder shall give written notice to the commissioner before the 30th day preceding the date the license holder moves an office from the location provided on the license.

(b) The commissioner shall amend a license holder's license accordingly.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.163. Transfer or Assignment of License.

A license may be transferred or assigned only with the approval of the commissioner.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

SUBCHAPTER E. INTEREST CHARGES ON NON-REAL PROPERTY LOANS

§ 342.201. Maximum Interest Charge and Administrative Fee.

(a) A loan contract under this chapter that is a regular transaction and is not secured by real property may provide for an interest charge on the cash advance that does not exceed the amount of add-on interest equal to the amount computed for the full term of the contract at an add-on interest amount equal to:

(1) $18 for each $100 per year on the part of the cash advance that is less than or equal to the amount computed under Subchapter C, Chapter 341, using the reference base amount of $300; and

(2) $8 for each $100 per year on the part of the cash advance that is more than the amount computed for Subdivision (1) but less than or equal to an amount computed under Subchapter C, Chapter 341, using the reference base amount of $2,500.

(b) For the purpose of Subsection (a):

(1) when the loan is made an interest charge may be computed for the full term of the loan contract;

(2) if the period before the first installment due date includes a part of a month that is longer than 15 days, that portion of a month may be considered a full month; and

(3) if a loan contract provides for precomputed interest, the amount of the loan is the total of:

(A) the cash advance; and

(B) the amount of precomputed interest.

(c) A loan contract under this chapter that is an irregular transaction and is not secured by real property may provide for an interest charge, using any method or formula, that does not exceed the amount that, having due regard for the schedule of installment payments, would produce the same effective return as allowed under this section if the loan were payable in equal successive monthly installments beginning one month from the date of the contract.

(d) A loan contract under this chapter that is not secured by real property may provide for a rate or amount of interest computed using the true daily earnings method or the scheduled installment earnings method that does not exceed the alternative interest rate as computed under Subchapter A, Chapter 303. Interest may accrue on the principal balance and amounts added to principal after the date of the loan contract from time to time unpaid at the rate provided for by the contract until the date of payment in full or demand for payment in full.

(e) A loan contract under this chapter that is not secured by real property may provide for a rate or amount of interest computed using the true daily earnings method or the scheduled installment earning method that does not exceed:

(1) 30 percent a year on that part of the cash advance that is less than or equal to the amount computed under Subchapter C, Chapter 341, using the reference base amount of $500;

(2) 24 percent a year on that part of the cash advance that is more than the amount computed for Subdivision (1) but less than or equal to an amount computed under Subchapter C, Chapter 341, using the reference base amount of $1050; and

(3) 18 percent a year on that part of the cash advance that is more than the amount computed for Subdivision (2) but less than or equal to an amount computed under Subchapter C, Chapter 341, using the reference base amount of $2,500.

(e-1) The interest charge under Subsection (e) must be contracted for, charged, or received using the scheduled installment earnings method or the true daily earnings method under one of the following methods:

(1) applying the applicable daily rate to each part of the unpaid principal balance corresponding to the brackets described by Subsection (e) for the actual or scheduled number of days during a payment period; or

(2) applying a single equivalent daily rate to the unpaid principal balance for the actual or scheduled number of days during a payment period, where the single equivalent daily rate is determined at the inception of the loan using the scheduled installment earnings method and would earn an amount of interest authorized under Subsection (e) if the debt were paid to maturity according to the schedule of payments.

(f) A loan contract under this subchapter may provide for an administrative fee in an amount not to exceed $25 for a loan of more than $1,000 or $20 for a loan of $1,000 or less. The administrative fee is considered earned when the loan is made or refinanced and is not subject to refund. An administrative fee is not interest. A lender refinancing the loan may not contract for or receive an administrative fee for the loan more than once in any 180-day period, except that if the loan has an interest charge authorized by Subsection (e) the lender may not contract for or receive the administrative fee more than once in any 365-day period. One dollar of each administrative fee may be deposited with the comptroller for use in carrying out the finance commission's responsibilities under Section 11.3055.

(g) The finance commission by rule may prescribe a reasonable maximum amount of an administrative fee for a loan contract under this subchapter that is greater than the maximum amount authorized by this section for the amount of the loan.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999; Acts 2001, 77th Leg., c. 916, § 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., c. 211, § 2.03, eff. June 16, 2003; Acts 2013, 83rd Leg., R.S., c. 784, §§ 2 and 3, eff. Sept. 1, 2013; Acts 2019, 86th Leg., c. 1003, § 1, eff. Sept. 1, 2019.

Section 8 of Acts 2013, 83rd Leg., R.S., c. 784 provides:

The changes in law made by this Act apply only to a loan made on or after the effective date of this Act. A loan made before the effective date of this Act is governed by the law in effect on the date the loan was made, and the former law is continued in effect for that purpose.

§ 342.202. Maximum Charge for Loan With Single Repayment.

A loan contract that exceeds the maximum cash advance under Section 342.251 and that is payable in a single installment may provide for an interest charge on the cash advance that does not exceed a rate or amount that would produce the same effective return, determined as a true daily earnings rate, as allowed under Section 342.201 considering the amount and term of the loan. If a loan under this section is prepaid in full, the lender may earn a minimum interest charge of $25.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999. Acts 1999, 76th Leg., c. 909, § 2.09, eff. Sept. 1, 1999; Acts 1997, 75th Leg., c. 1396, § 2 and c. 164, § 2 repealed by Acts 1999, 76th Leg., c. 63, § 7.19(b), eff. Sept. 1, 1999.

§ 342.203. Additional Interest for Default: Regular Transaction.

(a) A loan contract that includes precomputed interest or uses the scheduled installment earnings method and that is a regular transaction may provide for additional interest for default if any part of an installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays.

(b) A loan contract that uses the scheduled installment earnings method and that is a regular transaction may provide for additional interest for default if any part of an installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays.

(c) A loan contract that includes simple interest and that is a regular transaction may provide for additional interest for default if any part of an installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays.

(d) The additional interest may not exceed five cents for each $1 of a scheduled installment.

(e) Interest under this section may not be collected more than once on the same installment.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., c. 909, § 2.10, eff. Sept. 1, 1999; Acts 1999, 76th Leg., c. 934, § 2.01, eff. Sept. 1, 1999.

§ 342.204. Additional Interest for Installment Deferment: Regular Transaction.

(a) On a loan contract that includes precomputed interest or uses the scheduled installment earnings method and that is a regular transaction, an authorized lender may charge additional interest for the deferment of an installment if:

(1) the entire amount of the installment is unpaid;

(2) no interest for default has been collected on the installment; and

(3) payment of the installment is deferred for one or more full months and the maturity of the contract is extended for a corresponding period.

(b) The interest for deferment under Subsection (a) may not exceed the amount computed by:

(1) taking the difference between the refund that would be required for prepayment in full as of the date of deferment and the refund that would be required for prepayment in full one month before the date of deferment; and

(2) multiplying the results under Subdivision (1) by the number of months in the deferment period.

(c) The amount of interest applicable to each deferred balance or installment period occurring after a deferment period remains the amount applicable to that balance or period under the original loan contract.

(d) If a loan is prepaid in full during the deferment period, the borrower shall receive, in addition to the refund required under Subchapter H, a pro rata refund of that part of the interest for deferment applicable to the number of full months remaining in the deferment period on the payment date.

(e) For the purposes of this section, a deferment period is the period during which a payment is not required or made because of the deferment and begins on the day after the due date of the scheduled installment that precedes the first installment being deferred.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., c. 63, § 7.19(b), eff. Sept. 1, 1999.

§ 342.205. Collection of Default or Deferment Interest.

Interest for default under Section 342.203 or for installment deferment under Section 342.204 may be collected when it accrues or at any time after it accrues.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999. Acts 1997, 75th Leg., c. 1396, § 2 and c. 164, § 2 repealed by Acts 1999, 76th Leg., c. 63, § 7.19(b), eff. Sept. 1, 1999.

§ 342.206. Additional Interest for Default: Irregular Transaction.

(a) A loan contract that includes precomputed interest and that is an irregular transaction may provide for additional interest for default using the true daily earnings method for the period from the maturity date of an installment until the date the installment is paid. The rate of the additional interest may not exceed the maximum contract interest rate.

(b) A loan contract that includes simple interest and that is an irregular transaction may provide for additional interest for default if any part of an installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays. The additional interest may not exceed five cents for each $1 of a scheduled installment. Interest under this subsection may not be collected more than once on the same installment.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

SUBCHAPTER F. ALTERNATE CHARGES FOR CERTAIN LOANS

§ 342.251. Maximum Cash Advance.

The maximum cash advance of a loan made under this subchapter is an amount computed under Subchapter C, Chapter 341, using the reference base amount of $100, except that for loans that are subject to Section 342.259 the reference base amount is $200.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999; Acts 2005, 79th Leg., c. 1018 § 2.22, eff. Sept. 1, 2005.

§ 342.252. Alternate Interest Charge.

(a) Instead of the charges authorized by Section 342.201, a loan contract may provide for:

(1) on a cash advance of less than $30, an acquisition charge that is not more than $1 for each $5 of the cash advance;

(2) on a cash advance equal to or more than $30 but not more than $100:

(A) an acquisition charge that is not more than the amount equal to one-tenth of the amount of the cash advance; and

(B) an installment account handling charge that is not more than:

(i) $3 a month if the cash advance is not more than $35;

(ii) $3.50 a month if the cash advance is more than $35 but not more than $70; or

(iii) $4 a month if the cash advance is more than $70; or

(3) on a cash advance of more than $100:

(A) an acquisition charge that is not more than $10; and

(B) an installment account handling charge that is not more than the ratio of $4 a month for each $100 of cash advance.

(b) For an acquisition charge authorized by this subchapter, the finance commission by rule may prescribe a reasonable maximum amount for an acquisition charge that is greater than the maximum amount authorized by the applicable section of this subchapter for the amount of the cash advance.

(c) An acquisition charge under this subchapter is not interest.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999; Acts 2013, 83rd Leg., R.S., c. 784, § 4, eff. Sept. 1, 2013.

Section 8 of Acts 2013, 83rd Leg., R.S., c. 784 provides:

The changes in law made by this Act apply only to a loan made on or after the effective date of this Act. A loan made before the effective date of this Act is governed by the law in effect on the date the loan was made, and the former law is continued in effect for that purpose.

§ 342.253. Maximum Interest Charge for Loan With Single Repayment.

A loan contract to which Section 342.251 applies and that is payable in a single installment may provide for an acquisition charge and an interest charge on the cash advance that does not exceed a rate or amount that would produce the same effective return, determined as a true daily earnings rate, as allowed under Section 342.252 considering the amount and term of the loan. If a loan that has a term in excess of one month under this section is prepaid in full, the lender may earn a minimum of the acquisition charge and interest charge for one month. If a loan under this section has an initial term of less than one month, the lender may earn a minimum of the acquisition charge and an interest charge that produces the same effective return as the installment account handling charge computed at a daily rate for the term the loan is outstanding.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 909, Sec. 2.12, eff. Sept. 1, 1999.

§ 342.254. No Other Charges Authorized.

(a) On a loan made under this subchapter a lender may not contract for, charge, or receive an amount unless this subchapter authorizes the amount to be charged.

(b) An insurance charge is not authorized on a loan made under this subchapter.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.255. Maximum Loan Term.

The maximum scheduled term of a loan made under this subchapter is:

(1) for a loan of $100 or less, the lesser of:

(A) one month for each multiple of $10 of cash advance; or

(B) six months; and

(2) for a loan of more than $100, one month for each multiple of $20 of cash advance.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999. Amended by Acts 2013, 83rd Leg., R.S., c. 784, § 4, eff. Sept. 1, 2013.

Section 8 of Acts 2013, 83rd Leg., R.S., c. 784 provides:

The changes in law made by this Act apply only to a loan made on or after the effective date of this Act. A loan made before the effective date of this Act is governed by the law in effect on the date the loan was made, and the former law is continued in effect for that purpose.

§ 342.256. Refund.

(a) An acquisition charge authorized under Section 342.252(1), (2) or (3) is considered to be earned at the time a loan is made and is not subject to refund.

(b) On the prepayment of a loan with a cash advance of $30 or more, the installment account handling charge authorized under Section 342.252(2) or (3) is subject to refund in accordance with Subchapter H.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., c. 189, § 1, eff. Sept. 1, 2001

Section 2 of Acts 2001, 77th Leg., c. 189, provides:

This Act takes effect September 1, 2001, and applies only to a loan made on or after that date.

§ 342.257. Default Charge; Deferment of Payment.

The provisions of Subchapter E relating to additional interest for default and additional interest for the deferment of installments apply to a loan made under this subchapter. Provided, that on a loan contract in which the cash advance is $100 or more, instead of additional interest for default under Subchapter E, the contract may provide for a delinquency charge if any part of an installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays. The delinquency charge on a loan with a cash advance of $100 or more may not exceed the greater of $10 or five cents for each $1 of the delinquent installment.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999. Amended by Acts 2005, 79th Leg., c. 1018 § 2.23, eff. Sept. 1, 2005.

§ 342.258. Schedules for Weekly, Biweekly, or Semimonthly Installments.

The commissioner may prepare schedules that may be used by an authorized lender for the repayment of a loan made under this subchapter by weekly, biweekly, or semimonthly installments.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.259. Loans with Larger Advances.

(a) Instead of the charges authorized by Sections 342.201 and 342.252, a loan made under this subchapter with a maximum cash advance computed under Subchapter C, Chapter 341, using a reference base amount that is more than $100 but not more than $200, may provide for:

(1) an acquisition charge that is not more than $10; and

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

(b) An acquisition charge under this section is considered to be earned at the time a loan is made and is not subject to refund. On the prepayment of a loan that is subject to this section, the installment account handling charge is subject to refund in accordance with Subchapter H.

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

Added by Acts 2005, 79th Leg., c. 1018, § 2.23, eff. Sept. 1, 2005.

§ 342.260. Alternate Interest Charge Computation Methods.

(a) A loan contract under this subchapter may provide for an interest charge computed using the true daily earnings method or the scheduled installment earnings method that does not exceed the equivalent rate or effective return of the installment account handling charge for the original scheduled term of the loan.

(b) The principal balance of a loan contract authorized by this section may not include the acquisition charge, installment account handling charge, default charges, or deferment charges or the return check fees authorized by Section 3.506, Business & Commerce Code.

(c) Interest may accrue on the principal balance from time to time unpaid at the rate provided for by the contract until the date of payment in full or demand for payment in full.

(d) A payment on a loan contract authorized by this section shall be applied to the borrower's account in the following order or, at the lender's option, under another method of applying a payment that is more favorable to the borrower:

(1) the straight line allocation of the acquisition charge using the original scheduled term of the loan based on the proportional scheduled payment that was paid or scheduled to be paid;

(2) default charges authorized by Section 342.257;

(3) return check fees authorized by Section 3.506, Business & Commerce Code;

(4) any other charges authorized by this subchapter;

(5) accrued interest authorized by this section; and

(6) principal.

Added by Acts 2013, 83rd Leg., R.S., c. 784, § 7, eff. Sept. 1, 2013.

Section 8 of Acts 2013, 83rd Leg., R.S., c. 784 provides:

The changes in law made by this Act apply only to a loan made on or after the effective date of this Act. A loan made before the effective date of this Act is governed by the law in effect on the date the loan was made, and the former law is continued in effect for that purpose.

SUBCHAPTER G. INTEREST AND OTHER CHARGES ON SECONDARY MORTGAGE LOANS

§ 342.301. Maximum Interest Charge.

(a) A secondary mortgage loan that is a regular transaction may provide for an interest charge on the cash advance that is precomputed and that does not exceed a rate or amount that would produce the same effective return as allowed under Subchapter A, Chapter 303.

(b) For the purpose of Subsection (a):

(1) when the loan is made an interest charge may be computed for the full term of the loan contract;

(2) if the period before the first installment due date includes a part of a month that is longer than 15 days, that portion of a month may be considered a full month; and

(3) if a loan contract provides for precomputed interest, the amount of the loan is the total of:

(A) the cash advance; and

(B) the amount of precomputed interest.

(c) A secondary mortgage loan may provide for a rate or amount of interest calculated using the true daily earnings method or the scheduled installment earnings method that does not exceed the alternative rate ceiling in Subchapter A, Chapter 303. Interest may accrue on the principal balance and amounts added to principal after the date of the loan contract from time to time unpaid at the rate provided for by the contract until the date of payment in full or demand for payment in full. An interest charge under this subsection may not be precomputed.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.302. Additional Interest for Default: Regular Transaction or Transaction Including Simple Interest.

(a) A secondary mortgage loan that includes precomputed interest and that is a regular transaction may provide for additional interest for default if any part of an installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays.

(b) A secondary mortgage loan contract that uses the scheduled installment earnings method and that is a regular transaction may provide for additional interest for default if any part of an installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays.

(c) The additional interest for default under this section may not exceed five cents for each $1 of a scheduled installment.

(d) Interest under this section may not be collected more than once on the same installment.

(e) A secondary mortgage loan that includes simple interest may provide for additional interest for default if any part of an installment remains unpaid after the 10th day after the date on which the installment is due, including Sundays and holidays.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999 ;Acts 2003, 78th Leg., c. 27, §§ 1, 2, eff. May 12, 2003.

§ 342.303. Additional Interest for Installment Deferment: Regular Transactions.

(a) On a secondary mortgage loan that includes precomputed interest or uses the scheduled installment earnings method and that is a regular transaction, an authorized lender may charge additional interest for the deferment of an installment if:

(1) the entire amount of the installment is unpaid;

(2) no interest for default has been collected on the installment; and

(3) payment of the installment is deferred for one or more full months and the maturity of the contract is extended for a corresponding period.

(b) The interest for deferment under Subsection (a) may not exceed the amount computed by:

(1) taking the difference between the refund that would be required for prepayment in full as of the date of deferment and the refund that would be required for prepayment in full one month before the date of deferment; and

(2) multiplying the results under Subdivision (1) by the number of months in the deferment period.

(c) The amount of interest applicable to each deferred balance or installment period occurring after a deferment period remains the amount applicable to that balance or period under the original loan contract.

(d) If a loan is prepaid in full during the deferment period, the borrower shall receive, in addition to the refund required under Subchapter H, a pro rata refund of that part of the interest for deferment applicable to the number of full months remaining in the deferment period on the payment date.

(e) For the purposes of this section, a deferment period is the period during which a payment is not required or made because of the deferment and begins on the day after the due date of the scheduled installment that precedes the first installment being deferred.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., c. 909, § 2.13, eff. Sept. 1, 1999.

§ 342.304. Collection of Default or Deferment Interest.

Interest for default under Section 342.302 or for installment deferment under Section 342.303 may be collected when it accrues or at any time after it accrues.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.305. Additional Interest for Default: Irregular Transaction.

A secondary mortgage loan that includes precomputed interest and that is an irregular transaction may provide for additional interest for default using the true daily earnings method for the period from the maturity date of an installment until the date the installment is paid. The rate of the additional interest may not exceed the maximum contract interest rate.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.306. Date of First Scheduled Installment.

On a secondary mortgage loan made under this chapter the due date of the first installment may not be scheduled later than three months after the date of the loan.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.307. Amounts Authorized to be Included in Contract.

A secondary mortgage loan contract may provide for:

(1) reasonable fees or charges paid to the trustee in connection with a deed of trust or similar instrument executed in connection with the secondary mortgage loan, including fees for enforcing the lien against or posting for sale, selling, or releasing the property secured by the deed of trust;

(2) reasonable fees paid to an attorney who is not an employee of the creditor in the collection of a delinquent secondary mortgage loan; or

(3) court costs and fees incurred in the collection of the loan or foreclosure of a lien created by the loan.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch 909, § 2.14, eff. Sept. 1, 1999.

§ 342.308. Amounts Authorized to be Collected or Added to Loan.

(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:

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

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

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

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

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

(4) reasonable fees for an appraisal of real property offered as security for the loan prepared by an appraiser who is not a salaried employee of the lender;

(5) the reasonable cost of a credit report;

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

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

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

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

(b) Premiums for property insurance that conform with Section 342.401 may be added to the loan contract.

(c) An administrative fee under Subsection (a)(9) is considered earned when the loan is made or refinanced and is not subject to refund. A lender refinancing the loan may not contract for or receive an administrative fee for the loan more than once in any 180-day period. Fifty cents of each administrative fee may be deposited with the comptroller for use in carrying out the finance commission's responsibilities under Section 11.3055.

(d) Costs that conform to Section 342.4021(a) may be added to the loan contract.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., c. 909, § 2.15, eff. Sept. 1, 1999, Acts 1999, 76th Leg., c. 935, § 2.02, eff. Sept. 1, 1999; Acts 2003, 78th Leg., c. 211, § 2.03(b), eff. June 16, 2003; Acts 2003, 78th Leg., c. 1265, § 1, eff. June 20, 2003; Acts 2005, 79th Leg., c. 1018, § 2.21, eff. Sept. 1, 2005.

SUBCHAPTER H. REFUND OF PRECOMPUTED INTEREST

§ 342.351. Refund of Precomputed Interest: Sum of the Periodic Balances.

(a) This section applies to a loan contract that includes precomputed interest authorized under Subchapter F or G and that is a regular transaction.

(b) If the contract is prepaid in full, including payment in cash or by a new loan or renewal of the loan, or if the lender demands payment in full of the unpaid balance, after the first installment due date but before the final installment due date, the lender shall refund or credit to the borrower the amount computed by:

(1) dividing the sum of the periodic balances scheduled to follow the installment date after the date of the prepayment or demand, as appropriate, by the sum of all the periodic balances under the schedule of payments set out in the loan contract; and

(2) multiplying the total interest contracted for under Section 342.252 or 342.301, as appropriate, by the result under Subdivision (1).

(c) If the prepayment in full or demand for payment in full occurs before the first installment due date, the lender shall:

(1) retain an amount computed by:

(A) dividing 30 into the amount that could be retained if the first installment period were one month and the loan were prepaid in full on the date the first installment is due; and

(B) multiplying the result under Paragraph (A) by the number of days in the period beginning on the date the loan was made and ending on the date of the prepayment or demand; and

(2) refund or credit to the borrower the amount computed by subtracting the amount retained under Subdivision (1) from the interest contracted for under Section 342.252 or 342.301, as appropriate.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., c. 916, § 2, eff. Sept. 1, 2001.

§ 342.352. Refund of Precomputed Interest on Contract: Scheduled Installment Earnings.

(a) This section applies to a loan contract:

(1) that includes precomputed interest and to which Section 342.351 does not apply;

(2) that includes interest contracted for under Section 342.201 or 342.260; or

(3) that has a term of more than 60 months.

(b) If the contract is prepaid in full, including payment in cash or by a new loan or renewal of the loan, or if the lender demands payment in full of the unpaid balance before final maturity of the contract, the lender earns interest for the period beginning on the date of the loan and ending on the date of the prepayment or demand, as applicable, an amount that does not exceed the amount allowed by Subsection (f) using the simple annual interest rate under the contract.

(c) If prepayment in full or demand for payment in full occurs during an installment period, the lender may retain, in addition to interest that accrued during any elapsed installment periods, an amount computed by:

(1) multiplying the simple annual interest rate under the contract by the unpaid principal balance of the loan determined according to the schedule of payments to be outstanding on the preceding installment due date;

(2) dividing 365 into the product under Subdivision (1); and

(3) multiplying the number of days in the period beginning on the day after the installment due date and ending on the date of the prepayment or demand, as appropriate, by the result obtained under Subdivision (2).

(d) The lender may also earn interest on an addition to principal, or other permissible charges, added to the loan after the date of the loan contract, accruing at the simple annual interest rate under the contract from the date of the addition until the date paid or the date the lender demands payment in full of the total unpaid balance under the loan contract.

(e) The lender shall refund or credit to the borrower the amount computed by subtracting the total amount retained under Subsections (b), (c), and (d) from the total amount of interest contracted for and precomputed in the amount of the loan.

(f) For the purposes of this section, the simple annual interest rate under a contract is equal to the rate computed under the scheduled installment earnings method.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., c. 916, §§ 3 and 4, eff. Sept. 1, 2001; Acts 2013, 83rd Leg., R.S., c. 784, § 6, eff. Sept. 1, 2013.

Section 8 of Acts 2013, 83rd Leg., R.S., c. 784 provides:

The changes in law made by this Act apply only to a loan made on or after the effective date of this Act. A loan made before the effective date of this Act is governed by the law in effect on the date the loan was made, and the former law is continued in effect for that purpose.

§ 342.353. No Refund on Partial Prepayment or of Amount Less Than $1.

A refund is not required under this subchapter for a partial prepayment or if the amount to be refunded is less than $1.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

SUBCHAPTER I. INSURANCE

§ 342.401. Required Property Insurance.

(a) On a loan that is subject to Subchapter E with a cash advance of $300 or more, a lender may require a borrower to insure tangible personal property offered as security for the loan.

(b) On a secondary mortgage loan, a lender may require a borrower to provide property insurance as security against reasonable risks of loss, damage, and destruction.

(c) The insurance coverage and the premiums or charges for the coverage must bear a reasonable relationship to:

(1) the amount, term, and conditions of the loan;

(2) the value of the collateral; and

(3) the existing hazards or risk of loss, damage, or destruction.

(d) The insurance may not:

(1) cover unusual or exceptional risks; or

(2) provide coverage not ordinarily included in policies issued to the general public.

(e) A creditor may not require the purchase of duplicate property insurance if the creditor has knowledge that the borrower:

(1) has valid and collectible insurance covering the property; and

(2) has provided a loss payable endorsement sufficient to protect the creditor.

(f) For purposes of determining the knowledge required under Subsection (e), a creditor may rely on a written consent to purchase insurance in which the borrower is given the opportunity to disclose the existence of other coverage.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch 909, § 2.16, eff. Sept. 1, 1999.

§ 342.402. Credit Life Insurance, Credit Health and Accident Insurance, or Involuntary Unemployment Insurance.

(a) On a loan made under this chapter that is subject to Subchapter E with a cash advance of $100 or more, a lender may:

(1) offer a borrower credit life insurance and credit health and accident insurance as additional protection for the loan; and

(2) offer involuntary unemployment insurance to the borrower at the time the loan is made.

(b) A lender may not require that the borrower accept or provide the insurance described by Subsection (a).

(c) On a secondary mortgage loan made under this chapter, a lender may require that a borrower provide credit life insurance and credit accident and health insurance as additional protection for the loan.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch 909, § 2.17, eff. Sept. 1, 1999.

§ 342.4021. Agreements Regarding Debt Suspension, Debt Cancellation, and Gap Waiver.

(a) In connection with a loan made under this chapter that is subject to Section 342.201(d) or 342.301(c), a lender may offer to the borrower at the time the loan a debt suspension agreement or debt cancellation agreement under similar terms and conditions as such an agreement may be offered by a bank or savings association.

(b) In connection with a loan made under this chapter that is subject to Section 342.201(d) and that is secured by a motor vehicle, a lender may offer to the borrower at the time the loan is made a gap waiver agreement.

(c) A lender may not require that the borrower accept or provide and agreement or contract under Subsection (a) or (b).

(d) In addition to other disclosures required by the state or federal law and before offering an agreement or contract authorized by this section, the lender shall provide to the borrower a notice separate from the loan documents stating that the borrower is not required to accept or provide the agreement or contract to obtain the loan.

(e) The amount charged for a product authorized by Subsection (a) or (b) must be reasonable.

Added by Acts 2003, 78th Leg., c. 1265, § 2, eff. June 20, 2003.

§ 342.403. Maximum Amount of Insurance Coverage.

(a) At any time the total amount of the policies of credit life insurance in force on one borrower on one loan contract may not exceed the greater of:

(1) the total amount repayable under the loan contract if the loan is an irregular transaction; or

(2) the greater of the scheduled or actual amount of unpaid indebtedness if the loan is a regular transaction.

(b) At any time the total amount of the policies of credit accident and health insurance or involuntary unemployment insurance in force on one borrower on one loan contract may not exceed the total amount repayable under the loan contract, and the amount of each periodic indemnity payment may not exceed the scheduled periodic installment payment on the loan.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.404. Insurance Notice.

(a) If insurance is required on a loan made under this chapter, the lender shall give to the borrower written notice that clearly and conspicuously states that:

(1) insurance is required in connection with the loan; and

(2) the borrower as an option may furnish the required insurance coverage through an insurance policy that is in existence and that is owned or controlled by the borrower or an insurance policy obtained from an insurance company authorized to do business in this state.

(b) If insurance requested or required on a loan made under this chapter is sold or obtained by a lender at a premium or rate of charge that is not fixed or approved by the commissioner of insurance, the lender shall notify the borrower of that fact. If notice is required under Subsection (a), the lender shall include that fact in the notice required by Subsection (a).

(c) A notice required under this section may be:

(1) a separate writing delivered with the loan contract; or

(2) a part of the loan contract.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.405. Insurance May be Furnished by Borrower.

(a) If insurance is required on a loan made under this chapter, the borrower may furnish the insurance coverage through an insurance policy that is in existence and that is owned or controlled by the borrower or an insurance policy obtained by the borrower from an insurance company authorized to do business in this state.

(b) If insurance is required on a loan made under this chapter and the insurance is sold or obtained by the lender at a premium or rate of charge that is not fixed or approved by the commissioner of insurance, the borrower has the option of furnishing the required insurance under this section at any time before the sixth day after the date of the loan.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.406. Borrower's Failure to Provide Required Insurance.

(a) If a borrower fails to obtain or maintain insurance coverage required under a loan contract or requests the lender to obtain that coverage, the lender may obtain substitute insurance coverage that is substantially equivalent to or more limited than the coverage originally required.

(b) If a loan is subject to Subchapter E, the lender may obtain insurance to cover only the interest of the lender as a secured party if the borrower does not request that the borrower's interest be covered.

(c) Insurance obtained under this section must comply with Sections 342.407 and 342.408.

(d) The lender may add the amount advanced by the lender for insurance coverage obtained under this section to the unpaid balance of the loan contract and may charge interest on that amount from the time it is added to the unpaid balance until it is paid. The rate of additional interest may not exceed the rate that the loan contract would produce over its full term if each scheduled payment were paid on the due date.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.407. Requirements for Including Insurance Charge in Contract.

Insurance for which a charge is included in a loan contract must be written:

(1) at lawful rates;

(2) in accordance with the Insurance Code; and

(3) by a company authorized to do business in this state.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999; Acts 1997, 75th Leg., c. 1396, § 2 and c. 164, § 2 repealed by Acts 1999, 76th Leg., c. 63, § 7.19(b), eff. Sept. 1, 1999.

§ 342.408. Furnishing of Insurance Document to Borrower.

If a lender obtains insurance for which a charge is included in the loan contract, the lender, not later than the 30th day after the date on which the loan contract is executed, shall deliver, mail, or cause to be mailed to the borrower at the borrower's address specified in the contract one or more policies or certificates of insurance that clearly set forth:

(1) the amount of the premium;

(2) the kind of insurance provided;

(3) the coverage of the insurance; and

(4) all terms, including options, limitations, restrictions, and conditions, of each insurance policy.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.409. Lender's Duty if Insurance is Adjusted or Terminated.

(a) If insurance for which a charge is included in or added to the loan contract is canceled, adjusted, or terminated, the lender shall:

(1) credit to the amount unpaid on the loan the amount of the refund received by the lender for unearned insurance premiums, less the amount of the refund that is applied to the purchase by the lender of similar insurance; and

(2) if the amount to be credited under Subdivision (1) is more than the unpaid balance, refund promptly to the borrower the difference between those amounts.

(b) A cash refund is not required under this section if the amount of the refund is less than $1.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.410. Payment for Insurance From Loan Proceeds.

A lender, including an officer, agent, or employee of the lender, who accepts insurance under this subchapter as protection for a loan:

(1) may deduct the premium or identifiable charge for the insurance from the proceeds of the loan; and

(2) shall pay the deducted amounts to the insurance company writing the insurance.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.411. Insurance Gain Not Interest.

Any gain or advantage to the lender or the lender's employee, officer, director, agent, general agent, affiliate, or associate from insurance or another agreement or contract permitted under this subchapter or the provision or sale of insurance or another agreement or contract permitted under this subchapter is not additional interest or an additional charge in connection with a loan made under this chapter except as specifically provided by this chapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999; Acts 2003, 78th Leg., c. 1265, § 2, eff. June 20, 2003.

§ 342.412. Action Under Subchapter Not Sale of Insurance.

Arranging for insurance or collecting an identifiable charge as authorized by this subchapter is not a sale of insurance.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.413. Required Agent or Broker Prohibited.

A lender may not by any direct or indirect method require the purchase of insurance from an agent or broker designated by the lender.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.414. Declination of Equal Insurance Coverage Prohibited.

A lender may not decline at any time existing insurance coverage providing substantially equal benefits that comply with this subchapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.415. Effect of Unauthorized Insurance Charge.

(a) If a lender charges for insurance an amount that is not authorized under this subchapter, the lender:

(1) is not entitled to collect an amount for insurance or interest on an amount for insurance; and

(2) shall refund to the borrower or credit to the borrower's account all amounts collected for insurance and interest collected on those amounts.

(b) An overcharge that results from an accidental or bona fide error may be corrected as provided by Subchapter C, Chapter 349.

(c) The remedy provided by this section is not exclusive of any other remedy or penalty provided by this subtitle.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.416. Nonfiling Insurance.

(a) Instead of charging fees for the filing, recording, and releasing of a document securing a loan to which Subchapter E applies, an authorized lender may include in the loan contract a charge for a nonfiling insurance premium.

(b) The amount of a charge under Subsection (a) may not exceed the amount of fees authorized for filing and recording an original financing statement in the standard form prescribed by the secretary of state.

(c) A lender may receive an amount authorized under this section only if the lender purchases nonfiling insurance in connection with the loan contract.

(d) A lender is not required to furnish to a borrower a policy or certificate of insurance evidencing nonfiling insurance.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

SUBCHAPTER J. AUTHORIZED LENDER'S DUTIES AND AUTHORITY

§ 342.451. Delivery of Information to Borrower.

(a) When a loan is made under this chapter, the lender shall deliver to the borrower, or to one borrower if there is more than one, a copy of each document signed by the borrower, including the note or loan contract, and a written statement in English that contains:

(1) the names and addresses of the borrower and the lender; and

(2) any type of insurance for which a charge is included in the loan contract and the charge to the borrower for the insurance.

(b) If the note or loan contract shows the information required by Subsection (a), the written statement is not required.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.452. Receipt for Cash Payment.

A lender shall give a receipt to a person making a cash payment on a loan.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.453. Acceptance of Prepayment.

At any time during regular business hours, the lender shall accept prepayment of a loan in full or, if the amount tendered is less than the amount required to prepay the loan in full, prepayment of an amount equal to one or more full installments.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.454. Return of Instruments to Borrower on Repayment.

Within a reasonable time after a loan is repaid in full or an open-end account is terminated according to the terms of the contract, a lender shall cancel and return to a borrower any instrument, including a note, assignment, security agreement, or mortgage that:

(1) secured the loan; and

(2) does not secure another indebtedness of the borrower to the lender.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., c. 909, § 2.18, eff. Sept. 1, 1999.

§ 342.455. Agreement for More Than One Loan or Cash Advance.

(a) A lender and a borrower may enter an agreement under which one or more loans or cash advances are from time to time made to or for the account of the borrower.

(b) An agreement under this section may provide for a maximum loan charge on the unpaid principal amounts from time to time outstanding at a rate that does not exceed the rate that produces the maximum interest charge computed under Section 342.201 for an equivalent loan amount.

(c) An agreement under this section must be written and signed by the lender and borrower.

(d) An agreement under this section must contain:

(1) the date of the agreement;

(2) the name and address of each borrower; and

(3) the name and address of the lender.

(e) If a charge for insurance coverage is to be included in a loan contract, an agreement under this section must clearly set forth a simple statement of the amount of the charge or the method by which the charge is to be computed.

(f) The lender shall deliver a copy of an agreement under this section to the borrower.

(g) The commissioner may prescribe monthly rates of charge that produce the maximum interest charge computed under Section 342.201 for use under Subsection (b).

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.456. Agreement to Modify Term of Secondary Mortgage Loan Contract.

(a) A lender and a borrower may enter into an agreement under which a term of a secondary mortgage loan contract is amended, restated, or rescheduled.

(b) An agreement under this section must be written and signed by the lender and borrower.

(c) An agreement under this section must contain:

(1) the date of the agreement;

(2) the name and address of the lender; and

(3) the name and address of each borrower.

(d) The lender shall deliver a copy of an agreement under this section to the borrower.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.457. Automobile Club Membership Offered in Connection With a Loan.

(a) An authorized lender may, at the time or after a loan under Subchapter E is made, offer to sell to the borrower and finance in the loan contract a charge for an automobile club membership.

(b) The lender may not require the purchase of the membership authorized under Subsection (a) as a condition for approval of the loan.

(c) The borrower shall provide the lender with written acknowledgment of the borrower's intent to purchase the membership.

(d) The lender shall give the borrower written notice at the time the loan is made that the borrower:

(1) is not required to purchase the membership as a condition for approval of the loan; and

(2) is entitled to cancel the transaction and receive a full refund of the purchase price of the membership before the 31st day after the date the loan is made.

(e) The commissioner shall:

(1) adopt a rule providing for disclosure in Spanish of the information required by Subsection (d); and

(2) establish a form for the disclosure of the information required by Subsection (d) that conforms to the plain language and readability requirements applicable to loan contracts under Section 341.502.

(f) The amount charged for a membership as authorized by Subsection (a) must be reasonable.

Added by Acts 2005, 79th Leg., c. 252, § 2, eff. Sept. 1, 2005.

Section 3 of Acts 2005, 79th Leg., c. 252, provides:

The change in law made by this Act applies only to a loan contract made on or after the effective date of this Act. A loan contract made before the effective date of this Act is governed by the law in effect when the loan contract was made, and the former law is continued in effect for that purpose.

SUBCHAPTER K. LIMITATIONS ON AUTHORIZED LENDER

§ 342.501. Obligation Under More Than One Contract.

(a) An authorized lender may not induce or permit a person or a husband and wife to be directly or indirectly obligated under more than one loan contract at any time for the purpose or with the effect of obtaining an amount of interest greater than the amount of interest otherwise authorized under this chapter for a loan of that aggregate amount with a maximum interest charge computed under Section 342.201(a), Section 342.201(e), Section 342.252, or any combination of those sections.

(b) Subsection (a) does not prohibit the purchase of a bona fide retail installment contract or revolving charge agreement of a borrower for the purchase of goods or services.

(c) A lender who purchases all or substantially all of the loan contracts of another authorized lender and who at the time of purchase has a loan contract with a borrower whose loan contract is purchased may collect principal and authorized charges according to the terms of each loan contract.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999; Acts 2001, 77th Leg., c. 916, § 5, eff. Sept. 1, 2001.

§ 342.502. Amount Authorized.

(a) A lender may not directly or indirectly charge, contract for, or receive an amount that is not authorized under this chapter in connection with a loan to which this chapter applies, including any fee, compensation, bonus, commission, brokerage, discount, expense, and any other charge of any nature, whether or not listed by this subsection.

(b) On a loan subject to Subchapter E or a secondary mortgage loan subject to Subchapter G a lender may assess and collect from the borrower an amount incurred by the lender for:

(1) court costs;

(2) attorney's fees assessed by a court, in addition to those provided by Section 342.307;

(3) a fee authorized by law for filing, recording, or releasing in a public office a security for a loan;

(4) a reasonable amount spent for repossessing, storing, preparing for sale, or selling any security;

(5) a fee for recording a lien on or transferring a certificate of title to a motor vehicle offered as security for a loan made under this chapter; or

(6) a premium or an identifiable charge received in connection with the sale of insurance authorized under this chapter.

(c) Deleted by Acts 1999, 76th Leg., c. 935, § 2.04, eff. Sept. 1, 1999.

(d) On a loan subject to this chapter a lender may assess and collect a fee that does not exceed the amount prescribed by Section 3.506, Business & Commerce Code, for the return by a depository institution of a dishonored check, negotiable order of withdrawal, or share draft offered in full or partial payment of a loan.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., c. 909, § 2.19, eff. Sept. 1, 1999; Acts 2011, 82nd Leg., R.S., c. 1182, § 5, eff. Sept. 1, 2011.

§ 342.503. Security for Loan.

(a) A lender may not take as security for a loan made under this chapter an assignment of wages.

(b) A lender may not take as security for a loan made under Subchapter E or F a lien on real property other than a lien created by law on the recording of an abstract of judgment.

(c) A lender may take as security for a loan made under Subchapter E or F an assignment of:

(1) a warrant drawn against a state fund; or

(2) a claim against a state fund or a state agency.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.504. Confession of Judgment; Power of Attorney.

A lender may not take a confession of judgment or a power of attorney authorizing the lender or a third person to confess judgment or to appear for a borrower in a judicial proceeding.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.505. Disclosure of Amount Financed and Schedule of Payments.

A lender may not take a promise to pay or loan obligation that does not disclose the amount financed and the schedule of payments, except for an open-end account.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.506. Instrument With Blank Prohibited.

A lender may not take an instrument in which a blank is left to be filled in after the loan is made.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.507. Waiver of Borrower's Right Prohibited.

A lender may not take an instrument in which a borrower waives any right accruing to the borrower under this chapter.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.508. Maximum Loan Term.

A lender may not enter a loan contract under Section 342.201(a) or Section 342.201(e) under which the borrower agrees to make a scheduled payment of principal more than:

(1) 37 calendar months after the date on which the contract is made, if the contract is for a cash advance of $1,500 or less;

(2) 49 calendar months after the date on which the contract is made, if the contract is for a cash advance of more than $1,500 but not more than $3,000; or

(3) 60 months after the date on which the contract is made, if the contract is for a cash advance of more than $3,000.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., c. 916, § 6, eff. Sept. 1, 2001.

SUBCHAPTER L. ADMINISTRATION OF CHAPTER

§ 342.551. Adoption of Rules.

(a) The Finance Commission of Texas may adopt rules to enforce this chapter.

(b) The commissioner shall recommend proposed rules to the Finance Commission of Texas.

(c) Repealed by Acts 2023, 88th Leg., R.S., SB 1371, § 34(1), eff. Sept. 1, 2023.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999. Amended by Acts 2023, 88th Leg., R.S., SB 1371, §§ 14 and 34(1), eff. Sept. 1, 2023.

§ 342.552. Examination of Lenders; Access to Records.

(a) The commissioner or the commissioner's representative shall, at the times the commissioner considers necessary:

(1) examine each place of business of each authorized lender; and

(2) investigate the lender's transactions, including loans, and records, including books, accounts, papers, and correspondence, to the extent the transactions and records pertain to the business regulated under this chapter.

(b) The lender shall:

(1) give the commissioner or the commissioner's representative free access to the lender's office, place of business, files, safes, and vaults; and

(2) allow the commissioner or the commissioner's authorized representative to make a copy of an item that may be investigated under Subsection (a)(2).

(c) During an examination the commissioner or the commissioner's representative may administer oaths and examine any person under oath on any subject pertinent to a matter that the commissioner is authorized or required to consider, investigate, or secure information about under this chapter.

(d) Information obtained under this section is confidential.

(e) A lender's violation of Subsection (b) is a ground for the suspension or revocation of the lender's license.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.553. General Investigation.

(a) To discover a violation of this chapter or to obtain information required under this chapter, the commissioner or the commissioner's representative may investigate the records, including books, accounts, papers, and correspondence, of a person, including an authorized lender, who the commissioner has reasonable cause to believe is violating this chapter regardless of whether the person claims to not be subject to this chapter.

(b) For the purposes of this section, a person who advertises, solicits, or otherwise represents that the person is willing to make a loan with a cash advance less than or equal to the amount computed under Subchapter C, Chapter 341, using the reference base amount of $2,500 is presumed to be engaged in the business described by Section 342.051.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.554. Certificate; Certified Document.

On application by any person and on payment of any associated cost, the commissioner shall furnish under the commissioner's seal and signed by the commissioner or an assistant of the commissioner:

(1) a certificate of good standing; or

(2) a certified copy of a license, rule, or order.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.555. Transcript of Hearing: Public.

The transcript of a hearing held by the commissioner under this chapter is a public record.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.556. Appointment of Agent.

(a) An authorized lender shall maintain on file with the commissioner the name and address of the lender's registered agent for service.

(b) Repealed by Acts 2023, 88th Leg., R.S., SB 1371, § 34(2), eff. Sept. 1, 2023.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999. Amended by Acts 2023, 88th Leg., R.S., SB 1371, §§ 14 and 34(2), eff. Sept. 1, 2023.

§ 342.557. Payment of Examination Costs and Administration Expenses.

An authorized lender shall pay to the commissioner an amount assessed by the commissioner to cover the direct and indirect cost of an examination of the lender under Section 342.552 and a proportionate share of general administrative expense.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.558. Authorized Lender's Records.

(a) An authorized lender shall maintain a record of each loan made under this chapter as is necessary to enable the commissioner to determine whether the lender is complying with this chapter.

(b) An authorized lender shall keep the record, make it available in this state, or, if the lender makes, transacts, or negotiates loans principally by mail, keep the record or make it available at the lender's principal place of business, until the later of:

(1) the fourth anniversary of the date of the loan; or

(2) the second anniversary of the date on which the final entry is made in the record.

(c) A record described by Subsection (a) must be prepared in accordance with accepted accounting practices.

(d) The commissioner shall accept a lender's system of records if the system discloses the information reasonably required under Subsection (a).

(e) An authorized lender shall keep each obligation signed by a borrower at an office in this state designated by the lender unless the obligation is transferred under an agreement that gives the commissioner access to the obligation.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.559. Annual Report.

(a) Each year, not later than May 1 or a later date set by the commissioner, an authorized lender shall file with the commissioner a report that contains relevant information required by the commissioner concerning the lender's

business and operations during the preceding calendar year for each office of the lender in this state where business is conducted under this chapter.

(b) A report under this section must be:

(1) under oath; and

(2) in the form prescribed by the commissioner.

(c) A report under this section is confidential.

(d) Annually the commissioner shall prepare and publish a consolidated analysis and recapitulation of reports filed under this section.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

§ 342.560. Conducting Associated Business.

An authorized lender may conduct business under this chapter in an office, office suite, room, or place of business in which any other business is conducted or in combination with any other business unless the commissioner:

(1) finds after a hearing that the lender's conducting of the other business in that office, office suite, room, or place of business has concealed an evasion of this chapter; and

(2) orders the lender in writing to desist from that conduct in that office, office suite, room, or place of business.

Added by Acts 1999, 76th Leg., c. 62, § 7.19(a), eff. Sept. 1, 1999.

SUBCHAPTER M. DEFERRED PRESENTMENT TRANSACTIONS

§ 342.601. Definitions.

In this subchapter:

(1) "Lender" means a lender licensed under this chapter.

(2) "Member of the United States military" means:

(A) a member of the armed forces of the United States; or

(B) a member of the Texas National Guard who is called to federal active duty.

Added by Acts 2005, c. 394, § 1, eff. Sept. 1, 2005.

§ 342.602. Disclosures to Military Borrowers.

Before engaging in a deferred presentment transaction, a lender shall provide to a customer who is a member of the United States military or the member's spouse a written statement that clearly and conspicuously states that:

(1) the lender is prohibited by law from:

(A) garnishing the wages of any borrower, including a borrower who is a member of the United States military;

(B) conducting any collection activity against a borrower who is:

(i) a member of the armed forces of the United States who is deployed to combat or a combat support posting, for the duration of the posting;

(ii) a member of the Texas National Guard who is called to federal active duty, for the duration of the duty;

(iii) the spouse of a person described by Paragraph (i), for the duration of the posting; or

(iv) the spouse of a person described by Paragraph (ii), for the duration of the duty; or

(C) from contacting the employer of a member of the United States military about a deferred presentment debt of the member or the member's spouse;

(2) the lender shall honor the terms of a repayment agreement entered into with a member of the United States military or the member's spouse, including a repayment agreement negotiated through military counselors or third-party credit counselors; and

(3) the lender shall honor any statement made by a commanding officer of a member of the United States military declaring any location where deferred presentment transaction business is to be conducted by the lender to be a place at which a member of the United States military or the member's spouse is prohibited from transacting business.

Added by Acts 2005, c. 394, § 1, eff. Sept. 1, 2005.

§ 342.603. Prohibited Practices.

A lender may not contact the employer of a member of the United States military about a deferred presentment debt of the member or the member's spouse.

Added by Acts 2005, c. 394, § 1, eff. Sept. 1, 2005.

§ 342.604. Military Borrower.

(a) A lender may not engage in collection activity against a borrower who is:

(1) a member of the armed forces of the United States who is deployed to combat or a combat support posting, for the duration of the posting;

(2) a member of the Texas National Guard who is called to federal active duty, for the duration of the duty;

(3) the spouse of a person described by Subdivision (1), for the duration of the posting; or

(4) the spouse of a person described by Subdivision (2), for the duration of the duty.

(b) A lender may not garnish the wages of a borrower who is a member of the United States military or the member's spouse.

(c) A lender who engages in a deferred presentment transaction with a member of the United States military or a dependent of a member of the United States military must comply with 10 U.S.C. Section 987 and any regulations adopted under that law, to the extent applicable.

Added by Acts 2005, c. 394, § 1, eff. Sept. 1, 2005. Amended by Acts 2017, 85th Leg., R.S., c. 835, § 1, eff. Sept. 1, 2017.

§ 342.605. Repayment Agreement.

With respect to a deferred presentment transaction, a lender shall honor a repayment agreement entered into with a borrower who is a member of the United States military or the member's spouse, including a repayment agreement negotiated through a military counselor or a third-party credit counselor.

Added by Acts 2005, c. 394, § 1, eff. Sept. 1, 2005.

CHAPTER 343. HOME LOANS

SUBCHAPTER A. GENERAL PROVISIONS

§ 343.001. Definitions.

In this chapter:

(1) "Bridge loan" means temporary or short-term financing requiring payment of only interest until the entire unpaid balance is due.

(2) "Home loan" means a loan that is:

(A) made to one or more individuals for personal, family, or household purposes; and

(B) secured in whole or part by:

(i) a manufactured home, as defined by Section 347.002, used or to be used as the borrower's principal residence; or

(ii) real property improved by a dwelling designed for occupancy by four or fewer families and used or to be used as the borrower's principal residence.

(3) "Restructure" means a change in the payment schedule or other terms of a home loan as a result of the borrower's default.

Added by Acts 2001, 77th Leg., c. 622, § 1, eff. Sept. 1, 2001.

§ 343.002. Applicability.

(a) This chapter applies to a loan under this chapter that is extended to a person who is located in this state at the time the loan is made.

(b) This chapter does not apply to:

(1) a reverse mortgage; or

(2) an open-end account, as defined by Section 301.002.

Added by Acts 2001, 77th Leg., c. 622, § 1, eff. Sept. 1, 2001. Amended by Acts 2019, 86th Leg., c. 767, § 25, eff. Sept. 1, 2019

§ 343.003. Conflict With Other Provisions of Title.

If this chapter conflicts with another provision of this title, this chapter controls.

Added by Acts 2001, 77th Leg., c. 622, § 1, eff. Sept. 1, 2001.

SUBCHAPTER B. PROVISIONS RELATING TO HOME LOANS IN GENERAL

§ 343.101. Refinancing.

(a) For purposes of this section, a low-rate home loan is a home loan that at its inception carries an interest rate two percentage points or more below the yield on treasury securities having comparable periods of maturity to the loan maturity, except that if the loan's interest rate is a discounted introductory rate or a rate that automatically steps up over time, the fully indexed rate or the fully stepped-up rate, as appropriate, shall be used instead of the rate at the loan's inception to determine whether the loan is a low-rate loan.

(b) A lender may not replace or consolidate a low-rate home loan directly made by a government or nonprofit lender before the seventh anniversary of the date of the loan unless the new or consolidated loan has a lower interest rate and requires payment of a lesser amount of points and fees than the original loan or is a restructure to avoid foreclosure.

Added by Acts 2001, 77th Leg., c. 622, § 1, eff. Sept. 1, 2001.

§ 343.104. Restrictions on Single Premium Credit Insurance.

A lender may not offer any individual or group credit life, disability, or unemployment insurance on a prepaid single premium basis in conjunction with a home loan unless the following notice is provided to each applicant for the loan by hand delivery or mail to the applicant not later than the third business day after the date the applicant's application for a home loan is received:

INSURANCE NOTICE TO APPLICANT

You may elect to purchase credit life, disability, or involuntary unemployment insurance in conjunction with this mortgage loan. If you elect to purchase this insurance coverage, you may pay for it either on a monthly premium basis or with a single premium payment at the time the lender closes this loan. If you choose the single premium payment, the cost of the premium will be financed at the interest rate provided for in the mortgage loan.

This insurance is NOT required as a condition of closing the mortgage loan and will be included with the loan only at your request.

You have the right to cancel this credit insurance once purchased. If you cancel it within 30 days of the date of your loan, you will receive either a full refund or a credit against your loan account. If you cancel this insurance at any other time, you will receive either a refund or credit against your loan account of any unearned premium. YOU MUST CANCEL WITHIN 30 DAYS OF THE DATE OF THE LOAN TO RECEIVE A FULL REFUND OR CREDIT.

To assist you in making an informed choice, the following estimates of premiums are being provided along with an example of the cost of financing. The examples assume that the term of the insurance product is ____ years and that the interest rate is _____ percent (a rate that has recently been available for the type of loan you are seeking). PLEASE NOTE THAT THE ACTUAL LOAN TERMS YOU QUALIFY FOR MAY VARY FROM THIS EXAMPLE. "Total amount paid" is the amount that would be paid if you financed only the total insurance premium for a ___ year period and is equal to the amount you would have paid if you made all scheduled payments. This is NOT the total of payments on your loan.

CREDIT LIFE INSURANCE: Estimated premium of $_____

DISABILITY INSURANCE: Estimated premium of $_____

INVOLUNTARY UNEMPLOYMENT INSURANCE: Estimated premium of $_____

TOTAL INSURANCE PREMIUMS: $_____

TOTAL AMOUNT PAID: $_____

Added by Acts 2001, 77th Leg., c. 622, § 1, eff. Sept. 1, 2001.

§ 343.105. Notice of Penalties for Making False or Misleading Statement.

(a) A lender, mortgage banker, or licensed mortgage broker shall provide to each applicant for a home loan a written notice at closing.

(b) The notice must:

(1) be provided on a separate document;

(2) be in at least 14-point type; and

(3) have the following or substantially similar language:

"Warning: Intentionally or knowingly making a materially false or misleading written statement to obtain property or credit, including a mortgage loan, is a violation of Section 32.32, Texas Penal Code, and, depending on the amount of the loan or value of the property, is punishable by imprisonment for a term of 2 years to 99 years and a fine not to exceed $10,000.

"I/we, the undersigned home loan applicant(s), represent that I/we have received, read, and understand this notice of penalties for making a materially false or misleading written statement to obtain a home loan.

"I/we represent that all statements and representations contained in my/our written home loan application, including statements or representations regarding my/our identity, employment, annual income, and intent to occupy the residential real property secured by the home loan, are true and correct as of the date of loan closing."

(c) On receipt of the notice, the loan applicant shall verify the information and execute the notice.

(d) The failure of a lender, mortgage banker, or licensed mortgage broker to provide a notice complying with this section to each applicant for a home loan does not affect the validity or enforceability of the home loan by any holder of the loan.

Added by Acts 2007, 80th Leg., R.S., c. 285, § 1, Sept. 1, 2007.

§ 343.106. Payoff Statements.

(a) In this section, "mortgagee," "mortgage servicer," and "mortgagor" have the meanings assigned by Section 51.0001, Property Code.

(b) The finance commission shall adopt rules governing requests by title insurance companies for payoff information from mortgage servicers related to home loans and the provision of that information, including rules prescribing a standard payoff statement form that must be used by mortgage servicers to provide those payoff statements.

(c) In adopting rules under Subsection (b), the finance commission shall require a mortgage servicer who receives a request for a payoff statement with respect to a home loan from a title insurance company to deliver the requested payoff statement on the prescribed form within a time specified by finance commission rule, which must allow the mortgage servicer at least seven business days after the date the request is received to deliver the payoff statement.

(d) The standard payoff statement form prescribed by the finance commission under Subsection (b) must require that a completed form:

(1) state the proposed closing date for the sale and conveyance of the real property securing the home loan or for any other transaction that would involve the payoff of the home loan, as specified by the title insurance company's request; and

(2) provide a payoff amount that is valid through that date.

(e) Except as provided by Subsection (f) or (g), if the mortgage servicer provides a completed payoff statement form that meets the requirements of this section and rules adopted under this section in response to a request for a payoff statement, the mortgage servicer or mortgagee may not, on or before the proposed closing date, demand that a mortgagor pay an amount in excess of the payoff amount specified in the payoff statement.

(f) If a mortgage servicer or mortgagee discovers that a payoff statement is incorrect, the mortgage servicer or mortgagee may correct and deliver the statement on or before the second business day before the specified proposed closing date. The corrected payoff statement must be delivered to the requestor by:

(1) certified mail with return receipt requested; and

(2) electronic means, if the requestor provides the mortgage servicer with a means to deliver the corrected statement electronically.

(g) If a mortgage servicer submits an incorrect payoff statement to a title insurance company that results in the mortgage servicer requesting an amount that is less than the correct payoff amount, the mortgage servicer or mortgagee does not deliver a corrected payoff statement in accordance with Subsection (f), and the mortgage servicer receives payment in the amount specified in the payoff statement, the difference between the amount included in the payoff statement and the correct payoff amount:

(1) remains a liability of the former mortgagor owed to the mortgagee; and

(2) if the payoff statement is in connection with:

(A) the sale of the real property:

(i) the deed of trust or other contract lien securing an interest in the property is released;

(ii) within a reasonable time after receipt of payment by the mortgagee or mortgage servicer, the mortgagee or mortgage servicer, as applicable, shall deliver to the title company a release of the deed of trust or other contract lien securing an interest in the property; and

(iii) any proceeds disbursed at closing to or for the benefit of the mortgagor, excluding closing costs related to the transaction, are subject to a constructive trust for the benefit of the mortgagee to the extent of the underpayment; or

(B) a refinance by the mortgagor of the existing home loan:

(i) the lien securing the existing home loan becomes subordinate to the lien securing the new home loan; and

(ii) any proceeds disbursed at closing to or for the benefit of the mortgagor, excluding closing costs related to the transaction, are subject to a constructive trust for the benefit of the mortgagee to the extent of the underpayment.

Added by Acts 2011, 82nd Leg., R.S., c. 57, § 1, eff. Sept. 1, 2011.

§ 343.108. Release of Lien after Payoff by Mortgagor.

(a) In this section:

(1) "Mortgage servicer," "mortgagee," and "mortgagor" have the meanings assigned by Section 51.0001, Property Code.

(2) "Release of lien" means a release of a deed of trust or other lien securing a home loan.

(b) Except as provided by Subsection (c), not later than the 60th day after the date a mortgage servicer or mortgagee, as applicable, receives the correct payoff amount for a home loan from a mortgagor, the mortgage servicer or mortgagee shall:

(1) deliver to the mortgagor a release of lien for the home loan; or

(2) file the release of lien with the appropriate county clerk's office for recording in the real property records of the county.

(c) If, on or before the 20th day after the date of the payoff of the home loan, the mortgagor delivers a written request to the mortgagee or mortgage servicer for the release of lien to be delivered to the mortgagor or filed with the county clerk, the mortgagee or mortgage servicer shall deliver or file the release of lien not later than the 30th day after the date the mortgagee or mortgage servicer receives the written request from the mortgagor.

(d) Chapter 349 does not apply to this section.

(e) A mortgage servicer is required to comply with this section only if the mortgage servicer has the authority to deliver or file a release of lien for the home loan.

Added by Acts 2023, 88th Leg., R.S., HB 219, § 1, eff. Sept. 1, 2023.

Section 2 of Acts 2023, 88th Leg., R.S., HB 219 provides:

To the extent of a conflict between Section 343.108, Finance Code, as added by this Act, and a provision of a home loan agreement entered into before the effective date of this Act, the provision of the home loan agreement prevails.

SUBCHAPTER C. HIGH-COST HOME LOANS

§ 343.201. Definitions.

In this subchapter:

(1) “High-cost home loan” means a loan that:

(A) is made to one or more individuals for personal, family, or household purposes;

(B) is secured in whole or part by:

(i) a manufactured home, as defined by Section 347.002, used or to be used as the borrower’s principal residence; or

(ii) real property improved by a dwelling designed for occupancy by four or fewer families and used or to be used as the borrower’s principal residence;

(C) has a principal amount equal to or less than one-half of the maximum conventional loan amount for first mortgages as established and adjusted by the Federal National Mortgage Association;

(D) is not:

(i) a reverse mortgage; or

(ii) an open-end account, as defined by Section 301.002; and

(E) is a credit transaction described by 12 C.F.R. Section 1026.32, as amended, except that the term includes a residential mortgage transaction, as defined by 12 C.F.R. Section 1026.2, as amended, if the total loan amount is $20,000 or more and:

(i) the annual percentage rate exceeds the rate indicated in 12 C.F.R. Section 1026.32(a)(1)(i), as amended; or

(ii) the total points and fees payable by the consumer at or before loan closing will exceed the amount indicated in 12 C.F.R. Section 1026.32(a)(1)(ii), as amended.

(2) “Points and fees” has the meaning assigned by 12 C.F.R. Section 1026.32(b), as amended.

Added by Acts 2001, 77th Leg., c. 622, § 1, eff. Sept. 1, 2001. Amended by Acts 2023, 88th Leg., R.S., SB 1371, § 15, eff. Sept. 1, 2023.

§ 343.202. Balloon Payment.

A high-cost home loan may not contain a provision for a scheduled payment that is more than twice as large as the average of earlier scheduled monthly payments, unless the balloon payment becomes due not less than 60 months after the date of the loan. This prohibition does not apply if the payment schedule is adjusted to account for the

seasonal or otherwise irregular income of the borrower or if the loan is a bridge loan in connection with the acquisition or construction of a dwelling intended to become the borrower's principal dwelling.

Added by Acts 2001, 77th Leg., c. 622, § 1, eff. Sept. 1, 2001.

§ 343.203. Negative Amortization.

A high-cost home loan may not provide for a payment schedule with regular periodic payments that cause the principal balance to increase, except that this section does not prohibit negative amortization as a consequence of a temporary forbearance, bridge loan, or restructure sought by the borrower.

Added by Acts 2001, 77th Leg., c. 622, § 1, eff. Sept. 1, 2001.

§ 343.204. Consideration of Obligor's Payment Ability.

(a) In this section, "obligor" means a person obligated to pay a loan, including a borrower, cosigner, or guarantor. If more than one person is obligated to pay a loan, the term refers to those persons collectively.

(b) A lender may not engage in a pattern or practice of extending credit to consumers under high-cost home loans based on the consumers' collateral without regard to the obligor's repayment ability, including the obligor's current and expected income, current obligations, employment status, and other financial resources, other than the obligor's equity in the dwelling that secures repayment of the loan.

Added by Acts 2001, 77th Leg., c. 622, § 1, eff. Sept. 1, 2001.

§ 343.205. Prepayment Penalties Prohibited.

A lender may not make a high-cost home loan containing a provision for a prepayment penalty.

Added by Acts 2001, 77th Leg., c. 622, § 1, eff. Sept. 1, 2001.

§ 343.206. Charge Prohibited for Product or Service Not Received.

A lender, in connection with a high-cost home loan, may not charge a borrower an amount for a service or product if the borrower does not receive the service or product.

Added by Acts 2003, 78th Leg., c. 1207, § 3, eff. Sept. 13, 2003.

CHAPTER 345. RETAIL INSTALLMENT SALES

SUBCHAPTER A. GENERAL PROVISIONS

§ 345.001. Definitions.

In this chapter:

(1) "Credit card issuer" means a person who issues an identification device, including a card or plate, that is used to obtain goods or services under a retail credit card arrangement, other than a person who is:

(A) a bank, savings association, or credit union;

(B) licensed to do business under Chapter 342; or

(C) regularly and principally engaged in the business of lending money for personal, family, or household purposes.

(2) "Holder" means:

(A) for a retail installment contract:

(i) the retail seller of the goods or services under the contract if the contract or the outstanding balance under the contract has not been sold or otherwise transferred; or

(ii) if the contract or the outstanding balance under the contract has been sold or otherwise transferred, the person to whom it was transferred;

(B) for a retail charge agreement:

(i) the retail seller of the goods or services under the retail charge agreement if the agreement or the outstanding balance under the agreement has not been sold or otherwise transferred; or

(ii) if the agreement or the outstanding balance under the agreement has been sold or otherwise transferred, the person to whom it was sold or otherwise transferred; or

(C) for a retail credit card arrangement, the credit card issuer under the arrangement.

(3) "Retail buyer" means a person who:

(A) purchases or agrees to purchase goods from a retail seller; or

(B) obtains services from a retail seller or agrees to have services furnished by a retail seller.

(4) "Retail charge agreement" means one or more instruments that prescribe the terms of retail installment transactions that may be made under the agreement from time to time and under which a time price differential is computed on the unpaid balance from time to time. The term includes an instrument that prescribes the terms of a retail credit card arrangement.

(5) "Retail credit card arrangement" means an arrangement that is not regulated under another chapter of this code and under which:

(A) a retail seller or credit card issuer authorizes a retail buyer or lessee to use a credit card to purchase or lease goods or services from:

(i) the seller or issuer, as appropriate;

(ii) a person related to the seller or issuer;

(iii) a person licensed or franchised to do business under the seller's or issuer's business or trade name or designation; or

(iv) another person authorized to honor the card; and

(B) the debt for the purchase or lease is payable in one or more installments.

(6) "Retail installment contract" means one or more instruments entered into in this state that evidence a secured or unsecured retail installment transaction. The term includes a chattel mortgage, security agreement, and conditional sale contract and a document that evidences a bailment or lease described by Section 345.068, but does not include:

(A) an instrument that is a retail charge agreement;

(B) an instrument reflecting a sale under a retail charge agreement; or

(C) a rental-purchase agreement that complies with Chapter 92, Business & Commerce Code.

(7) "Retail installment transaction" means a transaction in which a retail buyer purchases goods or services from a retail seller under a retail installment contract or retail charge agreement that provides for a time price differential and under which the buyer agrees to pay the unpaid balance and the time price differential in one or more installments. The term includes a transaction:

(A) made under a retail credit card arrangement; or

(B) for the sale of prepaid funeral benefits regulated under Chapter 154.

(8) "Retail seller" means a person who regularly and substantially engages in the business of selling goods or services to retail buyers, other than the services of a member of a learned profession not specifically included under Section 345.003(b).

(9) "Time price differential" means the amount paid or payable for accepting payment in installments for goods or services purchased, regardless of how the amount is denominated or expressed. The term includes an amount payable to a holder as consideration for accepting payment in installments for goods and services charged under a retail credit card arrangement. The term does not include an amount charged for insurance premiums, delinquency charges, attorney's fees, court costs, or official fees.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 344, § 2.035, eff. Sept. 1, 1999; Acts 2007, 80th Leg., R.S., c. 885, § 2.17, eff April 1, 2009.

§ 345.002. Goods.

(a) For the purposes of this chapter, goods are tangible personal property, other than property described by Subsection (d), that is:

(1) purchased primarily for personal, family, or household use; and

(2) not purchased for commercial or business use.

(b) "Goods" includes property described by Subsection (a) that is:

(1) personal property furnished for or used in the modernization, rehabilitation, repair, alteration, improvement, or construction of real property that is to become or becomes a part of the real property regardless of whether the personal property is severable from the real property;

(2) a structure, other than a mobile home, that is to be used as a residence;

(3) a boat;

(4) a boat-trailer;

(5) a motor scooter, moped, motorcycle, trailer designed or intended to be drawn by or to transport a motor scooter, moped, motorcycle or all-terrain vehicle;

(6) a recreational vehicle designed for temporary living accommodations and commonly known as a travel trailer;

(7) a camper-type trailer;
(8) a horse trailer; and
(9) a vehicle propelled or drawn exclusively by muscular power.

(c) "Goods" also includes a merchandise certificate or coupon that is:
(1) issued by a retail seller;
(2) not redeemable in cash; and
(3) to be used in its face amount instead of cash in exchange for other goods or services sold by the seller.

(d) This chapter does not apply to the sale of:
(1) money;
(2) a vehicle designed to run only on rails or tracks or in the air; or
(3) a motor vehicle, other than a vehicle included under Subsection (b), to which Chapter 348 applies or other goods that are included in a contract under Chapter 348.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.003. Services.

(a) For the purposes of this chapter, services include work, labor, and other services, other than services described by Subsection (c), that are:
(1) purchased primarily for personal, family, or household use; and
(2) not purchased for commercial or business use.

(b) "Services" includes work or labor described by Subsection (a) and that is:
(1) a medical or dental service;
(2) a prepaid funeral benefit regulated under Chapter 154; and
(3) a maintenance or service contract or warranty.

(c) This chapter does not apply to the sale of:
(1) legal services;
(2) services of a professional person licensed by this state, unless the services are:
(A) provided in connection with the purchase of goods; or
(B) described by Subsection (b)(1) or (2);
(3) services for which the cost is:
(A) set by law; or
(B) filed with or subject to approval by the United States, this state, or an agency, instrumentality, or subdivision of this state;
(4) educational services provided by:
(A) an accredited college or university; or
(B) a primary or secondary school providing education required by this state;
(5) services provided by a kindergarten or nursery school; or
(6) services that are included in a contract under Chapter 348.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.004. Cash Price.

(a) The cash price in a retail installment transaction is the price at which the retail seller would have sold to the retail buyer, and the buyer would have bought from the seller, the goods or services that are subject to the transaction if the sale had been a sale for cash.

(b) The cash price may include:
(1) the amount of taxes;
(2) the amount of charges for delivery, installation, servicing, repair, alteration, or improvement; and
(3) an amount described by Section 345.005(1), (3), (4), or (6) that is not separately itemized in the retail installment contract or retail charge agreement.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.005. Itemized Charge.

An amount charged to a retail buyer in a retail installment contract or retail charge agreement is an itemized charge if the amount is not included in the cash price and is the amount of:

(1) fees prescribed by law for filing, recording, or otherwise perfecting, releasing, or satisfying a security interest created in connection with a retail installment transaction or nonfiling insurance premiums as authorized by Section 345.212;

(2) fees for registration or a certificate of title;

(3) any taxes;

(4) fees or charges prescribed by law and connected with the sale or inspection of the goods or services subject to the contract or agreement;

(5) premiums and other charges for insurance authorized by Subchapter E;

(6) official fees for a construction permit or the filing or recording of a construction permit;

(7) a documentary fee authorized under Section 345.251;

(8) in a retail installment transaction involving modernization, rehabilitation, repair, alteration, improvement, or construction of real property, reasonable and necessary costs, including amounts, paid by the holder:

(A) for title insurance or title examination and opinion that does not exceed the amount set by the commissioner of insurance for title insurance for the transaction;

(B) to a person who is not a salaried employee of the holder for an appraisal or inspection or for investigating the credit standing or creditworthiness of the retail buyer; or

(C) to an attorney who is not a salaried employee of the holder as a legal fee for the preparation of documents in connection with the transaction; and

(9) charges for a debt cancellation agreement under Chapter 354.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2017, 85th Leg., R.S., c. 183, § 1, eff. Sept. 1, 2017.

§ 345.006. Time Price Differential Not Interest.

An amount of time price differential is not interest.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.007. Applicability of Chapter.

(a) This chapter applies only to a retail installment transaction.

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

(c) The provisions of this chapter defining specific rates and amounts of charges and requiring certain credit disclosures to be made control over any contrary law of this state respecting those subjects.

(d) This chapter applies to a retail installment transaction extended to a person who is located in this state at the time the transaction is entered into.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2019, 86th Leg., c. 767, § 26, eff. Sept. 1, 2019.

§ 345.008. Applicability of Other Statutes to Retail Installment Transaction.

(a) A loan or interest statute of this state other than Chapter 303 does not apply to a retail installment transaction.

(b) Except as provided by this chapter, an applicable statute, including Title 1, Business & Commerce Code, or a principle of common law continues to apply to a retail installment transaction unless it is displaced by this chapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.009. Disclosure Requirements if Conflict With Federal Law.

If a disclosure requirement of this chapter and one of a federal law, including a regulation or an interpretation of law, are inconsistent or conflict, federal law controls and the inconsistent or conflicting disclosures required by this chapter need not be given.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

§ 345.051. Retail Installment Contract General Requirements.

(a) A retail installment contract must be:

(1) in writing;

(2) dated;

(3) signed by the retail buyer; and

(4) completed as to all essential provisions, except as provided by Section 345.064.

(b) The contract must be designated "Retail Installment Contract."

(c) The printed or typed part of a retail installment contract, other than instructions for completion, must be in at least eight-point type unless a different size of type is required under this subchapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.052. Contents of Contract.

(a) A retail installment contract must contain:

(1) the name of the retail seller and the name of the retail buyer;

(2) the place of business of the retail seller;

(3) the residence or other address of the retail buyer as specified by the retail buyer;

(4) the cash price;

(5) the amount of the retail buyer's down payment, specifying the amount paid in money and the amount allowed for goods traded in; and

(6) each itemized charge.

(b) A charge for insurance authorized under Subchapter E may be disclosed as provided by that subchapter.

(c) A retail installment contract must reasonably identify the goods sold or services furnished under the contract. Multiple items of goods or services may be described in a separate writing in detail sufficient to identify them.

(d) The contract must contain substantially the following notice printed or typed in at least 10-point type that is bold-faced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material:

"NOTICE TO THE BUYER. DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE CONTRACT YOU SIGN. UNDER THE LAW YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CONDITIONS MAY OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE. KEEP THIS CONTRACT TO PROTECT YOUR LEGAL RIGHTS."

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.053. Disclosure of Promise to Compensate for Referral.

(a) A written or oral promise of a retail seller to compensate a retail buyer for referring customers or prospective customers to the seller or for referring the seller to customers or prospective customers must be disclosed in a retail installment contract if the promise is:

(1) part of the contract;

(2) made to induce the buyer to become a party to the contract; or

(3) made incidental to negotiations between the seller and the buyer with respect to the sale of the goods or services that are the subject of the contract.

(b) A contract that contains a provision required by Subsection (a) must provide that the amount owed under the contract at any time is reduced by the amount of compensation owed under the promise.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.054. Time Price Differential for Contract.

A retail installment contract may provide for:

(1) any amount of time price differential permitted under Section 345.055, 345.056, 345.057, or 345.058; or

(2) any rate of time price differential not exceeding a yield permitted under Section 345.055, 345.056, 345.057, or 345.058.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.055. Time Price Differential for Contract Payable in Equal Monthly Payments.

(a) A retail installment contract that is payable in substantially equal monthly payments beginning one month after the date of the contract may provide for a time price differential that does not exceed an add-on charge equal to:

(1) $12 per $100 per year on the part of the principal balance that is less than or equal to the amount computed under Subchapter C, Chapter 341, using the reference amount of $500;

(2) $10 per $100 per year on the part of the principal balance that is more than the amount computed for Subdivision (1) but less than or equal to the amount computed under Subchapter C, Chapter 341, using the reference amount of $1,000; and

(3) $8 per $100 per year on the part of the principal balance that is more than the amount computed for Subdivision (2).

(b) The time price differential is computed on the original principal balance from the date of the contract until the due date of the final installment, notwithstanding that the balance is payable in installments.

(c) If the retail installment contract is payable for a period that is shorter or longer than a year or is for an amount that is less or greater than $100, the amount of the maximum time price differential computed under this section is decreased or increased proportionately.

(d) For the purpose of a computation under this section, 15 or more days of a month may be considered a full month.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.056. Use of Optional Ceiling.

As an alternative to the maximum rate or amount authorized for a time price differential under Section 345.055 or 345.057, a retail installment contract may provide for a rate or amount of time price differential that does not exceed the rate or amount authorized by Chapter 303.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.057. Time Price Differential for Other Contracts.

A retail installment contract that is payable other than in substantially equal successive monthly payments or the first installment of which is not payable one month from the date of the contract may provide for a time price differential that does not exceed an amount that provides the same effective return as if the contract were payable in substantially equal successive monthly installments beginning one month from the date of the contract.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.058. Minimum Time Price Differential for Contract.

Notwithstanding Section 345.055, 345.056, or 345.057:

(1) a retail installment contract with an initial principal balance of $75 or more may provide for a minimum time price differential that does not exceed $12;

(2) a retail installment contract with an initial principal balance of more than $25 and less than $75 may provide for a minimum time price differential that does not exceed $9; and

(3) a retail installment contract with an initial principal balance of $25 or less may provide for a minimum time price differential that does not exceed $6.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.059. Principal Balance Computation.

The principal balance of a retail installment contract is computed by:

(1) adding the cash price subject to the contract and the total of the contract's itemized charges, including a documentary fee authorized under Section 345.251; and

(2) subtracting the amount of the retail buyer's down payment in money and goods from the amount computed under Subdivision (1).

Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.060. Charges for Default in Payment of Installment.

(a) A retail installment contract may provide that if an installment remains unpaid after the 10th day after the maturity of the installment the retail seller may collect:

(1) a delinquency charge that is not more than five percent of an installment or $5, whichever is less; or

(2) interest on the amount of the installment accruing after the maturity of the installment at a rate that does not exceed the maximum rate authorized for the contract.

(b) Only one delinquency charge may be collected under Subsection (a) on an installment regardless of the duration of the default.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.061. Charges for Collecting Debt.

A retail installment contract may provide for the payment of:

(1) an attorney's reasonable fees if the contract is referred for collection to an attorney who is not a salaried employee of the holder; and

(2) court costs and disbursements.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.062. Acceleration of Debt Maturity.

A retail installment contract or retail charge agreement may not authorize the holder to accelerate the maturity of all or a part of the amount owed under the contract or agreement unless:

(1) the retail buyer is in default in the performance of any of the buyer's obligations; or

(2) the holder believes in good faith that the prospect of the buyer's payment or performance is impaired.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.063. Requirements for Contract That Is More Than One Document.

(a) A retail installment contract may be more than one document.

(b) One of the retail installment contract documents must:

(1) provide that it applies to purchases of goods or services to be made by the retail buyer from time to time; and

(2) be signed by the retail buyer.

(c) For each purchase, the document described by Subsection (b) and a written statement relating to the purchase, including a sales slip or account book, together must set forth all of the information required by this subchapter. The document described by Subsection (a) and the written statement under this subsection are the retail installment contract.

(d) If the retail seller elects, a written statement described by Subsection (c) satisfies the statement requirements of Section 345.082 for a purchase to which the statement applies.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.064. Completion of Contract.

(a) A person may not sign a retail installment contract that contains a blank space for an item that is an essential provision of the transaction.

(b) If delivery of the goods is not made at the time the contract is executed, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted by the retail seller in the seller's counterpart of the contract after the contract has been signed by the retail buyer.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.065. Delivery of Copy of Contract.

The retail seller shall:

(1) deliver to the retail buyer a copy of the retail installment contract as accepted by the retail seller; or

(2) mail to the retail buyer at the address shown on the contract a copy of the retail installment contract as accepted by the retail seller.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.066. Buyer's Right to Rescind Contract.

Until a retail seller complies with Section 345.065, a retail buyer who has not received delivery of the goods or services is entitled to:

(1) rescind the contract;

(2) receive a refund of all payments made under or in contemplation of the contract; and

(3) receive the return of all goods traded in to the seller under or in contemplation of the contract or, if those goods cannot be returned, receive the trade-in allowance of those goods.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.067. Buyer's Acknowledgment of Delivery of Contract Copy.

(a) Any retail buyer's acknowledgment of delivery of a copy of a retail installment contract must:

(1) be in at least 10-point type that is bold-faced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material; and

(2) appear directly above the buyer's signature if the acknowledgment is contained in the contract.

(b) Any retail buyer's acknowledgment conforming to this section of the delivery of a copy of the retail installment contract is, in any action or proceeding:

(1) presumptive proof of the delivery of a copy of the contract and compliance with any requirement relating to the completion of the contract before execution of the contract by the buyer; or

(2) conclusive proof of the delivery of a copy of the contract and compliance with any requirement relating to the completion of the contract before execution of the contract by the buyer if the holder purchased the contract without knowledge to the contrary.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.068. Bailment or Lease as Retail Installment Transaction.

A bailment or lease is a retail installment transaction if the bailee or lessee:

(1) contracts to pay as compensation for the use of goods an amount that substantially equals or exceeds the value of those goods; and

(2) on full compliance with the bailment or lease is bound to become the owner of the goods or has the option to become the owner of the goods for no or nominal additional consideration.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.069. Deferment of Installment.

(a) A holder of a retail installment contract, on request of the retail buyer, may agree to defer the scheduled due date of all or part of one or more installments.

(b) A holder may collect from the retail buyer for deferment of an installment:

(1) a charge that is a part of the time price differential and computed on the amount deferred for the period of deferment at the monthly rate of 15 cents for each $10; and

(2) the amount of the additional cost to the holder for:

(A) premiums for continuing in force any insurance provided for by the contract; and

(B) additional necessary official fees.

(c) The minimum charge under Subsection (b)(1) is $1.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.070. Amendment of Contract.

(a) On request of the retail buyer, the holder of a retail installment contract may:

(1) amend the contract to renew, restate, or reschedule the unpaid balance of the contract; and

(2) collect an amount computed on the principal balance of the amended contract for the term of the amended contract at the applicable rate under Section 345.055, 345.056, 345.057, or 345.058.

(b) The principal balance of the amended contract is computed by:

(1) adding:

(A) the amount of the unpaid balance on the date of the amendment;

(B) the cost of insurance;

(C) the amount of each additional necessary official fee; and

(D) the amount of each accrued delinquency charge; and

(2) subtracting from the total computed under Subdivision (1) an amount equal to the minimum refund credit that would be required under Section 345.075 or 345.076 for prepayment in full on the date of the amendment.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.071. Confirmation of Amendment.

An amendment to a retail installment contract must be confirmed in a writing signed by the retail buyer. The holder shall deliver a copy of the confirmation to the buyer at the time it is executed.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.072. Contract After Amendment.

After amendment a retail installment contract is the original contract and each amendment to the original contract.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.073. Prepayment of Contract.

A retail buyer may prepay the unpaid time balance of a retail installment contract in full at any time before the contract's final due date.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.074. Refund Credit on Prepayment.

If a retail buyer prepays a retail installment contract in full or if the holder demands payment of the unpaid balance of the contract in full before the contract's final installment is due, the buyer is entitled to receive a refund credit as provided by Section 345.075 or 345.076, as applicable.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.075. Amount of Refund Credit for Monthly Installment Contract.

(a) The minimum amount of a refund credit on prepayment of a contract that is payable in substantially equal successive monthly installments beginning one month after the date of the contract is computed by:

(1) subtracting an amount equal to the minimum charge authorized by this chapter for that contract from the original time price differential; and

(2) multiplying the amount computed under Subdivision (1) by the percentage computed by dividing the sum of all of the monthly balances under the contract's schedule of payments into the sum of the unpaid monthly balances under the contract's schedule of payments beginning on:

(A) the first day, after the date of the prepayment or demand for payment in full, that is the date of a month that corresponds to the date of the month that the first installment is due under the contract; or

(B) if the prepayment or demand for payment in full is made before the first installment date under the contract, the next monthly anniversary date of the contract occurring after prepayment or demand.

(b) A refund credit is not required if the amount of the refund credit is less than $1.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.076. Amount of Refund Credit for Other Contracts.

The refund credit on a contract to which Section 345.075 does not apply shall be computed in a manner proportionate to the method set out by that section, having due regard for:

(1) the amount of each installment; and

(2) the irregularity of the installment periods.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.077. Reinstatement of Contract.

After a demand for payment in full under a retail installment contract, the retail buyer and holder may agree to reinstate the contract and may amend the contract under Section 345.070.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.078. Consolidation of Contracts.

(a) If a retail buyer purchases goods or services in a retail installment transaction from a retail seller from whom the buyer has previously purchased goods or services under one or more retail installment contracts and the amounts under those contracts have not been paid in full, the seller may consolidate the subsequent purchase with one or more of the contracts.

(b) If a purchase is consolidated with a retail installment contract under this section, the retail seller may prepare a written memorandum of the subsequent purchase instead of executing a retail installment contract for the purchase. Sections 345.051, 345.052, 345.053, 345.065, 345.066, and 345.067 do not apply to the memorandum. The seller

shall deliver a copy of the memorandum to the retail buyer before the date on which the first installment under the consolidated contract is due.

(c) Each subsequent purchase that is consolidated with a retail installment contract is a separate retail installment contract under this chapter. The provisions of this chapter relating to a retail installment contract apply to the subsequent purchase except as provided by Subsection (b).

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.079. Allocation of Payments on Consolidation of Contracts.

(a) If a subsequent purchase is consolidated with a contract and the retail seller retains title or takes a security interest, including a lien, in any of the goods purchased under one of the contracts:

(1) the total of all payments made before the subsequent purchase is considered to have been applied to the previous purchases; and

(2) each payment made on the consolidated contract after the subsequent purchase is considered to be allocated to each purchase in the same ratio as the original cash price of the purchase bears to the total of the original cash prices of all purchases under the contract.

(b) All of a down payment on a subsequent purchase shall be allocated to that purchase.

(c) If the amount of installment payments is increased after a subsequent purchase, the retail seller may elect to allocate:

(1) an amount of the payment equal to the original periodic payment to the previous purchase; and

(2) the remainder of the payment to the subsequent purchase.

(d) This section does not apply if the previous and subsequent purchases involve:

(1) goods, including equipment or parts, attached or affixed to goods previously purchased and for which full payment has not been made; or

(2) services rendered by the retail seller at the retail buyer's request in connection with goods described by Subdivision (1).

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.080. Obligation Under More Than One Contract.

(a) A retail seller may not induce a person or a husband and wife to become obligated at substantially the same time under more than one retail installment contract with the same seller for the deliberate purpose of obtaining a greater amount of time price differential than is permitted under this chapter for one retail installment contract.

(b) A contract made by a retail buyer and retail seller after the 30th day after the date of a contract between that buyer and seller is presumed not to violate this section.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.081. Certificate of Completion or Satisfaction of Contract.

(a) A retail seller who has entered into a retail installment transaction under a retail installment contract to perform services or install goods for the modernization, rehabilitation, repair, alteration, improvement, or construction of improvements on real property shall obtain a certificate of completion or certificate of satisfaction signed by the retail buyer when all of the services have been performed or goods have been installed as required under the contract. A certificate is required regardless of whether a guaranty or warranty of the services or goods remains in force.

(b) A certificate of completion or certificate of satisfaction must be a separate writing and must have at the top in at least 10-point type that is bold-faced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material:

WARNING TO BUYER--DO NOT SIGN THIS CERTIFICATE UNTIL ALL SERVICES HAVE BEEN SATISFACTORILY PERFORMED AND MATERIALS SUPPLIED OR GOODS RECEIVED AND FOUND SATISFACTORY.

(c) The retail seller shall keep the signed certificate or a copy of the signed certificate until the second anniversary of the date of the certificate's execution.

(d) If performance of the services or installation of the goods required by the retail installment contract is not complete, a retail seller may not knowingly:

(1) induce a retail buyer to sign a certificate; or

(2) take or accept from the retail buyer an executed certificate.

(e) Execution of a certificate by the retail buyer is not a waiver of any guaranty or warranty made by the retail seller or a manufacturer or supplier.

(f) A retail buyer's failure or refusal to execute a certificate, without good cause, does not affect the validity of the retail installment contract.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.082. Statement of Payments and Amount Due Under Contract.

(a) On written request of a retail buyer, the holder of a retail installment contract shall give or send to the buyer a written statement of the dates and amounts of installment payments and the total amount unpaid under the contract.

(b) A retail buyer is entitled to one statement without charge during a six-month period. The charge for each additional requested statement during the period may not exceed $1.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.083. Receipt for Cash Payment.

A holder of a retail installment contract shall give to the retail buyer a written receipt for each cash payment.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.084. Debt Cancellation Agreement.

A debt cancellation agreement under Chapter 354 may be offered in connection with a retail installment contract for a covered vehicle to which this chapter applies. For purposes of this section, "covered vehicle" has the meaning assigned by Section 354.001.

Added by Acts 2017, 85th Leg., R.S., c. 183, § 2, eff. Sept. 1, 2017.

SUBCHAPTER C. RETAIL CHARGE AGREEMENT

§ 345.101. Making Retail Charge Agreement.

On the request of a retail buyer or prospective buyer, a retail seller or credit card issuer may establish a retail charge agreement.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.102. Agreement General Requirements.

(a) A retail charge agreement must be in writing and signed by the retail buyer.

(b) An agreement must contain substantially the following notice printed or typed in at least 10-point type that is bold-faced, capitalized, underlined, or otherwise conspicuously set out from the surrounding written material:

"NOTICE TO THE BUYER—DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT OR IF IT CONTAINS BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE AGREEMENT YOU SIGN. KEEP THIS AGREEMENT TO PROTECT YOUR LEGAL RIGHTS."

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.103. Time Price Differential for Agreement.

(a) Notwithstanding any other law a retail charge agreement may provide for a time price differential for the payment in installments under the agreement.

(b) The time price differential may not be more than the amount computed on the unpaid amount under the retail charge agreement at a rate equal to:

(1) 15 cents per $10 per month on the part of the unpaid balance that is equal to or less than the amount computed under Subchapter C, Chapter 341, using the reference amount of $500; and

(2) 10 cents per $10 per month on the part of the unpaid balance that is more than the amount computed for Subdivision (1).

(c) If the amount computed under Subsection (b) for any month for which a balance is due is less than 75 cents, the time price differential for that month may be 75 cents.

(d) If the period between installment payments is not a month, the time price differential shall be computed proportionately.

(e) The time price differential may be computed for all unpaid balances within a $10 range by applying the amount of the time price differential for the median amount within the range to those unpaid balances.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.104. Use of Optional Ceiling.

(a) As an alternative to the maximum rate or amount authorized for a time price differential under Section 345.103, a retail charge agreement may provide for a rate or amount of time price differential that does not exceed the rate or amount authorized by Chapter 303.

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

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2005, 79th Leg., c. 1018, § 2.16, eff. Sept. 1, 2005.

§ 345.105. Charges for Collection of Payment of Agreement.

A retail charge agreement may provide for the payment of:

(1) an attorney's reasonable fee if the agreement is referred for collection to an attorney who is not a salaried employee of the holder; and

(2) court costs and disbursements.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.106. Processing Fee for Returned Check.

A retail charge agreement may provide that the holder of the agreement may:

(1) charge the retail buyer, on return of a dishonored check given in payment under the agreement, a reasonable processing fee that does not exceed the amount prescribed by Section 3.506, Business & Commerce Code; and

(2) add the fee to the unpaid balance under the agreement.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2023, 88th Leg., R.S., SB 1371, § 16, eff. Sept. 1, 2023.

§ 345.107. Prohibited Fees.

An annual, membership, or participation fee may not be charged to or collected from a retail buyer in connection with a retail charge agreement.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.108. Prohibition on Signing of Agreement With Blank Spaces.

A retail buyer may not sign a retail charge agreement that contains blank spaces.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.109. Delivery of Copy of Agreement.

(a) A retail seller or credit card issuer shall deliver or mail a copy of the executed retail charge agreement to the retail buyer before the date on which the first payment under the agreement is due.

(b) If a copy of the retail charge agreement is not retained by the retail seller, a notation in the seller's permanent record showing that the agreement was mailed and the date of mailing is presumptive proof of the mailing.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.110. Buyer's Acknowledgment of Delivery of Agreement Copy.

(a) Any retail buyer's acknowledgment of delivery of a copy of a retail charge agreement that is contained in the body of the agreement must:

(1) be in at least 10-point type that is bold-faced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material; and

(2) appear directly above the buyer's signature.

(b) A retail buyer's acknowledgment, conforming to this section, of delivery of a copy of the agreement is, in an action or proceeding, presumptive proof that:

(1) the copy was delivered to the buyer; and

(2) the agreement did not contain a blank space when it was signed by the buyer.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.111. Statement of Cash Price.

The cash price in a retail installment transaction under a retail charge agreement shall be stated in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with the agreement.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.112. Agreement Balance Statement.

(a) At the end of each statement period of a retail charge agreement in which an unpaid balance exists, the retail seller shall provide to the retail buyer a statement of the unpaid balance.

(b) The statement must set out that the retail buyer at any time may pay all or any part of the unpaid balance.

(c) In this section, "statement period" means a monthly period, which is not required to be a calendar month. The term may include a regular period, other than a monthly period, to which the retail charge agreement parties agree in writing.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.113. Compliance With Federal Law Considered Compliance With Chapter's Disclosure Requirements.

A retail charge agreement that complies with the applicable disclosure provisions of the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) is considered to comply with the disclosure requirements of Section 345.112.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

SUBCHAPTER D. ALTERNATE FINANCE CHARGE CEILING

§§ 345.151, 345.152. Repealed by Acts 2005, 79thLeg., c. 1018, § 7.05, eff. Sept. 1, 2005.

§ 345.153. Publication and Effective Date of Ceiling.

The commissioner shall send to the secretary of state the market competitive rate ceiling determined under Section 345.152 for publication in the first publication of the Texas Register after September 1 of each year. The market competitive rate ceiling takes effect on the following October 1.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.154. Repealed by Acts 2005, 79thLeg., c. 1018, § 7.05, eff. Sept. 1, 2005.

§ 345.155. Time Price Differential Computation and Amount.

(a) A time price differential authorized under Subchapter C shall be computed using the average daily balance method.

(b) If the amount of a time price differential otherwise authorized under Subchapter C for a billing cycle in which a balance is due is less than 75 cents a month, the holder may charge an amount that does not exceed 75 cents a month.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2011, 82nd Leg., c. 1182, § 7, eff. Sept. 1, 2011.

§ 345.156. When Charging of Time Price Differential Prohibited.

A time price differential may not be charged for a billing cycle of a retail charge agreement that provides for a time price differential under this subchapter if:

(1) the payments received for the agreement and amounts credited during the billing cycle that are attributable to amounts included in the balance owed at the end of the preceding billing cycle equal or exceed the balance owed under the agreement at the end of the preceding billing cycle; or

(2) a balance is not owed at the end of the preceding billing cycle.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.157. Delinquency Charge.

(a) A retail charge agreement may provide for the payment of:

(1) a delinquency charge on each installment that is in default for a period that is longer than 21 days;

(2) an attorney's reasonable fee if the agreement is referred for collection to an attorney who is not a salaried employee of the holder; and

(3) court costs and disbursements.

(b) The amount of a delinquency charge may not exceed $15.

(c) Only one delinquency charge may be collected on an installment regardless of the duration of the default.

(d) The holder shall remit 50 cents of each delinquency charge in excess of $10 collected under this section to the comptroller, in the time and manner established by the comptroller, for deposit to the credit of an account in the general revenue fund. One-half of the money in the account may be appropriated only to finance research conducted by the commissioner under Section 11.305 and the other one-half of the money in the account may be appropriated only to finance educational activities and counseling services under Section 394.001.

(e) A customer's monthly statement must contain the following notice printed or typed in at least 10-point type that is boldfaced, capitalized, underlined, or otherwise conspicuously set out from the surrounding written material: "A DELINQUENCY CHARGE OF $15 MAY BE ASSESSED FOR A PAYMENT THAT IS IN DEFAULT FOR A PERIOD THAT IS LONGER THAN 21 DAYS."

(f) If the commissioner determines that a retail seller or creditor that was operating under this subchapter on September 1, 1999, and that charges a delinquency charge in excess of $10, moved its credit operations out of this state after September 1, 1999, in a manner that results in the retail seller's or creditor's retail charge agreements not being subject to this subchapter, the commissioner shall collect from the retail seller or creditor an amount equal to 25 cents for each delinquency charge in excess of $10 collected during the 12-month period preceding the date of the move.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 1348, § 4, eff. Sept. 1, 1999; Acts 2011, 82nd Leg., R.S., H.B. 3453, § 8, eff. Sept. 1, 2011; Acts 2019, 86th Leg., c. 767, § 27, eff. Sept. 1, 2019.

§ 345.158. Retail Charge Agreement to Which Subchapter Does Not Apply.

This subchapter does not apply to a retail charge agreement that:

(1) is a home solicitation transaction that is subject to Chapter 601, Business & Commerce Code;

(2) is secured by a lien on the obligor's homestead; and

(3) provides for credit that is extended by the retail seller or the seller's owner, subsidiary, or corporate affiliate.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2007, 80th Leg., R.S., c. 885, § 2.18, eff. April 1, 2009.

SUBCHAPTER E. INSURANCE

§ 345.201. Property Insurance.

(a) A holder may request or require a retail buyer to insure the property purchased or improved under a retail installment transaction, including the purchase of title insurance on real property that is involved in the retail installment contract or retail charge agreement and that is subject to a security interest of the holder, including a lien.

(b) If the property is a boat that may be enrolled or licensed as a yacht with the United States Coast Guard and subject to the maritime laws of the United States, a holder may also require a retail buyer to provide in connection with the boat:

(1) protection and indemnity insurance;

(2) longshoremen's and harbor worker's compensation insurance; and

(3) medical payments insurance.

(c) The insurance and the premiums or charges for the insurance must bear a reasonable relationship to:

(1) the amount, term, and conditions of the retail installment contract or retail charge agreement;

(2) the existing hazards or risk of loss, damage, or destruction; or

(3) the potential liability.

(d) The insurance may not:

(1) cover unusual or exceptional risks; or

(2) provide coverage not ordinarily included in policies issued to the public.

(e) The holder may include the cost of insurance provided under this section as a separate charge in the contract or agreement.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.202. Credit Life, Credit Health and Accident, and Credit Involuntary Unemployment Insurance.

(a) As additional protection for the contract or agreement, a holder may:

(1) request or require a retail buyer to provide credit life insurance and credit health and accident insurance; and

(2) request or allow a retail buyer to provide credit involuntary unemployment insurance.

(b) A holder may include the cost of insurance provided under Subsection (a) as a separate charge in the contract or agreement.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.203. Maximum Amount of Insurance Coverage.

(a) At any time the total amount of the policies of credit life insurance in force on one retail buyer on one retail installment contract or retail charge agreement may not exceed:

(1) the total amount repayable under the contract or agreement; and

(2) the greater of the scheduled or actual amount of unpaid indebtedness if the indebtedness is repayable in substantially equal installments.

(b) At any time the total amount of the policies of credit health and accident insurance or credit involuntary unemployment insurance in force on one retail buyer on one retail installment contract or retail charge agreement may not exceed the total amount repayable under the contract or agreement, and the amount of each periodic indemnity payment may not exceed the scheduled periodic payment on the indebtedness.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.204. Insurance Statement.

(a) If insurance is required in connection with a retail installment contract or retail charge agreement, the holder shall give to the retail buyer a statement that clearly and conspicuously states that:

(1) insurance is required in connection with the contract or agreement; and

(2) the buyer as an option may furnish the insurance through:

(A) an existing policy of insurance owned or controlled by the buyer; or

(B) an insurance policy obtained from an insurance company authorized to do business in this state.

(b) If requested or required insurance is sold or obtained by the holder and the retail installment contract or retail charge agreement includes a premium or rate of charge that is not fixed or approved by the commissioner of insurance, the holder shall deliver or mail to the retail buyer a written statement that includes that fact.

(c) A statement under Subsection (a) or (b) may be provided with or as part of the retail installment contract or the retail charge agreement, as appropriate, or separately.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.205. Insurance May Be Furnished by Buyer.

(a) If insurance is requested or required in connection with a retail installment contract or retail charge agreement and the retail installment contract or retail charge agreement includes a premium or rate of charge that is not fixed or approved by the commissioner of insurance, the retail buyer is entitled to furnish the insurance coverage not later than the 10th day after the date of the contract or agreement or the delivery or mailing of the written statement required under Section 345.204, as appropriate, through:

(1) an existing insurance policy owned or controlled by the buyer; or

(2) an insurance policy obtained from an insurance company authorized to do business in this state.

(b) When a retail installment contract or retail charge agreement is executed, the retail buyer is entitled to purchase the insurance described by Section 345.201, 345.202, or 345.207 and select:

(1) the agent or broker; and

(2) an insurance company acceptable to the holder.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.206. Buyer's Failure to Provide Evidence of Insurance.

(a) If the retail buyer fails to present to the holder reasonable evidence that the buyer has obtained or maintained a coverage required by the retail installment contract or retail charge agreement, the holder may:

(1) obtain substitute insurance coverage that is substantially equivalent to or more limited than the coverage required; and

(2) add the amount of the premium advanced for the substitute coverage to the unpaid balance of the contract or agreement.

(b) Substitute insurance coverage under Subsection (a)(1):

(1) may be limited to coverage only of the interest of the holder or the interest of the holder and the buyer; and

(2) must be written at lawful rates and in accordance with the Insurance Code by a company authorized to do business in this state.

(c) If substitute insurance is obtained by the holder under Subsection (a), the amendment adding the premium or rescheduling the contract is not required to be signed by the retail buyer. The holder shall deliver to the buyer or send to the buyer's most recent address shown in the records of the holder specific written notice that the holder has obtained substitute insurance.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.207. Charges for Other Insurance Included in Retail Installment Contract.

A retail buyer and retail seller may agree in a retail installment contract to include charges for insurance coverage that is:

(1) for risk of loss or liability reasonably related to:

(A) the goods or services sold;

(B) the anticipated use of the goods or services sold; or

(C) goods or services that:

(i) are related to the goods or services sold; and

(ii) may be insured with the goods and services sold;

(2) written on policies or endorsement forms prescribed or approved by the commissioner of insurance; and

(3) ordinarily offered in policies or endorsements offered to the public.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.208. Requirements for Including Insurance Charge in Contract or Agreement.

(a) For insurance to be included as an itemized charge in a retail installment contract or a retail charge agreement:

(1) the insurance must be written:

(A) at lawful rates;

(B) in accordance with the Insurance Code; and

(C) by a company authorized to do business in this state; and

(2) the disclosure requirements of this section must be satisfied.

(b) If the insurance is described by Section 345.201, 345.202, or 345.207, the retail installment contract or retail charge agreement, or a separate written statement or specimen copy of a certificate or policy of insurance that is given to the retail buyer, must identify the:

(1) type of the coverage;

(2) term of the coverage; and

(3) amount of the premium for the coverage.

(c) If the insurance is described by Section 345.207, the retail installment contract must also clearly indicate that the coverage is optional.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.209. Delivery of Insurance Document to Buyer.

A holder who obtains insurance shall, not later than the 45th day after the date of the delivery of goods or the furnishing of services under a retail installment contract or retail charge agreement, deliver, mail, or cause to be mailed to the retail buyer at the buyer's address specified in the contract or agreement a policy or certificate of insurance that clearly sets forth:

(1) the amount of the premium;

(2) the kind of insurance provided;
(3) the coverage of the insurance; and
(4) all terms, including options, limitations, restrictions, and conditions, of the policy.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.210. Holder's Duty if Insurance is Adjusted or Terminated.

(a) If insurance for which a charge is included in or added to a retail installment contract or retail charge agreement is canceled, adjusted, or terminated, the holder shall, at the holder's option:

(1) apply the amount of the refund for unearned insurance premiums received by the holder to replace required insurance coverage; or

(2) credit the refund to the final maturing installments of the retail installment contract or retail charge agreement.

(b) If the amount to be applied or credited under Subsection (a) is more than the amount unpaid on the retail installment contract or retail charge agreement, the holder shall refund to the retail buyer the difference between those amounts.

(c) A cash refund is not required under this section if the amount of the refund is less than $1.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.211. Gain or Advantage From Insurance Not Additional Charge.

Any gain or advantage to the holder or the holder's employee, officer, director, agent, general agent, affiliate, or associate from insurance or the provision or sale of insurance under this subchapter is not an additional charge or additional time price differential in connection with a retail installment contract or retail sales agreement made under this chapter except as specifically provided by this chapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.212. Nonfiling Insurance.

(a) Instead of charging fees for the filing, recording, and releasing of documents for the perfection of a security interest created in connection with a retail installment transaction, the holder may include in the retail installment contract or retail charge agreement a charge for a nonfiling insurance premium.

(b) The amount of a charge under Subsection (a) may not exceed the amount of fees authorized for filing and recording an original financing statement in the standard form prescribed by the secretary of state.

(c) A holder may receive a charge authorized by this section only if the holder purchases nonfiling insurance in connection with the retail installment transaction.

(d) A holder is not required to furnish to a retail buyer a policy or certificate of insurance evidencing nonfiling insurance.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.213. Inclusion of Insurance Premiums.

A retail seller may include any type of insurance premium in the billing of its accounts if:

(1) a charge, other than the premium, is not made to the retail buyer in connection with that inclusion; and

(2) a charge is not made and a premium is not charged under a retail credit agreement when there is no monthly balance or the monthly balances are paid in full.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.214. Adding to Retail Installment Contract Premiums for Insurance Acquired After Transaction.

(a) A retail buyer and holder may agree to add to the unpaid balance of a retail installment contract premiums for insurance policies covering goods or services sold in a prior retail installment transaction under the contract or goods or services related to those goods or services, including premiums for the renewal of a policy included in the contract.

(b) A policy of insurance described by Subsection (a) must comply with the applicable requirements of Sections 345.201, 345.203, 345.207, and 345.208.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.215. Effect of Adding Premium to Contract or Agreement.

(a) If a premium is added to the unpaid balance of a retail installment contract under Section 345.206 or 345.214, the rate of time price differential agreed to in the retail installment contract remains in effect and shall be applied to the new unpaid balance or the contract may be rescheduled in accordance with Section 345.070.

(b) If a premium is added under a retail charge agreement, the premium shall be added to the unpaid balance under the agreement.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

SUBCHAPTER F. SPECIAL FEES AND FINANCE RATES

§ 345.251. Documentary Fee for Certain Vehicles.

(a) A retail seller may charge a documentary fee for services rendered to, for, or on behalf of a retail buyer in handling and processing documents relating to the sale of a motorcycle, moped, all-terrain vehicle, boat, boat motor, boat trailer, or towable recreational vehicle.

(b) If a documentary fee is charged under this section the fee:

(1) must be charged to cash buyers and credit buyers;

(2) may not exceed a reasonable amount agreed to by the retail seller and retail buyer for the documentary services, subject to a reasonable maximum amount set by rule by the finance commission; and

(3) must be disclosed on the buyer's order or retail installment contract as a separate itemized charge.

(c) A preliminary work sheet on which a sale price is computed and that is shown to the retail buyer, an order from the buyer, or a retail installment contract must include in reasonable proximity to the place on the document where the documentary fee is disclosed:

(1) the amount of the fee; and

(2) the following notice in type that is bold-faced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material:

"A DOCUMENTARY FEE IS NOT AN OFFICIAL FEE. A DOCUMENTARY FEE IS NOT REQUIRED BY LAW, BUT MAY BE CHARGED TO BUYERS FOR HANDLING DOCUMENTS RELATING TO THE SALE. A DOCUMENTARY FEE MAY NOT EXCEED A REASONABLE AMOUNT AGREED TO BY THE PARTIES THAT IS NOT MORE THAN THE MAXIMUM AMOUNT ALLOWED BY THE STATE. THIS NOTICE IS REQUIRED BY LAW."

(e) The finance commission may adopt rules necessary to implement and enforce this section.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2013, 83rd Leg., R.S., c. 43, § 1, eff. Sept. 1, 2013; Acts 2019, 86th Leg., c. 882, § 2.01, eff. Sept. 1, 2019.

§ 345.252. Time Price Differential for Certain Prepaid Funeral Benefits.

Prepaid funeral benefits regulated under Chapter 154 may be financed only at rates authorized by Chapter 303.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.253. Time Price Differential for Medical and Dental Services.

Medical or dental services may be financed only at rates authorized by Chapter 303.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

SUBCHAPTER G. ACQUISITION OF CONTRACT, AGREEMENT, OR BALANCE

§ 345.301. Authority to Acquire.

Notwithstanding any other law, a person may acquire a retail installment contract or retail charge agreement or an outstanding balance under a contract or agreement from another person on the terms, including the price, to which they agree.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.302. Lack of Notice Does Not Affect Validity as to Certain Creditors.

Notice to a retail buyer of an assignment or negotiation of a retail installment contract or retail charge agreement or an outstanding balance under a contract or agreement or a requirement that the retail seller be deprived of dominion

over payments on a contract or agreement or over the goods if returned to or repossessed by the seller is not necessary for a written assignment or negotiation of the contract or agreement or an outstanding balance under the contract or agreement to be valid as against a creditor, subsequent purchaser, pledgee, mortgagee, or lien claimant of the seller.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.303. Payment by Buyer.

Unless a retail buyer has notice of the assignment or negotiation of the buyer's retail installment contract or retail charge agreement or an outstanding balance under the contract or agreement, a payment by the buyer to the holder last known to the buyer is binding on all subsequent holders.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.304. Preservation of Buyer's Right of Action or Defense.

(a) A right of action or defense of a retail buyer arising out of a retail installment transaction is not affected by the negotiation of the retail installment contract or retail charge agreement to a third party except as authorized by other law and the third party:

(1) acquires the contract relying in good faith on a certificate of completion or certificate of satisfaction, if required by Section 345.081;

(2) gives notice of the negotiation to the buyer under Subsection (b); and

(3) does not receive from the buyer, before the 31st day after the day on which that notice is mailed, written notice of a fact that gives rise to a claim or defense of the buyer.

(b) A notice of negotiation must:

(1) be in writing addressed to the retail buyer at the address shown on the contract;

(2) identify the contract;

(3) state the names and addresses of the retail seller and retail buyer;

(4) describe the goods or services;

(5) state the time balance and a description of the payment schedule; and

(6) contain the following warning in at least 10-point type that is bold-faced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material:

ARE THE TERMS OF THE CONTRACT DESCRIBED ABOVE CORRECT AND ARE YOU SATISFIED WITH THE GOODS OR SERVICES FURNISHED? IF NOT, YOU SHOULD NOTIFY US GIVING DETAILS WITHIN 30 DAYS FROM THE DATE THE ABOVE NOTICE WAS MAILED.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

SUBCHAPTER H. OTHER PROVISIONS APPLICABLE TO CONTRACTS AND AGREEMENTS

§ 345.351. Registration of Holder.

(a) A holder who is not an authorized lender under Chapter 342 or a credit union shall:

(1) register with the Office of Consumer Credit Commissioner; and

(2) pay a fee in an amount determined under Section 14.107 for each location at which a retail installment transaction is originated, serviced, or collected.

(b) Subject to Section 14.112, the finance commission by rule may establish procedures to facilitate the registration and collection of fees under this section.

(c) A registration issued under this section is valid for the period prescribed by finance commission rule adopted under Section 14.112.

(d) The commissioner may refuse to renew the registration of a holder who fails to comply with an order issued by the commissioner to enforce this chapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., c. 867, § 96, eff. Sept. 1, 2001; Acts 2019, 86th Leg., c. 767, § 28, eff. Sept. 1, 2019; Acts 2023, 88th Leg., R.S., SB 1371, § 17, eff. Sept. 1, 2023.

§ 345.352. Seller's Promise to Pay or Tender of Cash to Buyer as Part of Transaction.

A retail seller may not promise to pay, pay, or otherwise tender cash to a retail buyer as a part of a transaction under this chapter unless specifically authorized by this chapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.353. Making of Contract or Agreement by Mail or Telephone.

The designation requirement of Section 345.051(b) and the notice requirement of Section 345.052(d) do not apply to a sale under a retail installment contract or retail charge agreement negotiated and entered into by mail or telephone without solicitation in person by a salesperson or other representative of the retail seller if the contract or agreement is based on a printed solicitation, including a catalog of the seller, that clearly sets forth the cash price of sales to be made through the printed solicitation.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.354. Prohibition on Power of Attorney to Confess Judgment and Assignment of Wages.

A retail installment contract or retail charge agreement may not contain:

(1) a power of attorney to confess judgment; or

(2) an assignment of wages.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.355. Prohibition on Certain Acts of Repossession.

A retail installment contract or retail charge agreement may not:

(1) authorize the holder or a person acting on the holder's behalf to:

(A) enter the retail buyer's premises unlawfully; or

(B) commit a breach of the peace in the repossession of goods; or

(2) provide for the retail buyer to execute a power of attorney appointing, as the buyer's agent in the repossession of goods, the holder or a person acting on the holder's behalf.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.356. Buyer's Waiver.

(a) A retail installment contract or retail charge agreement may not:

(1) provide for a waiver of the retail buyer's rights of action against the holder or a person acting on the holder's behalf for an illegal act committed in:

(A) the collection of payments under the contract or agreement; or

(B) the repossession of goods; or

(2) provide that the retail buyer agrees not to assert against the retail seller a claim or defense arising out of the sale.

(b) A retail buyer may not waive any provision of this chapter before or at the time of the making of a retail installment contract, retail charge agreement, or purchase under the contract or agreement.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 345.357. Prohibition on Certain Liens.

A retail installment contract or retail charge agreement may not provide for a first lien on real property to secure the obligation, other than a lien:

(1) created by law on the recording of an abstract of judgment; or

(2) provided for or granted by a contract or series of contracts for the sale or construction and sale of a structure to be used as a residence if the time price differential provided in the contract or agreement does not exceed an annual percentage rate permitted under this chapter or Chapter 303.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

CHAPTER 346. REVOLVING CREDIT ACCOUNTS

SUBCHAPTER A. GENERAL PROVISIONS

§ 346.001. Definitions.

In this chapter:

(1) "Billing cycle" means the interval between periodic billing statements.

(2) "Credit card" means a card, confirmation, or identification or check or other written request by which a customer obtains access to a revolving credit account.

(3) "Creditor" means an authorized lender who directly or through another who honors a credit card issued by the person, extends credit, including money loaned, to a customer under an agreement that provides for the use of a credit card.

(4) "Customer" means a person who has accepted a revolving credit account.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 346.002. Average Daily Balance.

(a) The average daily balance of a revolving credit account is computed by:

(1) adding all of the ending balances in the account during each day of a billing cycle; and

(2) dividing the total under Subdivision (1) by the number of days in the billing cycle.

(b) For purposes of Subsection (a), a day's ending balance is computed by:

(1) adding the previous day's ending balance and the amount of each loan, lease of goods, or purchase of goods or services posted to the account on the day for which the ending balance is being computed; and

(2) subtracting from the result under Subdivision (1) each credit or payment posted to the account on the day for which the ending balance is being computed.

(c) A day's ending balance may not include interest.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 346.003. Revolving Credit Accounts.

(a) A revolving credit account is an open-end account:

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

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

(3) under which:

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

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

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

(D) the customer may obtain from the creditor one or more extensions of credit as described by Subsection (b) or (c).

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

(c) A revolving triparty account is a revolving credit account under which:

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

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

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

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

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

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

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

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 346.004. Application of Chapter to Revolving Credit Accounts.

(a) 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 extended primarily for personal, family, or household use to a person who is located in this state at the time the loan is made or the extension of credit is entered into.

(b) 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.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2005, 79th Leg., c. 1018, § 2.17, eff. Sept. 1, 2005; Acts 2019, 86th Leg., c. 767, § 29, eff. Sept. 1, 2019.

§ 346.005. Application of Other Provisions.

(a) A revolving credit account is subject to Chapters 303 and 349 but is not subject to another chapter of this title unless specifically provided by this chapter.

(b) A creditor in a revolving credit account under this chapter for personal, family, or household use must hold a license under Chapter 342, unless the person is not required to obtain a license under Section 342.051.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., c. 887, § 1, eff. Sept. 1, 2003.

SUBCHAPTER B. INTEREST CHARGE AND FEES

§ 346.101. Maximum Interest Rate.

(a) A revolving credit account may provide for interest on an account at an annual rate that does not exceed the greater of:

(1) 18 percent a year; or

(2) the applicable alternative rate ceiling under Chapter 303.

(b) A revolving credit account may provide for interest computed under a method other than the average daily balance method if the amount of interest computed under that method does not exceed the amount of interest computed under the average daily balance method.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 1348, § 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., c. 887, § 2, eff. Sept. 1, 2003.

§ 346.102. Permissible Interest Rate for Billing Cycle.

(a) A revolving credit account that provides for equal billing cycles may provide for interest for a billing cycle at the rate equal to one-twelfth of the applicable annual interest rate on the average daily balance of the account during that billing cycle.

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

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

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

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 346.103. Fees.

(a) The following fees may be charged to or collected from a customer in connection with an account under this chapter:

(1) an annual fee not to exceed:

(A) $50 a year on an account with a credit limit of $5,000 or less;

(B) $75 a year on an account with a credit limit exceeding $5,000 but not exceeding $25,000; and

(C) $125 a year on an account with a credit limit exceeding $25,000;

(2) a late charge not to exceed the lesser of $15 or five percent of the payment due after the payment continues unpaid for 10 days or more after the date the payment is due, including Sundays and holidays;

(3) a cash advance charge not to exceed the greater of $2 or two percent of the cash advance;

(4) a returned check fee as provided for a loan agreement under Chapter 342 by Section 3.506, Business & Commerce Code; and

(5) a fee for exceeding a credit limit not to exceed the greater of $15 or five percent of the amount by which the credit limit is exceeded.

(b) A creditor may not charge, contract for, or receive interest on fees authorized under this section.

(c) A customer's monthly statement must contain the following notice printed or typed in at least 10-point type that is boldfaced, capitalized, underlined, or otherwise conspicuously set out from the surrounding written material: "A LATE CHARGE OF FIVE PERCENT OF THE PAYMENT DUE OR A MAXIMUM OF $15 WILL BE ASSESSED FOR A PAYMENT MADE 10 DAYS OR MORE AFTER THE DATE PAYMENT OF THIS BILL IS DUE."

(d) With respect to a revolving credit account secured by an interest in real property, a creditor may contract for, charge, and receive additional fees or charges permitted under Section 342.308 as if the revolving credit account were a secondary mortgage loan under Chapter 342.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 1348, § 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., c. 887, § 3, eff. Sept. 1, 2003; Acts 2011, 82nd Leg., R.S., c. 1182, § 9, eff. Sept. 1, 2011.

SUBCHAPTER C. CREDITORS DUTIES AND AUTHORITY

§ 346.201. Insurance; Collateral.

In connection with a revolving credit account, a creditor may require or take insurance subject to the provisions of Chapter 342, relating to insurance, as if the revolving credit account were a loan contract under that chapter. A creditor may require or take real or personal property as collateral.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.55, eff. Sept. 1, 1999; Acts 2003, 78th Leg., c. 887, § 4, eff. Sept. 1, 2003.

§ 346.202. Amounts Authorized to be Recovered From Customer.

(a) A creditor may recover from a customer amounts incurred by the creditor for:

(1) court costs;

(2) attorney's fees assessed by a court;

(3) a fee authorized by law for filing or recording in a public office a document securing a revolving credit account, including a document releasing a security interest;

(4) a fee for recording a lien on or transferring a certificate of title to a motor vehicle securing a revolving credit account;

(5) a reasonable amount spent for repossessing, storing, preparing for sale, or selling collateral; or

(6) a premium or an identifiable charge received in connection with sale of insurance authorized for a revolving credit account.

(b) With respect to a revolving credit account secured by an interest in real property, a creditor may contract for, charge, and receive additional fees or charges permitted under Section 342.307 as if the revolving credit account were a secondary mortgage loan under Chapter 342.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., c. 887, § 5, eff. Sept. 1, 2003.

§ 346.203. More Than One Revolving Credit Account Authorized.

(a) On a customer's request, a creditor may enter into more than one revolving credit account with the customer and may charge interest on each account.

(b) A creditor may not require that a customer enter into more than one revolving credit account for the purpose of collecting interest at a rate greater than the rate authorized by law.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 346.204. Amendment of Revolving Credit Account by Creditor.

(a) A creditor unilaterally may amend a revolving credit account.

(b) A change made under Subsection (a) that relates to an existing or future balance of a revolving credit account and that is adverse to the customer may not take effect before the first billing cycle that begins after the 90th day after the date of written notice of the change to the customer unless the amendment is made under Section 303.103.

(c) With respect to a revolving credit account secured by an interest in real property, a creditor who makes a change under Subsection (a) that relates to an existing or future balance of the account and that is adverse to the customer must comply with the procedures in Section 303.103.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., c. 1235, § 16, eff. Sept. 1, 2001; Acts 2003, 78th Leg., c. 887, § 6, eff. Sept. 1, 2003.

§ 346.205. Compliance With Federal Consumer Credit Protection Act.

This chapter does not change a creditor's obligation to comply with the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.)

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 346.206. Acceleration or Immediate Payment Demand Prohibited.

With respect to a revolving credit account secured by an interest in real property, a creditor may not accelerate or demand immediate payment of an amount owed under the account unless the customer is in default under the terms of the account agreement.

Added by Acts 2003, 78th Leg., c. 887, § 7, eff. Sept. 1, 2003.

CHAPTER 347. MANUFACTURED HOME CREDIT TRANSACTIONS

SUBCHAPTER A. GENERAL PROVISIONS

§ 347.001. Legislative Finding.

The legislature finds that credit transactions, both credit sales and consumer loans, for the purchase of manufactured homes should be regulated equally in the same chapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.002. Definitions.

(a) In this chapter:

(1) "Consumer" means a person to whom credit is extended in a credit transaction. The term includes a comaker, endorser, guarantor, surety, or another person who is obligated to repay the extension of credit.

(2) "Credit document" means a written instrument evidencing a credit transaction and includes all written agreements between each consumer and creditor that relate to that transaction.

(3) "Credit transaction" means:

(A) any sale, loan, or other transaction involving a retail purchase of a manufactured home and under which a person in a written agreement, including a credit sales contract or loan instrument, grants to another person a purchase money lien on the manufactured home to secure an extension of credit that is:

(i) subject to a finance charge; or

(ii) payable in more than four installments, not including a down payment; and

(B) a lease or bailment described by Section 347.003.

(4) "Creditor" means a:

(A) person who extends credit or arranges for the extension of credit in a credit transaction; or

(B) retailer or broker, as defined by Section 1201.003, Occupations Code, who participates in arranging for the extension of credit in a credit transaction.

(5) "Manufactured home" has the meaning assigned by Section 1201.003, Occupations Code. The term includes furniture, appliances, drapes, carpets, wall coverings, and other items that are:

(A) attached to or contained in the structure; and

(B) included in the cash price and sold with the structure.

(b) To the extent possible, a word or phrase used in this chapter, other than a term defined by this section, has the meaning assigned by the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) and its subsequent amendments, as implemented by Regulation Z (12 C.F.R. Part 1026).

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., c. 1276, § 14A.773, eff. Sept. 1, 2003; Acts 2017, 85th Leg., R.S., c. 408, § 72, eff. Sept. 1, 2017.

§ 347.003. Bailment or Lease as Credit Transaction.

(a) A bailment or lease of a manufactured home is a credit transaction if the bailee or lessee:

(1) agrees to pay as compensation for use of the manufactured home an amount that is substantially equal to or that exceeds the aggregate value of the property and services involved; and

(2) on compliance with the agreement becomes the owner of the manufactured home or has the option to become the owner of the manufactured home, for nominal or no additional consideration.

(b) A bailment or lease that the bailee or lessee may terminate at any time without penalty is not a credit transaction.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.004. Compliance With Federal Consumer Credit Protection Act.

(a) A creditor shall comply with all applicable requirements, including required disclosures, under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) and its subsequent amendments, as implemented by Regulation Z (12 C.F.R. Part 1026) adopted under that Act.

(b) A regulation, disclosure, or interpretation of this chapter that is inconsistent or in conflict with a federal regulation, disclosure, or interpretation does not apply.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997; Acts 2017, 85th Leg., R.S., c. 408, § 73, eff. Sept. 1, 2017.

§ 347.005. Federal Residential Mortgage Loans Programs.

(a) A creditor and consumer may agree to any provision in the credit transaction that is expressly authorized in a program for residential mortgage loans by the United States, including the Office of Thrift Supervision, the Office of the Comptroller of the Currency, or the Department of the Treasury.

(b) If a creditor and consumer agree on an alternative residential mortgage loan from a program described by Subsection (a), the creditor shall comply with all limitations and requirements, including required disclosures, of the regulating entity that relate to the loan.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.006. Waiver Not Valid.

No act or agreement of the consumer before or at the time of the making of a credit transaction or purchase under the transaction is a valid waiver of any provision of this chapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 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.

Added by Acts 2005, 79th Leg., c. 1018, § 2.18, eff. Sept. 1, 2005.

§ 347.008. Applicability.

Each credit transaction extended to a person who is located in this state at the time the transaction is entered into is subject to this chapter.

Added by Acts 2019, 86th Leg., c. 767, § 30, eff. Sept. 1, 2019.

SUBCHAPTER B. CREDIT DOCUMENT

§ 347.051. Appearance or Credit Document; Consumer Notice.

(a) The printed part of a credit document, other than instructions for completion, must be in at least eight-point type.

(b) A credit document must contain substantially:

"NOTICE TO THE CONSUMER--DO NOT SIGN THIS DOCUMENT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE DOCUMENT YOU SIGN. UNDER THE LAW YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND OBTAIN A SUBSTANTIAL REFUND OF THE CREDIT CHARGE. KEEP THIS DOCUMENT TO PROTECT YOUR LEGAL RIGHTS."

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.052. Disclosure of Amount of Delinquency Charge.

The creditor shall disclose in the credit document the amount or method of computing the amount of a charge that is payable if a payment on the credit transaction is late.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.053. Provisions Prohibited in Credit Document.

A credit document may not:

(1) contain a power of attorney to confess judgment in this state;

(2) contain an assignment of wages;

(3) provide that the consumer agrees not to assert against a creditor or an assignee of the credit transaction a claim or defense arising out of the sale; or

(4) authorize the creditor or a person acting on the creditor's behalf to:

(A) enter the consumer's premises unlawfully; or

(B) commit a breach of the peace in the repossession of a manufactured home.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.054. Consumer's Acknowledgment of Delivery of Credit Document.

(a) A consumer's acknowledgment of the delivery of a copy of the credit document is conclusive proof that:

(1) the document was delivered to the consumer; and

(2) the document did not contain a blank space that was required by this chapter to have been filled when the document was signed by the consumer.

(b) In an action or proceeding by or against a subsequent creditor who does not have knowledge to the contrary, a consumer's acknowledgment of the delivery of a copy of the credit document is conclusive proof that the creditor complied with this section.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.055. Credit Document After Amendment.

After a credit document is amended under Subchapter D, the document consists of:

(1) the original credit document;

(2) the writing required under Section 347.153 for that amendment; and

(3) each amendment to the original credit document adopted before that amendment.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.056. Authority of Consumer Credit Commissioner Relating to a Credit Document.

Except as provided by Section 347.004(a), the commissioner may not require the inclusion of any specific language or a disclosure on a credit document that is not expressly required by:

(1) this chapter; or

(2) a regulation of the Office of the Comptroller of the Currency.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2017, 85th Leg., R.S., c. 408, § 74, eff. Sept. 1, 2017.

SUBCHAPTER C. FINANCE CHARGE RATES AND ADJUSTMENTS

§ 347.101. Adjustable Rate.

A credit transaction may provide for an adjustable interest rate or time price differential in accordance with this subchapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.102. Requirements for Rate Adjustments.

(a) The interest rate or time price differential in a credit transaction may be adjusted at stated regular intervals if the credit document expressly:

(1) provides for the adjustment; and

(2) states the index described by Subsection (b) that is being used for the adjustment.

(b) The index must be:

(1) the monthly average gross yield to the Federal National Mortgage Association on accepted bids in weekly or biweekly auctions for four-month commitments to purchase FHA-insured or VA-guaranteed home mortgages, as published in the Federal Reserve Bulletin;

(2) the monthly average yield on United States Treasury securities adjusted to a constant maturity of five years as published in the Federal Reserve Bulletin; or

(3) an index expressly approved by the Office of Thrift Supervision or by the Office of the Comptroller of the Currency, Department of the Treasury, for adjustable or variable interest rates on residential mortgage loans.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.103. Rate Adjustment Index Base.

The index base for an adjustment of the interest rate or time price differential is set by the index value on the first day of the month in which the credit document is dated.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.104. Amount of Rate Adjustment.

(a) The amount of a rate adjustment is computed by subtracting the index base or, for a change after the initial change, the index value used for the preceding rate adjustment from the index value on the first day of a month that precedes the 50th day before the date on which the adjustment is to take effect. The amount is applied to the rate applicable to the credit transaction.

(b) The rate in a credit transaction may be adjusted only if the adjustment results in a change of at least one-eighth of one percent a year.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.105. Maximum Rate Adjustments.

(a) The total of the rate adjustments for any six-month period may not exceed one-half of one percent a year.

(b) If the stated interval for rate adjustments is a 12-month period or longer, a rate adjustment may not exceed one percent a year.

(c) The total of all rate adjustments over the term of the credit transaction may not exceed the least of:

(1) one-half of the initial rate;

(2) eight percent; or

(3) a rate, expressed as a percentage, computed by dividing the term of the loan in years by two.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.106. Mandatory Decrease; Optional Increase.

(a) If a computation under Section 347.104 results in a decrease, the creditor shall decrease the credit transaction's rate. If the creditor has agreed to impose periodic or aggregate limitations on rate adjustments that are smaller or more restrictive than the limitations prescribed by Section 347.105, those limitations apply to the decrease.

(b) A creditor may waive an increase that results from a computation under Section 347.104.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.107. Notice of Rate Adjustment.

(a) After the notice provided by this section has been given, the rate shall be increased or decreased by the amount determined by this subchapter.

(b) Before the 40th day preceding the payment date on which a rate adjustment is to take effect, the creditor shall mail to the consumer, postage prepaid, a notice that states:

(1) the initial credit transaction rate or the adjusted rate in effect on the date of the notice, as appropriate;

(2) the index base, or the index value used to compute the preceding rate adjustment, as appropriate, and the date on which the index base or value was determined;

(3) the index value used to compute the rate adjustment for which the notice is sent and the date on which the index value was determined;

(4) the amount of the rate adjustment;

(5) the new adjusted rate;
(6) the amount of the monthly payments on the indebtedness on the date of the notice;
(7) the adjusted amount of the monthly payments and the date on which the adjustment takes effect; and
(8) a statement of the prepayment rights of the consumer as set forth in the credit document.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.108. Prohibition on Use of Rate Adjustment and Certain Mortgages.

A credit transaction that provides for a rate adjustment under this subchapter may not permit the rate adjustment to be combined with a mortgage loan that has a term of five years or less or contain a provision that otherwise additionally allows the creditor to renegotiate, modify, or otherwise adjust the rate or term of the transaction within the 60-month period after the date of the transaction.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.109. Computation of Finance Charge for Disclosure.

(a) This section applies only for purposes of disclosure.

(b) The finance charge on a credit transaction is computed on the unpaid balance from the effective date of the transaction provided by the credit document until the payment date of the final installment, notwithstanding that the total of payments is required to be repaid in installments.

(c) The finance charge on a credit transaction that includes an adjustable rate provision is computed on the amount financed using the initial contract rate.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.110. Use of Optional Ceiling.

(a) This section applies to a credit transaction only if the federal usury preemptions for residential mortgage loans contained in the Veterans' Disability Compensation and Survivors' Benefits Act of 1979 (38 U.S.C. Section 101 et seq.), the Housing and Community Development Act of 1979 (42 U.S.C. Section 5401 et seq.), and the Depository Institutions Deregulation and Monetary Control Act of 1980 (12 U.S.C. Section 1735f-7) are expressly made inapplicable to transactions made in this state by an Act of the legislature of this state. Application of this section begins on the effective date of that Act.

(b) The interest or time price differential in a credit transaction may not exceed the amount obtained by applying a simple interest rate equal to 13.32 percent a year to the unpaid balance for the scheduled term of the transaction.

(c) If the credit transaction is payable for a period that is shorter or longer than a year or is for an amount that is less or greater than $100, the amount of the maximum charge computed under this section is decreased or increased proportionately.

(d) For the purpose of a computation under this section, 15 or more days of a month may be considered a full month.

(e) A transaction payable other than in substantially equal successive monthly installments beginning one month from the date of the credit document may provide for a finance charge that does not exceed an amount that, having due regard for the schedule of payments, provides the same effective return as if the credit transaction were payable in substantially equal successive monthly installments beginning one month from the date of the credit document.

(f) As an alternative to the rate authorized under Subsection (b), a credit transaction may provide for a rate that does not exceed the applicable optional interest rate ceiling under Chapter 303.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

SUBCHAPTER D. AMENDMENT OR PREPAYMENT OF CREDIT TRANSACTION

§ 347.151. Amendment of Credit Transaction.

(a) On a consumer's request, a creditor may:
(1) extend or defer the scheduled due date of all or part of one or more installments of the credit transaction;
(2) renew, restate, or reschedule the unpaid balance of the transaction; or
(3) increase or reduce the number of installments of the transaction.

(b) A creditor may collect a charge that does not exceed the amount computed by applying the credit transaction's interest rate or time price differential applicable on the date of adjustment to the remaining amount of the unpaid balance, computed under Section 347.155, for the period that the amount is extended or deferred.

(c) The creditor and consumer may agree to an unlimited number of extensions. The period of each extension is the period agreed to by the creditor and consumer.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.152. Alternative Method of Amendment of Credit Transaction.

(a) As an alternative to Section 347.151 the creditor, on the consumer's request, may agree to amend an original credit transaction by renewing, restating, or rescheduling the unpaid part of the total of payments.

(b) The charge for the amended credit transaction is computed on the unpaid balance of the transaction for the term of the transaction at the rate applicable to the transaction.

(c) For the purpose of Subsection (b), the unpaid balance of an amended credit transaction is computed by:

(1) adding:

(A) the unpaid balance of the transaction preceding the amendment;

(B) the cost of insurance incidental to the amendment;

(C) additional necessary official fees; and

(D) each accrued delinquency and collection charge; and

(2) subtracting from the total under Subdivision (1) the prepayment refund credit required by Section 347.155.

(d) The provisions of this chapter relating to minimum charges and acquisition costs do not apply to the computation of the unpaid balance for an amended credit transaction.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.153. Requirements for Amendment.

(a) Before an amendment of a credit transaction may take effect it must be:

(1) confirmed in writing;

(2) signed by the consumer; and

(3) returned to the creditor.

(b) The writing must state:

(1) the terms of the amendment; and

(2) the new due dates and amounts of the installments.

(c) The creditor shall:

(1) deliver a copy of the writing to the consumer; or

(2) mail a copy of the writing to the consumer's address shown on the credit document.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.154. Oral Amendment Not Binding.

An oral amendment to a credit transaction is not binding on the consumer or the creditor.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.155. Prepayment.

(a) A consumer may prepay in full the unpaid balance of a credit transaction at any time before maturity.

(b) On prepayment, after deduction of an acquisition charge that does not exceed $50, the consumer is entitled to a refund credit of the time price differential or interest. The amount of the credit is computed on an actuarial basis in accordance with regulations of the Office of the Comptroller of the Currency adopted under the Depository Institutions Deregulation and Monetary Control Act of 1980 (12 U.S.C. Section 1735f-7a et seq.) for the prepayment of a mortgage loan that is secured by a first lien on a residential manufactured home.

(c) In making the computation under Subsection (b), the creditor may assume that payments on the credit transaction have been made as originally scheduled, ignoring any difference created by a late or early payment.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2017, 85th Leg., R.S., c. 408, § 75, eff. Sept. 1, 2017.

SUBCHAPTER E. INSURANCE

§ 347.201. Property Insurance.

(a) A creditor may require a consumer to insure the property involved in a credit transaction with coverage designated by the creditor.

(b) Insurance required under this section may include federal flood coverage.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.202. Statement of Required Insurance.

(a) If insurance is required in connection with a credit transaction, the creditor shall give to the consumer a statement that clearly and conspicuously states that:

(1) insurance is required in connection with the transaction; and

(2) the consumer as an option may obtain and furnish equivalent insurance coverage through an insurance policy obtained from an insurance company authorized to do business in this state subject to the limitations of Section 347.208.

(b) The statement may be made with or be a part of the credit document.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.203. Consumer's Failure to Obtain Required Insurance.

(a) If at any time the consumer fails to obtain the required insurance, the creditor may:

(1) treat the failure as a default; or

(2) purchase the required insurance and add to the unpaid balance of the credit transaction the premium of the insurance and interest, at the interest rate or time price differential applicable to the transaction on the date the insurance is purchased.

(b) The insurance purchased under Subsection (a) may be in an amount up to but not in excess of the prepayment amount under Section 347.155 if the balance were prepaid on the date that the insurance is purchased.

(c) If insurance is purchased under Subsection (a), the creditor shall notify the consumer that:

(1) the insurance has been purchased under this section; and

(2) the premium for the insurance and interest on the premium have been added to the unpaid balance.

(d) The creditor may determine the period and number of installments in which the consumer is to pay the premium and interest, including payment of the total amount on the date of the last installment, payment in equal increments added to each of the remaining installments, or payment in a lesser number of installments or in unequal increments.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.204. Purchase of Additional Insurance After Date of Credit Document.

(a) A consumer may:

(1) purchase any insurance authorized by this chapter after the date of the credit document; and

(2) include the amount of the insurance premium in the unpaid balance of the credit transaction.

(b) Interest accrues on the insurance premium at a rate that does not exceed the interest rate or time price differential applicable to the credit transaction on the date the insurance is purchased.

(c) The additional insurance premium and interest may be paid in any period and any number of installments to which the consumer and creditor agree.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.205. Statement for Purchase of Optional Insurance.

(a) A consumer who elects to purchase optional insurance must sign a statement that:

(1) indicates the consumer's election; and

(2) describes the term, premium, and type of insurance purchased.

(b) The statement may be a part of the credit document or a part of a separate document.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.206. Requirements for Insurance Charge in Credit Transaction.

Insurance required by or included in a credit transaction must be written:

(1) at lawful rates;

(2) in accordance with the Insurance Code; and

(3) by a company authorized to do business in this state.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.207. Insurance Disclosures in Credit Document.

A credit document must disclose:

(1) the term, premium, and type of insurance the cost of which is included in the unpaid balance of the credit transaction; or

(2) the term and type of insurance required in accordance with this chapter if the cost of the insurance is not included in the unpaid balance.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.208. Creditor May Refuse to Accept Policy.

(a) If the consumer obtains insurance required under this chapter from someone other than the creditor, the creditor is entitled for good cause to refuse to accept certain insurance policies from insurance companies designated by the creditor.

(b) On the consumer's request the creditor shall deliver to the consumer a writing that states the reason for a refusal under Subsection (a).

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.209. Creditor's Duty if Insurance is Canceled, Adjusted, or Terminated.

(a) If insurance for which a charge is included in a credit transaction is canceled, adjusted, or terminated, the creditor shall:

(1) credit to the final maturing installments of the credit transaction the amount of the refund received by the creditor for unearned insurance premiums; and

(2) if the amount to be credited under Subdivision (1) is more than the unpaid balance of the credit transaction, refund to the consumer the difference between those amounts.

(b) A cash refund is not required under this section if the amount of the refund is less than $1.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.210. Single Interest Policy Prohibited.

Insurance that protects only the interest of the creditor is prohibited and may not be financed as part of a credit transaction.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.211. Gain or Advantage From Insurance Not Charge.

Any gain or advantage to a creditor or a creditor's employee, officer, director, agent, general agent, affiliate, or associate from insurance under this chapter or the provision or sale of insurance is not an additional finance charge or an additional charge in connection with a credit transaction except as specifically provided by this chapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

SUBCHAPTER F. PAYMENT OF INSURANCE AND TAXES

§ 347.251. Financing Insurance.

(a) A creditor may finance as part of a credit transaction insurance:

(1) required in accordance with Section 347.201; or

(2) requested by the consumer.

(b) The cost of the insurance required under Section 347.201 may be included as a separate charge in the credit transaction.

(c) The premium of any insurance included in the credit transaction may be included in the unpaid balance of the credit transaction and paid as part of the total of payments regardless of whether the term of the insurance is less than the term of the credit transaction.

(d) A consumer and creditor may agree that the purchase of additional insurance under Section 347.204 will be:

(1) in accordance with an insurance premium financing agreement made under the Insurance Code; and

(2) separate from the credit transaction.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.252. Payment of Insurance Premiums With Installments.

For insurance coverage required under Section 347.201 in the second and subsequent years of the credit transaction, a creditor may require the consumer to pay on each installment due date an amount equal to one-twelfth of the reasonably estimated yearly premium.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.253. Adjustment of Amounts Paid to Creditor for Insurance.

(a) If the amount held by a creditor to pay insurance premiums and the amounts for insurance to be paid to the creditor with installments before the due date of an insurance premium exceed the amount required to pay the insurance premium when it is due, the creditor, at the consumer's option, shall:

(1) repay the excess to the consumer; or

(2) credit the excess to the payment of the consumer's future insurance premium installments.

(b) If the amount held by the creditor to pay insurance premiums is not sufficient to pay an insurance premium when it is due, the consumer, not later than the 30th day after the date on which the creditor mails to the consumer notice requesting the consumer to pay the amount of the deficiency, shall pay to the creditor an amount equal to the amount of the deficiency.

(c) If the consumer fails to pay the amount under Subsection (b) for insurance required by the creditor under Section 347.201, the creditor may treat the deficiency in the same manner as provided by Section 347.203 for the consumer's failure to obtain the required insurance.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.254. Payment of Taxes Through Creditor.

(a) Except as provided by Subsection (c), a creditor shall require a consumer to pay ad valorem taxes on the manufactured home through the creditor.

(b) The creditor may:

(1) include in the credit transaction an amount equal to a reasonable estimate of the tax for the first year; or

(2) require that the consumer pay on each installment due date an amount equal to one-twelfth of the reasonable estimate of the tax for the first year.

(c) The escrow requirement of Subsection (a) does not apply to a transaction involving a manufactured home if the creditor is a federally insured financial institution and does not otherwise require the escrow of taxes, insurance premiums, fees, or other charges in connection with loans secured by residential real property.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., c. 338, § 40, eff. June 18, 2003.

§ 347.255. Adjustment of Amounts Paid to Creditor for Taxes.

(a) If the amount held by a creditor to pay ad valorem taxes on the manufactured home and the amounts for taxes to be paid to the creditor with installments before the due date of the tax exceed the amount required to pay the tax when it is due, the creditor, at the consumer's option, shall:

(1) repay the excess to the consumer; or

(2) credit the excess to the payment of the consumer's future tax installments.

(b) If the amount held by the creditor to pay ad valorem taxes on the manufactured home is not sufficient to pay the tax when it is due, the consumer, before the 31st day after the date on which the creditor mails to the consumer notice requesting the consumer to pay the amount of the deficiency, shall pay to the creditor an amount equal to the amount of the deficiency.

(c) If the consumer fails to pay the amount under Subsection (b), the creditor may treat the deficiency in the same manner as provided by Section 347.203 for the consumer's failure to obtain the required insurance.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.256. Creditor's Action on Consumer's Failure to Pay Taxes.

(a) If a consumer does not pay a tax that has been assessed against the manufactured home, the creditor may treat the failure as a default or may:

(1) pay to the appropriate taxing authority the unpaid tax and any interest or other charge due; and

(2) add to the unpaid balance of the credit transaction the amounts paid to the taxing authority and interest, at the interest rate or time price differential applicable to the transaction on the date payment is made.

(b) If the creditor pays a tax under this section, the creditor shall notify the consumer that:

(1) the tax and interest or other charges have been paid, as appropriate; and

(2) those amounts have been added to the unpaid balance of the credit transaction.

(c) The creditor may determine the period and number of installments in which the consumer is required to pay the amounts added to the unpaid balance, including payment of the entire amount on the date of the last installment, payment in equal increments added to each of the remaining installments, or payment in a lesser number of installments or unequal increments.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.257. Agreement to Include Taxes in Credit Transaction.

(a) A consumer and creditor may agree to:

(1) have the creditor pay taxes, and interest or other charges, assessed by a taxing authority against a manufactured home after the date of the credit document; and

(2) include the amount paid by the creditor in the unpaid balance of the credit transaction.

(b) Interest on the amounts added to the unpaid balance under this section accrues at the interest rate or time price differential applicable to the credit transaction.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.258. Deposit Amounts Paid for Taxes or Insurance.

(a) This section applies to amounts received in installments by a creditor for the payment of ad valorem taxes or insurance premiums.

(b) The creditor shall deposit and hold the amount in an institution the deposits or accounts of which are insured or guaranteed by a federal or state agency.

(c) The creditor shall use the amount to pay the ad valorem taxes or insurance on the manufactured home, as appropriate.

(d) The creditor may not charge an amount for:

(1) holding or paying an amount received;

(2) analyzing the account in which the amount is deposited; or

(3) verifying or compiling the bills to be paid.

(e) The creditor is not required to pay to the consumer any interest or earnings on an amount received.

(f) The creditor shall give to the consumer, without charge, an annual accounting of the amounts received showing credits and debits and the purpose for which each debit was made.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

SUBCHAPTER G. MISCELLANEOUS FEES AND CHARGES

§ 347.301. Fees for Transactions Without Real Property.

(a) This section applies only to a credit transaction that does not involve real property.

(b) Only a fee or tax that is paid by the creditor as required by law, including a rule, or a fee or tax paid on behalf of the consumer to a governmental entity in relation to the credit transaction may be charged to the consumer.

(c) A documentary fee for the preparation of a credit document may not be charged to the consumer.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.21(a), eff. Sept. 1, 1999.

§ 347.302. Charge Prohibited.

A creditor may not charge a consumer any amount in connection with processing a credit transaction rate adjustment under Subchapter C.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.307. Charges on Repossession.

A credit document may provide for payment of:

(1) reasonable attorney's fees;

(2) court costs and disbursements; and

(3) the charge and collection of actual and reasonable out-of-pocket expenses incurred in connection with repossession of the manufactured home that secures the payment of the credit transaction or foreclosure of a lien on the manufactured home, including costs of storing, reconditioning, and reselling the manufactured home, subject to the standards of good faith and commercial reasonableness set by the Business & Commerce Code.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.308. Fee for Transfer of Obligor on Debt.

A creditor may:

(1) agree to accept a subsequent consumer as an obligor under an existing obligation; and

(2) charge a transfer fee that does not exceed the greater of:

(A) $50; or

(B) one-half of one percent of the unpaid balance of the credit transaction computed under Section 347.155.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

SUBCHAPTER H. ACTIONS ON DEFAULT

§ 347.351. Delinquency Charge on Default.

(a) On each installment in default for more than 15 days, a creditor may collect a delinquency charge that does not exceed the lesser of an amount equal to five percent of the installment or $20.

(b) Only one delinquency charge may be collected on an installment, regardless of the period for which the installment remains in default.

(c) The charge or collection of a delinquency charge does not affect the right of a creditor to accelerate the debt under this subchapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.352. Acceleration of Debt Maturity.

A creditor may accelerate the maturity of all or a part of the amount owed under a credit transaction only if the consumer is in default on the performance of an obligation under the credit transaction.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.353. Computing Amount Owed for Purpose of Acceleration.

In computing the amount that is owed under a credit transaction, the creditor shall grant to the consumer a refund of the finance charge computed under Section 347.155.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.354. Accrual of Interest on Acceleration.

If payment of a debt is accelerated, interest accrues on the amount owed under the credit transaction, including expenses authorized under Section 347.307 that are incurred, at a rate equal to the rate applicable to the credit transaction at the time of the acceleration.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.355. Repossession on Default.

(a) If a consumer is in default, the creditor who possesses the first recorded perfected security interest may repossess the manufactured home.

(b) If the manufactured home is affixed to real property, the creditor, after notice, may remove the manufactured home from the real property in accordance with the applicable provisions of the Business & Commerce Code as if it were personal property.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.356. Requirements for Action to Repossess, Foreclose, or Accelerate Payment of Entire Debt.

An action to repossess a manufactured home, foreclose a lien on a manufactured home, or accelerate payment of the entire unpaid balance of a credit transaction must comply with the regulations of the Office of the Comptroller of the Currency relating to the disclosure required for repossession, foreclosure, or acceleration except in extreme circumstances, including abandonment or voluntary surrender of the manufactured home.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2017, 85th Leg., R.S., c. 408, § 76, eff. Sept. 1, 2017.

§ 347.357. Disposal of Insurance and Tax Escrow Account on Default.

If a consumer is in default, the amount in the consumer's insurance and tax escrow accounts established under Section 347.258 shall be applied to the remaining balance of the credit transaction.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

SUBCHAPTER I. SECURITY INTERESTS IN MANUFACTURED HOMES

§ 347.401. Priority of Security Interest for Unpaid Rental of Real Property.

Except as provided by this subchapter, a lien or charge against a manufactured home for unpaid rental of the real property on which the manufactured home is or has been located is subordinate to the rights of a creditor with a security interest or lien that is:

(1) perfected under this chapter; and

(2) recorded on the document of title issued on the manufactured home.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.402. Possessory Lien.

(a) The owner of the real property on which a manufactured home is or has been located and for which rental charges have not been paid has a possessory lien that is not subject to Section 347.401 to secure rental charges described by Subsection (b) if:

(1) the creditor described by Section 347.401 repossesses the manufactured home when the charges have not been paid; and

(2) the owner of the real property has mailed to the creditor by certified mail, return receipt requested, written notice of the unpaid charges.

(b) The possessory lien secures rental charges that begin to accrue:

(1) for a manufactured home that is abandoned or voluntarily surrendered by the consumer, from and after the 15th day after the date on which the creditor receives the written notice of the unpaid charges; or

(2) for a manufactured home that is not abandoned or voluntarily surrendered by the consumer, from and after the 15th day after the first day on which both:

(A) all notice and grace periods that the creditor is required to give the consumer before repossession under any applicable contract or law have expired; and

(B) the creditor has received the written notice of the unpaid charges.

(c) The maximum daily rental charge that is secured by the possessory lien is equal to one-thirtieth of the monthly rental payment last paid by the consumer.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.403. Amounts That May Be Recovered By Real Property Owner.

In addition to the recovery of the rental charges, the owner of real property who is required to retain legal counsel to recover the amounts subject to the possessory lien under Section 347.402 is entitled to recover:

(1) other actual damages;

(2) attorney's fees; and

(3) court costs.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.404. Liability of Real Property Owner for Refusal to Allow Creditor to Repossess Manufactured Home.

(a) Unless an owner of real property has a possessory lien that has priority under Section 347.402, the owner of the real property may not refuse to allow a creditor to repossess and move the manufactured home.

(b) An owner of the real property who unlawfully refuses to allow the creditor to repossess and move the manufactured home is liable to the creditor for:

(1) an amount computed for each day that the owner of the real property maintains possession of the home equal to one-thirtieth of the monthly payment last paid by the consumer on the credit transaction;

(2) other actual or exemplary damages;

(3) attorney's fees;

(4) court costs; and

(5) any injunctive relief ordered by a court.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

SUBCHAPTER J. RIGHTS AND DUTIES OF CREDITOR AND RESIDENTIAL MORTGAGE LOAN ORIGINATOR

§ 347.451. Registration of Certain Creditors.

(a) A creditor who is not an authorized lender under Chapter 342 or a credit union shall:

(1) register with the Office of Consumer Credit Commissioner; and

(2) pay a fee in an amount determined under Section 14.107 for each location at which a credit transaction is originated, serviced, or collected.

(a-1) A registration issued under this section is valid for the period prescribed by finance commission rule adopted under Section 14.112.

(b) Subject to Section 14.112, the finance commission by rule may establish procedures to facilitate the registration and collection of fees under this section.

(b-1) A registered creditor that engages in the activity of originating a residential mortgage loan must meet the surety bond or recovery fund fee requirement, as applicable, of the creditor's residential mortgage loan originator under Section 180.058.

(c) If a creditor fails to renew the creditor's registration, the commissioner shall, not later than the 30th day after the date of expiration of the registration, notify the creditor of the expiration and of the procedures applicable to renewal.

(d) A creditor shall file the registration renewal and pay the registration fee to the commissioner not later than the 30th day after the date on which the creditor receives the notice under Subsection (c).

(e) The commissioner may refuse to renew the registration of a creditor who fails to comply with an order issued by the commissioner to enforce this chapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., c. 867, § 97, eff. Sept. 1, 2001; Acts 2009, 81st Leg., R.S., c. 1104, § 13, eff. June 19, 2009; Acts 2019, 86th Leg., c. 767, § 31, eff. Sept. 1, 2019; Acts 2023, 88th Leg., R.S., SB 1371, § 18, eff. Sept. 1, 2023.

§ 347.4515. Residential Mortgage Loan Originator License Required.

(a) In this section, "Nationwide Mortgage Licensing System and Registry" and "residential mortgage loan originator" have the meanings assigned by Section 180.002.

[Text of subsection (a-1) added by Acts 2019, 86th Leg., c. 767, § 32, eff. Sept. 1, 2019.]

(a-1) A license issued under this section is valid for the period prescribed by finance commission rule adopted under Section 14.112.

[Text of subsection (b) amended by Acts 2019, 86th Leg., c. 695, § 5, eff. Nov. 24, 2019.]

(b) Unless exempt under Section 180.003, or acting under the temporary authority described under Section 180.0511, an individual who acts as a residential mortgage loan originator in the making, transacting, or negotiating of an extension of credit subject to this chapter must:

(1) be individually licensed to engage in that activity under this chapter;

(2) be enrolled with the Nationwide Mortgage Licensing System and Registry as required by Section 180.052; and

(3) comply with other applicable requirements of Chapter 180 and rules adopted under that chapter.

[Text of subsection (c) amended by Acts 2019, 86th Leg., c. 767, § 32, eff. Sept. 1, 2019.]

(c) Subject to Section 14.112, the finance commission shall adopt rules establishing procedures for issuing, renewing, and enforcing an individual license under this section. In adopting rules under this subsection, the finance commission shall ensure that:

(1) the minimum eligibility requirements for issuance of an individual license are the same as the requirements of Section 180.055;

(2) the minimum eligibility requirements for renewal of an individual license are the same as the requirements of Section 180.059; and

(3) the applicant pays:

(A) an investigation fee in a reasonable amount determined by the commissioner; and

(B) a license fee in an amount determined as provided by Section 14.107.

(d) The finance commission may adopt rules under this chapter as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

[Text of subsection (e) added by Acts 2019, 86th Leg., c. 767, § 32, eff. Sept. 1, 2019.]

(e) The commissioner may refuse to renew the license of an individual described by Subsection (b) who fails to comply with an order issued by the commissioner to enforce this chapter.

Added by Acts 2009, 81st Leg., R.S., c. 1104, § 14, eff. June 19, 2009. Amended by Acts 2019, 86th Leg., c. 767, § 32, eff. Sept. 1, 2019; Acts 2019, 86th Leg., c. 695, § 5, eff. Nov. 24, 2019.

§ 347.452. Acquisition and Transfer of Credit Transaction or Balance.

(a) A person may acquire or agree to acquire from another person a credit transaction or an unpaid balance under a credit transaction on the terms and for the price to which the parties agree.

(b) Notice to the consumer of the transfer of rights or a requirement that the creditor be deprived of dominion over payments on a credit transaction or over a manufactured home that is returned to or repossessed by the creditor is not necessary for a written transfer of the credit transaction or an unpaid balance under the transaction to be valid as against a creditor, subsequent purchaser, pledgee, mortgagee, or lien claimant of the creditor.

(c) Unless the consumer has notice of the transfer of the consumer's credit transaction or an unpaid balance under the transaction, a payment made by the consumer to the creditor last known to the consumer is binding on each subsequent creditor.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.453. Effect of Disclosure by One of Several Creditors.

In a credit transaction involving more than one creditor, the disclosure of an item by a creditor satisfies the requirement to disclose that item regardless of which creditor makes the disclosure.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.454. Disclosure If More Than One Consumer.

In a credit transaction involving more than one consumer, the creditor is required to give the disclosures required by this chapter to only one of the consumers.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.455. Real Property in Credit Transactions.

(a) A creditor and consumer may agree to include real property in the cash price of a credit transaction if:

(1) the real property does not exceed 200 acres;

(2) the real property is purchased by the consumer simultaneously or in conjunction with the purchase of the manufactured home, regardless of whether the real property and manufactured home are sold by the same person; and

(3) the creditor and consumer agree that the manufactured home is to be attached to the real property within a reasonable time.

(b) If the real property is included in the cash price of a credit transaction, the creditor may:

(1) charge a fee that is ordinarily associated with a real property transaction and is not prohibited by law, including a fee that is associated with a real property transaction and excluded from a finance charge under this chapter by the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) and Regulation Z (12 C.F.R. Part 1026) adopted under that Act; and

(2) elect to treat the manufactured home as if it were residential real property for all purposes in connection with the credit transaction by conspicuously disclosing that election to the consumer.

(c) On an election under Subsection (b)(2):

(1) the credit transaction is considered to be a residential real property loan for all purposes; and

(2) this chapter, other than the definitions assigned by this chapter, does not apply to the credit transaction.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2017, 85th Leg., R.S., c. 408, § 77, eff. Sept. 1, 2017.

SUBCHAPTER K. CREDITORS LIABILITY; PENALTIES

§ 347.501. Creditor's Liability Related to Deposit.

A creditor is liable for the penalty provided by Section 349.003 if the creditor:

(1) fails to order the manufactured home or fails to hold the manufactured home in inventory in accordance with the deposit agreement under Section 347.303 or 347.304, respectively; or

(2) retains as a deposit an amount that exceeds the amount authorized by Subchapter H.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.502. Liability for Charge Exceeding Amount Authorized.

(a) Notwithstanding Chapter 349, a creditor who contracts for, charges, or receives a charge relating to a credit transaction, other than interest or time price differential, that is more than that authorized by this chapter is liable to the consumer as provided by Section 349.003.

(b) For purposes of this section, a late fee, default charge, or delinquency charge is included as a charge relating to a credit transaction.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.503. Creditor's Liability for Error in Pay-Off Quotation.

Notwithstanding Chapter 349, a creditor that responds to a consumer's request for a pay-off quotation under this chapter by delivering to the consumer a written statement indicating that the consumer owes a total amount on the credit transaction that exceeds the amount authorized by this chapter is liable to the consumer under Section 349.003.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.504. Creditor's Liability for Oral or Unsolicited Written Statement of Amount Owed.

On a credit transaction a creditor is not liable for an oral statement of an amount owed or for a written statement of an amount owed that is not solicited by a debtor unless the statement:

(1) is made with a demand by a creditor that the consumer pay an amount that exceeds the amount authorized by this subtitle; or

(2) is contained in a solicitation to renew or refinance existing debt.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.505. Penalty for Failure to Register.

(a) The commissioner may impose a penalty not to exceed $50 for failure to register as required by Section 347.451(a).

(b) The commissioner may impose a penalty not to exceed $250 for failure to renew an existing registration and submit the appropriate fee before the expiration of the period described by Section 347.451(d).

(c) The penalties provided by this section are the exclusive penalties for a violation of Section 347.451.

(d) The fact that a creditor was not registered as required by Section 347.451 when a contract was executed does not:

(1) render a contract invalid or unenforceable if the contract is otherwise enforceable; or

(2) subject the creditor to liability under any other law, including common law, other than the liability established by this section.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 347.506. When Act or Omission Not Violation.

(a) An act or omission does not violate this chapter if the act or omission conforms to an interpretation of any provision of this chapter that is in effect at the time of the act or omission and that:

(1) was made by the commissioner under Section 14.108; or

(2) is a final decision of an appellate court of this state or the United States.

(b) If the interpretation or decision is modified, rescinded, or invalidated by a subsequent interpretation or final decision, the subsequent interpretation or final decision does not apply to a credit transaction made before the effective date of the subsequent interpretation or final decision.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

CHAPTER 348. MOTOR VEHICLE INSTALLMENT SALES

SUBCHAPTER A. GENERAL PROVISIONS

§ 348.001. Definitions.

In this chapter:

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

(A) the motor vehicle being purchased; and

(B) each motor vehicle being traded in.

(1-a) "Commercial vehicle" has the meaning assigned by Section 353.001.

(1-b) "Debt cancellation agreement" means a retail installment contract term or a contractual arrangement modifying a retail installment contract term under which a retail seller or holder agrees to cancel all or part of an obligation of the retail buyer to repay an extension of credit from the retail seller or holder on the occurrence of the total loss or theft of the motor vehicle that is the subject of the retail installment contract but does not include an offer to pay a specified amount on the total loss or theft of the motor vehicle.

(2) "Heavy commercial vehicle" has the meaning assigned by Section 353.001.

(3) "Holder" means a person who is:

(A) a retail seller; or

(B) the assignee or transferee of a retail installment contract.

(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 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.

(5) "Retail buyer" means a person who purchases or agrees to purchase a motor vehicle from a retail seller in a retail installment transaction.

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

(7) "Retail installment transaction" means a transaction in which a retail buyer purchases a motor 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.

(8) "Retail seller" means a person in the business of selling motor vehicles to retail buyers in retail installment transactions.

(9) "Time price differential" means the total amount added to the principal balance to determine the balance of the retail buyer's indebtedness under a retail installment contract.

(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 Motor Vehicles 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.

(11) "Trade-in credit agreement" means a contractual arrangement under which a retail seller agrees to provide a specified amount as a motor vehicle trade-in credit for the diminished value of the motor vehicle that is the subject of the retail installment contract in connection with which the trade-in credit agreement is offered if the motor vehicle is damaged but not rendered a total loss as a result of a collision accident, with the credit to be applied toward the purchase or lease of a different motor vehicle from the retail seller or an affiliate of the retail seller. A trade-in credit agreement is a separate agreement from a retail installment contract and is not a term of the retail installment contract.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2005, 79th Leg., c. 1018, § 2.19, eff. Sept. 1, 2005; Acts 2009, 81st Leg., R.S., c. 149, § 1, eff. Sept. 1, 2009; Acts 2009, 81st Leg., R.S., c. 238, § 3, eff. Sept. 1, 2009; Acts 2009, 81st Leg., R.S., c. 676, § 1, eff. Sept. 1, 2009; Acts 2009, 81st Leg., R.S., c. 933, § 3D.02, eff. Sept. 1, 2009; Acts 2011, 82nd Leg., R.S., c. 91, § 27.001(12), eff. Sept. 1, 2011; Acts 2011, 82nd Leg., R.S., c. 117, § 7, eff. Sept. 1, 2011; Acts 2017, 85th Leg., R.S., c. 477, § 1, eff. Sept. 1, 2017.

§ 348.0015. Presumption Regarding Noncommercial Vehicles; Exception.

(a) A motor vehicle that is not described by Section 353.001(1)(A), (B), or (C) or a motor vehicle that is of a type typically used for personal, family, or household use, as determined by finance commission rule, is presumed not to be a commercial vehicle.

(b) Notwithstanding Subsection (a), if a retail buyer represents in writing that a motor vehicle is not for personal, family, or household use, or that the vehicle is for commercial use, a retail seller or holder to whom the representation is made may rely on that representation unless the retail seller or holder, as applicable, has actual knowledge that the representation is not true.

Added by Acts 2009, 81st Leg., R.S., c. 238, § 4, eff. Sept. 1, 2009. Amended by Acts 2011, 82nd Leg., R.S., c. 117, § 8, eff. Sept. 1, 2011.

§ 348.002. Bailment or Leases as Retail Installment Transaction.

A bailment or lease of a motor vehicle is a retail installment transaction if the bailee or lessee:

(1) contracts to pay as compensation for use of the vehicle an amount that is substantially equal to or exceeds the value of the vehicle; and

(2) on full compliance with the bailment or lease is bound to become the owner or, for no or nominal additional consideration, has the option to become the owner of the vehicle.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.003. Classification as Retail Installment Transaction Unaffected.

A transaction is not excluded as a retail installment transaction because:

(1) the retail seller arranges to transfer the retail buyer's obligation;

(2) the amount of any charge in the transaction is determined by reference to a chart or other information furnished by a financing institution;

(3) a form for all or part of the retail installment contract is furnished by a financing institution; or

(4) the credit standing of the retail buyer is evaluated by a financing institution.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.004. Cash Price.

(a) The cash price is the price at which the retail seller offers in the ordinary course of business to sell for cash the goods or services that are subject to the transaction. An advertised price does not necessarily establish a cash price.

(b) The cash price does not include any finance charge.

(c) At the retail seller's option, the cash price may include:

(1) the price of accessories;

(2) the price of services related to the sale;

(3) the price of service contracts;

(4) taxes; and

(5) fees for license, title, and registration.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2009, 81st Leg., R.S., c. 676, § 4, eff. Sept. 1, 2009.

§ 348.005. Itemized Charge.

An amount in a retail installment contract is an itemized charge if the amount is not included in the cash price and is the amount of:

(1) fees for registration, certificate of title, and license and any additional registration fees charged by a full service deputy under Section 520.0071, Transportation Code;

(2) any taxes;

(3) fees or charges prescribed by law and connected with the sale or inspection of the motor vehicle; and

(4) charges authorized for insurance, service contracts, warranties, automobile club memberships, trade-in credit agreements, or a debt cancellation agreement by Subchapter C.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Laws 2009, 81st Leg., R.S., c. 149, § 2, eff. Sept. 1, 2009; Acts 2013, 83rd Leg., R.S., c. 355, § 1, eff. Sept. 1, 2013. Reenacted and amended byActs 2015, 84th Leg., R.S., c. 1236, Sec. 8.001, eff. Sep. 1, 2015. Amended by Acts 2017, 85th Leg., R.S., c. 477, § 2, eff. Sept. 1, 2017

§ 348.0051. Repealed by Acts 2011, 82nd Leg., R.S., c. 117, § 26(3), eff. Sept. 1, 2011.

§ 348.006. Principal Balance; Inclusion of Documentary Fee.

(a) The principal balance under a retail installment contract is computed by:

(1) adding:

(A) the cash price of the motor vehicle;

(B) each amount included in the retail installment contract for an itemized charge; and

(C) subject to Subsection (c), a documentary fee for services rendered for or on behalf of the retail buyer in handling and processing documents relating to the motor vehicle sale; and

(2) subtracting from the results under Subdivision (1) the amount of the retail buyer's down payment in money, goods, or both.

(b) The computation of the principal balance may include an amount authorized under Section 348.404(b).

(c) For a documentary fee to be included in the principal balance of a retail installment contract:

(1) the retail seller must charge the documentary fee to cash buyers and credit buyers;

(2) the documentary fee may not exceed a reasonable amount agreed to by the retail seller and retail buyer for the documentary services; and

(3) the buyer's order and the retail installment contract must include:

(A) a statement of the amount of the documentary fee; and

(B) in reasonable proximity to the place in each where the amount of the documentary fee is disclosed, the following notice in type that is bold-faced, capitalized, underlined, or otherwise conspicuously set out from surrounding written material:

"A DOCUMENTARY FEE IS NOT AN OFFICIAL FEE. A DOCUMENTARY FEE IS NOT REQUIRED BY LAW, BUT MAY BE CHARGED TO BUYERS FOR HANDLING DOCUMENTS RELATING TO THE SALE. A DOCUMENTARY FEE MAY NOT EXCEED A REASONABLE AMOUNT AGREED TO BY THE PARTIES. THIS NOTICE IS REQUIRED BY LAW."

(d) A retail seller shall post the documentary fee notice prescribed in Subsection (c) so that it is clearly visible in each place where a vehicle sale is finalized. If the language primarily used in an oral sales presentation is not the same as the language in which the retail installment contract is written, the retail seller shall furnish to the retail buyer a written statement containing the notice set out in Subsection (c)(3)(B) in the language primarily used in the oral sales presentation.

(e) Prior to increasing the maximum amount of the documentary fee the retail seller charges, a retail seller shall provide written notice to the commissioner of the maximum amount of the documentary fee the retail seller intends to charge unless the maximum amount intended to be charged is considered reasonable as provided by Subsection (f). The commissioner may review the amount of a documentary fee a retail seller intends to charge for reasonableness if the retail seller is required to provide written notice of the fee increase under this subsection. In determining whether a fee charged by a retail seller is reasonable, the commissioner may consider the resources required by the retail seller to perform the retail seller's duties under state and federal law with respect to the handling and processing of documents relating to the sale and financing of a motor vehicle. If the commissioner determines that a documentary fee charged is not reasonable, the commissioner may require that the documentary fee charged be reduced or suspended.

(e-1) Except as provided by Subsections (e-2) and (e-3), the following information and documents are confidential and not subject to disclosure:

(1) all information provided by a retail seller to the commissioner under Subsection (e), including the maximum documentary fee a retail seller intends to charge, the written notice of an increased documentary fee, and any financial information submitted with the notice; and

(2) all correspondence between a retail seller and the commissioner or the commissioner's representative relating to the notice of an increased documentary fee under Subsection (e) and a review for reasonableness of the amount of the documentary fee to be charged.

(e-2) The commissioner may disclose information or documents that are confidential under Subsection (e-1) if:

(1) the commissioner determines that release of the information or documents is required for an administrative hearing;

(2) the retail seller consents to the release of the information or documents; or

(3) the disclosure is required by a court order.

(e-3) The commissioner or the commissioner's representative may disclose whether a retail seller has filed written notice of an increased documentary fee and the proposed amount of the increased fee to:

(1) a holder that provides written proof, signed by the retail seller, that the retail seller has agreed to assign or transfer one or more retail installment contracts to the holder; or

(2) a prospective retail buyer that provides to the commissioner:

(A) a buyer's order executed by the prospective buyer and the retail seller;

(B) a draft of a retail installment contract provided by the retail seller to the prospective buyer; or

(C) a written statement by the retail seller acknowledging that the person is a prospective buyer of a motor vehicle from the retail seller.

(f) A documentary fee charged in accordance with this section is considered reasonable for purposes of this section if the amount is less than or equal to the amount of the documentary fee presumed reasonable as established by rule of the finance commission.

(g) This section does not:

(1) create a private right of action; or

(2) require that the commissioner approve a specific documentary fee amount before a retail seller charges the fee.

(h) The finance commission may adopt rules, including rules relating to the standards for a reasonableness determination or disclosures, necessary to enforce this section. A rule adopted under this subsection may not require a

retail seller to submit to the commissioner for prior approval the amount of a documentary fee that the retail seller intends to charge under this section.

(i) The commissioner has exclusive jurisdiction to enforce this section.

(j) Repealed by Acts 2011, 82nd Leg., R.S., c. 117, § 26(3), eff. Sept. 1, 2011.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 800, § 1, eff. Sept. 1, 1999; Acts 2009, 81st Leg., R.S., c. 1327, § 1, eff. Sept. 1, 2009; Acts 2011, 82nd Leg., R.S., c. 117, § 9, eff. Sept. 1, 2011; Acts 2011, 82nd Leg., R.S., c. 117, § 26(3), eff. Sept. 1, 2011; Acts 2011, 82nd Leg., R.S., c. 1182, § 10, eff. Sept. 1, 2011; Acts 2017, 85th Leg., R.S., c. 875, § 1, eff. Sept. 1, 2017.

Section 2 of Acts 2017, 85th Leg., R.S., c. 875, provides:

Sections 348.006(e) and (f), Finance Code, as amended by this Act, apply only to the sale of a motor vehicle that occurs on or after the effective date of this Act. The sale of a motor vehicle that occurs before the effective date of this Act is governed by the law in effect on the date of the sale, and the former law is continued in effect for that purpose.

§ 348.007. Applicability of Chapter.

(a) Except as otherwise provided by this section, each retail installment transaction extended to a person who is located in this state at the time the transaction is entered into is subject to this chapter.

(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.

(a-2) Repealed by Acts 2011, 82nd Leg., R.S., c. 117, § 26(1), eff. Sept. 1, 2011.

(a-2) Repealed by Acts 2011, 82nd Leg., R.S., c. 117, § 26(2), eff. Sept. 1, 2011.

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

(c) The provisions of this chapter defining specific rates and amounts of charges and requiring certain credit disclosures to be made control over any contrary law of this state respecting those subjects.

(d) A retail installment transaction in which a retail buyer purchases a motor vehicle that is a commercial vehicle is not subject to this chapter and is subject to Chapter 353 if the retail installment contract states that Chapter 353 applies.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2005, 79th Leg., c. 1018, § 2.20, eff. Sept. 1, 2005; Acts 2009, 81st Leg., R.S., c. 238, § 7, eff. Sept. 1, 2009; Acts 2009, 81st Leg., R.S., c. 676, § 2, eff. Sept. 1, 2009; Acts 2011, 82nd Leg., R.S., c. 117, § 10, eff. Sept. 1, 2011; Acts 2011, 82nd Leg., R.S., c. 117, § 26(1), eff. Sept. 1, 2011; Acts 2011, 82nd Leg., R.S., c. 117, § 26(2), eff. Sept. 1, 2011; Acts 2019, 86th Leg., c. 767, § 33, eff. Sept. 1, 2019.

§ 348.008. Applicability of Other Statutes to Retail Installment Transaction.

(a) A loan or interest statute of this state, other than Chapter 303, does not apply to a retail installment transaction.

(b) Except as provided by this chapter, an applicable statute, including Title 1, Business & Commerce Code, or a principle of common law continues to apply to a retail installment transaction unless it is displaced by this chapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.009. Federal Disclosure Requirements Applicable.

(a) The disclosure requirements of Regulation Z (12 C.F.R. Parts 226 and 1026) adopted under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) and specifically 12 C.F.R. Sections 226.18(f) and 1026.18(f), regarding variable rate disclosures, apply according to their terms to retail installment transactions..

(b) If a disclosure requirement of this chapter and one of a federal law, including a regulation or an interpretation of law, are inconsistent or conflict, federal law controls and the inconsistent or conflicting disclosures required by this chapter need not be given.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2023, 88th Leg., R.S., SB 1371, § 19, eff. Sept. 1, 2023.

§ 348.0091. Disclosure of Equity in Trade in Motor Vehicle.

(a) A retail seller may not accept a trade-in motor vehicle for a motor vehicle sold under a retail installment contract unless the retail seller provides to the retail buyer, before the buyer signs the contract, a completed disclosure of trade-in equity form prescribed by this section.

(b) The finance commission shall by rule adopt a standard form for the disclosure of the equity in a retail buyer's trade-in motor vehicle.

(c) The form adopted by the finance commission under Subsection (b), at a minimum, must:

(1) contain:

(A) the name of the retail buyer;

(B) the name, address, and telephone number of the retail seller;

(C) the make, model, year, and vehicle identification number of the trade-in motor vehicle;

(D) the date of the retail installment transaction;

(E) the amount offered by the retail seller to the retail buyer for the trade-in motor vehicle;

(F) the amount the retail buyer owes on the trade-in motor vehicle as of the date of the retail installment transaction;

(G) a statement indicating whether the retail buyer's equity in the trade-in motor vehicle is positive or negative;

(H) a disclosure containing substantially similar words to the following: "If the EQUITY amount is NEGATIVE, the value the retail seller is offering you for your trade-in motor vehicle is less than what you currently owe on your trade-in. The amount of negative equity may be further reduced by the amount of any cash down payment and manufacturer's rebate and may be included in the amount financed under your retail installment contract as an itemized charge.";

(I) the cash price of the vehicle being purchased under the retail installment transaction; and

(J) the amount financed under the retail installment contract;

(2) include a space for the signature of both the retail seller and retail buyer and the printed name of the retail seller; and

(3) be signed and dated by the retail seller and retail buyer.

(d) The retail seller is solely responsible for the content and delivery of the disclosure form required by Subsection (a). An assignee of a retail installment contract may not be held responsible for a retail seller's failure to comply with the requirements of this section.

(e) This section does not create a private right of action. The commissioner has exclusive jurisdiction to enforce this section.

Added by Acts 2009, 81st Leg., R.S., c. 676, § 3, eff. Sept. 1, 2009.

Section 13 of Acts 2009, 81st Leg., R.S., c. 676 provides:

(a) As soon as practicable after the effective date of this Act, the Finance Commission of Texas shall adopt the form required by Section 348.0091, Finance Code, as added by this Act.

(b) Notwithstanding Section 348.0091, Finance Code, as added by this Act, a retail seller is not required to comply with that section until the Finance Commission of Texas prescribes the form required by that section.

§ 348.010. Additional Information Allowed in Contract.

Information not required by this chapter may be included in a retail installment contract.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.011. Order of Items in Contract.

Items required by this chapter to be in a retail installment contract are not required to be stated in the order set forth in this chapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.012. Applicability of Insurance Premium Financing Provisions.

Chapter 651, Insurance Code, does not apply to a retail installment transaction.

Added by Acts 2001, 77th Leg., c. 1235, § 17, eff. Sept. 1, 2001. Amended by Acts 2005, 79th Leg., c. 728, § 11.117, eff. Sept. 1, 2005.

§ 348.013. Conditional Delivery Agreement.

(a) In this section, "conditional delivery agreement" means a contract between a retail seller and prospective retail buyer under the terms of which the retail seller allows the prospective retail buyer the use and benefit of a motor vehicle for a specified term.

(b) Subject to this section, a retail seller and prospective retail buyer may enter into a conditional delivery agreement.

(c) A conditional delivery agreement is:

(1) an enforceable contract; and

(2) void on the execution of a retail installment contract between the parties of the conditional delivery agreement for the sale of the motor vehicle that is the subject of the conditional delivery agreement.

(d) A conditional delivery agreement may only confer rights consistent with this section and may not confer any legal or equitable rights of ownership, including ownership of the motor vehicle that is the subject of the conditional delivery agreement.

(e) A conditional delivery agreement may not exceed a term of 15 days.

(f) If a prospective retail buyer tenders to a retail seller a trade-in motor vehicle in connection with a conditional delivery agreement:

(1) the parties must agree on the value of the trade-in motor vehicle;

(2) the conditional delivery agreement must contain the agreed value of the trade-in motor vehicle described by Subdivision (1); and

(3) the retail seller must use reasonable care to conserve the trade-in motor vehicle while the vehicle is in the retail seller's possession.

(g) If the parties to a conditional delivery agreement do not subsequently enter into a retail installment contract for the sale of the motor vehicle that is the subject of the conditional delivery agreement, the retail seller shall, not later than the seventh day after termination of the conditional delivery agreement:

(1) deliver to the prospective retail buyer any trade-in motor vehicle that the prospective retail buyer tendered in connection with the conditional delivery agreement in the same or substantially the same condition as it was at the time of execution of the agreement and shall return any down payment or other consideration received from the prospective retail buyer in connection with the agreement; or

(2) if the trade-in motor vehicle cannot be returned in the same or substantially the same condition as it was at the time of execution of the conditional delivery agreement, deliver to the prospective retail buyer a sum of money equal to the agreed value of the trade-in motor vehicle as described by Subsection (f) and shall return any down payment or other consideration described by Subdivision (1).

(h) Any money that a retail seller is obligated to provide a prospective retail buyer under Subsection (g) must be tendered at the same time that the trade-in motor vehicle is delivered for return to the prospective retail buyer or when the trade-in motor vehicle would have been delivered if the vehicle was damaged or could not be returned.

(i) If a prospective retail buyer returns a motor vehicle under a conditional delivery agreement at the request of the retail seller, the retail seller, notwithstanding the period prescribed by Subsection (g), must return the trade-in vehicle at the same time that the motor vehicle under the conditional delivery agreement is returned by the prospective retail buyer.

(j) The prospective retail buyer shall return the motor vehicle received under the conditional delivery agreement in the same or substantially the same condition as it was at the time of the execution of the conditional delivery agreement.

(k) An amount paid or required to be paid by the retail seller under Subsection (g) is subject to review by the commissioner. If the commissioner determines that the retail seller in fact owes the prospective retail buyer a certain amount under Subsection (g), the commissioner may order the retail seller to pay the amount to the prospective retail buyer. If the trade-in motor vehicle is not returned by the retail seller in accordance with this section and the retail seller does not pay the prospective retail buyer an amount equal to the agreed value of the trade-in motor vehicle within the period prescribed by this section, the commissioner may assess an administrative penalty against the retail seller in an amount that is reasonable in relation to the value of the trade-in motor vehicle. The commissioner shall provide notice to the retail seller and the prospective retail buyer of the commissioner's determination under this subsection.

(l) Not later than the 30th day after the date the parties receive notice of the commissioner's determination under Subsection (k), the retail seller or prospective retail buyer may file with the commissioner an appeal of the commissioner's determination requesting a time and place for a hearing before a hearings officer designated by the commissioner. A hearing under this subsection is governed by Chapter 2001, Government Code. After the hearing, based on the findings of fact, conclusions of law, and recommendations of the hearings officer, the commissioner shall enter a final order.

(m) A person who requests an appeal under Subsection (l) is required to pay a deposit to secure the payment of the costs of the hearing in a reasonable amount as determined by the commissioner, unless the person cannot afford to pay the deposit and files an affidavit to that effect with the hearings officer in the form and content prescribed by finance commission rule. The entire deposit must be refunded to the person if the person prevails in the hearing. If the person does not prevail, any portion of the deposit in excess of the costs of the hearing assessed against the person is refundable.

(n) Notice of the commissioner's final order under Subsection (l), given to the person in accordance with Section 2001, Government Code, must include a statement of the person's right to judicial review of the order.

(o) The hearings officer may order the retail seller or the prospective retail buyer, or both, to pay reasonable expenses incurred by the commissioner in connection with obtaining a final order under Subsection (l), including attorney's fees, investigative costs, and witness fees.

(p) This section does not:

(1) apply to a bailment agreement under Section 348.002; or

(2) create a private right of action.

(q) Except as otherwise provided by this section, the commissioner has exclusive jurisdiction to enforce this section.

Added by Acts, 81st Leg., R.S., c. 683, § 1, eff. Sept. 1, 2009.

§ 348.014. Transaction Conditioned on Purchase of Vehicle Protection Product Prohibited.

(a) In this section, "vehicle protection product" has the meaning assigned by Section 17.45, Business & Commerce Code.

(b) A retail seller may not require as a condition of a retail installment transaction or the cash sale of a motor vehicle that the buyer purchase a vehicle protection product that is not installed on the vehicle at the time of the transaction.

(c) A violation of this section is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

Added by Acts 2017, 85th Leg., R.S., c. 967, § 1.003, eff. Sept. 1, 2017.

SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

§ 348.101. Retail Installment Contract General Requirements.

(a) A retail installment contract is required for each retail installment transaction. A retail installment contract may be more than one document.

(b) A retail installment contract must be:

(1) in writing;

(2) dated;

(3) signed by the retail buyer and retail seller; and

(4) completed as to all essential provisions before it is signed by the retail buyer except as provided by Subsection (d).

(c) The printed part of a retail installment contract, other than instructions for completion, must be in at least eight-point type unless a different size of type is required under this subchapter.

(d) If the motor vehicle is not delivered when the retail installment contract is executed, the following information may be inserted after the contract is executed:

(1) the identifying numbers or marks of the vehicle or similar information; and

(2) the due date of the first installment.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.1015. Contract Conditioned on Subsequent Assignment Prohibited.

(a) A retail installment contract may not be conditioned on the subsequent assignment of the contract to a holder.

(b) A provision in violation of this section is void. This subsection does not affect the validity of other provisions of the contract that may be given effect without the voided provision, and to that extent those provisions are severable.

(c) This section does not create a private right of action.

(d) The commissioner has exclusive jurisdiction to enforce this section.

Added by Acts, 81st Leg., R.S., c. 683, § 2, eff. Sept. 1, 2009.

§ 348.102. Contents of Contract.

(a) A retail installment contract must contain:

(1) the name of the retail seller and the name of the retail buyer;

(2) the place of business or address of the retail seller;

(3) the residence or other address of the retail buyer as specified by the retail buyer;

(4) a description of the motor vehicle being sold;

(5) the cash price of the retail installment transaction;

(6) the amount of any down payment by the retail buyer, specifying the amounts paid in money and in goods traded in; and

(7) each itemized charge.

(b) A charge for insurance, a service contract, or a warranty authorized by Subchapter C may be disclosed as provided by that subchapter.

(c) A retail installment contract that provides for a variable contract rate must set out the method by which the rate is computed.

(d) The contract must contain substantially the following notice in at least 10-point type that is bold-faced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material:

"NOTICE TO THE BUYER—DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACES. YOU ARE ENTITLED TO A COPY OF THE CONTRACT YOU SIGN. UNDER THE LAW YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CONDITIONS MAY OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE. KEEP THIS CONTRACT TO PROTECT YOUR LEGAL RIGHTS."

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Laws 2009, 81st Leg., R.S., c. 238, § 8, eff. Sept. 1, 2009.

§ 348.103. Time Price Differential for Retail Installment Contract.

A retail installment contract may provide for:

(1) any amount of time price differential permitted under Section 348.104, 348.105, or 348.106; or

(2) any rate of time price differential not exceeding a yield permitted under Section 348.104, 348.105, or 348.106.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.104. Time Price Differential for Retail Installment Contract.

(a) A retail installment contract that is payable in substantially equal successive monthly installments beginning one month after the date of the contract may provide for a time price differential that does not exceed:

(1) the add-on charge provided by this section; or

(2) $25 if the add-on charge under Subdivision (1) is less than $25.

(b) The add-on charge is $7.50 per $100 per year on the principal balance for a new motor vehicle designated by the manufacturer by a model year that is not earlier than the year in which the sale is made.

(c) The add-on charge is $10 per $100 per year on the principal balance for:

(1) a new motor vehicle not covered by Subsection (b); or

(2) a used motor vehicle designated by the manufacturer by a model year that is not more than two years before the year in which the sale is made.

(d) The add-on charge is $12.50 per $100 per year on the principal balance for a used motor vehicle not covered by Subsection (c) that is a motor vehicle designated by the manufacturer by a model year that is not more than four years before the year in which the sale is made.

(e) For a used motor vehicle not covered by Subsection (c) or (d), the add-on charge is:

(1) $15 per $100 per year on the principal balance; or

(2) $18 per $100 per year on the principal balance if the principal balance under the retail installment contract does not exceed $300.

(f) The time price differential is computed on the original principal balance under the retail installment contract from the date of the contract until the maturity of the final installment, notwithstanding that the balance is payable in installments.

(g) If the retail installment contract is payable for a period that is shorter or longer than a year or is for an amount that is less or greater than $100, the amount of the maximum time price differential computed under this section is decreased or increased proportionately.

(h) For the purpose of a computation under this section, 16 or more days of a month may be considered a full month.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2009, 81st Leg., R.S., c. 676, § 5, eff. Sept. 1, 2009; Acts 2011, 82nd Leg., R.S., c. 117, § 11, eff. Sept. 1, 2011.

§ 348.105. Use of Optional Ceiling.

As an alternative to the maximum rate or amount authorized for a time price differential under Section 348.104 or 348.106, a retail installment contract may provide for a rate or amount of time price differential that does not exceed the rate or amount authorized by Chapter 303.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.106. Time Price Differential for Other Contracts.

A retail installment contract that is payable other than in substantially equal successive monthly installments or the first installment of which is not payable one month from the date of the contract may provide for a time price differential that does not exceed an amount that, having due regard for the schedule of payments, provides the same effective return as if the contract were payable in substantially equal successive monthly installments beginning one month from the date of the contract.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.107. Charge for Default in Payment of Installment.

(a) A retail installment contract may provide that if an installment remains unpaid after the 15th day after the maturity of the installment the holder may collect:

(1) a delinquency charge that does not exceed five percent of the amount of the installment; or

(2) interest on the amount of the installment accruing after the maturity of the installment and until the installment is paid in full at a rate that does not exceed the maximum rate authorized for the contract.

(b) A retail installment contract that provides for the accrual earnings method may provide for the delinquency charge authorized by Subsection (a)(1), the interest authorized by Subsection (a)(2), or both.

(c) Only one delinquency charge may be collected on an installment under this section regardless of the duration of the default.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., c. 1077, § 1, eff. Sept. 1, 2001; Acts 2011, 82nd Leg., R.S., c. 117, § 12, eff. Sept. 1, 2011.

§ 348.108. Charges for Collecting Debt.

A retail installment contract may provide for the payment of:

(1) reasonable attorney's fees if the contract is referred for collection to an attorney who is not a salaried employee of the holder;

(2) court costs and disbursements; and

(3) reasonable out-of-pocket expenses incurred in connection with the repossession or sequestration of the motor vehicle securing the payment of the contract or foreclosure of a security interest in the vehicle, including the costs of storing, reconditioning, and reselling the vehicle, subject to the standards of good faith and commercial reasonableness set by Title 1, Business & Commerce Code.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.109. Accleration of Debt Maturity.

A retail installment contract may not authorize the holder to accelerate the maturity of all or a part of the amount owed under the contract unless:

(1) the retail buyer is in default in the performance of any of the buyer's obligations; or

(2) the holder believes in good faith that the prospect of buyer's payment or performance is impaired.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2009, 81st Leg., R.S., c. 238, § 9, eff. Sept. 1, 2009; Acts 2011, 82nd Leg., R.S., c. 117, § 13, eff. Sept. 1, 2011.

§ 348.110. Delivery of Copy of Contract.

A retail seller shall:

(1) deliver to the retail buyer a copy of the retail installment contract as accepted by the retail seller; or

(2) mail to the retail buyer at the address shown on the retail installment contract a copy of the retail installment contract as accepted by the retail seller.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.111. Buyer's Right to Rescind Contract.

Until the retail seller complies with Section 348.110, a retail buyer who has not received delivery of the motor vehicle is entitled to:

(1) rescind the contract;

(2) receive a refund of all payments made under or in contemplation of the contract; and

(3) receive the return of all goods traded in to the retail seller under or in contemplation of the contract or, if those goods cannot be returned, to receive the value of those goods.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.112. Buyer's Acknowledgment of Delivery of Contract Copy.

(a) Any retail buyer's acknowledgment of delivery of a copy of the retail installment contract must:

(1) be in at least 10-point type that is bold-faced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material; and

(2) appear directly above the buyer's signature.

(b) Any retail buyer's acknowledgment conforming to this section of delivery of a copy of the retail installment contract is, in an action or proceeding by or against a holder of the contract who was without knowledge to the contrary when the holder purchased it, conclusive proof:

(1) that the copy was delivered to the buyer;

(2) that the contract did not contain a blank space that was required to have been completed under this chapter when the contract was signed by the buyer; and

(3) of compliance with Sections 348.009, 348.101, 348.102, 348.123, 348.205, 348.405, 348.406, and 348.408.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.113. Amendment of Retail Installment Contract.

On request by a retail buyer, the holder may agree to one or more amendments to the retail installment contract to:

(1) extend or defer the scheduled due date of all or a part of one or more installments; or

(2) renew, restate, or reschedule the unpaid balance under the contract.

Added by Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.114. Charges for Deferring Installment.

(a) If a retail installment contract that provides for a time price differential that is computed using the add-on method or the scheduled installment earnings method is amended to defer all or a part of one or more installments for not longer than three months, the holder may collect from the retail buyer:

(1) a deferment charge in an amount computed on the amount deferred for the period of deferment at a rate that does not exceed the effective return for time price differential permitted for a monthly payment retail installment contract; and

(2) the amount of the additional cost to the holder for:

(A) premiums for continuing in force any insurance coverages provided for by the contract; and

(B) any additional necessary official fees.

(b) The minimum charge under Subsection (a)(1) is $1.

(c) If a retail installment contract that provides for a time price differential that is computed using the true daily earnings method is amended to defer all or a part of one or more installments, the holder may charge and receive from the retail buyer time price differential on the unpaid balance of the contract at the rate agreed to in the contract. At the time of deferment, the holder must provide the following written notice to the retail buyer that is boldfaced, capitalized, or underlined or otherwise conspicuously set out from any surrounding written material: "FINANCE CHARGES WILL CONTINUE TO ACCRUE ON THE UNPAID BALANCE AT THE CONTRACT RATE. BY DEFERRING ONE OR MORE INSTALLMENTS, YOU WILL PAY MORE FINANCE CHARGES THAN ORIGINALLY DISCLOSED." A holder does not collect a deferment charge by the accrual of time price differential on the unpaid balance of the contract.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2017, 85th Leg., R.S., c. 183, § 3, eff. Sept. 1, 2017.

§ 348.115. Charge for Other Amendment.

(a) If the unpaid balance of a retail installment contract is extended, renewed, restated, or rescheduled under this subchapter and Section 348.114 does not apply, the holder may collect an amount computed on the principal balance of the amended contract for the term of the amended contract at the time price differential for a retail installment contract that is applicable after reclassifying the motor vehicle by its model year at the time of the amendment.

(b) The principal balance of the amended contract is computed by:

(1) adding:

(A) the unpaid balance as of the date of amendment;

(B) the cost of any insurance incidental to the amendment;

(C) the amount of each additional necessary official fee; and

(D) the amount of each accrued delinquency or collection charge; and

(2) subtracting from the total computed under Subdivision (1) an amount equal to the prepayment refund credit required by Section 348.120 or 348.121, as applicable.

(c) The provisions of this chapter relating to minimum charges under Section 348.104 and acquisition costs under the refund schedule under Section 348.120 do not apply in computing the principal balance of the amended contract.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.116. Confirmation of Amendment.

An amendment to a retail installment contract must be confirmed in a writing signed by the retail buyer. The holder shall:

(1) deliver a copy of the confirmation to the buyer; or

(2) mail a copy of the confirmation to the buyer at the buyer's most recent address shown on the records of the holder.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.117. Contract After Amendment.

After amendment the retail installment contract is the original contract and each amendment to the original contract.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.118. Prepayment of Contract.

A retail buyer may prepay a retail installment contract in full at any time before maturity. This section prevails over a conflicting provision of the contract.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.119. Refund Credit on Prepayment.

If a retail buyer prepays a retail installment contract in full or if the holder of the contract demands payment of the unpaid balance of the contract in full before the contract's final installment is due, the buyer is entitled to receive a refund credit as provided by Section 348.120 or 348.121, as applicable.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.120. Amount of Refund Credit for Monthly Installment Contract.

(a) This section applies only to a refund credit on the prepayment of a retail installment contract that is payable in substantially equal successive monthly installments beginning one month after the date of the contract.

(b) On a contract for a motor vehicle the minimum amount of the refund credit is computed by:

(1) subtracting an acquisition cost of $25 from the original time price differential; and

(2) multiplying the amount computed under Subdivision (1) by the percentage of refund computed under Subsection (d).

(c) Repealed by Acts 2011, 82nd Leg., R.S., c. 117, § 26(3), eff. Sept. 1, 2011.

(d) The percentage of refund is computed by:

(1) computing the sum of all of the monthly balances under the contract's schedule of payments; and

(2) dividing the amount computed under Subdivision (1) into the sum of the unpaid monthly balances under the contract's schedule of payments beginning:

(A) on the first day, after the date of the prepayment or demand for payment in full, that is the date of a month that corresponds to the date of the month that the first installment is due under the contract; or

(B) if the prepayment or demand for payment in full is made before the first installment date under the contract, one month after the next monthly anniversary date of the contract occurring after the prepayment or demand.

(e) A refund credit is not required if the amount of the refund credit is less than $1.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2011, 82nd Leg., R.S., c. 117, § 14, eff. Sept. 1, 2011; Acts 2011, 82nd Leg., R.S., c. 117, § 26(3), eff. Sept. 1, 2011.

§ 348.121. Amount of Refund Credit for Other Contracts.

The minimum amount of the refund credit on a retail installment contract to which Section 348.120 does not apply shall be computed in a manner proportionate to the method set out by that section for the type of motor vehicle being sold, having due regard for:

(1) the amount of each installment;

(2) the irregularity of the installment periods; and

(3) the requirements of Sections 348.104(f) and 348.106.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.122. Reinstatement of Contract After Demand for Payment.

After a demand for payment in full under a retail installment contract, the retail buyer and holder of the contract may:

(1) agree to reinstate the contract; and

(2) amend the contract as provided by Section 348.113.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.123. Refinancing of Large Installment.

(a) If a scheduled installment of a retail installment contract is more than an amount equal to twice the average of all installments scheduled before that installment, other than the down payment, the retail buyer is entitled to refinance that installment:

(1) when the installment is due;

(2) without an acquisition cost;

(3) in installments that are not greater or more frequent than the average amount and frequency of installments preceding that installment; and

(4) at a rate of time price differential that does not exceed the rate applicable to the original contract.

(b) This section does not apply to:

(1) a lease;

(2) a retail installment transaction for a vehicle that is to be used primarily for a purpose other than personal, family, or household use;

(3) a transaction for which the payment schedule is adjusted to the seasonal or irregular income or scheduled payments or obligations of the buyer;

(4) a transaction of a type that the commissioner determines does not require the protection for the buyer provided by this section; or

(5) a retail installment transaction in which:

(A) the seller is a franchised dealer licensed under Chapter 2301, Occupations Code; and

(B) the buyer is entitled, at the end of the term of the retail installment contract, to choose one of the following:

(i) sell the vehicle back to the holder according to a written agreement:

(a) entered into between the buyer and holder concurrently with or as a part of the transaction; and

(b) under which the buyer will be released from liability or obligation for the final scheduled payment under the contract on compliance with the agreement;

(ii) pay the final scheduled payment under the contract; or

(iii) if the buyer is not in default under the contract, refinance the final scheduled payment with the holder for repayment in not fewer than 24 equal monthly installments or on other terms agreed to by the buyer and holder at the time of refinancing and at a rate of time price differential not to exceed the lesser of:

(a) a rate equal to the maximum rate authorized under this subchapter; or

(b) an annual percentage rate of five percent a year more than the annual percentage rate of the original contract.

(c) A retail installment contract under Subsection (b)(5) must disclose that any refinancing may be for any period and payment schedule to which the buyer and holder agree.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.22(a), eff. Sept. 1, 1999; Acts 2003, 78th Leg., c. 1276, § 14A.774, eff. Sept. 1, 2003.

§ 348.124. Debt Cancellation Agreements.

(a) In connection with a retail installment transaction under this chapter, a retail seller may offer to the retail buyer a debt cancellation agreement, including a guaranteed asset protection waiver or similarly named agreement. If the retail installment transaction requires insurance coverage as part of the retail buyer's responsibility to the holder, the debt cancellation agreement, guaranteed asset protection waiver, or similarly named agreement must be offered under Chapter 354. The retail seller may not require that the purchase of a debt cancellation agreement by the retail buyer be made in order to enter into a retail installment transaction.

(b) A debt cancellation agreement is not considered an insurance product.

(c) The amount charged for a debt cancellation agreement made in connection with a retail installment contract must be reasonable.

(d) In addition to other disclosures required by state or federal law, the retail seller shall provide to the retail buyer a separate notice in connection with the retail installment contract stating that the retail buyer is not required to accept or provide a debt cancellation agreement in order to purchase the motor vehicle under a retail installment contract.

Added by Acts 2009, 81st Leg., R.S., c. 149, § 3, eff. Sept. 1, 2009. Amended by Acts 2011, 82nd Leg., R.S., c. 1034, § 1, eff. Sept. 1, 2011; Acts 2017, 85th Leg., R.S., c. 183, § 4, eff. Sept. 1, 2017.

§ 348.125. Trade-In Credit Agreements Offered in Connectin with Retail Installment Contracts.

(a) A retail seller may, at the time a retail installment contract is executed, offer to sell to a retail buyer a trade-in credit agreement or similarly named agreement.

(b) A trade-in credit agreement is not considered an insurance product.

(c) To ensure the faithful performance of a retail seller's obligations to a retail buyer under a trade-in credit agreement, the retail seller must be insured under a contractual liability reimbursement policy approved by the commissioner of insurance and issued for the benefit of Texas residents.

(d) In addition to other disclosures required by state or federal law, if a retail seller offers to a retail buyer a trade-in credit agreement, the retail seller shall give the retail buyer at the time the retail installment contract is executed a copy of the written trade-in credit agreement and written notice that the retail buyer:

(1) is not required to purchase the trade-in credit agreement as a condition for approval of the retail installment contract;

(2) is entitled to cancel the trade-in credit agreement before the 31st day after the date the retail installment contract is executed and receive a full refund;

(3) may terminate the trade-in credit agreement at any time on or after the 31st day after the date the retail installment contract is executed and receive a pro rata refund minus any applicable cancellation fee which may not exceed $50; and

(4) has been provided a clear and concise disclosure of the amount of the credit available during the term of the trade-in credit agreement.

(e) The amount charged for a trade-in credit agreement offered in connection with a retail installment contract may not exceed five percent of the cash price of the motor vehicle that is the subject of the retail installment contract, including any attached accessories and excluding the price of services related to the sale, the price of service contracts, taxes, and fees for license, title, and registration.

(f) A trade-in credit agreement must require the retail buyer to provide proof of insurance settlement documents in order to obtain the credit. A trade-in credit agreement may not require the retail buyer to provide any other documentation in order to obtain the credit.

(g) If a retail seller enters a trade-in credit agreement with a retail buyer, the retail seller must comply with the terms of the trade-in credit agreement in connection with the purchase or lease of a subsequent motor vehicle. A retail seller must provide any credit required under a trade-in credit agreement at the time of the purchase or lease of a subsequent motor vehicle.

(h) The benefit to be provided in connection with a trade-in credit agreement must bear a reasonable relationship to the amount charged for the trade-in credit agreement and the amount, term, and conditions of the retail installment contract.

Added by Acts 2017, 85th Leg., R.S., c. 477, § 3, eff. Sept. 1, 2017.

SUBCHAPTER C. INSURANCE

§ 348.201. Property Insurance.

(a) A holder may request or require a retail buyer to insure the motor vehicle purchased under a retail installment transaction and accessories and related goods subject to the holder's security interest.

(b) The insurance and the premiums or charges for the insurance must bear a reasonable relationship to:

(1) the amount, term, and conditions of the retail installment contract; and

(2) the existing hazards or risk of loss, damage, or destruction.

(c) The insurance may not:

(1) cover unusual or exceptional risks; or

(2) provide coverage not ordinarily included in policies issued to the public.

(d) The holder may include the cost of insurance provided under this section as a separate charge in the contract.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.202. Credit Life and Credit Health and Accident Insurance.

(a) As additional protection for the contract, a holder may request or require a retail buyer to provide credit life insurance and credit health and accident insurance.

(b) As additional protection for the contract, a seller may offer involuntary unemployment insurance to the buyer at the time the contract is executed.

(c) A holder may include the cost of insurance provided under Subsection (a) or (b), and a policy or agent fee charged in connection with insurance provided under Subsection (a) or (b), as a separate charge in the contract.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 1107, § 1, eff. June 18, 1999; Acts 2001, 77th Leg., c. 409, § 1, eff. Sept. 1, 2001.

§ 348.203. Maximum Amount of Credit Life and Credit Health and Accident Coverage.

(a) At any time the total amount of the policies of credit life insurance in force on one retail buyer on one retail installment contract may not exceed:

(1) the total amount repayable under the contract; and

(2) the greater of the scheduled or actual amount of unpaid indebtedness if the indebtedness is repayable in substantially equal installments.

(b) At any time the total amount of the policies of credit health and accident insurance in force on one retail buyer on one retail installment contract may not exceed the total amount payable under the contract, and the amount of each periodic indemnity payment may not exceed the scheduled periodic payment on the indebtedness.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.204. Insurance Statement.

(a) If insurance is required in connection with a retail installment contract, the holder shall give to the retail buyer a written statement that clearly and conspicuously states that:

(1) insurance is required in connection with the contract; and

(2) the buyer as an option may furnish the required insurance through:

(A) an existing policy of insurance owned or controlled by the buyer; or

(B) an insurance policy obtained through an insurance company authorized to do business in this state.

(b) If requested or required insurance is sold or obtained by the holder and the retail installment contract includes a premium or rate of charge for the insurance that is not fixed or approved by the commissioner of insurance, the holder shall deliver or mail to the retail buyer a written statement that includes that fact.

(c) A statement under Subsection (a) or (b) may be provided with or as part of the retail installment contract or separately.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.205. Statement If Liability Insurance Not Included in Contract.

If liability insurance coverage for bodily injury and property damage caused to others is not included in a retail installment contract, the retail installment contract or a separate writing must contain, in at least 10-point type that is bold-faced, capitalized, underlined, or otherwise conspicuously set out from the surrounding written material, a specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.206. Insurance May Be Furnished by Buyer.

(a) If insurance is requested or required in connection with a retail installment contract and the retail installment contract includes a premium or rate of charge that is not fixed or approved by the commissioner of insurance, the retail buyer is entitled to furnish the insurance coverage not later than the 10th day after the date of the contract or the delivery or mailing of the written statement required under Section 348.204, as appropriate, through:

(1) an existing insurance policy owned or controlled by the buyer; or

(2) an insurance policy obtained from an insurance company authorized to do business in this state.

(b) When a retail installment contract is executed, the retail buyer is entitled to purchase the insurance described by Section 348.210 and select:

(1) the agent or broker; and

(2) an insurance company acceptable to the holder.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.207. Buyer's Failure to Provide Evidence of Insurance.

(a) If a retail buyer fails to present to the holder reasonable evidence that the buyer has obtained or maintained a coverage required by the retail installment contract, the holder may:

(1) obtain substitute insurance coverage that is substantially equal to or more limited than the coverage required; and

(2) add the amount of the premium advanced for the substitute insurance to the unpaid balance of the contract.

(b) Substitute insurance coverage under Subsection (a)(1):

(1) may at the holder's option be limited to coverage only of the interest of the holder or the interest of the holder and the buyer; and

(2) must be written at lawful rates in accordance with the Insurance Code by a company authorized to do business in this state.

(c) If substitute insurance is obtained by the holder under Subsection (a), the amendment adding the premium or rescheduling the contract is not required to be signed by the retail buyer. The holder shall deliver to the buyer or send to the buyer's most recent address shown on the records of the holder specific written notice that the holder has obtained substitute insurance.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.208. Charges for Other Insurance and Forms of Protection Included in Retail Installment Contract. (Version 1).

(a) A retail buyer and retail seller may agree in a retail installment contract to include a charge for insurance coverage that is:

(1) for a risk of loss or liability reasonably related to:

(A) the motor vehicle;

(B) the use of the motor vehicle; or

(C) goods or services that:

(i) are related to the motor vehicle; and

(ii) may ordinarily be insured with a motor vehicle;

(2) written on policies or endorsement forms prescribed or approved by the commissioner of insurance; and

(3) ordinarily available in policies or endorsements offered to the public.

(b) A retail installment contract may include as a separate charge an amount for:

(1) motor vehicle property damage or bodily injury liability insurance;

(2) mechanical breakdown insurance;

(3) participation in a motor vehicle theft protection plan;

(4) insurance to reimburse the retail buyer for the amount computed by subtracting the proceeds of the buyer's basic collision policy on the motor vehicle from the amount owed on the vehicle if the vehicle has been rendered a total loss;

(5) a warranty or service contract relating to the motor vehicle;

(6) an identity recovery service contract; or

(7) a debt cancellation agreement if the agreement is included as a term of a retail installment contract under Section 348.124; [~~or~~]

(8) a trade-in credit agreement.

(b-1) In this section, "identity recovery service contract" means an agreement:

(1) to provide identity recovery, as defined by Section 1304.003, Occupations Code;

(2) that is entered into for a separately stated consideration and for a specified term; and

(3) that is financed through a retail installment contract.

(c) Notwithstanding any other law, service contracts, [~~and~~] debt cancellation agreements, and trade-in credit agreements sold by a retail seller of a motor vehicle to a retail buyer are not subject to Chapter 101 or 226, Insurance Code.

(d) Repealed by Acts 2011, 82nd Leg., R.S., c. 117, § 26(3), eff. Sept. 1, 2011.

(e) Repealed by Acts 2011, 82nd Leg., R.S., c. 117, § 26(3), eff. Sept. 1, 2011.

(f) Repealed by Acts 2011, 82nd Leg., R.S., c. 117, § 26(3), eff. Sept. 1, 2011.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 1107, § 2, eff. June 18, 1999; Acts 1999, 76th Leg., c. 1559, § 2, eff. Aug. 30, 1999; Acts 2003, 78th Leg., c. 1276, § 10A.512, eff. Sept. 1, 2003; Acts 2005, 79th Leg., c. 728, § 11.118, eff. Sept. 1, 2005; Acts 2009, 81st Leg., R.S., c. 36, § 1, eff. Sept. 1, 2009; Acts 2009, 81st Leg., R.S., c. 149, § 4, eff. Sept. 1, 2009; Acts 2009, 81st Leg., R.S., c. 238, § 10, eff. Sept. 1, 2009; Acts 2011, 82nd Leg., R.S., c. 91, § 10.002, eff. Sept. 1, 2011; Acts 2011, 82nd Leg., R.S., c. 117, § 26(3), eff. Sept. 1, 2011; Acts 2013, 83rd Leg., R.S., c. 1207, § 1, eff. Sept. 1, 2013; Acts 2017, 85th Leg., R.S., c. 477, § 4, eff. Sept. 1, 2017.

§ 348.208. Charges for Other Insurance and Forms of Protection Included in Retail Installment Contract. (Version 2).

(a) A retail buyer and retail seller may agree in a retail installment contract to include a charge for insurance coverage that is:

(1) for a risk of loss or liability reasonably related to:

(A) the motor vehicle;

(B) the use of the motor vehicle; or

(C) goods or services that:

(i) are related to the motor vehicle; and

(ii) may ordinarily be insured with a motor vehicle;

(2) written on policies or endorsement forms prescribed or approved by the commissioner of insurance; and

(3) ordinarily available in policies or endorsements offered to the public.

(b) A retail installment contract may include as a separate charge an amount for:

(1) motor vehicle property damage or bodily injury liability insurance;

(2) mechanical breakdown insurance;

(3) participation in a motor vehicle theft protection plan;

(4) insurance to reimburse the retail buyer for the amount computed by subtracting the proceeds of the buyer's basic collision policy on the motor vehicle from the amount owed on the vehicle if the vehicle has been rendered a total loss;

(5) a warranty or service contract relating to the motor vehicle;

(6) an identity recovery service contract; or

(7) a debt cancellation agreement if the agreement is included as a term of a retail installment contract under Section 348.124.

(b-1) In this section, "identity recovery service contract" means an agreement:

(1) to provide identity recovery, as defined by Section 1304.003, Occupations Code;

(2) that is entered into for a separately stated consideration and for a specified term; and

(3) that is financed through a retail installment contract.

(c) a debt cancellation agreement, including a debt cancellation agreement under Chapter 354, if the agreement is included as a term of a retail installment contract under Section 348.124.

(d) Repealed by Acts 2011, 82nd Leg., R.S., c. 117, § 26(3), eff. Sept. 1, 2011.

(e) Repealed by Acts 2011, 82nd Leg., R.S., c. 117, § 26(3), eff. Sept. 1, 2011.

(f) Repealed by Acts 2011, 82nd Leg., R.S., c. 117, § 26(3), eff. Sept. 1, 2011.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 1107, § 2, eff. June 18, 1999; Acts 1999, 76th Leg., c. 1559, § 2, eff. Aug. 30, 1999; Acts 2003, 78th Leg., c. 1276, § 10A.512, eff. Sept. 1, 2003; Acts 2005, 79th Leg., c. 728, § 11.118, eff. Sept. 1, 2005; Acts 2009, 81st Leg., R.S., c. 36, § 1, eff. Sept. 1, 2009; Acts 2009, 81st Leg., R.S., c. 149, § 4, eff. Sept. 1, 2009; Acts 2009, 81st Leg., R.S., c. 238, § 10, eff. Sept. 1, 2009; Acts 2011, 82nd Leg., R.S., c. 91, § 10.002, eff. Sept. 1, 2011; Acts 2011, 82nd Leg., R.S., c. 117, § 26(3), eff. Sept. 1, 2011; Acts 2013, 83rd Leg., R.S., c. 1207, § 1, eff. Sept. 1, 2013; Acts 2017, 85th Leg., R.S., c. 183, § 5, eff. Sept. 1, 2017.

§ 348.209. Requirements for Including Insurance Cost in Contract.

(a) If insurance is included as an itemized charge in a retail installment contract:

(1) the insurance must be written:

(A) at lawful rates;

(B) in accordance with the Insurance Code; and

(C) by a company authorized to do business in this state; and

(2) the disclosure requirements of this section must be satisfied.

(b) If the insurance is described by Section 348.201, 348.202, or 348.208(a), the retail installment contract must identify the:

(1) type of the coverage;

(2) term of the coverage; and

(3) amount of the premium for the coverage.

(c) If the insurance is described by Section 348.208(a), the retail installment contract must also clearly indicate that the coverage is optional.

(d) If the retail installment contract includes a charge described by Section 348.208(b), the retail installment contract must clearly and conspicuously disclose that the charge is included.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.210. Delivery of Insurance Document to Buyer.

A holder who purchases dual interest insurance on the motor vehicle shall within a reasonable time after execution of the retail installment contract send or cause to be sent to the retail buyer a policy or certificate of insurance written by an insurance company authorized to do business in this state that clearly sets forth:

(1) the amount of the premium;

(2) the kind of insurance provided;

(3) the coverage of the insurance; and

(4) all terms, including options, limitations, restrictions, and conditions, of the policy.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.211. Holder's Duty If Insurance is Adjusted or Terminated.

(a) If insurance for which a charge is included in or added to a retail installment contract is canceled, adjusted, or terminated, the holder shall, at the holder's option:

(1) apply the amount of the refund for unearned insurance premiums received by the holder to replace required insurance coverage; or

(2) credit the refund to the final maturing installments of the retail installment contract.

(b) If the amount to be applied or credited under Subsection (a) is more than the amount unpaid on the retail installment contract, the holder shall refund to the retail buyer the difference between those amounts.

(c) A cash refund is not required under this section if the amount of the refund is less than $1.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.212. Gain or Advantage From Insurance Not Additional Charge.

Any gain or advantage to the holder or the holder's employee, officer, director, agent, general agent, affiliate, or associate from insurance or the provision or sale of insurance under this subchapter is not an additional charge or additional time price differential in connection with a retail installment contract except as specifically provided by this chapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.213. Adding to Retail Installment Contract Premiums for Insurance Acquired After Transaction.

(a) A retail buyer and holder may agree to add to the unpaid balance of a retail installment contract premiums for insurance policies obtained after the date of the retail installment transaction covering the motor vehicle, the use of the motor vehicle, or goods or services related to the motor vehicle, including premiums for the renewal of a policy included in the contract.

(b) A policy of insurance described by Subsection (a) must comply with the applicable requirements of Sections 348.201, 348.203, 348.208, and 348.209.

Added y Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2009, 81st Leg., R.S., c. 238, § 11, eff. Sept. 1, 2009; Acts 2011, 82nd Leg., R.S., c. 117, § 15, eff. Sept. 1, 2011.

§ 348.214. Effect of Adding Premium to Contract.

If a premium is added to the unpaid balance of a retail installment contract under Section 348.207 or 348.213, the rate applicable to the time price differential agreed to in the retail installment contract remains in effect and shall be applied to the new unpaid balance, or the contract may be rescheduled in accordance with Sections 348.113-348.117 without reclassifying the motor vehicle by its year model at the time of the amendment.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.215. Financing Entity May Not Require Insurance From Particular Source.

If a retail installment contract presented to a financing entity for acceptance includes any insurance coverage, the financing entity may not directly or indirectly require, as a condition of its agreement to finance the motor vehicle, that the retail buyer purchase the insurance coverage from a particular source.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

SUBCHAPTER D. ACQUISITION OF CONTRACT OR BALANCE

§ 348.301. Authority to Acquire.

A person may acquire a retail installment contract or an outstanding balance under a contract from another person on the terms, including the price, to which they agree. Notwithstanding any other applicable law of this state, no person acquiring or assigning a retail installment contract, or any balance under a contract, has any duty to disclose to any other person the terms on which a contract or balance under a contract is acquired, including any discount or difference between the rates, charges, or balance under the contract and the rates, charges, or balance acquired.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 909, § 2.20, eff. June 18, 1999.

§ 348.302. Lack of Notice Does Not Affect Validity as to Certain Creditors.

Notice to a retail buyer of an assignment or negotiation of a retail installment contract or an outstanding balance under the contract or a requirement that the retail seller be deprived of dominion over payments on a retail installment contract or over the motor vehicle if returned to or repossessed by the retail seller is not necessary for a written assignment or negotiation of the contract or balance to be valid as against a creditor, subsequent purchaser, pledgee, mortgagee, or lien claimant of the retail seller.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.303. Payment by Buyer.

Unless a retail buyer has notice of the assignment or negotiation of the buyer's retail installment contract or an outstanding balance under the contract, a payment by the buyer to the most recent holder known to the buyer is binding on all subsequent holders.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

SUBCHAPTER E. HOLDERS RIGHTS, DUTIES, AND LIMITATIONS

§ 348.403. Seller's Promise to Pay or Tender of Cash to Buyer as Part of Transaction..

A retail seller may not promise to pay, pay, or otherwise tender cash to a retail buyer as a part of a transaction under this chapter unless specifically authorized by this chapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.404. Seller's Action For Incentive Program or to Pay for Buyer's Motor Vehicle.

(a) A retail seller may pay, promise to pay, or tender cash or another thing of value to the manufacturer, distributor, or retail buyer of the product if the payment, promise, or tender is made in order to participate in a financial incentive program offered by the manufacturer or distributor of the vehicle to the buyer.

(b) A retail seller, in connection with a retail installment transaction, may:

(1) advance money to retire:

(A) an amount owed against a motor vehicle used as a trade-in or a motor vehicle owned by the buyer that has been declared a total loss by the buyer's insurer; or

(B) the retail buyer's outstanding obligation under a motor vehicle lease contract, a credit transaction for the purchase of a motor vehicle, or another retail installment transaction; and

(2) finance repayment of that money in a retail installment contract.

(c) A retail seller may pay in cash to the retail buyer any portion of the net cash value of a motor vehicle owned by the buyer and used as a trade-in in a transaction involving the sale of another motor vehicle. In this subsection, "net cash value" means the cash value of a motor vehicle after payment of all amounts secured by the motor vehicle.

(d) A retail seller may include money advanced under Subsection (b) in the retail installment contract only if it is included as an itemized charge and may disclose money advanced under Subsection (b) in any manner permitted by Regulation Z (12 C.F.R. Parts 226 and 1026) adopted under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.). Section 349.003 does not apply to this subsection. This subsection does not create a private right of action. The commissioner has exclusive jurisdiction to enforce this subsection.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 1042, § 1, eff. Aug. 30, 1999; Acts 2009, 81st Leg., R.S., c. 676, § 6, eff. Sept. 1, 2009; Acts 2023, 88th Leg., R.S., SB 1371, § 20, eff. Sept. 1, 2023..

§ 348.405. Statement of Payments and Amount Due Under Contract.

(a) On written request of a retail buyer, the holder of a retail installment contract shall give or send to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under the contract.

(b) A retail buyer is entitled to one statement during a six-month period without charge. The charge for each additional requested statement may not exceed $1.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.406. Receipt for Cash Payment.

A holder of a retail installment contract shall give the retail buyer a written receipt for each cash payment.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.407. Retention or Disposition of Nonattached Personal Property.

(a) If a retail installment contract authorizes the holder or a person acting on the holder's behalf to retain or dispose of tangible personal property acquired in the repossession of a motor vehicle that is not attached to the vehicle and not subject to a security interest, the contract or another writing must require the holder to send written notice of the acquisition of the property to the retail buyer in accordance with this section.

(b) The notice must be mailed or delivered to the most recent address of the retail buyer shown on the records of the holder not later than the 15th day after the date on which the holder discovers the property.

(c) The notice must:

(1) state that the retail buyer may identify and claim the property at a reasonable time before the 31st day after the date on which the notice was mailed or delivered; and

(2) give the location at which and reasonable times during the period that the retail buyer may identify and claim the property.

(d) If the property is not claimed before the date described by Subsection (c)(1), the holder may:

(1) retain the property subject to any legal rights of the retail buyer; or

(2) dispose of the property in a reasonable manner and distribute any proceeds of the disposition according to applicable law.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.408. Outstanding Balance Information; Payment in Full.

(a) The holder of a retail installment contract who gives the retail buyer or the buyer's designee outstanding balance information relating to the contract is bound by that information and shall honor that information for a reasonable time.

(b) If the retail buyer or the buyer's designee tenders to the holder as payment in full an amount derived from that outstanding balance information, the holder shall:

(1) accept the amount as payment in full; and

(2) release the holder's lien against the motor vehicle within a reasonable time not later than the 10th day after the date on which the amount is tendered.

(c) A retail seller must pay in full the outstanding balance of a vehicle traded in not later than the 25th day after the date that:

(1) the retail installment contract is signed by the retail buyer and the retail buyer receives delivery of the motor vehicle; and

(2) the retail seller receives delivery of the motor vehicle traded in and the necessary and appropriate documents to transfer title from the buyer.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2009, 81st Leg., R.S., c. 676, § 7, eff. Sept. 1, 2009.

§ 348.409. Liability Relating to Outstanding Balance Information.

A holder who violates Section 348.408 is liable to the retail buyer or the buyer's designee in an amount computed by adding:

(1) three times the difference between the amount tendered and the amount sought by the holder at the time of tender;

(2) interest;

(3) reasonable attorney's fees; and

(4) costs.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.410. Prohibition on Power of Attorney to Confess Judgment or Assignment of Wages.

A retail installment contract may not contain:

(1) a power of attorney to confess judgment in this state; or

(2) an assignment of wages.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.411. Prohibition on Certain Acts of Repossession.

A retail installment contract may not:

(1) authorize the holder or a person acting on the holder's behalf to:

(A) enter the retail buyer's premises in violation of Chapter 9, Business & Commerce Code; or

(B) commit a breach of the peace in the repossession of the motor vehicle; or

(2) contain, or provide for the execution of, a power of attorney by the retail buyer appointing, as the buyer's agent in the repossession of the vehicle, the holder or a person acting on the holder's behalf.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.412. Buyer's Waiver.

(a) A retail installment contract may not:

(1) provide for a waiver of the retail buyer's rights of action against the holder or a person acting on the holder's behalf for an illegal act committed in:

(A) the collection of payments under the contract; or

(B) the repossession of the motor vehicle; or

(2) provide that the retail buyer agrees not to assert against the holder a claim or defense arising out of the sale.

(b) An act or agreement of the retail buyer before or at the time of the making of a retail installment contract or a purchase under the contract does not waive any provision of this chapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 348.413. Transfer of Equity.

(a) With the written consent of the holder, a retail buyer may transfer at any time the buyer's equity in the motor vehicle subject to the retail installment contract to another person.

(b) The holder may charge for the transfer of equity an amount that does not exceed $25.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 2011, 82nd Leg., R.S., c. 117, § 16, eff. Sept. 1, 2011.

§ 348.414. Automobile Club Membership Offered in Connection with Retail Installment Contract.

(a) A retail seller may, at the time a retail installment contract is executed, offer to sell to the retail buyer an automobile club membership.

(b) The retail seller shall give the retail buyer written notice at the time the retail installment contract is executed that the retail buyer:

(1) is not required to purchase the membership as a condition for approval of the contract; and

(2) is entitled to cancel the membership and receive a full refund of the purchase price of the membership before the 31st day after the date the contract is executed.

(c) The retail seller shall notify the retail buyer if the membership includes services that are provided by the manufacturer as part of the motor vehicle purchase.

(d) The amount charged for a membership as authorized by Subsection (a) must be reasonable.

Added by Acts 2013, 83rd Leg., R.S., c. 355, § 2, eff. Sept. 1, 2013

Section 3 of Acts 2013, 83rd Leg., R.S., c. 355 provides:

The changes in law made by this Act apply only to a retail installment contract executed on or after the effective date of this Act. A retail installment contract executed before the effective date of this Act is governed by the law in effect when the retail installment contract was executed, and the former law is continued in effect for that purpose.

SUBCHAPTER F. LICENSING; ADMINISTRATION OF CHAPTER

§ 348.501. License Required.

(a) A person may not act as a holder under this chapter unless the person:

(1) is an authorized lender or a credit union; or

(2) holds a license issued under this chapter.

(b) A person who is required to hold a license under this chapter must ensure that each office at which retail installment transactions are made, serviced, held, or collected under this chapter is licensed or otherwise authorized to make, service, hold, or collect retail installment transactions in accordance with this chapter and rules implementing this chapter.

(c) A license holder under this chapter who engages in the sale of a motor vehicle to be used as a principal dwelling must meet the surety bond or recovery fund fee requirements, as applicable, of the holder's residential mortgage loan originator under Section 180.058.

(d) A person may not use any device, subterfuge, or pretense to evade the application of this section.

Added by Acts 2001, 77th Leg., c. 1235, § 18, eff. Sept. 1, 2001. Amended by Acts 2009, 81st Leg., R.S., c. 676, § 8, eff. Sept. 1, 2009; Acts 2009, 81st Leg., R.S., c. 1104, § 15, eff. June 19, 2009; Acts 2011, 82nd Leg., R.S., c. 91, § 27.001(13), eff. Sept. 1, 2011.

§ 348.5015. Residential Mortgage Loan Originator License Required.

(a) In this section, "Nationwide Mortgage Licensing System and Registry" and "residential mortgage loan originator" have the meanings assigned by Section 180.002.

[Text of subsection (b) added by Acts 2019, 86th Leg., c. 695, § 6, eff. Nov. 24, 2019.]

(b) Unless exempt under Section 180.003, or acting under the temporary authority described under Section 180.0511, an individual who acts as a residential mortgage loan originator in the sale of a motor vehicle to be used as a principal dwelling must:

(1) be licensed to engage in that activity under this chapter;

(2) be enrolled with the Nationwide Mortgage Licensing System and Registry as required by Section 180.052; and

(3) comply with other applicable requirements of Chapter 180 and rules adopted under that chapter.

[Text of subsection (c) added by Acts 2019, 86th Leg., c. 767, § 34, eff. Sept. 1, 2019.]

(c) Subject to Section 14.112, the finance commission shall adopt rules establishing procedures for applying for issuing, renewing, and enforcing a license under this section. In adopting rules under this subsection, the finance commission shall ensure that:

(1) the minimum eligibility requirements for issuance of a license are the same as the requirements of Section 180.055;

(2) the minimum eligibility requirements for renewal of a license are the same as the requirements of Section 180.059; and

(3) the applicant pays:

(A) an investigation fee in a reasonable amount determined by the commissioner; and

(B) a license fee in an amount determined as provided by Section 14.107.

(d) The finance commission may adopt rules under this chapter as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

Added by Acts 2009, 81st Leg., R.S., c. 1104, § 16, eff. Sept. 1, 2009. Amended by Acts 2019, 86th Leg., c. 767, § 34, eff. Sept. 1, 2019; Acts 2019, 86th Leg., c. 695, § 6, eff. Nov. 24, 2019.

§ 348.502. Application Requirements.

(a) The application for a license under this chapter must:

(1) be under oath;

(2) identify the applicant's principal parties in interest; and

(3) contain other relevant information that the commissioner requires.

(b) On the filing of a license application, the applicant shall pay to the commissioner:

(1) an investigation fee not to exceed $200; and

(2) a license fee in an amount determined as provided by Section 14.107.

Added by Acts 2001, 77th Leg., c. 1235, § 18, eff. Sept. 1, 2001. Amended by Acts 2019, 86th Leg., c. 767, § 35, eff. Sept. 1, 2019

§ 348.503. Investigation of Application.

On the filing of an application and payment of the required fees, the commissioner shall conduct an investigation to determine whether to issue the license.

Added by Acts 2001, 77th Leg., c. 1235, § 18, eff. Sept. 1, 2001.

§ 348.504. Approval or Denial of Application.

(a) The commissioner shall approve the application and issue to the applicant a license under this chapter if the commissioner finds that:

(1) the financial responsibility, experience, character, and general fitness of the applicant are sufficient to:

(A) command the confidence of the public; and

(B) warrant the belief that the business will be operated lawfully and fairly, within the purposes of this chapter; and

(2) the forms and contracts to be used by the applicant are appropriate and adequate to protect the interests of retail buyers.

(b) If the commissioner does not find the eligibility requirements of Subsection (a), the commissioner shall notify the applicant.

(c) If an applicant requests a hearing on the application not later than the 30th day after the date of notification under Subsection (b), the applicant is entitled to a hearing not later than the 60th day after the date of the request.

(d) The commissioner shall approve or deny the application not later than the 60th day after the date of the filing of a completed application with payment of the required fees, or if a hearing is held, after the date of the completion of the hearing on the application. The commissioner and the applicant may agree to a later date in writing.

Added by Acts 2001, 77th Leg., c. 1235, § 18, eff. Sept. 1, 2001.

§ 348.505. Disposition of Fees on Denial of Application.

If the commissioner denies the application, the commissioner shall retain the investigation fee and shall return to the applicant the license fee submitted with the application.

Added by Acts 2001, 77th Leg., c. 1235, § 18, eff. Sept. 1, 2001.

§ 348.5055. License Term.

A license issued under this chapter is valid for the period prescribed by finance commission rule adopted under Section 14.112.

Added by Acts 2019, 86th Leg., c. 767, § 36, eff. Sept. 1, 2019.

§ 348.506. License Fee.

Not later than the 30th day before the date the license expires, a license holder shall pay to the commissioner for each license held a fee in an amount determined as provided by Section 14.107.

Added by Acts 2001, 77th Leg., c. 1235, § 18, eff. Sept. 1, 2001. Added by Acts 2019, 86th Leg., c. 767, § 37, eff. Sept. 1, 2019.

§ 348.5065. Grounds for Refusal to Renew.

The commissioner may refuse to renew the license of a person who fails to comply with an order issued by the commissioner to enforce this chapter.

Added by Acts 2019, 86th Leg., c. 767, § 38, eff. Sept. 1, 2019.

§ 348.507. Expiration of License on Failure to Pay Fee.

If the fee for a license is not paid before the 16th day after the date on which the written notice of delinquency of payment has been given to the license holder, the license expires on that day.

Added by Acts 2001, 77th Leg., c. 1235, § 18, eff. Sept. 1, 2001. Added by Acts 2019, 86th Leg., c. 767, § 39, eff. Sept. 1, 2019.

§ 348.508. License Suspension or Revocation.

After notice and opportunity for a hearing, the commissioner may suspend or revoke a license if the commissioner finds that:

(1) the license holder failed to pay the license fee, an examination fee, an investigation fee, or another charge imposed by the commissioner;

(2) the license holder, knowingly or without the exercise of due care, violated this chapter or a rule adopted or order issued under this chapter; or

(3) a fact or condition exists that, if it had existed or had been known to exist at the time of the original application for the license, clearly would have justified the commissioner's denial of the application.

Added by Acts 2001, 77th Leg., c. 1235, § 18, eff. Sept. 1, 2001. Added by Acts 2019, 86th Leg., c. 767, § 508, eff. Sept. 1, 2019.

§ 348.509. Reinstatement of Suspended License; Issuance of New License After Revocation.

The commissioner may reinstate a suspended license or issue a new license on application to a person whose license has been revoked if at the time of the reinstatement or issuance no fact or condition exists that clearly would have justified the commissioner's denial of an original application for the license.

Added by Acts 2001, 77th Leg., c. 1235, § 18, eff. Sept. 1, 2001.

§ 348.510. Surrender of License.

A license holder may surrender a license issued under this chapter by complying with the commissioner's written instructions relating to license surrender.

.Added by Acts 2001, 77th Leg., c. 1235, § 18, eff. Sept. 1, 2001. Amended by Acts 2023, 88th Leg., R.S., SB 1371, § 21, eff. Sept. 1, 2023.

§ 348.511. Effect of License Suspension, Revocation, or Surrender.

(a) The suspension, revocation, or surrender of a license issued under this chapter does not affect the obligation of a contract between the license holder and a retail buyer entered into before the suspension, revocation, or surrender.

(b) Surrender of a license does not affect the license holder's civil or criminal liability for an act committed before surrender.

Added by Acts 2001, 77th Leg., c. 1235, § 18, eff. Sept. 1, 2001.

§ 348.512. Transfer or Assignment of License.

A license may be transferred or assigned only with the approval of the commissioner.

Added by Acts 2001, 77th Leg., c. 1235, § 18, eff. Sept. 1, 2001.

§ 348.513. Adoption Rules.

(a) The finance commission may adopt rules to:

(1) enforce this chapter; or

(2) modify the standard form as required by Section 348.0091 to:

(A) conform to the provisions of the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) or a regulation issued under authority of that Act;

(B) address any official commentary or other interpretation by a federal agency relating to the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) or a regulation issued under authority of that Act; or

(C) address a judicial interpretation by a state or federal court relating to the Truth in Lending Act (15 U.S.C. Section 1601 et seq.) or a regulation issued under authority of that Act.

Added by Acts 2001, 77th Leg., c. 1235, § 18, eff. Sept. 1, 2001. Amended by Acts 2009, 81st Leg., R.S., c. 676, § 9, eff. Sept. 1, 2009.

§ 348.514. Examination; Access to Records.

(a) At the times the commissioner considers necessary, the commissioner or the commissioner's representative shall:

(1) examine each place of business of each license holder; and

(2) investigate the license holder's transactions and records, including books, accounts, papers, and correspondence, to the extent the transactions and records pertain to the business regulated under this chapter.

(b) The license holder shall:

(1) give the commissioner or the commissioner's representative free access to the license holder's office, place of business, files, safes, and vaults; and

(2) allow the commissioner or the commissioner's representative to make a copy of an item that may be investigated under Subsection (a)(2).

(c) During an examination or investigation the commissioner or the commissioner's representative may administer oaths and examine any person under oath on any subject pertinent to a matter that the commissioner is authorized or required to consider, investigate, or secure information about under this chapter.

(d) All information relating to the examination or investigation process is confidential, including:

(1) information obtained from the license holder;

(2) the examination report;

(3) instructions and attachments; and

(4) correspondence between the license holder and the commissioner or the commissioner's representative relating to an examination or investigation of the license holder.

(e) A license holder's violation of Subsection (b) is a ground for the suspension or revocation of the license.

(f) An examination of a license holder's place of business may be made only:

(1) after advance notice; and

(2) during normal business hours.

Added by Acts 2001, 77th Leg., c. 1235, § 18, eff. Sept. 1, 2001. Amended by Acts 2009, 81st Leg., R.S., c. 676, § 10, eff. Sept. 1, 2009.

§ 348.515. General Investigation.

To discover a violation of this chapter or to obtain information required under this chapter, the commissioner or the commissioner's representative may investigate the records, including books, accounts, papers, and correspondence,

of a person, including a license holder, who the commissioner has reasonable cause to believe is violating this chapter, regardless of whether the person claims to not be subject to this chapter.

Added by Acts 2001, 77th Leg., c. 1235, § 18, eff. Sept. 1, 2001.

§ 348.516. Payment of Examination Costs and Administration Expenses.

A license holder shall pay to the commissioner an amount determined as provided by Section 14.107 and assessed by the commissioner to cover the direct and indirect costs of an examination and a proportionate share of general administrative expenses.

Added by Acts 2001, 77th Leg., c. 1235, § 18, eff. Sept. 1, 2001.

§ 348.517. License Holder's Records; Document Retention Requirements.

(a) A license holder shall maintain a record of each retail installment transaction made under this chapter as is necessary to enable the commissioner to determine whether the license holder is complying with this chapter.

(b) A license holder shall keep the record until the later of:

(1) the fourth anniversary of the date of the retail installment transaction; or

(2) the second anniversary of the date on which the final entry is made in the record.

(c) A record described by Subsection (a) must be prepared in accordance with accepted accounting practices.

(d) The commissioner shall accept a license holder's system of records if the system discloses the information reasonably required under Subsection (a).

(e) A license holder shall keep each obligation signed by a retail buyer at an office in this state designated by the license holder unless the obligation is transferred under an agreement that gives the commissioner access to the obligation.

Added by Acts 2001, 77th Leg., c. 1235, § 18, eff. Sept. 1, 2001. Amended by Acts 2009, 81st Leg., R.S., c. 676, §§ 11, 12, eff. Sept. 1, 2009.

§ 348.518. Sharing of Information.

To ensure consistent enforcement of law and minimization of regulatory burdens, the commissioner and the Texas Department of Motor Vehicles may share information, including criminal history information, relating to a person licensed under this chapter. Information otherwise confidential remains confidential after it is shared under this section.

Added by Acts 2001, 77th Leg., c. 1235, § 18, eff. Sept. 1, 2001. Amended by Acts 2009, 81st Leg., R.S., c. 933, § 3D.03, eff. Sept. 1, 2009.

SUBCHAPTER G. CERTAIN DEBT CANCELLATION AGREEMENTS

§§ 348.601 to 348.606. Redesignated as Chapter 354, Finance Code, and amended by Acts 2017, 85th Leg., R.S., c. 183, § 6, eff. Sept. 1, 2017.

CHAPTER 349. PENALTIES AND LIABILITIES

SUBCHAPTER A. CIVIL PENALTIES

§ 349.001. Liability for Contracting For, Charging, or Receiving Excessive Amount.

(a) A person who violates this subtitle by contracting for, charging, or receiving interest or time price differential greater than the amount authorized by this subtitle is liable to the obligor for an amount equal to:

(1) twice the amount of the interest or time price differential contracted for, charged, or received; and

(2) reasonable attorney's fees set by the court.

(b) A person who violates this subtitle by contracting for, charging, or receiving a charge, other than interest or time price differential, greater than the amount authorized by this subtitle is liable to the obligor for an amount equal to:

(1) the greater of:

(A) three times the amount computed by subtracting the amount of the charge authorized by this subtitle from the amount of the charge contracted for, charged, or received; or

(B) $2,000 or 20 percent of the amount of the principal balance, whichever is less; and

(2) reasonable attorney's fees set by the court.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.24(a), eff. Sept. 1, 1999.

§ 349.002. Liability for Charges Exceeding Twice Amount Authorized.

(a) A person who violates this subtitle by contracting for, charging, or receiving interest or time price differential that in an aggregate amount exceeds twice the total amount of interest or time price differential authorized by this subtitle is liable to the obligor as an additional penalty for all principal or principal balance, as well as all interest or time price differential.

(b) A person who is liable under Subsection (a) is also liable for reasonable attorney's fees incurred by the obligor in enforcing this section.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.25(a), eff. Sept. 1, 1999.

§ 349.003. Liability for Failure to Perform or for Performance of Prohibited Act.

(a) Except as provided by this subtitle, a person who fails to perform a requirement specifically imposed on the person by this subtitle or who commits an act prohibited by this subtitle is liable to the obligor for an amount that does not exceed an amount computed under one, but not both, of the following:

(1) three times the actual economic loss to the obligor that results from the violation; or

(2) if the violation was material and the violation induced the obligor to enter into a transaction that the obligor would not have entered if the violation had not occurred, twice the interest or time price differential contracted for, charged, or received, not to exceed:

(A) $2,000 in a transaction in which the amount financed does not exceed $5,000; or

(B) $4,000 in a transaction in which the amount financed exceeds $5,000.

(b) A person who is liable under Subsection (a) is also liable for reasonable attorney's fees set by the court.

(c) In a judicial proceeding under Subsection (a)(2), the court determines whether the violation is material and the finder of fact determines whether the violation induced the obligor to enter into the transaction.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 349.004. Liability Related to Criminal Offense.

In addition to other applicable penalties, a person who commits an offense under Section 349.502 is liable to the obligor for an amount equal to:

(1) the principal of and all charges contracted for or collected on each loan made without the authority required by Chapter 342 or 346; and

(2) reasonable attorney's fees incurred by the obligor.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.56, eff. Sept. 1, 1999.

§ 349.005. Liability for Violating Injunction.

(a) A person who violates an injunction issued under this subtitle is liable to this state for a civil penalty that does not exceed $1,000 for each violation.

(b) For purposes of this section, a district court that issues an injunction under this subtitle shall retain jurisdiction, and the cause shall be continued.

(c) The attorney general may petition the court for recovery of the civil penalty prescribed by this section.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

SUBCHAPTER B. GENERAL LIMITATIONS ON LIABILITY

§ 349.101. No Liability If Violation Unintentional and From Bona Fide Error or If In Conformity With Other Law.

(a) A person is not liable under Section 349.001, 349.002, or 349.003 if the person shows by a preponderance of evidence that:

(1) the violation:

(A) was not intentional; and

(B) resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such a violation; or

(2) the violation was an act done or omitted in good faith in conformity with:

(A) a rule adopted under, or interpretation of, this title by a state agency, board, or commission;

(B) the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.); or

(C) a rule or regulation adopted under, or interpretation of, the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) by an agency, board, or commission of the United States.

(b) The exception from liability provided by Subsection (a)(2) is not affected by the fact that after the act or omission occurs, the rule, regulation, or interpretation in conformity with which the act was done or omitted is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 349.102. Liability for Multiple Violations in One Transaction.

(a) A person who would be liable under Sections 349.001 and 349.003 as a result of the same transaction is liable only for the penalties provided by Section 349.001.

(b) An obligor is entitled to only one recovery for multiple violations of this subtitle that occur in the same transaction.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 349.103. Limitation on Multiple Recovery of Penalties.

(a) 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 shall 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. This section does not apply to a claim for restitution for unreimbursed actual damages.

(b) 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. An administrative agency of this state, however, shall consider as a mitigating factor any relief recovered in a private suit or proceeding when the agency determines an administrative remedy.

Added by Acts 2005, 79th Leg., c. 1018, § 4.07, eff. Sept. 1, 2005.

SUBCHAPTER C. LIMITING LIABILITY BY CORRECTING VIOLATION

§ 349.201. Correction Resulting in No Liability.

(a) A person is not liable to an obligor for a violation of this subtitle if:

(1) not later than the 60th day after the date on which the person actually discovered the violation, the person corrects the violation as to that obligor by:

(A) performing the required act; or

(B) refunding the amount in excess of the amount authorized by law; and

(2) the person gives to the obligor written notice of the violation as provided by Section 349.204 before the obligor:

(A) gives written notice of that violation; or

(B) files an action alleging that violation.

(b) For purposes of Subsection (a), “actually discovered” refers to the time of the discovery of the violation in fact and not to the time when an ordinarily prudent person, through reasonable diligence, could or should have discovered or known as a matter of law or fact of the violation. Actual discovery of a violation in one transaction may constitute actual discovery of the same violation in other transactions if the violation actually discovered is of such a nature that it would necessarily be repeated and would be clearly apparent in the other transactions without the necessity of examining all of the other transactions.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 349.202. Correction of Violation of Failure to Act or Performing Prohibited Act Resulting in Limited Liability.

(a) Liability to an obligor for a violation of this subtitle to which Section 349.003 applies is limited as provided by this section if, after the 60-day period described by Section 349.201(a)(1) but before the time the obligor gives written notice of that violation or files an action alleging that violation, the violation is corrected as to that obligor by:

(1) the performance of the required act; and

(2) giving to the obligor written notice of the violation as provided by Section 349.204.

(b) The liability of any person for the violation to the obligor as described by Subsection (a) is limited for each transaction to an amount that does not exceed one, but not both, of the following:

(1) the actual economic loss suffered by the obligor as a result of the violation; or

(2) the time price differential or interest contracted for, charged, or received, not to exceed $2,000, if:

(A) the violation was material; and

(B) the violation induced the obligor to enter into a transaction that the obligor would not have entered if the violation had not occurred.

(c) A person who is liable under Subsection (b) is also liable for reasonable attorney's fees set by the court.

(d) In a judicial proceeding under Subsection (b)(2), the court determines whether the violation is material and the finder of fact determines whether the violation induced the obligor to enter into the transaction.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 349.203. Correction of Violation of Charging Excessive Amounts Resulting in Limited Liability.

(a) This section applies only to a violation of this subtitle to which Section 349.001 applies and that results from:

(1) contracting for, charging, or receiving interest or time price differential that exceeds the amount authorized by law if the excess is directly and solely attributable to and computed on the amount of a charge other than the interest or time price differential; or

(2) contracting for, charging, or receiving a charge, other than interest or time price differential, that exceeds the amount authorized by law.

(b) If, after the 60-day period described by Section 349.201(a)(1) but before the time an obligor gives written notice of the violation or files an action alleging the violation, the violation is corrected as to the obligor by refunding the amount of the excess and giving to the obligor written notice of the violation as provided by Section 349.204, the liability of any person to that obligor is limited for each transaction to an amount that does not exceed:

(1) the time price differential or interest contracted for, charged, or received, not to exceed $2,000; and

(2) reasonable attorney's fees set by the court.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 349.204. Giving Written Notice.

(a) For purposes of this subchapter, written notice is given to a person by delivering the notice to the person or the person's agent or attorney of record:

(1) in person; or

(2) by United States mail to the address shown on the most recent documents in the transaction.

(b) Deposit of a notice as registered or certified mail in a postage-paid, properly addressed wrapper in a post office or official depository under the care and custody of the United States Postal Service is prima facie evidence of the delivery of the notice to the person to whom it is addressed.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 349.205. Correction Exception Available to all Similarly Situated.

If in a single transaction more than one person may be liable for a violation of this subtitle, compliance with Section 349.201, 349.202, or 349.203 by any of those persons entitles each to the protection provided by that section.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

SUBCHAPTER D. LIMITING LIABILITY BY LATE REGISTRATION OR LICENSURE

§ 349.301. Payment of Fees.

A person who registers or obtains or renews a license under this title after the date on which the person was required to register or to obtain or renew the license may limit the person's liability as provided by this subchapter by paying to the commissioner:

(1) all prior registration or license fees that the person should have paid under this title; and

(2) except as provided by Section 349.302(a), a late filing fee as provided by this subchapter.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Added by Acts 2019, 86th Leg., c. 767, § 41, eff. Sept. 1, 2019

§ 349.302. Late Filing Fee for Registering or Renewal of Registration.

(a) A person who renews a registration not later than the 30th day after the date on which the registration expires is not required to pay a late filing fee.

(b) The late filing fee is $250 for:

(1) registering after the time registration is required under this title; or

(2) renewal of a registration after the day prescribed by Subsection (a).

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 349.303. Late Filing Fee for Obtaining or Renewing License.

(a) The late filing fee for renewing an expired license is $1,000 if the license:

(1) was in good standing when it expired; and

(2) is renewed not later than the 180th day after its expiration date.

(b) The late filing fee is $10,000 for:

(1) obtaining a license after the time it is required under this title; or

(2) renewing an expired license to which Subsection (a) does not apply.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 349.304. Effect of Compliance With Subchapter for Registrant or License Holder.

(a) A person who pays the applicable registration fees and late filing fee as provided by Section 349.301 is considered for all purposes to have had the required registration for the periods for which the registration fees have been paid.

(b) A person who renews an expired license and pays the applicable license fees and, if required, a late filing fee as provided by Section 349.301 is considered for all purposes to have held the required license as if it had not expired.

(c) A person who obtains a license and pays the applicable license fees and the late filing fee under Section 349.301 is considered for all purposes to have held the license for the period during which it was required but only as to a loan on which the person has contracted for, charged, or received interest that does not exceed the amount that would have been allowed for the loan under Chapter 303.

(d) A person who under this section is considered to have been registered or to have held a license is not subject to any liability, forfeiture, or penalty, other than as provided by this subchapter, relating to the person's not having been registered or not holding a license during the period for which the registration or license fees and late filing fee are paid under Section 349.301.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 349.305. Effect of Compliance With Subchapter on Person Other Than Registrant or License Holder.

A benefit provided to a person under Section 349.304 also applies to that person's employees or other agents, employers, predecessors, successors, and assigns but does not apply to any other person required to be licensed under this title.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

SUBCHAPTER E. PROCEDURES FOR CIVIL ACTIONS

§ 349.401. Venue.

An action under this chapter must be brought in the county in which:

(1) the transaction was entered; or

(2) the defendant resides when the action is filed.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 349.402. Limitation Period.

(a) Except as provided by Subsection (b), an action under this chapter must be brought before the later of:

(1) the fourth anniversary of the date of the loan or retail installment transaction with respect to which the violation occurred; or

(2) the second anniversary of the date on which the violation occurred.

(b) An action under this chapter with respect to an open-end credit transaction must be brought before the second anniversary of the date on which the violation occurred.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 349.403. Class Action.

(a) In a class action that alleges one or more violations of this subtitle and is determined by the court to be maintainable as a class action, the class may recover the amount of actual damages proximately caused to the members of the class as a result of the violations.

(b) The court may assess as a penalty:

(1) for each obligor who is named as a class representative at the time that the action is determined to be maintainable as a class action, the amount that could be recovered by the person under this chapter; and

(2) for other class members, an amount set by the court under Subsection (c) and subject to Subsection (d).

(c) In determining the award amount, the court shall consider, in addition to other relevant factors:

(1) the amount of any actual damages awarded;

(2) the frequency and persistence of violations by the creditor;

(3) the resources of the creditor;

(4) the number of persons adversely affected; and

(5) the extent to which the creditor's violation was intentional or reckless.

(d) A minimum recovery is not applicable to a class member to whom Subsection (b)(2) applies. The total recovery under Subsection (b)(2) in a class action or series of class actions arising out of the same violation of this subtitle by the same person may not exceed the lesser of $100,000 or five percent of the net worth of the person.

(e) In a successful action to enforce the liability under this section, the court may award:

(1) costs of the action; and

(2) reasonable attorney's fees set by the court.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 349.404. Liability Under Subchapter in Lieu of Liability Under Consumer Credit Protection Act.

(a) A final judgment granting or denying relief under the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) bars a subsequent action under Section 349.001, 349.002, or 349.003 by the same obligor with respect to the same violation.

(b) If an obligor brings an action under the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) against a person after a final judgment has been rendered under Section 349.001, 349.002, or 349.003 in favor of the obligor against that person with respect to the same violation, that person in the same or an independent action may sue that obligor to recover:

(1) the amount of the judgment rendered under Section 349.001, 349.002, or 349.003; and

(2) reasonable attorney's fees set by the court.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

SUBCHAPTER F. CRIMINAL OFFENSES

§ 349.501. Offense of Charges Exceeding Twice Amount Authorized.

(a) A person commits an offense if the person contracts for, charges, or receives interest, time price differential, and other charges that in an aggregate amount exceed twice the total amount of interest, time price differential, and other charges authorized by this subtitle.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $100.

(c) Each contract or transaction that violates Subsection (a) is a separate offense.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997.

§ 349.502. Offense of Engaging in Lending Business Without Proper Authority.

(a) A person commits an offense if the person engages in a business that is subject to Chapter 342, 346, or 351 without holding the license or other authorization required under that chapter.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $1,000.

(c) Each loan made without the authority required by Chapter 342, 346, or 351 is a separate offense.

Added by Acts 1997, 75th Leg., c. 1008, § 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., c. 62, § 7.57, eff. Sept. 1, 1999; Acts 2007, 80th Leg., R.S., c. 1220, § 2, eff. Sept. 1, 2007.

§ 349.503. Certain Proceedings in Connection With Sale-Leaseback Transaction.

(a) If a buyer in a sale-leaseback transaction requires the seller to provide a check as security for the transaction, the buyer may not file or threaten to file a charge, complaint, or criminal prosecution under Section 31.03, 31.04, or 32.41, Penal Code, based on nonpayment of the check.

(b) A buyer who violates Subsection (a) commits an offense. An offense under this section is a misdemeanor punishable by a fine of not more than $1,000.

Added by Acts 2001, 77th Leg., c. 1235, § 19, eff. Sept. 1, 2001.

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

§ 350.001. Applicability.

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

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

(1) licensed or registered under this title or Title 3; or

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

Added by Acts 2005, 79th Leg., c. 1018, § 1.04, eff. Sept. 1, 2005.

§ 350.002. Prevention of Evasion.

A person may not use any device, subterfuge, or pretense to evade the application of this section.

Added by Acts 2005, 79th Leg., c. 1018, § 1.04, eff. Sept. 1, 2005.

§ 350.003. Compliance With Fair Trade Practices Act.

A creditor who is not licensed, registered, or otherwise exempt under this title must comply with the requirements of 15 U.S.C. Section 45. An enforcement action to compel compliance under this section may include an action to enjoin illegal activities or order restitution.

Added by Acts 2005, 79th Leg., c. 1018, § 1.04, eff. Sept. 1, 2005.

§ 350.004. Penalties.

Chapter 349 applies to violations of this chapter and the rules adopted under this chapter.

Added by Acts 2005, 79th Leg., c. 1018, § 1.04, eff. Sept. 1, 2005.

CHAPTER 351. PROPERTY TAX LENDERS

SUBCHAPTER A. GENERAL PROVISIONS

§ 351.001. Short Title.

This chapter may be cited as the Property Tax Lender License Act.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007.

§ 351.002. Defintions.

In this chapter:

(1) "Property tax lender" means a person that engages in activity requiring a license under Section 351.051. The term does not include:

(A) a person who is sponsored by a licensed property tax lender to assist with or perform the acts of a property tax lender; or

(B) a person who performs only clerical functions such as delivering a loan application to a property tax lender, gathering or requesting information related to a property tax loan application on behalf of the prospective borrower or property tax lender, word processing, sending correspondence, or assembling files.

(2) "Property tax loan" means an advance of money:

(A) in connection with a transfer of lien under Section 32.06, Tax Code, or a contract under Section 32.065, Tax Code;

(B) in connection with which the person making the transfer arranges for the payment, with a property owner's written consent, of property taxes and related closing costs on behalf of the property owner in accordance with Section 32.06, Tax Code; and

(C) that is secured by a special lien against property transferred from a taxing unit to the property tax lender and which may be further secured by the lien or security interest created by a deed of trust, security deed, or other security instrument.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007.

§ 351.0021. Authorized Charges.

(a) The contract between a property tax lender and a property owner may require the property owner to pay the following costs after closing:

(1) a reasonable fee for filing the release of a tax lien authorized under Section 32.06(b), Tax Code;

(2) a reasonable fee for a payoff statement authorized under Section 32.06(f-3), Tax Code;

(3) a reasonable fee for providing information regarding the current balance owed by the property owner authorized under Section 32.06(g), Tax Code;

(4) reasonable and necessary attorney's fees, recording fees, and court costs for actions that are legally required to respond to a suit filed under Chapter 33, Tax Code, or to perform a foreclosure, including fees required to be paid to an official and fees for an attorney ad litem;

(5) to the extent permitted by the United States Bankruptcy Code, attorney's fees and court costs for services performed after the property owner files a voluntary bankruptcy petition;

(6) a reasonable fee for title examination and preparation of an abstract of title by an attorney, a title company, or a property search company authorized to do business in this state;

(7) a processing fee for insufficient funds, as authorized under Section 3.506, Business & Commerce Code;

(8) a fee for collateral protection insurance, as authorized under Chapter 307;

(9) a prepayment penalty, unless the lien transferred is on residential property owned and used by the property owner for personal, family, or household purposes;

(10) recording expenses incurred in connection with a modification necessary to preserve a borrower's ability to avoid a foreclosure proceeding; and

(11) fees for copies of transaction documents requested by the property owner.

(b) Notwithstanding Subsection (a)(11), a property tax lender shall provide a property owner:

(1) one free copy of the transaction documents at closing; and

(2) an additional free copy of the transaction documents on the property owner's request following closing.

(c) A property tax lender or any successor in interest may not charge:

(1) any fee, other than interest, after closing in connection with the transfer of a tax lien unless the fee is expressly authorized under this section; or

(2) any interest that is not expressly authorized under Section 32.06, Tax Code.

(d) Except for charges authorized under Subsections (a)(1), (2), (3), (9), and (11), any amount charged by a property tax lender after closing must be for services performed by a person that is not an employee of the property tax lender.

(e) The finance commission may adopt rules implementing and interpreting this section.

Added by Acts 2011, 82nd Leg., R.S., c. 622, § 3, eff. Sept. 1, 2011. Amended by Acts 2013, 83rd Leg., R.S., c. 206, § 1, eff. May 29, 2013.

§ 351.0022. Waiver Prohibited.

Except as specifically permitted by this chapter or Chapter 32, Tax Code, a property owner may not waive or limit a requirement imposed on a property tax lender by this chapter or Chapter 32, Tax Code.

Added by Acts 2013, 83rd Leg., R.S., c. 206, § 2, eff. May 29, 2013. Amended by Acts 2023, 88th Leg., R.S., SB 1371, § 22, eff. Sept. 1, 2023.

§ 351.0023. Solicitation of Loans; Notice.

(a) A property tax lender who solicits property tax loans by mail, e-mail, or other print or electronic media shall include on the first page of all solicitation materials, in at least 12-point boldface type, a notice substantially similar to the following: "YOUR TAX OFFICE MAY OFFER DELINQUENT TAX INSTALLMENT PLANS THAT MAY BE LESS COSTLY TO YOU. YOU CAN REQUEST INFORMATION ABOUT THE AVAILABILITY OF THESE PLANS FROM THE TAX OFFICE."

(b) A property tax lender who solicits property tax loans by broadcast media, including a television or radio broadcast, shall state the following in the broadcast: "YOUR TAX OFFICE MAY OFFER DELINQUENT TAX INSTALLMENT PLANS THAT MAY BE LESS COSTLY TO YOU. YOU CAN REQUEST INFORMATION ABOUT THE AVAILABILITY OF THESE PLANS FROM THE TAX OFFICE."

(c) A property tax lender may not, in any manner, advertise or cause to be advertised a false, misleading, or deceptive statement or representation relating to a rate, term, or condition of a property tax loan.

(d) A property tax lender who refers to a rate or charge in an advertisement shall state the rate or charge fully and clearly. If the rate or charge is a rate of finance charge, the advertisement must include the annual percentage rate and specifically refer to the rate as an "annual percentage rate." The advertisement must state that the annual percentage rate may be increased after the contract is executed, if applicable. The advertisement may not refer to any other rate, except that a simple annual rate that is applied to the unpaid balance of a property tax loan may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

(e) If an advertisement for a property tax loan includes the number of payments, period of repayment, amount of any payment, or amount of any finance charges, the advertisement must, in addition to any applicable requirements of Subsection (d), include:

(1) the terms of repayment, including the repayment obligations over the full term of the loan and any balloon payment;

(2) the annual percentage rate, and must refer to that rate as the annual percentage rate; and

(3) a statement that the lender may increase the annual percentage rate after the contract is executed, if applicable.

(f) The finance commission may adopt rules to implement and enforce this section.

(g) Notwithstanding Section 14.251, the commissioner may assess an administrative penalty under Subchapter F, Chapter 14, against a property tax lender who violates this section, regardless of whether the violation is knowing or wilful.

Added by Acts 2013, 83rd Leg., R.S., c. 206, § 2, eff. May 29, 2013.

§ 351.003. Secondary Market Transactions.

(a) Except as provided by Subsection (b), this chapter does not prohibit a property tax lender from receiving compensation from a party other than the property tax loan applicant for the sale, transfer, assignment, or release of rights on the closing of a property tax loan transaction.

(b) A person may not sell, transfer, assign, or release rights to a property tax loan to a person who is not licensed under Section 351.051 or exempt from the application of this chapter under Section 351.051(c).

(c) The finance commission shall adopt rules to implement this section.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007. Amended by Acts 2013, 83rd Leg., R.S., c. 206, § 3, eff. May 29, 2013.

§ 351.004. Affiliated Business Arrangements.

A property tax lender may conduct business under this chapter in an office, office suite, room, or place of business in which any other business is conducted or in combination with any other business unless the commissioner:

(1) determines after a hearing that the conduct of the other business in that office, office suite, room, or place of business has concealed an evasion of this chapter; and

(2) orders the lender in writing to desist from the conduct of the other business in that office, office suite, room, or place of business.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007. Amended by Acts 2009, 81st Leg., R.S., c. 1382, § 1, eff. Sept. 1, 2009.

§ 351.005. Application of Tax Code.

This chapter does not affect the application of Section 32.06 or 32.065, Tax Code.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007.

§ 351.006. Enforcement.

(a) In addition to any other applicable enforcement provisions, Subchapters E, F, and G, Chapter 14, apply to a violation of this chapter or Section 32.06 or 32.065, Tax Code, in connection with property tax loans.

(b) Notwithstanding Section 14.251, the commissioner may assess an administrative penalty under Subchapter F, Chapter 14, against a person who violates Section 32.06(b-1), Tax Code, regardless of whether the violation is knowing or wilful.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007. Amended by Acts 2011, 82nd Leg., R.S., c. 622, § 4, eff. Sept. 1, 2011; Acts 2011, 82nd Leg., R.S., c. 1182, § 11, eff. Sept. 1, 2011.

§ 351.007. Rules.

The finance commission may adopt rules to ensure compliance with this chapter and Sections 32.06 and 32.065, Tax Code.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007.

§ 351.008. Examination of Lenders; Access to Records.

(a) The commissioner or the commissioner's representative shall, at the times the commissioner or the representative considers necessary:

(1) examine each place of business of each property tax lender; and

(2) investigate the lender's transactions, including loans, and records, including books, accounts, papers, and correspondence, to the extent the transactions and records pertain to the business regulated under this chapter and Sections 32.06 and 32.065, Tax Code.

(b) The property tax lender shall:

(1) give the commissioner or the commissioner's representative free access to the lender's office, place of business, files, safes, and vaults; and

(2) allow the commissioner or the representative to make a copy of an item that may be investigated under Subsection (a)(2).

(c) During an examination, the commissioner or the commissioner's representative may administer oaths and examine any person under oath on any subject pertinent to a matter that the commissioner or the representative is authorized or required to consider, investigate, or secure information about under this chapter or Section 32.06 or 32.065, Tax Code.

(d) Information obtained under this section is confidential.

(e) A property tax lender's violation of Subsection (b) is a ground for the suspension or revocation of the lender's license.

Amended by Acts 2009, 81st Leg., R.S., c. 1382, § 1, eff. Sept. 1, 2009.

§ 351.009. General Investigation.

(a) To discover a violation of this chapter or Section 32.06 or 32.065, Tax Code, or to obtain information required under this chapter or Section 32.06 or 32.065, Tax Code, the commissioner or the commissioner's representative may investigate the records, including books, accounts, papers, and correspondence, of a person, including a property tax lender, who the commissioner or the representative has reasonable cause to believe is violating this chapter or Section

32.06 or 32.065, Tax Code, regardless of whether the person claims to not be subject to this chapter or Section 32.06 or 32.065, Tax Code.

(b) For the purposes of this section, a person who advertises, solicits, or otherwise represents that the person is willing to make a property tax loan is presumed to be engaged in the business described by Section 351.051.

Amended by Acts 2009, 81st Leg., R.S., c. 1382, § 1, eff. Sept. 1, 2009.

§ 351.010. Refusal to Allow Examination or Inspection.

A property tax lender who fails or refuses to permit an examination or investigation authorized by this subchapter violates this chapter. The failure or refusal is grounds for the suspension or revocation of the lender's license.

Amended by Acts 2009, 81st Leg., R.S., c. 1382, § 1, eff. Sept. 1, 2009.

§ 351.011. Verification of Net Assets.

If the commissioner questions the amount of a property tax lender's net assets, the commissioner may require certification by an independent certified public accountant that:

(1) the accountant has reviewed the property tax lender's books, other records, and transactions during the reporting year;

(2) the books and other records are maintained using generally accepted accounting principles; and

(3) the property tax lender meets the net assets requirement of Section 351.153.

Amended by Acts 2009, 81st Leg., R.S., c. 1382, § 1, eff. Sept. 1, 2009.

§ 351.012. Applicability of Chapter.

This chapter applies to a property tax loan that is extended to a person for payment of property taxes on real property located in this state.

Added by Acts 2019, 86th Leg., c. 767, § 42, eff. Sept. 1, 2019.

[Sections 351.012-351.050 reserved for expansion]

SUBCHAPTER B. AUTHORIZED ACTIVITIES; LICENSE

§ 351.051. License Required.

(a) A person must hold a license issued under this chapter to:

(1) engage in the business of making, transacting, or negotiating property tax loans; or

(2) contract for, charge, or receive, directly or indirectly, in connection with a property tax loan subject to this chapter, a charge, including interest, compensation, consideration, or another expense, authorized under this chapter or Chapter 32, Tax Code.

(b) A person may not use any device, subterfuge, or pretense to evade the application of this section.

(c) Except as provided by Section 351.003, this chapter does not apply to:

(1) any of the following entities or an employee of any of the following entities, if the employee is acting for the benefit of the employer:

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

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

(2) an individual who:

(A) is related to the property owner within the second degree of consanguinity or affinity, as determined under Chapter 573, Government Code; or

(B) makes five or fewer property tax loans in any consecutive 12-month period from the individual's own funds.

(d) A property tax lender licensed under this chapter is not required to be licensed under Chapter 156 or any other provision of this code.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007. Amended by Acts 2011, 82nd Leg., R.S., c. 622, § 5, eff. Sept. 1, 2011; Acts 2013, 83rd Leg., R.S., c. 206, § 4, eff. May 29, 2013.

§ 351.0515. Residential Mortgage Loan Originator License Required.

(a) In this section, "Nationwide Mortgage Licensing System and Registry" and "residential mortgage loan originator" have the meanings assigned by Section 180.002.

(b) Unless exempt under Section 180.003, or acting under the temporary authority described under Section 180.0511, an individual who acts as a residential mortgage loan originator in the making, transacting, or negotiating of a property tax loan for a principal dwelling must:

(1) be individually licensed to engage in that activity under this chapter;

(2) be enrolled with the Nationwide Mortgage Licensing System and Registry as required by Section 180.052; and

(3) comply with other applicable requirements of Chapter 180 and rules adopted under that chapter.

(c) Subject to Section 14.112, the finance commission shall adopt rules establishing procedures for issuing, renewing, and enforcing an individual license under this section. In adopting rules under this subsection, the finance commission shall ensure that:

(1) the minimum eligibility requirements for issuance of an individual license are the same as the requirements of Section 180.055;

(2) the minimum eligibility requirements for renewal of an individual license are the same as the requirements of Section 180.059; and

(3) the applicant pays:

(A) an investigation fee in a reasonable amount determined by the commissioner; and

(B) a license fee in an amount determined as provided by Section 14.107.

(d) The finance commission may adopt rules under this chapter as required to carry out the intentions of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (Pub. L. No. 110-289).

Added by Acts 2009, 81st Leg., R.S., c. 1104, § 17, eff. Sept. 1, 2009. Amended by Acts 2019, 86th Leg., R.S. c. 695, § 7, eff. Nov. 24, 2019; Acts 2019, 86th Leg., c. 767, § 43, eff. Sept. 1, 2019.

§ 351.052. Issuance of More Than One License for Property Tax Lender.

(a) The commissioner may issue more than one license to a property tax lender on compliance with this chapter for each license.

(b) A person who is required to hold a license under this chapter must hold a separate license for each office at which property tax loans are made, negotiated, serviced, held, or collected under this chapter.

(c) A license is not required under this chapter for a place of business:

(1) devoted to accounting or other recordkeeping; and

(2) at which property tax loans are not made, negotiated, serviced, held, or collected under this chapter.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007.

§ 351.053. Area of Business; Property Tax Loans by Mail or Online.

(a) A property tax lender is not limited to making property tax loans to residents of the community in which the office for which the license or other authority is granted is located.

(b) A property tax lender may make, negotiate, arrange, and collect property tax loans by mail or online from a licensed office.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007. Added by Acts 2019, 86th Leg., c. 767, §§ 44, 45, eff. Sept. 1, 2019.

§ 351.054. Notice to Taxing Unit.

(a) A transferee of a tax lien must include with the sworn document executed by the borrower and filed with the collector of a taxing unit under Section 32.06(a-1), Tax Code, the information required by this section.

(b) If the transferee is licensed under this chapter, the transferee shall include with the filing the licensee's license number assigned by the commissioner.

(c) If the transferee is exempt from this chapter under Section 351.051(c)(1), the transferee shall include with the filing an affidavit stating the entity's type of organization that qualifies it for the exemption, any charter number assigned by the governmental authority that issued the entity's charter, and the address of the entity's main office.

(d) If the transferee is exempt from this chapter under Section 351.051(c)(2), the transferee shall include a certificate issued by the commissioner indicating the entity's exemption. The commissioner shall establish procedures for issuance of a certificate under this subsection, application requirements, and requirements regarding information that must be submitted with an application.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007. Amended by Acts 2013, 83rd Leg., R.S., c. 206, § 5, eff. May 29, 2013.

[Sections 351.055-351.100 reserved for expansion]

SUBCHAPTER C. APPLICATION FOR AND ISSUANCE OF LICENSE

§ 351.101. Application Requirements.

(a) The application for a license under this chapter must:

(1) be under oath;

(2) give the approximate location from which business is to be conducted;

(3) identify the business's principal parties in interest; and

(4) contain other relevant information that the commissioner requires for the findings required under Section 351.104.

(b) On the filing of one or more license applications, the applicant shall pay to the commissioner an investigation fee not to exceed $200.

(c) On the filing of each license application, the applicant shall pay to the commissioner a license fee in an amount determined as provided by Section 14.107.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007. Added by Acts 2019, 86th Leg., c. 767, § 46, eff. Sept. 1, 2019.

§ 351.102. Bond.

(a) If the commissioner requires, an applicant for a license under this chapter shall file with the application a bond that is:

(1) in an amount not to exceed the total of:

(A) $50,000 for the first license; and

(B) $10,000 for each additional license;

(2) satisfactory to the commissioner; and

(3) issued by a surety company qualified to do business as a surety in this state.

(b) The bond must be in favor of this state for the use of this state and the use of a person who has a cause of action under this chapter against the license holder.

(c) The bond must be conditioned on:

(1) the license holder's faithful performance under this chapter and rules adopted under this chapter; and

(2) the payment of all amounts that become due to the state or another person under this chapter during the period for which the bond is given.

(d) The aggregate liability of a surety to all persons damaged by the license holder's violation of this chapter may not exceed the amount of the bond.

(e) A license holder engaged in the business of making, transacting, or negotiating a property tax loan for a principal dwelling must meet the surety bond or recovery fund fee requirement, as applicable, of the holder's residential mortgage loan originator under Section 180.058.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007. Amended by Acts 2009, 81st Leg., R.S., c. 1104, § 18, eff. Sept. 1, 2009; Acts 2019, 86th Leg., c. 767, § 47, eff. Sept. 1, 2019.

§ 351.103. Investigation of Application.

On the filing of an application and, if required, a bond, and on payment of the required fees, the commissioner shall conduct an investigation to determine whether to issue the license.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007.

§ 351.104. Approval or Denial of Application.

(a) The commissioner shall approve the application and issue to the applicant a license to make property tax loans under this chapter if the commissioner finds that:

(1) the financial responsibility, experience, character, and general fitness of the applicant are sufficient to:

(A) command the confidence of the public; and

(B) warrant the belief that the business will be operated lawfully and fairly, within the purposes of this chapter; and

(2) the applicant has net assets of at least $25,000 available for the operation of the business.

(b) If the commissioner does not find that the eligibility requirements of Subsection (a) are met, the commissioner shall notify the applicant.

(c) If an applicant requests a hearing on the application not later than the 30th day after the date of notification under Subsection (b), the applicant is entitled to a hearing not later than the 60th day after the date of the request.

(d) The commissioner shall approve or deny the application not later than the 60th day after the date of the filing of a completed application with payment of the required fees, or if a hearing is held, after the date of the completion of the hearing on the application. The commissioner and the applicant may agree to a later date in writing.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007.

§ 351.105. Disposition of Fees on Denial of Application.

If the commissioner denies the application, the commissioner shall retain the investigation fee and shall return to the applicant the license fee submitted with the application.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007.

§ 351.106. License Term.

A license issued under this chapter is valid for the period prescribed by finance commission rule adopted under Section 14.112.

Added by Acts 2019, 86th Leg., c. 767, § 48, eff. Sept. 1, 2019.

[Sections 351.107-351.150 reserved for expansion]

SUBCHAPTER D. LICENSE

§ 351.151. Name and Place of License.

(a) A license must state:

(1) the name of the license holder; and

(2) the address of the office from which the business is to be conducted.

(b) A license holder may not conduct business under this chapter under a name or at a place of business in this state other than the name or office stated on the license.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007.

§ 351.152. License Display.

A license holder shall display a license at the place of business provided on the license.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007.

§ 351.153. Minimum Assets for License.

A license holder shall maintain for each office for which a license is held net assets of at least $25,000 that are used or readily available for use in conducting the business of that office.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007.

§ 351.1535. Grounds for Refusal to Renew.

The commissioner may refuse to renew the license of a person who fails to comply with an order issued by the commissioner to enforce this chapter.

Added by Acts 2019, 86th Leg., c. 767, § 49, eff. Sept. 1, 2019.

§ 351.154. License Fee.

Not later than the 30th day before the date the license expires, a license holder shall pay to the commissioner for each license held a fee in an amount determined as provided by Section 14.107.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007. Amended by Acts 2019, 86th Leg., c. 767, § 50, eff. Sept. 1, 2019.

§ 351.155. Expiration of License on Failure to Pay Fee.

If the fee for a license is not paid before the 16th day after the date on which the written notice of delinquency of payment has been given to the license holder, the license expires on that day.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007. Amended by Acts 2019, 86th Leg., c. 767, § 51, eff. Sept. 1, 2019.

§ 351.156. License Suspension or Revocation.

After notice and opportunity for a hearing, the commissioner may suspend or revoke a license if the commissioner finds that:

(1) the license holder failed to pay the license fee, an examination fee, an investigation fee, or another charge imposed by the commissioner under this chapter;

(2) the license holder, knowingly or without the exercise of due care, violated this chapter or Section 32.06 or 32.065, Tax Code, or a rule adopted or an order issued under this chapter or Section 32.06 or 32.065, Tax Code; or

(3) a fact or condition exists that, if it had existed or had been known to exist at the time of the original application for the license, clearly would have justified the commissioner's denial of the application; or

(4) the license holder has failed to ensure that an individual acting as a residential mortgage loan originator, as defined by Section 180.002, in the making, transacting, or negotiating of a property tax loan for a principal dwelling is licensed under this chapter in accordance with Section 351.0515.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007. Amended by Acts 2009, 81st Leg., R.S., c. 289, § 18, eff. Sept. 1, 2009; Acts 2019, 86th Leg., c. 767, § 52, eff. Sept. 1, 2019.

§ 351.157. Corporate Charter Forfeiture.

(a) A license holder who violates this chapter is subject to revocation of the holder's license and, if the license holder is a corporation, forfeiture of its charter.

(b) When the attorney general is notified of a violation of this chapter and revocation of a license, the attorney general shall file suit in a district court in Travis County, if the license holder is a corporation, for forfeiture of the license holder's charter.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007.

§ 351.158. License Suspension or Revocation Filed with Public Records.

The decision of the commissioner on the suspension or revocation of a license and the evidence considered by the commissioner in making the decision shall be filed in the public records of the commissioner.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007.

§ 351.159. Reinstatement of Suspended License; Issuance of New License After Revocation.

The commissioner may reinstate a suspended license or issue a new license on application to a person whose license has been revoked if at the time of the reinstatement or issuance no fact or condition exists that clearly would have justified the commissioner's denial of an original application for the license.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007.

§ 351.160. Surrender of License.

A license holder may surrender a license issued under this chapter by complying with the commissioner's written instructions relating to license surrender.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007. Amended by Acts 2023, 88th Leg., R.S., SB 1371, § 23, eff. Sept. 1, 2023.

§ 351.161. Effect of License Suspension, Revocation, or Surrender.

(a) The suspension, revocation, or surrender of a license issued under this chapter does not affect the obligation of a contract between the license holder and a debtor entered into before the revocation, suspension, or surrender.

(b) Surrender of a license does not affect the license holder's civil or criminal liability for an act committed before surrender.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007.

§ 351.162. Moving an Office.

(a) A license holder shall give written notice to the commissioner before the 30th day preceding the date the license holder moves an office from the location provided on the license.

(b) The commissioner shall amend a license holder's license accordingly.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007.

§ 351.163. Transfer or Assignment of License.

A license may be transferred or assigned only with the approval of the commissioner.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007.

§ 351.164. Reporting Requirement.

(a) Each year, a license holder shall file with the commissioner a report that contains relevant information concerning its transactions conducted under this chapter.

(b) A report under this section must be:

(1) under oath; and

(2) in the form prescribed by the commissioner.

(c) A report under this section is confidential.

(d) Annually the commissioner shall prepare and publish a consolidated analysis and recapitulation of reports filed under this section.

Added by Acts 2007, 80th Leg., R.S., c. 1220, § 1, eff. Sept. 1, 2007.

CHAPTER 352. TAX REFUND ANTICIPATION LOANS

§ 352.001. Definitions.

In this chapter:

(1) "Borrower" means an individual who receives the proceeds of a refund anticipation loan.

(2) "Facilitator" means a person who processes, receives, or accepts for delivery an application for a refund anticipation loan, delivers a check in payment of refund anticipation loan proceeds, or in any other manner acts to allow the making of a refund anticipation loan.

(3) "Lender" means a person who extends credit to a borrower in the form of a refund anticipation loan.

(4) "Refund anticipation loan" means a loan borrowed by a taxpayer based on the taxpayer's anticipated federal income tax refund.

(5) "Refund anticipation loan fee" means a fee imposed or other consideration required by the facilitator or the lender for a refund anticipation loan. The term does not include a fee usually imposed or other consideration usually required by the facilitator in the ordinary course of business for services not related to the making of loans, including a fee imposed for tax return preparation or for the electronic filing of a tax return.

Added by Acts 2007, 80th Leg., R.S., c. 135, § 1, eff. Sept. 1, 2009. Renumbered by Acts 2009, 81st Leg., R.S., c. 87, § 27.001(17), eff. Sept. 1, 2009.

§ 352.002. Restriction on Acting a Facilitator.

(a) A person may not, individually or in conjunction or cooperation with another person, act as a facilitator unless the person is:

(1) engaged in the business of preparing tax returns, or employed by a person engaged in the business of preparing tax returns;

(2) primarily involved in financial services or tax preparations;

(3) authorized by the Internal Revenue Service as an e-file provider; and

(4) registered with the commissioner as a facilitator under Section 352.003.

(b) This section does not apply to:

(1) a bank, thrift, savings association, industrial bank, or credit union operating under the laws of the United States or this state;

(2) an affiliate that is a servicer of a person described by Subdivision (1) operating under the name of that person; or

(3) any person who acts solely as an intermediary and does not interact directly with a taxpayer in the making of the refund anticipation loan.

Added by Acts 2007, 80th Leg., R.S., c. 135, § 1, eff. Sept. 1, 2009. Renumbered by Acts 2009, 81st Leg., R.S., c. 87, § 27.001(17), eff. Sept. 1, 2009.

Section 2 of Acts 2007, 80th Leg., R.S., c. 135 provides:

(b) The requirement under Section 351.002(a), Finance Code, as added by this Act, that a person who facilitates refund anticipation loans be registered under Section 351.003, Finance Code, as added by this Act, takes effect January 1, 2008.

§ 352.003. Registration of Facilitators.

(a) To register as a facilitator, a person must provide to the commissioner:

(a-1) A registration issued under this section is valid for the period prescribed by finance commission rule adopted under Section 14.112.

(1) a list of each location in this state at which e-file providers authorized by the Internal Revenue Service file tax returns on behalf of borrowers for whom the facilitator acts to allow the making of a refund anticipation loan; and

(2) a processing fee for each location included on the list furnished under Subdivision (1).

(b) The commissioner shall prescribe the processing fee in an amount necessary to cover the costs of administering this section.

(c) The finance commission by rule shall establish a deadline for the submission of the information and fee required by Subsection (a) for initial issuance and renewal of registrations under this section.

(c-1) After the applicable deadline for initial or renewal registrations, a facilitator may amend the registration required under Subsection (a) to reflect any change in the information provided by the registration.

(d) The commissioner shall make available to the public a list of facilitators registered under this section.

(e) The commissioner may prescribe the registration form.

(f) The commissioner may refuse to renew the registration of a person who fails to comply with an order issued by the commissioner to enforce this chapter.

Added by Acts 2007, 80th Leg., R.S., c. 135, § 1, eff. Sept. 1, 2009. Renumbered by Acts 2009, 81st Leg., R.S., c. 87, § 27.001(17), eff. Sept. 1, 2009. Amended by Acts 2019, 86th Leg., c. 767, § 53, eff. Sept. 1, 2019.

§ 352.004. Disclosure Requirements.

(a) A facilitator to which Section 352.002 applies shall discuss with and clearly disclose to a borrower, after the borrower's tax return has been prepared and before the loan is closed:

(1) the refund anticipation loan fee schedule;

(2) a written statement disclosing:

(A) that a refund anticipation loan is a loan and is not the borrower's actual income tax refund;

(B) that the taxpayer may file an income tax return electronically without applying for a refund anticipation loan;

(C) that the borrower is responsible for repayment of the loan and related fees if the tax refund is not paid or is insufficient to repay the loan;

(D) any fee that will be charged if the loan is not approved;

(E) the average time, as published by the Internal Revenue Service, within which a taxpayer can expect to receive a refund for an income tax return filed:

(i) electronically, and the refund is:

(a) deposited directly into the taxpayer's bank account; or

(b) mailed to the taxpayer; and

(ii) by mail, and the refund is:

(a) deposited directly into the taxpayer's financial institution account; or

(b) mailed to the taxpayer;

(F) that the Internal Revenue Service does not guarantee:

(i) payment of the full amount of the anticipated refund; or

(ii) a specific date on which it will mail a refund or deposit the refund into a taxpayer's financial institution account; and

(G) the estimated time within which the proceeds of the refund anticipation loan will be paid to the borrower if the loan is approved; and

(3) the following information, specific to the borrower:

(A) the estimated total fees for the loan; and

(B) the estimated annual percentage rate for the loan, calculated using the guidelines established under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.).

(b) A refund anticipation loan fee schedule required by Subsection (a)(1) must be a listing or table of refund anticipation loan fees charged by the lender for refund anticipation loan amounts. The schedule shall:

(1) list separately each fee imposed related to the making of a refund anticipation loan;

(2) list the total amount of fees imposed related to the making of a refund anticipation loan; and

(3) include, for each stated loan amount, the estimated annual percentage rate for the loan, calculated using the guidelines established under the Truth in Lending Act (15 U.S.C. Section 1601 et seq.).

(c) A facilitator who advertises or markets refund anticipation loans in Spanish shall offer any borrower the option of receiving a Spanish-language printed disclosure and loan contract. A facilitator who negotiates a loan with a borrower in Spanish shall offer that borrower the option of receiving a Spanish-language printed disclosure and loan contract.

Added by Acts 2007, 80th Leg., R.S., c. 135, § 1, eff. Sept. 1, 2009. Renumbered by Acts 2009, 81st Leg., R.S., c. 87, § 27.001(17), eff. Sept. 1, 2009.

§ 352.005. Investigation by Commissioner.

The commissioner shall:

(1) monitor the operations of a facilitator to ensure compliance with this chapter; and

(2) receive and investigate complaints against a facilitator or a person acting as a facilitator.

Added by Acts 2007, 80th Leg., R.S., c. 135, § 1, eff. Sept. 1, 2009. Renumbered by Acts 2009, 81st Leg., R.S., c. 87, § 27.001(17), eff. Sept. 1, 2009.

§ 352.006. Revocation of Registration.

(a) The commissioner may revoke the registration of a facilitator if the commissioner concludes that the facilitator has violated this chapter. The commissioner shall recite the basis of the decision in an order revoking the registration.

(b) If the commissioner proposes to revoke a registration, the facilitator is entitled to notice and an opportunity for a hearing before the commissioner or a hearings officer, who shall propose a decision to the commissioner. The commissioner or hearings officer shall prescribe the time and place of the hearing if the facilitator makes a written request for a hearing not later than the 30th day after the date on which the order of revocation is served. The hearing is governed by Chapter 2001, Government Code.

(c) A facilitator aggrieved by a ruling, order, or decision of the commissioner is entitled to appeal to a district court in the county in which the hearing was held. An appeal under this subsection is governed by Chapter 2001, Government Code.

Added by Acts 2007, 80th Leg., R.S., c. 135, § 1, eff. Sept. 1, 2009. Renumbered by Acts 2009, 81st Leg., R.S., c. 87, § 27.001(17), eff. Sept. 1, 2009. Amended by Acts 2019, 86th Leg., c. 767, § 54, eff. Sept. 1, 2019; Acts 2023, 88th Leg., R.S., SB 1371, § 24, eff. Sept. 1, 2023.

§ 352.007. Administrative Penalty.

The commissioner may assess an administrative penalty of $500 against a person for each knowing and wilful violation of this chapter.

Added by Acts 2007, 80th Leg., R.S., c. 135, § 1, eff. Sept. 1, 2009. Renumbered by Acts 2009, 81st Leg., R.S., c. 87, § 27.001(17), eff. Sept. 1, 2009.

§ 352.008. Preemption of Local Ordinance.

This chapter preempts a local ordinance or rule regulating refund anticipation loans.

Added by Acts 2007, 80th Leg., R.S., c. 135, § 1, eff. Sept. 1, 2009. Renumbered by Acts 2009, 81st Leg., R.S., c. 87, § 27.001(17), eff. Sept. 1, 2009.

§ 352.009. Applicability of Chapter.

This chapter applies to a refund anticipation loan that is extended to a person who is located in this state at the time the loan is made.

Added by Acts 2019, 86th Leg., c. 767, § 55, eff. Sept. 1, 2019.

CHAPTER 353. COMMERCIAL MOTOR VEHICLE INSTALLMENT SALES

SUBCHAPTER A. GENERAL PROVISIONS

§ 353.001. Definitions.

In this chapter:

(1) "Commercial vehicle" means a motor vehicle that is not used primarily for personal, family, or household use. The term includes:

(A) a motor vehicle with a gross vehicular weight of 10,001 pounds or more;

(B) a motor vehicle that will be owned by a corporation, limited liability company, limited partnership, or other business entity formed, organized, or registered in this state, another state, or another country; and

(C) a motor vehicle that will be part of a fleet of five or more vehicles owned by the same person.

(2) "Debt cancellation agreement" means an agreement of the holder of the retail installment contract to waive:

(A) all or part of the difference between the amount owed under a retail installment contract and the amount paid under a physical damage insurance policy maintained by the retail buyer or its assign, in the event of a total loss or theft of the commercial vehicle;

(B) all or part of the amount owed under the retail installment contract, in the event of the death of the retail buyer; or

(C) one or more payments owed under the retail installment contract, in the event of the disability of the retail buyer.

(3) "Heavy commercial vehicle" means:

(A) a commercial vehicle that has a gross vehicular weight of 19,000 pounds or more; or

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

(4) "Holder" means a person who is:

(A) a retail seller; or

(B) the assignee or transferee of a retail installment contract.

(5) "Motor vehicle" has the meaning assigned by Section 348.001.

(6) "Precomputed earnings method" means a method of computing the time price differential in which the time price differential is computed at the inception of the contract based on the principal balance for the full contract term, as if the principal balance under the contract will not decline over the term of the contract, and in which the retail buyer agrees to pay the total of payments that includes both the principal balance of the contract and the time price differential.

(7) "Retail buyer" means a person who purchases or agrees to purchase a commercial vehicle from a retail seller in a retail installment transaction.

(8) "Retail installment contract" means one or more instruments entered into in this state that evidence a retail installment transaction. The term includes a security agreement and a document that evidences a bailment or lease described by Section 353.003.

(9) "Retail installment transaction" means a transaction in which a retail buyer purchases a commercial 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.

(10) "Retail seller" means a person in the business of selling commercial vehicles to retail buyers in retail installment transactions.

(11) "Scheduled installment earnings method" means a method of computing the time price differential by applying a daily rate to the unpaid principal balance as if each scheduled payment will be paid on the payment's scheduled installment date.

(12) "Time price differential" means the total amount added to the principal balance to determine the balance of the retail buyer's indebtedness under a retail installment contract.

(13) "True daily earnings method" means a method of computing the time price differential by applying a daily rate to the unpaid principal balance based on the actual payment date as provided by Section 353.016.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.002. Presumption Regarding Noncommercial Vehicles; Exception.

(a) A motor vehicle that is not described by Section 353.001(1)(A), (B), or (C) or a motor vehicle that is of a type typically used for personal, family, or household use, as determined by finance commission rule, is presumed not to be a commercial vehicle.

(b) Notwithstanding Subsection (a), if a retail buyer represents in writing that a motor vehicle is not for personal, family, or household use, or that the vehicle is for commercial use, a retail seller or holder may rely on that representation unless the retail seller or holder, as applicable, has actual knowledge that the representation is not true.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.003. Bailment of Lease as Retail Installment Transaction.

(a) A bailment or lease of a commercial vehicle is a retail installment transaction if the bailee or lessee:

(1) contracts to pay as compensation for use of the vehicle an amount that is substantially equal to or exceeds the value of the vehicle; and

(2) on full compliance with the bailment or lease is bound to become the owner or, for no or nominal additional consideration, has the option to become the owner of the vehicle.

(b) An agreement for the lease of a commercial vehicle does not create a retail installment transaction by merely providing that the rental price is permitted or required to be adjusted under the agreement as determined by the amount realized on the sale or other disposition of the vehicle, as provided by Section 501.112, Transportation Code.

Added by Acts 2011, 82nd Leg., R.S., c. 117, Sec. 17, eff. Sept. 1, 2011.

§ 353.004. Classification as Retail Installment Transaction Unaffected. .

A transaction is not excluded as a retail installment transaction because:

(1) the retail seller arranges to transfer the retail buyer's obligation;

(2) the amount of any charge in the transaction is determined by reference to a chart or other information furnished by a financing institution;

(3) a form for all or part of the retail installment contract is furnished by a financing institution; or

(4) the credit standing of the retail buyer is evaluated by a financing institution.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.005. Cash Price.

(a) The cash price is the price at which the retail seller offers in the ordinary course of business to sell for cash the goods or services that are subject to the transaction. An advertised price does not necessarily establish a cash price.

(b) The cash price does not include any finance charge.

(c) At the retail seller's option, the cash price may include:

(1) the price of accessories;

(2) the price of services related to the sale;

(3) the price of service contracts;

(4) taxes; and

(5) fees for license, title, and registration.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.006. Itemized Charge.

An amount in a retail installment contract is an itemized charge if the amount is not included in the cash price and is the amount of:

(1) fees for registration, certificate of title, and license and any additional registration fees charged by a deputy as authorized by rules adopted under Section 520.0071, Transportation Code;

(2) any taxes;

(3) fees or charges prescribed by law and connected with the sale or inspection of the commercial vehicle;

(4) charges authorized for insurance, service contracts, and warranties by Subchapter C; and

(5) advances or payments authorized under Section 353.402(b) or (c) made by the retail seller to or for the benefit of the retail buyer.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011. Amended by Acts 2013, 83rd Leg., R.S., c. 1135, § 2, eff. Sept. 1, 2013; Acts 2013, 83rd Leg., R.S., c. 1287, § 3, eff. Sept. 1, 2013.

§ 353.007. Additional Charges Permitted.

(a) In addition to the amounts allowed under Sections 353.005 and 353.006, the following amounts may be included as an itemized charge or in the cash price in a retail installment contract for a commercial vehicle:

(1) any fees prescribed by law;

(2) any amounts charged by a titling or registration service relating to the sale;

(3) any other amount agreed to by the retail buyer and retail seller, including amounts payable to the retail seller or another person for the provision of goods or services relating to:

(A) the commercial vehicle;

(B) the sale or use of the commercial vehicle; or

(C) the retail buyer's business in which the commercial vehicle will be used; and

(4) an amount paid to the retail seller or other person as consideration for a debt cancellation agreement.

(b) If a charge for a debt cancellation agreement is included in the contract, the contract and debt cancellation agreement must each conspicuously disclose that the debt cancellation agreement is optional.

(c) Notwithstanding any other law, a charge for a debt cancellation agreement is not a charge for insurance, and the sale, provision, or waiving of a balance owed or other action relating to a debt cancellation agreement is not considered insurance or engaging in the business of insurance.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.008. Principal Balance; Inclusion of Documentary Fee.

(a) The principal balance under a retail installment contract is computed by:

(1) adding:

(A) the cash price of the commercial vehicle;

(B) each amount included in the retail installment contract for an itemized charge; and

(C) subject to Subsection (c), a documentary fee for services rendered for or on behalf of the retail buyer in handling and processing documents relating to the sale of the commercial vehicle; and

(2) subtracting from the results under Subdivision (1) the amount of the retail buyer's down payment in money, goods, or both.

(b) The computation of the principal balance may include an amount authorized under Section 353.402(b).

(c) For a documentary fee to be included in the principal balance of a retail installment contract:

(1) the retail seller must charge the documentary fee to cash buyers and credit buyers; and

(2) the documentary fee may not exceed an amount agreed to in writing by the retail seller and retail buyer.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.009. Applicability of Chapter.

(a) Except as provided by this section, this chapter applies to a retail installment transaction for a commercial vehicle if the retail installment contract states that this chapter applies.

(b) If a retail installment contract does not state that this chapter applies, the transaction is governed by Chapter 348, and this chapter does not apply.

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

(d) The provisions of this chapter defining specific rates and amounts of charges and requiring certain credit disclosures to be made control over any contrary law of this state respecting those subjects.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.010. Applicability of Other Statutes to Retail Installment Transaction.

(a) A loan or interest statute of this state, other than Chapter 303, does not apply to a retail installment transaction subject to this chapter.

(b) Except as provided by this chapter, an applicable statute, including Title 1 and Chapter 322, Business & Commerce Code, or a principle of common law continues to apply to a retail installment transaction unless it is displaced by this chapter.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.011. Federal Disclosure Requirements.

If a disclosure requirement of this chapter and one of a federal law, including a regulation or an interpretation of federal law, are inconsistent or conflict, federal law controls and the inconsistent or conflicting disclosures required by this chapter need not be given.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.012. Additional Information Allowed in Contract.

Information not required by this chapter may be included in a retail installment contract.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.013. Order of Items in Contract.

Items required by this chapter to be in a retail installment contract are not required to be stated in the order set forth in this chapter.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.014. Applicability of Insurance Premium Financing Provisions.

Chapter 651, Insurance Code, does not apply to a retail installment transaction.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.015. Conditional Delivery Agreement.

(a) In this section, "conditional delivery agreement" means a contract between a retail seller and prospective retail buyer under the terms of which the retail seller allows the prospective retail buyer the use and benefit of a commercial vehicle for a specified term.

(b) A retail seller and prospective retail buyer may enter into a conditional delivery agreement.

(c) A conditional delivery agreement is:

(1) an enforceable contract; and

(2) void on the execution of a retail installment contract between the parties to the conditional delivery agreement for the sale of the commercial vehicle that is the subject of the conditional delivery agreement.

(d) A conditional delivery agreement may only confer rights consistent with this section and may not confer any legal or equitable rights of ownership, including ownership of the commercial vehicle that is the subject of the conditional delivery agreement.

(e) A conditional delivery agreement may not exceed a term of 15 days.

(f) If a prospective retail buyer tenders to a retail seller a trade-in motor vehicle in connection with a conditional delivery agreement:

(1) the parties must agree on the value of the trade-in motor vehicle;

(2) the conditional delivery agreement must contain the agreed value of the trade-in motor vehicle described by Subdivision (1); and

(3) the retail seller must use reasonable care to conserve the trade-in motor vehicle while the vehicle is in the retail seller's possession.

(g) If the parties to a conditional delivery agreement do not subsequently enter into a retail installment contract for the sale of the commercial vehicle that is the subject of the conditional delivery agreement, the retail seller shall, not later than the seventh day after termination of the conditional delivery agreement:

(1) deliver to the prospective retail buyer any trade-in motor vehicle that the prospective retail buyer tendered in connection with the conditional delivery agreement in the same or substantially the same condition as it was at the time of execution of the agreement and shall return any down payment or other consideration received from the prospective retail buyer in connection with the agreement; or

(2) if the trade-in motor vehicle cannot be returned in the same or substantially the same condition as it was at the time of execution of the conditional delivery agreement, deliver to the prospective retail buyer a sum of money equal to the agreed value of the trade-in motor vehicle as described by Subsection (f) and shall return any down payment or other consideration described by Subdivision (1).

(h) Any money that a retail seller is obligated to provide a prospective retail buyer under Subsection (g) must be tendered at the same time that the trade-in motor vehicle is delivered for return to the prospective retail buyer or when the trade-in motor vehicle would have been delivered if the vehicle was damaged or could not be returned.

(i) If a prospective retail buyer returns a commercial vehicle under a conditional delivery agreement at the request of the retail seller, the retail seller, notwithstanding the period prescribed by Subsection (g), must return the trade-in vehicle at the same time that the commercial vehicle under the conditional delivery agreement is returned by the prospective retail buyer.

(j) The prospective retail buyer shall return the commercial vehicle received under the conditional delivery agreement in the same or substantially the same condition as it was at the time of the execution of the conditional delivery agreement.

(k) An amount paid or required to be paid by the retail seller under Subsection (g) is subject to review by the commissioner. If the commissioner determines that the retail seller in fact owes the prospective retail buyer a certain amount under Subsection (g), the commissioner may order the retail seller to pay the amount to the prospective retail buyer. If the trade-in motor vehicle is not returned by the retail seller in accordance with this section and the retail

seller does not pay the prospective retail buyer an amount equal to the agreed value of the trade-in motor vehicle within the period prescribed by this section, the commissioner may assess an administrative penalty against the retail seller in an amount that is reasonable in relation to the value of the trade-in motor vehicle. The commissioner shall provide notice to the retail seller and the prospective retail buyer of the commissioner's determination under this subsection.

(l) Not later than the 30th day after the date the parties receive notice of the commissioner's determination under Subsection (k), the retail seller or prospective retail buyer may file with the commissioner an appeal of the commissioner's determination requesting a time and place for a hearing before a hearings officer designated by the commissioner. A hearing under this subsection is governed by Chapter 2001, Government Code. After the hearing, based on the findings of fact, conclusions of law, and recommendations of the hearings officer, the commissioner shall enter a final order.

(m) A person who files an appeal under Subsection (l) is required to pay a deposit to secure the payment of the costs of the hearing in a reasonable amount as determined by the commissioner, unless the person cannot afford to pay the deposit and files an affidavit to that effect with the hearings officer in the form and content prescribed by finance commission rule. The entire deposit must be refunded to the person if the person prevails at the hearing. If the person does not prevail, any portion of the deposit in excess of the costs of the hearing assessed against the person is refundable.

(n) Notice of the commissioner's final order under Subsection (l), given to the person in accordance with Chapter 2001, Government Code, must include a statement of the person's right to judicial review of the order.

(o) The hearings officer may order the retail seller or the prospective retail buyer, or both, to pay reasonable expenses incurred by the commissioner in connection with obtaining a final order under Subsection (l), including attorney's fees, investigative costs, and witness fees.

(p) This section does not:

(1) apply to a bailment agreement under Section 353.003; or

(2) create a private right of action.

(q) Except as otherwise provided by this section, the commissioner has exclusive jurisdiction to enforce this section.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.016. Computation of Time Price Differential Using True Daily Earnings Method.

Under the true daily earnings method, the earned time price differential is computed by multiplying the daily rate of the time price differential by the number of days the actual unpaid principal balance is outstanding. Under this method:

(1) a payment is credited at the time received, with a payment received before the scheduled installment date resulting in a greater reduction in the unpaid principal balance than otherwise scheduled, and a payment received after the scheduled installment date resulting in less of a reduction in the unpaid principal balance than otherwise scheduled;

(2) a partial payment is applied first to time price differential with any remainder applied to the unpaid principal balance; and

(3) accrued but unpaid time price differential is not:

(A) added to the unpaid principal balance; or

(B) compounded.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.\

§ 353.017. Transaction Conditioned on Purchase of Vehicle Protection Product Prohibited.

(a) In this section, "vehicle protection product" has the meaning assigned by Section 17.45, Business & Commerce Code.

(b) A retail seller may not require as a condition of a retail installment transaction or the cash sale of a commercial vehicle that the buyer purchase a vehicle protection product that is not installed on the vehicle at the time of the transaction.

(c) A violation of this section is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and is actionable in a public or private suit brought under Subchapter E, Chapter 17, Business & Commerce Code.

Addecd by Acts 2017, 82nd Leg., R.S., c. 967, § 1.004, eff. Sept. 1, 2017.

SUBCHAPTER B. RETAIL INSTALLMENT CONTRACT

§ 353.101. Retail Installment Contract General Requirements.

(a) A retail installment contract is required for each retail installment transaction in which the retail buyer is purchasing a commercial vehicle. A retail installment contract may be more than one document.

(b) A retail installment contract must be:

(1) in writing;

(2) dated;

(3) signed by the retail buyer and retail seller; and

(4) completed as to all essential provisions before it is signed by the retail buyer except as provided by Subsection (d).

(c) The printed part of a retail installment contract, other than instructions for completion, must be in at least eight-point type unless a different size of type is required under this subchapter.

(d) If the commercial vehicle is not delivered when the retail installment contract is executed, the following information may be inserted after the contract is executed:

(1) the identifying numbers or marks of the vehicle or similar information; and

(2) the due date of the first installment.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.102. Contract Conditioned on Subsequent Assignment Prohibited.

(a) A retail installment contract may not be conditioned on the subsequent assignment of the contract to a holder.

(b) A provision in violation of this section is void. This subsection does not affect the validity of other provisions of the contract that may be given effect without the voided provision, and to that extent those provisions are severable.

(c) This section does not create a private right of action.

(d) The commissioner has exclusive jurisdiction to enforce this section.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.103. Time Price Differential for Retail Installment Contract.

(a) A retail installment contract may provide for:

(1) any amount of time price differential permitted under Section 353.104, 353.105, or 353.106; or

(2) any rate of time price differential not exceeding a yield permitted under Section 353.104, 353.105, or 353.106.

(b) The time price differential may be computed using the:

(1) precomputed earnings method;

(2) scheduled installment earnings method; or

(3) true daily earnings method.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.104. Time Price Differential for Contract with Equal Montyly Successive Payments.

(a) A retail installment contract that is payable in substantially equal successive monthly installments beginning one month after the date of the contract may provide for a time price differential that does not exceed the add-on charge provided by this section.

(b) The add-on charge is $7.50 per $100 per year on the principal balance for a new commercial vehicle, other than a heavy commercial vehicle, designated by the manufacturer by a model year that is not earlier than the year in which the sale is made.

(c) The add-on charge is $10 per $100 per year on the principal balance for:

(1) a new commercial vehicle not covered by Subsection (b);

(2) a used commercial vehicle designated by the manufacturer by a model year that is not more than two years before the year in which the sale is made; or

(3) a new or used heavy commercial vehicle designated by the manufacturer by a model year that is not more than two years before the year in which the sale is made.

(d) The add-on charge is $12.50 per $100 per year on the principal balance for a used commercial vehicle not covered by Subsection (c) that is a commercial vehicle designated by the manufacturer by a model year that is not more than four years before the year in which the sale is made.

(e) For a used commercial vehicle not covered by Subsection (c) or (d), the add-on charge is:

(1) $15 per $100 per year on the principal balance; or

(2) $18 per $100 per year on the principal balance if the principal balance under the retail installment contract does not exceed $300.

(f) The time price differential is computed on the original principal balance under the retail installment contract from the date of the contract until the maturity of the final installment, notwithstanding that the balance is payable in installments.

(g) If the retail installment contract is payable for a period that is shorter or longer than a year or is for an amount that is less or greater than $100, the amount of the maximum time price differential computed under this section is decreased or increased proportionately.

(h) For the purpose of a computation under this section, 16 or more days of a month may be considered a full month.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.105. Use of Optional Ceiling.

As an alternative to the maximum rate or amount authorized for a time price differential under Section 353.104 or 353.106, a retail installment contract may provide for a rate or amount of time price differential that does not exceed the rate or amount authorized by Chapter 303.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.106. Time Price Differential for Other Contracts.

A retail installment contract that is payable other than in substantially equal successive monthly installments or the first installment of which is not payable one month from the date of the contract may provide for a time price differential that does not exceed an amount that, having due regard for the schedule of payments, provides the same effective return as if the contract were payable in substantially equal successive monthly installments beginning one month from the date of the contract.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.107. Charge for Default in Payment of Installment.

(a) A retail installment contract may provide that if an installment remains unpaid after the 10th day after the maturity of the installment for a heavy commercial vehicle or after the 15th day after the maturity of the installment for any other commercial vehicle the holder may collect:

(1) a delinquency charge that does not exceed five percent of the amount of the installment; or

(2) interest on the amount of the installment accruing after the maturity of the installment and until the installment is paid in full at a rate that does not exceed the maximum rate authorized for the contract.

(b) A retail installment contract that provides for the true daily earnings method or the scheduled installment earnings method may provide for the delinquency charge authorized by Subsection (a)(1), the interest authorized by Subsection (a)(2), or both.

(c) Only one delinquency charge under Subsection (a)(1) may be collected on an installment under this section regardless of the duration of the default.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.108. Charges of Collecting Debt.

A retail installment contract may provide for the payment of:

(1) reasonable attorney's fees if the contract is referred for collection to an attorney who is not a salaried employee of the holder;

(2) court costs and disbursements; and

(3) reasonable out-of-pocket expenses incurred in connection with the repossession or sequestration of the commercial vehicle securing the payment of the contract or foreclosure of a security interest in the vehicle, including the costs of storing, reconditioning, and reselling the vehicle, subject to the standards of good faith and commercial reasonableness set by Title 1, Business & Commerce Code.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.109. Acceleration of Debt Maturity.

A retail installment contract may not authorize the holder to accelerate the maturity of all or a part of the amount owed under the contract unless:

(1) the retail buyer is in default in the performance of any of the buyer's obligations;

(2) the holder believes in good faith that the prospect of the buyer's payment or performance is impaired; or

(3) the retail buyer or an affiliate of the retail buyer is in default in its obligations under another financing agreement or leasing agreement held by the same holder or an affiliate of the holder.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.110. Delivery of Copy Contract.

A retail seller shall:

(1) deliver to the retail buyer a copy of the retail installment contract as accepted by the retail seller; or

(2) mail to the retail buyer at the address shown on the retail installment contract a copy of the retail installment contract as accepted by the retail seller.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.111. Buyer's Right to Rescind Contract.

Until the retail seller complies with Section 353.110, a retail buyer who has not received delivery of the commercial vehicle is entitled to:

(1) rescind the contract;

(2) receive a refund of all payments made under or in contemplation of the contract; and

(3) receive the return of all goods traded in to the retail seller under or in contemplation of the contract or, if those goods cannot be returned, to receive the value of those goods.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.112. Buyer's Acknowledgement of Delivery of Contract Copy.

(a) Any retail buyer's acknowledgment of delivery of a copy of the retail installment contract must:

(1) be in at least 10-point type that is boldfaced, capitalized, or underlined or otherwise conspicuously set out from the surrounding written material; and

(2) appear directly above the buyer's signature.

(b) Any retail buyer's acknowledgment conforming to this section of delivery of a copy of the retail installment contract is, in an action or proceeding by or against a holder of the contract who was without knowledge to the contrary when the holder purchased it, conclusive proof:

(1) that the copy was delivered to the buyer;

(2) that the contract did not contain a blank space that was required to have been completed under this chapter when the contract was signed by the buyer; and

(3) of compliance with Sections 353.011, 353.101, 353.205, 353.403, 353.404, and 353.405.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.113. Amendment of Retail Installment Contract.

On request by a retail buyer, the holder may agree to one or more amendments to the retail installment contract to:

(1) extend or defer the scheduled due date of all or a part of one or more installments; or

(2) renew, restate, or reschedule the unpaid balance under the contract.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.114. Charges for Deferring Installment.

(a) If a retail installment contract is amended to defer all or a part of one or more installments for not longer than three months, the holder may collect from the retail buyer:

(1) an amount computed on the amount deferred for the period of deferment at a rate that does not exceed the effective return for time price differential permitted for a monthly payment retail installment contract; and

(2) the amount of the additional cost to the holder for:

(A) premiums for continuing in force any insurance coverages provided for by the contract; and

(B) any additional necessary official fees.

(b) The minimum charge under Subsection (a)(1) is $1.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.115. Charge for Other Amendment.

(a) If the unpaid balance of a retail installment contract is extended, renewed, restated, or rescheduled under this subchapter and Section 353.114 does not apply, the holder may collect an amount computed on the principal balance of the amended contract for the term of the amended contract at the time price differential for a retail installment contract that is applicable after reclassifying the commercial vehicle by its model year at the time of the amendment.

(b) The principal balance of the amended contract is computed by:

(1) adding:

(A) the unpaid balance as of the date of amendment;

(B) the cost of any insurance incidental to the amendment;

(C) the amount of each additional necessary official fee; and

(D) the amount of each accrued delinquency or collection charge; and

(2) if the time price differential was computed using the precomputed earnings method or the scheduled installment earnings method, subtracting from the total computed under Subdivision (1) an amount equal to the prepayment refund credit required by Section 353.120 or 353.121, as applicable.

(c) Subsection (b)(2) does not apply to a retail installment contract in which the time price differential is computed using the true daily earnings method.

(d) The provisions of this chapter relating to acquisition costs under the refund schedule under Section 353.120 do not apply in computing the principal balance of the amended contract.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.116. Confirmation of Amendment.

An amendment to a retail installment contract must be confirmed in a writing signed by the retail buyer. The holder shall:

(1) deliver a copy of the confirmation to the buyer; or

(2) mail a copy of the confirmation to the buyer at the buyer's most recent address shown on the records of the holder.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.117. Contract After Amendment.

After amendment the retail installment contract is the original contract and each amendment to the original contract.

Added by Acts 2011, 82nd Leg., R.S., c. 117, c 17, eff. Sept. 1, 2011.

§ 353.118. Prepayment of Contract.

A retail buyer may prepay a retail installment contract in full at any time before maturity. This section prevails over a conflicting provision of the contract.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.119. Refund Credit on Prepayment.

(a) This section does not apply to a retail installment contract in which the time price differential is computed using the true daily earnings method.

(b) If a retail buyer prepays a retail installment contract in full or if the holder of the contract demands payment of the unpaid balance of the contract in full before the contract's final installment is due and the time price differential is computed using the precomputed earnings method or the scheduled installment earnings method, the buyer is entitled to receive a refund credit as provided by Section 353.120 or 353.121, as applicable.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.120. Amount of Refund Credit for Monthly Installment Contract.

(a) This section:

(1) applies only to a refund credit on the prepayment of a retail installment contract that is payable in substantially equal successive monthly installments beginning one month after the date of the contract; and

(2) does not apply to a retail installment contract in which the time price differential is computed using the true daily earnings method or the scheduled installment earnings method.

(b) On a contract for a commercial vehicle other than a heavy commercial vehicle the minimum amount of the refund credit is computed by:

(1) subtracting an acquisition cost of $25 from the original time price differential; and

(2) multiplying the amount computed under Subdivision (1) by the percentage of refund computed under Subsection (d).

(c) On a contract for a heavy commercial vehicle the minimum amount of the refund credit is computed by:

(1) multiplying the amount of the original time price differential by the percentage of refund computed under Subsection (d); and

(2) subtracting an acquisition cost of $150 from the amount computed under Subdivision (1).

(d) The percentage of refund is computed by:

(1) computing the sum of all of the monthly balances under the contract's schedule of payments; and

(2) dividing the amount computed under Subdivision (1) into the sum of the unpaid monthly balances under the contract's schedule of payments beginning:

(A) on the first day, after the date of the prepayment or demand for payment in full, that is the date of a month that corresponds to the date of the month that the first installment is due under the contract; or

(B) if the prepayment or demand for payment in full is made before the first installment date under the contract, one month after the next monthly anniversary date of the contract occurring after the prepayment or demand.

(e) A refund credit is not required if the amount of the refund credit is less than $1.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.121. Refund on Contracts Using Scheduled Installment Earnings Method.

(a) This section:

(1) applies to a retail installment contract:

(A) that includes precomputed time price differential; and

(B) to which Section 353.120 does not apply; and

(2) does not apply to a retail installment contract in which the time price differential is computed using the true daily earnings method.

(b) If a retail installment contract is prepaid in full or if the holder demands payment in full of the unpaid balance before final maturity of the contract, the holder earns time price differential for the period beginning on the date of the contract and ending on the date of the earlier of the prepayment or demand, in an amount that does not exceed the amount allowed by this section.

(c) If prepayment in full or demand for payment in full occurs during an installment period, the holder may retain, in addition to time price differential that accrued during any elapsed installment periods, an amount computed by:

(1) multiplying the simple annual rate under the contract by the unpaid principal balance of the contract determined according to the schedule of payments to be outstanding on the preceding installment due date;

(2) dividing 365 into the product computed under Subdivision (1); and

(3) multiplying the number of days in the period, beginning on the day after the installment due date and ending on the date of the earlier of the prepayment or demand, by the result obtained under Subdivision (2).

(d) In addition to the earned time price differential computed under this section, the holder may also earn a $150 acquisition fee for a heavy commercial vehicle, or a $25 acquisition fee for other commercial vehicles, if the sum of the earned time price differential and the acquisition fee does not exceed the time price differential disclosed in the contract.

(e) The holder shall refund or credit, as applicable, to the retail buyer the amount computed by subtracting the total amount earned or retained under Subsections (b), (c), and (d) from the total amount of time price differential contracted for and precomputed in the contract.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.122. Reinstatement of Contract After Demand for Payment.

After a demand for payment in full under a retail installment contract, the retail buyer and holder of the contract may:

(1) agree to reinstate the contract; and
(2) amend the contract as provided by Section 353.113.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

SUBCHAPTER C. INSURANCE

§ 353.201. Property Insurance.

(a) A holder may require a retail buyer to insure the commercial vehicle purchased under a retail installment transaction and accessories and related goods subject to the holder's security interest.

(b) The holder may offer to provide insurance on a commercial vehicle purchased under a retail installment transaction and accessories and related goods subject to the holder's security interest, regardless of whether the holder requires a retail buyer to insure the commercial vehicle.

(c) The insurance required by the holder, and the premiums or charges for any insurance that is provided by the holder, must bear a reasonable relationship to:
(1) the amount, term, and conditions of the retail installment contract; and
(2) the existing hazards or risk of loss, damage, or destruction.

(d) Any insurance under this section may not:
(1) cover unusual or exceptional risks; or
(2) provide coverage not ordinarily included in policies issued to the public or for commercial purposes.

(e) The holder may include the cost of the insurance as a separate charge in the contract.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.202. Credit Life and Credit Health and Accident Insurance.

(a) A holder may require a retail buyer to provide credit life insurance and credit health and accident insurance.

(b) The holder may offer to provide credit life insurance and credit health and accident insurance, regardless of whether the holder requires a retail buyer to provide the insurance under Subsection (a).

(c) A retail seller may offer involuntary unemployment insurance to the buyer at the time the contract is negotiated or executed.

(d) A holder may include the cost of insurance provided under this section, and a policy or agent fee charged in connection with insurance provided under Subsection (b) or (c), as a separate charge in the contract.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.203. Maximum Amount of Credit Life and Credit Health and Accidenty Coverage.

(a) At any time the total amount of the policies of credit life insurance in force on one retail buyer on one retail installment contract may not exceed:
(1) the total amount repayable under the contract; and
(2) the greater of the scheduled or actual amount of unpaid indebtedness if the indebtedness is repayable in substantially equal installments.

(b) At any time the total amount of the policies of credit health and accident insurance in force on one retail buyer on one retail installment contract may not exceed the total amount payable under the contract, and the amount of each periodic indemnity payment may not exceed the scheduled periodic payment on the indebtedness.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.204. Insurance Statement.

(a) If insurance is required in connection with a retail installment contract, the holder shall give to the retail buyer a written statement that clearly and conspicuously states that:
(1) insurance is required in connection with the contract; and
(2) the buyer as an option may furnish the required insurance through:
(A) an existing policy of insurance owned or controlled by the buyer; or
(B) an insurance policy obtained through an insurance company authorized to do business in this state.

(b) A statement under Subsection (a) may be provided with or as part of the retail installment contract or separately.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.205. Statement if Liability Insurance Not Included in Contract.

If liability insurance coverage for bodily injury and property damage caused to others is not included in a retail installment contract, the retail installment contract or a separate writing must contain, in at least 10-point type that is boldfaced, capitalized, underlined, or otherwise conspicuously set out from the surrounding written material, a specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.206. Buyer's Failure to Provide Evidence of Insurance.

(a) If a retail buyer fails to present to the holder reasonable evidence that the buyer has obtained or maintained a coverage required by the retail installment contract, the holder may:

(1) obtain substitute insurance coverage that is substantially equal to or more limited than the coverage required; and

(2) add the amount of the premium advanced for the substitute insurance to the unpaid balance of the contract.

(b) Substitute insurance coverage under Subsection (a)(1):

(1) may at the holder's option be limited to coverage only of the interest of the holder or the interest of the holder and the buyer; and

(2) must be written at lawful rates in accordance with the Insurance Code by a company authorized to do business in this state.

(c) If substitute insurance is obtained by the holder under Subsection (a), the amendment adding the premium or rescheduling the contract is not required to be signed by the retail buyer. The holder shall deliver to the buyer or send to the buyer's most recent address shown on the records of the holder specific written notice that the holder has obtained substitute insurance.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.207. Charges for Other Insurance and Forms of Protection INcluded in Retail Installment Contract.

(a) A retail installment contract may include as a separate charge an amount for insurance coverage that is:

(1) for a risk of loss or liability reasonably related to:

(A) the commercial vehicle;

(B) the use of the commercial vehicle; or

(C) goods or services that:

(i) are related to the commercial vehicle; and

(ii) may ordinarily be insured with a commercial vehicle;

(2) written on policies or endorsement forms prescribed or approved by the commissioner of insurance; and

(3) ordinarily available in policies or endorsements offered to the public or for commercial purposes.

(b) A retail installment contract may include as a separate charge an amount for:

(1) motor vehicle property damage or bodily injury liability insurance;

(2) mechanical breakdown insurance;

(3) participation in a motor vehicle theft protection plan;

(4) insurance to pay all or part of the amount computed by subtracting the proceeds of the retail buyer's basic collision policy on the commercial vehicle from the amount owed on the vehicle in the event of a total loss or theft of the vehicle;

(5) a warranty or service contract relating to the commercial vehicle;

(6) an identity recovery service contract; or

(7) a debt cancellation agreement.

(b-1) In this section, "identity recovery service contract" means an agreement:

(1) to provide identity recovery, as defined by Section 1304.003, Occupations Code;

(2) that is entered into for a separately stated consideration and for a specified term; and

(3) that is financed through a retail installment contract.

(c) Notwithstanding any other law, service contracts and debt cancellation agreements sold by a retail seller of a commercial vehicle to a retail buyer are not subject to Chapter 101 or 226, Insurance Code.

(d) In addition to the charges for insurance coverage permitted under Subsection (a) or (b), a retail installment contract may include a charge for insurance coverage relating to:

(1) the commercial vehicle;

(2) the use of the commercial vehicle; or

(3) the retail installment contract.

(e) Insurance coverage under Subsection (d) may be provided only by:

(1) an insurer authorized under the Insurance Code to engage in the business of insurance in this state; or

(2) if permitted under the Insurance Code, a surplus lines insurer eligible to provide the insurance under Chapter 981, Insurance Code.

(f) A retail installment contract must set forth the amount of each charge for insurance coverage under Subsection (d) and the type of the coverage provided for that charge.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011. Amended by Acts 2013, 83rd Leg., R.S., c. 1207, § 2, eff. Sept. 1, 2013.

§ 353.208. Holder's Duty if Insurance is Adjusted or Terminated.

(a) If insurance for which a charge is included in or added to a retail installment contract is canceled, adjusted, or terminated, the holder shall, at the holder's option:

(1) apply the amount of the refund for unearned insurance premiums received by the holder to replace required insurance coverage; or

(2) credit the refund to the final maturing installments of the retail installment contract.

(b) If the amount to be applied or credited under Subsection (a) is more than the amount unpaid on the retail installment contract, the holder shall refund to the retail buyer the difference between those amounts.

(c) A cash refund is not required under this section if the amount of the refund is less than $1.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.209. Gain or Advantage from Insurance Not Additional Charge.

Any gain or advantage to the holder or the holder's employee, officer, director, agent, general agent, affiliate, or associate from insurance or the provision or sale of insurance under this subchapter is not an additional charge or additional time price differential in connection with a retail installment contract except as specifically provided by this chapter.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.210. Adding to Retail Installment Contract Premiums for Insurance Acquired After Transaction.

(a) A retail buyer and holder may agree to add to the unpaid balance of a retail installment contract premiums for insurance policies obtained after the date of the retail installment transaction for coverages of the types allowed under Sections 353.201, 353.202, and 353.207, including premiums for the renewal of a policy included in the contract.

(b) A policy of insurance described by Subsection (a) must comply with the requirements of Sections 353.201, 353.202, 353.203, and 353.207, as applicable.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.211. Effect of Adding Premium to Contract.

If a premium is added to the unpaid balance of a retail installment contract under Section 353.206 or 353.210, the rate applicable to the time price differential agreed to in the retail installment contract remains in effect and shall be applied to the new unpaid balance, or the contract may be rescheduled in accordance with Sections 353.114 and 353.115, without reclassifying the commercial vehicle by its year model at the time of the amendment.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.212. Financing Entity May Not Require Insurance from Particular Source.

If a retail installment contract presented to a financing entity for acceptance includes any insurance coverage, the financing entity may not directly or indirectly require, as a condition of its agreement to finance the commercial vehicle, that the retail buyer purchase the insurance coverage from a particular source.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

SUBCHAPTER D. ACQUISITION OF CONTRACT OR BALANCE

§ 353.301. Authority to Acquire.

A person may acquire a retail installment contract or an outstanding balance under a contract from another person on the terms, including the price, to which they agree. Notwithstanding any other law of this state, a person acquiring or assigning a retail installment contract, or any balance under a contract, does not have a duty to disclose to any other person the terms on which a contract or balance under a contract is acquired or assigned, including the consideration for the acquisition or assignment and any discount or difference between the rates, charges, or balance under the contract and the consideration rates, charges, or balance acquired or assigned, as applicable.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.302. Lack of Notice Does Not Affect Validity as to Certain Creditors.

Notice to a retail buyer of an assignment or negotiation of a retail installment contract or an outstanding balance under the contract or a requirement that the retail seller be deprived of dominion over payments on a retail installment contract or over the commercial vehicle if returned to or repossessed by the retail seller is not necessary for a written assignment or negotiation of the contract or balance to be valid as against a creditor, subsequent purchaser, pledgee, mortgagee, or lien claimant of the retail seller.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.303. Payment by Buyer.

Unless a retail buyer has notice of the assignment or negotiation of the buyer's retail installment contract or an outstanding balance under the contract, a payment by the buyer to the most recent holder known to the buyer is binding on all subsequent holders.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

SUBCHAPTER E. HOLDER'S RIGHTS, DUTIES, AND LIMITATIONS

§ 353.401. Seller's Promise to Pay or Tender of Cash to Buyer as Part of Transaction.

A retail seller may not promise to pay, pay, or otherwise tender cash to a retail buyer as a part of a transaction under this chapter unless specifically authorized by this chapter.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.402. Seller's Action for Incentive Program or to Pay for Buyer's Motor Vehicle.

(a) A retail seller may pay, promise to pay, or tender cash or another thing of value to the manufacturer, distributor, or retail buyer of the product if the payment, promise, or tender is made in order to participate in a financial incentive program offered by the manufacturer or distributor of the vehicle to the buyer.

(b) A retail seller, in connection with a retail installment transaction, may:

(1) advance money to retire:

(A) an amount owed against a motor vehicle used as a trade-in or a motor vehicle owned by the buyer that has been declared a total loss by the buyer's insurer; or

(B) the retail buyer's outstanding obligation under a motor vehicle lease contract, a credit transaction for the purchase of a motor vehicle, or another retail installment transaction; and

(2) finance repayment of that money in a retail installment contract.

(c) A retail seller may pay in cash to the retail buyer any portion of the net cash value of a motor vehicle owned by the buyer and used as a trade-in in a transaction involving the sale of a commercial vehicle. In this subsection, "net cash value" means the cash value of a motor vehicle after payment of all amounts secured by the motor vehicle.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.403. Statement of Payments and Amount Due Under Contract.

(a) On written request of a retail buyer, the holder of a retail installment contract shall give or send to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under the contract.

(b) A retail buyer is entitled to one statement during a six-month period without charge. The charge for each additional requested statement may not exceed $1.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.404. Receipt for Cash Payment. .

A holder of a retail installment contract shall give the retail buyer a written receipt for each cash payment.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.405. Outstanding Balance Information; Payment in Full.

(a) The holder of a retail installment contract who gives the retail buyer or the buyer's designee outstanding balance information relating to the contract is bound by that information and shall honor that information for a reasonable time.

(b) If the retail buyer or the buyer's designee tenders to the holder as payment in full an amount derived from that outstanding balance information, the holder shall:

(1) accept the amount as payment in full; and

(2) release the holder's lien against the commercial vehicle within a reasonable time not later than the 10th day after the date on which the amount is tendered.

(c) A retail seller must pay in full the outstanding balance of a vehicle traded in to the retail seller as part of the retail installment transaction not later than the 25th day after the date that:

(1) the retail installment contract is signed by the retail buyer and the retail buyer receives delivery of the commercial vehicle; and

(2) the retail seller receives delivery of the motor vehicle traded in and the necessary and appropriate documents to transfer title from the buyer.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.406. Liability Relating to Outstanding Balance Information.

A holder who violates Section 353.405 is liable to the retail buyer or the buyer's designee in an amount computed by adding:

(1) three times the difference between the amount tendered and the amount sought by the holder at the time of tender;

(2) interest;

(3) reasonable attorney's fees; and

(4) costs.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.407. Prohibition on Power of Attorney to Confess Judgement or Assignment of Wages.

A retail installment contract may not contain:

(1) a power of attorney to confess judgment in this state; or

(2) an assignment of wages.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.408. Prohibition on Certain Acts of Repossession.

A retail installment contract may not:

(1) authorize the holder or a person acting on the holder's behalf to:

(A) enter the retail buyer's premises in violation of Chapter 9, Business & Commerce Code; or

(B) commit a breach of the peace in the repossession of the commercial vehicle; or

(2) contain, or provide for the execution of, a power of attorney by the retail buyer appointing, as the buyer's agent in the repossession of the vehicle, the holder or a person acting on the holder's behalf.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.409. Buyer's Waiver.

(a) A retail installment contract may not:

(1) provide for a waiver of the retail buyer's rights of action against the holder or a person acting on the holder's behalf for an illegal act committed in:

(A) the collection of payments under the contract; or

(B) the repossession of the commercial vehicle; or

(2) provide that the retail buyer agrees not to assert against the holder a claim or defense arising out of the sale.

(b) An act or agreement of the retail buyer before or at the time of the making of a retail installment contract or a purchase under the contract does not waive any provision of this chapter.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.410. Transfer of Equity.

(a) With the written consent of the holder, a retail buyer may transfer at any time the buyer's equity in the commercial vehicle subject to the retail installment contract to another person.

(b) The holder may charge for the transfer of equity an amount that does not exceed:

(1) $25 for a commercial vehicle that is not a heavy commercial vehicle; or

(2) $50 for a heavy commercial vehicle.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

SUBCHAPTER F. LICENSING; ADMINISTRATION OF CHAPTER

§ 353.501. License Required.

(a) A person may not act as a holder under this chapter unless the person:

(1) is an authorized lender or a credit union; or

(2) holds a license issued under Chapter 348 or this chapter.

(b) A person who is required to hold a license under this chapter must ensure that each office at which retail installment transactions are made, serviced, held, or collected under this chapter is licensed or otherwise authorized to make, service, hold, or collect retail installment transactions in accordance with this chapter and rules implementing this chapter.

(c) A person may not use any device, subterfuge, or pretense to evade the application of this section.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.502. Application Requirements.

(a) The application for a license under this chapter must:

(1) be under oath;

(2) identify the applicant's principal parties in interest; and

(3) contain other relevant information that the commissioner requires.

(b) On the filing of a license application, the applicant shall pay to the commissioner:

(1) an investigation fee not to exceed $200; and

(2) a license fee in an amount determined as provided by Section 14.107.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011. Amended by Acts 2019, 86th Leg., c. 767, § 56, eff. Sept. 1, 2019.

§ 353.503. Investigation of Application.

On the filing of an application and payment of the required fees, the commissioner shall conduct an investigation to determine whether to issue the license.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.504. Approval or Denial of Application.

(a) The commissioner shall approve the application and issue to the applicant a license under this chapter if the commissioner finds that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to:

(1) command the confidence of the public; and

(2) warrant the belief that the business will be operated lawfully and fairly, within the purposes of this chapter.

(b) If the commissioner does not find the eligibility requirements of Subsection (a), the commissioner shall notify the applicant.

(c) If an applicant requests a hearing on the application not later than the 30th day after the date of notification under Subsection (b), the applicant is entitled to a hearing not later than the 60th day after the date of the request.

(d) The commissioner shall approve or deny the application not later than the 60th day after the date of the filing of a completed application with payment of the required fees, or if a hearing is held, after the date of the completion of the hearing on the application. The commissioner and the applicant may agree to a later date in writing.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.505. Disposition of Fees on Denial of Application.

If the commissioner denies the application, the commissioner shall retain the investigation fee and shall return to the applicant the license fee submitted with the application.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.5055. License Term.

A license issued under this chapter is valid for the period prescribed by finance commission rule adopted under Section 14.112.

Added by Acts 2019, 86th Leg., c. 767, § 57, eff. Sept. 1, 2019.

§ 353.506. License Fee.

Not later than the 30th day before the date the license expires, a license holder shall pay to the commissioner for each license held a fee in an amount determined as provided by Section 14.107.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011. Amended by Acts 2019, 86th Leg., c. 767, § 58, eff. Sept. 1, 2019.

§ 353.5065. Grounds for Refusal to Renew.

The commissioner may refuse to renew the license of a person who fails to comply with an order issued by the commissioner to enforce this chapter.

Added by Acts 2019, 86th Leg., c. 767, § 59, eff. Sept. 1, 2019.

§ 353.507. Expiration of License on Failure to Pay Fee.

If the fee for a license is not paid before the 16th day after the date on which the written notice of delinquency of payment has been given to the license holder, the license expires on that day.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011. Amended by Acts 2019, 86th Leg., c. 767, § 60, eff. Sept. 1, 2019.

§ 353.508. License Suspension or Revocation.

After notice and opportunity for a hearing, the commissioner may suspend or revoke a license if the commissioner finds that:

(1) the license holder failed to pay the license fee, an investigation fee, or another charge imposed by the commissioner;

(2) the license holder, knowingly or without the exercise of due care, violated this chapter or a rule adopted or order issued under this chapter; or

(3) a fact or condition exists that, if it had existed or had been known to exist at the time of the original application for the license, clearly would have justified the commissioner's denial of the application.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011. Amended by Acts 2019, 86th Leg., c. 767, § 61, eff. Sept. 1, 2019.

§ 353.509. Reinstatement of Suspended License; Issuance of New License After Revocation.

The commissioner may reinstate a suspended license or issue a new license on application to a person whose license has been revoked if at the time of the reinstatement or issuance no fact or condition exists that clearly would have justified the commissioner's denial of an original application for the license.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.510. Surrender of License.

A license holder may surrender a license issued under this chapter by complying with the commissioner's written instructions relating to license surrender.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011. Amended by Acts 2023, 88th Leg., R.S., SB 1371, § 25, eff. Sept. 1, 2023.

§ 353.511. Effect of License Suspension, Revocation, or Surrender.

(a) The suspension, revocation, or surrender of a license issued under this chapter does not affect the obligation of a contract between the license holder and a retail buyer entered into before the suspension, revocation, or surrender.

(b) Surrender of a license does not affect the license holder's civil or criminal liability for an act committed before surrender.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.512. Transfer of Assignment of License.

A license may be transferred or assigned only with the approval of the commissioner.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.513. Adoption of Rules.

(a) The finance commission may adopt rules to enforce this chapter.

(b) The commissioner shall recommend proposed rules to the finance commission.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.514. General Investigation.

To discover a violation of this chapter or to obtain information required under this chapter, the commissioner or the commissioner's representative may investigate the records, including books, accounts, papers, and correspondence, of a person, including a license holder, who the commissioner has reasonable cause to believe is violating this chapter, regardless of whether the person claims to not be subject to this chapter.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

§ 353.515. Sharing of Information.

To ensure consistent enforcement of law and minimization of regulatory burdens, the commissioner and the Texas Department of Motor Vehicles may share information, including criminal history information, relating to a person licensed under this chapter. Information otherwise confidential remains confidential after it is shared under this section.

Added by Acts 2011, 82nd Leg., R.S., c. 117, § 17, eff. Sept. 1, 2011.

CHAPTER 354. DEBT CANCELLATION AGREEMENTS FOR CERTAIN RETAIL VEHICLE INSTALLMENT SALES

§ 354.001. Definitions.

In this chapter:

(1) "Contract" means a retail installment contract made under Chapter 345 or 348.

(2) "Covered vehicle" includes a self-propelled or towed vehicle designed for personal use, including an automobile, truck, motorcycle, recreational vehicle, all-terrain vehicle, snowmobile, camper, boat, personal watercraft, and personal watercraft trailer.

(3) "Debt cancellation agreement" means a contract term or a contractual arrangement modifying a contract term under which a retail seller or holder agrees to cancel all or part of an obligation of the retail buyer to repay an extension of credit from the retail seller or holder on the occurrence of the total loss or theft of the covered vehicle that is the subject of the contract but does not include an offer to pay a specified amount on the total loss or theft of the covered vehicle.

(4) "Holder" means a person who is:

(A) a retail seller; or

(B) the assignee or transferee of a contract.

(5) "Retail buyer" means a person who purchases or agrees to purchase a covered vehicle from a retail seller in a retail installment transaction.

(6) "Retail seller" means a person in the business of selling covered vehicles to retail buyers in retail installment transactions.

Added by Acts 2017, 85th Leg., R.S., c. 183, § 6, eff. Sept. 1, 2017

§ 354.002. Limitation on Certain Debt Cancellation Agreements.

(a) This chapter applies only to a debt cancellation agreement that includes insurance coverage as part of the retail buyer's responsibility to the holder.

(b) The amount charged for a debt cancellation agreement made in connection with a contract may not exceed five percent of the amount financed pursuant to the contract. Section 348.124(c) does not apply to a debt cancellation agreement regulated under this chapter.

(c) The debt cancellation agreement becomes a part of or a separate addendum to the contract and remains a term of the contract on the assignment, sale, or transfer by the holder.

(d) A debt cancellation agreement to which this chapter applies is not insurance.

Added by Acts 2011, 82nd Leg., R.S., c. 1034, § 2, eff. Sept. 1, 2011. Amended by Acts 2013, 83rd Leg., R.S., c. 354, § 1, eff. Sept. 1, 2013. Redesignated and amended by Acts 2017, 85th Leg., R.S., c. 183, § 6, eff. Sept. 1, 2017.

§ 354.003. Debt Cancellation Agreements Exclusion Language.

(a) In addition to the provisions required by Section 354.004, a debt cancellation agreement must fully disclose all provisions permitting the exclusion of loss or damage including, if applicable:

(1) an act occurring after the original maturity date or date of the holder's acceleration of the contract;

(2) any dishonest, fraudulent, illegal, or intentional act of any authorized driver that directly results in the total loss of the covered vehicle;

(3) any act of gross negligence by an authorized driver that directly results in the total loss of the covered vehicle;

(4) conversion, embezzlement, or concealment by any person in lawful possession of the covered vehicle;

(5) lawful confiscation by an authorized public official;

(6) the operation, use, or maintenance of the covered vehicle in any race or speed contest;

(7) war, whether or not declared, invasion, insurrection, rebellion, revolution, or an act of terrorism;

(8) normal wear and tear, freezing, or mechanical or electrical breakdown or failure;

(9) use of the covered vehicle for primarily commercial purposes;

(10) damage that occurs after the covered vehicle has been repossessed;

(11) damage to the covered vehicle before the purchase of the debt cancellation agreement;

(12) unpaid insurance premiums and salvage, towing, and storage charges relating to the covered vehicle;

(13) damage related to any personal property attached to or within the covered vehicle;

(14) damages associated with falsification of documents by any person not associated with the retail seller or other person canceling the retail buyer's obligation;

(15) any unpaid debt resulting from exclusions in the retail buyer's primary physical damage coverage not included in the debt cancellation agreement;

(16) abandonment of the covered vehicle by the retail buyer only if the retail buyer voluntarily discards, leaves behind, or otherwise relinquishes possession of the covered vehicle to the extent that the relinquishment shows intent to forsake and desert the covered vehicle so that the covered vehicle may be appropriated by any other person;

(17) any amounts deducted from the primary insurance carrier's settlement due to prior damages; and

(18) any loss occurring outside the United States or outside the United States and Canada.

(b) An exclusion of loss or damage not listed in Subsection (a) may be included in a debt cancellation agreement only if the exclusion is disclosed in plain, easy to read language.

Added by Acts 2011, 82nd Leg., R.S., c. 1034, § 2, eff. September 1, 2011. Redesignated and amended by Acts 2017, 85th Leg., R.S., c. 183, § 6, eff. Sept. 1, 2017.

§ 354.004. Required Debt Cancellation Agreement Language.

A debt cancellation agreement must state:

(1) the contact information of the retail seller, the holder, and any administrator of the agreement;

(2) the name and address of the retail buyer;

(3) the cost and term of the debt cancellation agreement;

(4) the procedure the retail buyer must follow to obtain benefits under the terms of the debt cancellation agreement, including a telephone number and address where the retail buyer may provide notice under the debt cancellation agreement;

(5) the period during which the retail buyer is required to notify the retail seller, the holder, or any administrator of the agreement, of any potential loss under the debt cancellation agreement for total loss or theft of the covered vehicle;

(6) that in order to make a claim, the retail buyer must provide or complete some or all of the following documents and provide those documents to the retail seller, the holder, or any administrator of the agreement:

(A) a debt cancellation request form;

(B) proof of loss and settlement payment from the retail buyer's primary comprehensive, collision, or uninsured or underinsured motorist policy or other parties' liability insurance policy for the settlement of the insured total loss of the covered vehicle;

(C) verification of the retail buyer's primary insurance deductible;

(D) a copy of any police report filed in connection with the total loss or theft of the vehicle; and

(E) a copy of the damage estimate;

(7) that documentation not described by Subdivision (6) or required by the retail seller, the holder, or any administrator of the agreement is not required to substantiate the loss or determine the amount of debt to be canceled;

(8) that notwithstanding the collection of the documents under Subdivision (6), on reasonable advance notice the retail seller, the holder, or any administrator of the agreement may inspect the retail buyer's covered vehicle;

(9) that the retail seller or holder will cancel all or part of the retail buyer's obligation as provided in the debt cancellation agreement on the occurrence of total loss or theft of the covered vehicle;

(10) the method to be used to calculate refunds;

(11) the method for calculating the amount to be canceled under the debt cancellation agreement on the occurrence of total loss or theft of a vehicle;

(12) that purchase of a debt cancellation agreement is not required for the retail buyer to obtain an extension of credit and will not be a factor in the credit approval process;

(13) that in order to cancel the debt cancellation agreement and receive a refund, the retail buyer must provide a written request to cancel to the retail seller, the holder, or any administrator of the agreement;

(14) that if total loss or theft of the covered vehicle has not occurred, the retail buyer has 30 days from the date of the contract or the issuance of the debt cancellation agreement, whichever is later, or a longer period as provided under the debt cancellation agreement, to cancel the debt cancellation agreement and receive a full refund;

(15) that the retail buyer may file a complaint with the commissioner, and include the address, phone number, and Internet website of the Office of Consumer Credit Commissioner; and

(16) that the holder will cancel certain amounts under the debt cancellation agreement for total loss or theft of a covered vehicle, in the following or substantially similar language: "YOU WILL CANCEL CERTAIN AMOUNTS I OWE UNDER THIS CONTRACT IN THE CASE OF A TOTAL LOSS OR THEFT OF THE VEHICLE AS STATED IN THE DEBT CANCELLATION AGREEMENT."

Added by Acts 2011, 82nd Leg., R.S., c. 1034, § 2, eff. Sept. 1, 2011. Redesignated and amended by Acts 2017, 85th Leg., R.S., c. 183, § 6, eff. Sept. 1, 2017.

§ 354.005. Approval of Forms for Debt Cancellation Agreements.

(a) Debt cancellation agreement forms must be submitted to the commissioner for approval. Debt cancellation agreement forms may include additional language to supplement the terms of the debt cancellation agreement as required by this chapter.

(b) If a debt cancellation agreement form is provided to the commissioner for approval, the commissioner has 45 days to approve the form or deny approval of the form. On the written request of the person submitting the form, the commissioner may agree in writing to extend the approval period for an additional 45 days. If after the 45th day, or the 90th day if the commissioner agrees to an extension, the commissioner does not deny the form, the form is considered approved.

(c) If the debt cancellation agreement form is approved by the commissioner or considered approved as provided by Subsection (b), the terms of the debt cancellation agreement are considered to be in compliance with this chapter.

(d) The commissioner may deny approval of a form only if the form excludes the language required by Sections 354.003 and 354.004 or contains any inconsistent or misleading provisions. All form denials, after an opportunity for a hearing under Chapter 2001, Government Code, may be appealed to a district court in accordance with that chapter.

(e) If after approval of a form the Office of Consumer Credit Commissioner discovers that approval could have been denied under Subsection (d), the commissioner may order a retail seller, any administrator of the debt cancellation agreement, or a holder to submit a corrected form for approval. Beginning as soon as reasonably practicable after approval of the corrected form, the retail seller, administrator, or holder shall use the corrected form for all sales.

(f) A debt cancellation agreement form that has been approved by the commissioner is public information subject to disclosure under Chapter 552, Government Code. Section 552.110, Government Code, does not apply to a form approved under this chapter.

Added by Acts 2011, 82nd Leg., R.S., c. 1034, § 2, eff. Sept. 1, 2011. Redesignated and amended by Acts 2017, 85th Leg., R.S., c. 183, § 6, eff. Sept. 1, 2017. Amended by Acts 2019, 86th Leg., c. 767, § 62, eff. Sept. 1, 2019.

§ 354.006. Additional Requirements for Debt Cancellation Agreements.

(a) If a retail buyer purchases a debt cancellation agreement, the retail seller must provide to the retail buyer a true and correct copy of the agreement not later than the 10th day after the date of the contract.

(b) A holder must comply with the terms of a debt cancellation agreement not later than the 60th day after the date of receipt of all necessary information required by the holder or administrator of the agreement to process the request.

(c) A debt cancellation agreement may not knowingly be offered by a retail seller if:

(1) the contract is already protected by gap insurance; or

(2) the purchase of the debt cancellation agreement is required for the retail buyer to obtain the extension of credit.

(d) This section does not apply to a debt cancellation agreement offered in connection with the purchase of a commercial vehicle.

(e) The sale of a debt cancellation agreement must be for a single payment.

(f) A holder that offers a debt cancellation agreement must report the sale of and forward money received on all such agreements to any designated party as prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy, or other specified program documents.

(g) Money received or held by a holder or any administrator of a debt cancellation agreement and belonging to an insurance company, holder, or administrator under the terms of a written agreement must be held by the holder or administrator in a fiduciary capacity.

(h) A retail seller that negotiates a debt cancellation agreement and subsequently assigns the contract shall:

(1) maintain documents relating to the agreement that come into the retail seller's possession; and

(2) on request of the Office of Consumer Credit Commissioner, cooperate in requesting and obtaining access to documents relating to the agreement not in the retail seller's possession.

Added by Acts 2011, 82nd Leg., R.S., c. 1034, § 2, eff. Sept. 1, 2011. Redesignated and amended by Acts 2017, 85th Leg., R.S., c. 183, § 6, eff. Sept. 1, 2017.

§ 354.007. Refund for Debt Cancellation Agreements.

(a) A refund or credit of the debt cancellation agreement fee must be based on the earliest date of:

(1) the prepayment of the contract in full before the original maturity date;

(2) a demand by the holder for payment in full of the unpaid balance or acceleration;

(3) a request by the retail buyer for cancellation of the debt cancellation agreement; or

(4) the total denial of a debt cancellation request based on one of the exclusions listed in Section 354.003, except in the case of a partial loss of the covered motor vehicle.

(b) The refund or credit for the debt cancellation agreement can be rounded to the nearest whole dollar. A refund or credit is not required if the amount of the refund or credit calculated is less than $5.

(c) If total loss or theft has not occurred, the retail buyer may cancel the debt cancellation agreement not later than the 30th day after the date of the contract or the issuance of the debt cancellation agreement, whichever is later, or a later date as provided under the debt cancellation agreement. On cancellation, the holder or any administrator of the agreement shall refund or credit the entire debt cancellation agreement fee. A retail buyer may not cancel the debt cancellation agreement and subsequently receive any benefits under the agreement.

(d) A holder may in good faith rely on a computation by any administrator of the agreement of the balance waived, unless the holder has knowledge that the computation is not correct. If a computation by the administrator of the balance waived is not correct, the holder must within a reasonable time of learning that the computation is incorrect make the necessary corrections or cause the corrections to be made to the retail buyer's account. This subsection does not prevent the holder from obtaining reimbursement from the administrator or another responsible for the debt cancellation agreement or computation.

(e) If the debt cancellation agreement terminates due to the early termination of the contract, a holder who is a retail seller who has not assigned or transferred the contract shall:

(1) not later than the 60th day after the date the debt cancellation agreement terminates refund or credit an appropriate amount of the debt cancellation agreement fee; or

(2) cause to be refunded or credited an appropriate amount of the debt cancellation agreement fee by providing written instruction not later than the 30th day after the date the debt cancellation agreement terminates, including by electronic means, to the administrator of the agreement.

(e-1) If the debt cancellation agreement terminates due to the early termination of the contract, a holder, other than a holder described by Subsection (e), shall:

(1) not later than the 60th day after the date the debt cancellation agreement terminates refund or credit an appropriate amount of the debt cancellation agreement fee; or

(2) cause to be refunded or credited an appropriate amount of the debt cancellation agreement fee by providing written instruction not later than the 30th day after the date the debt cancellation agreement terminates, including by electronic means, to the administrator of the agreement and the retail seller.

(f) The administrator of the agreement or the administrator of the agreement and the retail seller, as applicable, not later than the 30th day after receiving the written instructions specified under Subsection (e)(2) or (e-1)(2), shall provide a refund or credit of an amount of a debt cancellation agreement fee proportional to the amount received by the administrator and retail seller under the agreement.

(g) The administrator of the agreement and the retail seller shall maintain records of any refund or credit of an amount of a debt cancellation agreement fee made under Subsection (e) or (e-1) and provide electronic access to those records until the later of the fourth anniversary of the date of the contract or the second anniversary of the date of the refund or credit.

Added by Acts 2011, 82nd Leg., R.S., c. 1034, § 2, eff. Sept. 1, 2011. Redesignated and amended by Acts 2017, 85th Leg., R.S., c. 183, § 6, eff. Sept. 1, 2017. Amended by Acts 2023, 88th Leg., R.S., HB 2746, § 1, eff. Sept. 1, 2023.

Section 2 of Acts 2023, 88th leg., R.S., HB 2746 provides:

The changes in law made by this Act to Section 354.007, Finance Code, are procedural only and do not require the refiling of forms to implement.

TITLE 5. REGULATION OF INTEREST, LOANS, AND FINANCED TRANSACTIONS

CHAPTER 397. DEBT CANCELLATION AGREEMENTS FOR CERTAIN VEHICLE LEASES

§ 397.001. Definitions.

In this chapter:

(1) "Covered vehicle" includes a self-propelled or towed vehicle designed for personal use, including an automobile, truck, motorcycle, recreational vehicle, all-terrain vehicle, snowmobile, camper, boat, personal watercraft, and personal watercraft trailer.

(2) "Debt cancellation agreement" means a lease term or a contractual arrangement modifying a lease term under which a lessor or holder agrees to cancel all or part of an obligation of the lessee to pay the lessor or holder on the occurrence of the total loss or theft of the covered vehicle that is the subject of the lease but does not include an offer to pay a specified amount on the total loss or theft of the covered vehicle.

(3) "Holder" means a person who is:

(A) a lessor; or

(B) the assignee or transferee of a lease.

(4) "Lease" means a lease for a covered vehicle.

Added by Laws 2017, 85th Leg., R.S., c. 183, § 7, eff. Sept. 1, 2017.

§ 397.002. Applicability.

This chapter does not apply to a lease that is a retail installment transaction under Section 345.068 or 348.002.

Added by Laws 2017, 85th Leg., R.S., c. 183, § 7, eff. Sept. 1, 2017.

§ 397.003. Relationship to Insurance.

A debt cancellation agreement to which this chapter applies is not insurance.

Added by Laws 2017, 85th Leg., R.S., c. 183, § 7, eff. Sept. 1, 2017.

§ 397.004. Limitation on Certain Debt Cancellation Agreements.

(a) This chapter applies only to a debt cancellation agreement, including a gap waiver agreement or other similarly named agreement, that includes insurance coverage as part of the lessee's responsibility to the holder.

(b) The amount charged for a debt cancellation agreement made in connection with a lease may not exceed five percent of the adjusted capitalized cost financed pursuant to the lease.

(c) The debt cancellation agreement becomes a part of or a separate addendum to the lease and remains a term of the lease on the assignment, sale, or transfer by the holder.

Added by Laws 2017, 85th Leg., R.S., c. 183, § 7, eff. Sept. 1, 2017.

§ 397.005. Debt Cancellation Agreements Exclusion Language.

(a) In addition to the provisions required by Section 397.006, a debt cancellation agreement must fully disclose all provisions permitting the exclusion of loss or damage including, if applicable:

(1) an act occurring after the original maturity date or date of the holder's acceleration of the lease;

(2) any dishonest, fraudulent, illegal, or intentional act of any authorized driver that directly results in the total loss of the covered vehicle;

(3) any act of gross negligence by an authorized driver that directly results in the total loss of the covered vehicle;

(4) conversion, embezzlement, or concealment by any person in lawful possession of the covered vehicle;

(5) lawful confiscation by an authorized public official;

(6) the operation, use, or maintenance of the covered vehicle in any race or speed contest;

(7) war, whether or not declared, invasion, insurrection, rebellion, revolution, or an act of terrorism;

(8) normal wear and tear, freezing, or mechanical or electrical breakdown or failure;

(9) use of the covered vehicle for primarily commercial purposes;

(10) damage that occurs after the covered vehicle has been repossessed;

(11) damage to the covered vehicle before the purchase of the debt cancellation agreement;

(12) unpaid insurance premiums and salvage, towing, and storage charges relating to the covered vehicle;

(13) damage related to any personal property attached to or within the covered vehicle;

(14) damages associated with falsification of documents by any person not associated with the lessor or other person canceling the lessee's obligation;

(15) any unpaid debt resulting from exclusions in the lessee's primary physical damage coverage not included in the debt cancellation agreement;

(16) abandonment of the covered vehicle by the lessee only if the lessee voluntarily discards, leaves behind, or otherwise relinquishes possession of the covered vehicle to the extent that the relinquishment shows intent to forsake and desert the covered vehicle so that the covered vehicle may be appropriated by any other person;

(17) any amounts deducted from the primary insurance carrier's settlement due to prior damages; and

(18) any loss occurring outside the United States or outside the United States and Canada.

(b) An exclusion of loss or damage not listed in Subsection (a) may be included in a debt cancellation agreement only if the exclusion is disclosed in plain, easy to read language.

Added by Laws 2017, 85th Leg., R.S., c. 183, § 7, eff. Sept. 1, 2017.

§ 397.006. Required Debt Cancellation Agreement Language.

A debt cancellation agreement must state:

(1) the contact information of the lessor, the holder, and any administrator of the agreement;

(2) the name and address of the lessee;

(3) the cost and term of the debt cancellation agreement;

(4) the procedure the lessee must follow to obtain benefits under the terms of the debt cancellation agreement, including a telephone number and address where the lessee may provide notice under the debt cancellation agreement;

(5) the period during which the lessee is required to notify the lessor, the holder, or any administrator of the agreement of any potential loss under the debt cancellation agreement for total loss or theft of the covered vehicle;

(6) that in order to make a claim, the lessee must provide or complete some or all of the following documents and provide those documents to the lessor, the holder, or any administrator of the agreement:

(A) a debt cancellation request form;

(B) proof of loss and settlement payment from the lessee's primary comprehensive, collision, or uninsured or underinsured motorist policy or other parties' liability insurance policy for the settlement of the insured total loss of the covered vehicle;

(C) verification of the lessee's primary insurance deductible;

(D) a copy of any police report filed in connection with the total loss or theft of the covered vehicle; and

(E) a copy of the damage estimate;

(7) that documentation not described by Subdivision (6) or required by the lessor, the holder, or any administrator of the agreement is not required to substantiate the loss or determine the amount of debt to be canceled;

(8) that notwithstanding the collection of the documents under Subdivision (6), on reasonable advance notice the lessor, the holder, or any administrator of the agreement may inspect the lessee's covered vehicle;

(9) that the lessor or holder will cancel all or part of the lessee's obligation as provided in the debt cancellation agreement on the occurrence of total loss or theft of the covered vehicle;

(10) the method to be used to calculate refunds;

(11) the method for calculating the amount to be canceled under the debt cancellation agreement on the occurrence of total loss or theft of a covered vehicle;

(12) that purchase of a debt cancellation agreement is not required for the lessee to obtain a lease and will not be a factor in the lease approval process;

(13) that in order to cancel the debt cancellation agreement and receive a refund, the lessee must provide a written request to cancel to the lessor, the holder, or any administrator of the agreement;

(14) that if total loss or theft of the covered vehicle has not occurred, the lessee has 30 days from the date of the lease or the issuance of the debt cancellation agreement, whichever is later, or a longer period as provided under the debt cancellation agreement, to cancel the debt cancellation agreement and receive a full refund; and

(15) that the lessor will cancel certain amounts under the debt cancellation agreement for total loss or theft of a covered vehicle, in the following or substantially similar language: "YOU WILL CANCEL CERTAIN AMOUNTS I OWE UNDER THIS LEASE IN THE CASE OF A TOTAL LOSS OR THEFT OF THE COVERED VEHICLE AS STATED IN THE DEBT CANCELLATION AGREEMENT."

Added by Laws 2017, 85th Leg., R.S., c. 183, § 7, eff. Sept. 1, 2017.

§ 397.007. Additional Requirements for Debt Cancellation Agreements.

(a) If a lessee purchases a debt cancellation agreement, the lessor must provide to the lessee a true and correct copy of the agreement not later than the 10th day after the date of the lease.

(b) A holder must comply with the terms of a debt cancellation agreement not later than the 60th day after the date of receipt of all necessary information required by the holder or administrator of the agreement to process the request.

(c) A debt cancellation agreement may not knowingly be offered by a lessor if:

(1) the lease is already protected by gap insurance; or

(2) the purchase of the debt cancellation agreement is required for the lessee to obtain the lease.

(d) This section does not apply to a debt cancellation agreement offered in connection with the lease of a commercial vehicle.

(e) The sale of a debt cancellation agreement must be for a single payment.

(f) A holder that offers a debt cancellation agreement must report the sale of and forward money received on all such agreements to any designated party as prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy, or other specified program documents.

(g) Money received or held by a holder or any administrator of a debt cancellation agreement and belonging to an insurance company, holder, or administrator under the terms of a written agreement must be held by the holder or administrator in a fiduciary capacity.

(h) A lessor that negotiates a debt cancellation agreement and subsequently assigns the lease shall maintain documents relating to the agreement that come into the lessor's possession.

Added by Laws 2017, 85th Leg., R.S., c. 183, § 7, eff. Sept. 1, 2017.

§ 397.008. Refund for Debt Cancellation Agreements.

(a) A refund or credit of the debt cancellation agreement fee must be based on the earliest date of:

(1) the prepayment of the lease in full before the original maturity date;

(2) a demand by the holder for payment in full of the unpaid balance or acceleration;

(3) a request by the lessee for cancellation of the debt cancellation agreement; or

(4) the total denial of a debt cancellation request based on one of the exclusions listed in Section 397.005, except in the case of a partial loss of the covered vehicle.

(b) The refund or credit for the debt cancellation agreement can be rounded to the nearest whole dollar. A refund or credit is not required if the amount of the refund or credit calculated is less than $5.

(c) If total loss or theft has not occurred, the lessee may cancel the debt cancellation agreement not later than the 30th day after the date of the lease or the issuance of the debt cancellation agreement, whichever is later, or a later date as provided under the debt cancellation agreement. On cancellation, the holder or any administrator of the agreement shall refund or credit the entire debt cancellation agreement fee. A lessee may not cancel the debt cancellation agreement and subsequently receive any benefits under the agreement.

(d) A holder may in good faith rely on a computation by any administrator of the agreement of the balance waived, unless the holder has knowledge that the computation is not correct. If a computation by the administrator of the balance waived is not correct, the holder must within a reasonable time of learning that the computation is incorrect make the necessary corrections or cause the corrections to be made to the lessee's account. This subsection does not prevent the holder from obtaining reimbursement from the administrator or another responsible for the debt cancellation agreement or computation.

(e) If the debt cancellation agreement terminates due to the early termination of the lease, the holder shall, not later than the 60th day after the date the debt cancellation agreement terminates:

(1) refund or credit an appropriate amount of the debt cancellation agreement fee; or

(2) cause to be refunded or credited an appropriate amount of the debt cancellation agreement fee by providing written instruction to the appropriate person.

(f) The holder shall ensure that a refund or credit of an amount of a debt cancellation agreement fee made by another person under Subsection (e)(2) is made not later than the 60th day after the date the debt cancellation agreement terminates.

(g) The holder shall maintain records of any refund or credit of an amount of a debt cancellation agreement fee made under Subsection (e) and provide electronic access to those records until the later of the fourth anniversary of the date of the lease or the second anniversary of the date of the refund or credit.

Added by Laws 2017, 85th Leg., R.S., c. 183, § 7, eff. Sept. 1, 2017.

§ 397.009. Enforcement.

(a) If the attorney general has reason to believe that a person is engaging in, has engaged in, or is about to engage in any method, act, or practice that is a violation of this chapter, the attorney general may bring an action in the name of the state against the person to restrain the person by temporary restraining order, temporary injunction, or permanent injunction from engaging in the method, act, or practice.

(b) An action brought under Subsection (a) may be commenced in the district court of the county in which the person against whom the action is brought resides, has the person's principal place of business, or has done business, in the district court of the county in which any or all parts of the method, act, or practice giving rise to the action occurred, or, on the consent of the parties, in a district court of Travis County. The court may issue a temporary restraining order, temporary injunction, or permanent injunction to restrain or prevent a violation of this chapter and injunctive relief must be issued without bond.

(c) In addition to the request for a temporary restraining order, temporary injunction, or permanent injunction, the attorney general may request, and the trier of fact may award, a civil penalty to be paid to the state in an amount of not more than $20,000 per violation.

(d) The attorney general may recover reasonable expenses incurred in obtaining injunctive relief or a civil penalty under this section, including reasonable investigative costs, court costs, and attorney's fees.

Added by Laws 2017, 85th Leg., R.S., c. 183, § 7, eff. Sept. 1, 2017.

20. Prohibition of Certain Surchages

Texas Business & Commerce Code

TITLE 12. RIGHTS AND DUTIES OF CONSUMERS AND MERCHANTS

CHAPTER 604A. PROHIBITION OF CERTAIN SURCHARGES

§ 604A.001. Definitions.

In this chapter:

(1) "Cardholder" means the person named on the face of a debit or stored value card to whom or for whose benefit the card is issued.

(2) "Debit card" has the meaning assigned by Section 502.001.

(3) "Merchant" means a person in the business of selling or leasing goods or services.

(4) "Stored value card" has the meaning assigned by Section 604.001(1), but does not include the meaning assigned by Section 604.001(2).

(5) "Surcharge" means an increase in the price charged for goods or services imposed on a buyer who pays with a debit or stored value card that is not imposed on a buyer who pays by other means. The term does not include a discounted price charged for goods or services to a buyer who pays with cash.

Transferred, redesignated and amended from Finance Code, Subchapter E, Chapter 59 by Acts 2015, 84th Leg., R.S., c. 113, § 1, eff. Sept. 1, 2015.

§ 604A.002. Imposition of Surcharge for Use of Debit or Stored Value Card.

(a) In a sale of goods or services, a merchant may not impose a surcharge on a buyer who uses a debit or stored value card instead of cash, a check, credit card, or a similar means of payment.

(b) This section does not apply to:

(1) a state agency, county, local governmental entity, or other governmental entity that accepts a debit or stored value card for the payment of fees, taxes, or other charges; or

(2) a private school that accepts a debit card for the payment of fees or other charges, as provided by Section 111.002, Business & Commerce Code.

Transferred, redesignated and amended from Finance Code, Subchapter E, Chapter 59 by Acts 2015, 84th Leg., R.S., c. 113, § 1, eff. Sept. 1, 2015. Amended by Acts 2015, 84th Leg., R.S., c. 357, § 2, eff. June 9, 2015.

§ 604A.0021. Imposition of Surcharge for Use of Credit Card.

(a) In a sale of goods or services, a seller may not impose a surcharge on a buyer who uses a credit card for an extension of credit instead of cash, a check, or a similar means of payment.

(b) This section does not apply to:

(1) a state agency, county, local governmental entity, or other governmental entity that accepts a credit card for the payment of fees, taxes, or other charges; or

(2) a private school that accepts a credit card for the payment of fees or other charges, as provided by Section 111.002 [Business & Commerce Code].

(c) This section does not create a cause of action against an individual for violation of this section.

Transferred, redesignated and amended from Finance Code, Chapter 339 by Acts 2017, 85th Leg., R.S., c. 196, § 1, eff. Sept. 1, 2017.

§ 604A.003. Civil Penalty.

(a) A person who knowingly violates Section 604A.002 is liable to the state for a civil penalty in an amount not to exceed $500 for each violation. The attorney general or the prosecuting attorney in the county in which the violation occurs may bring:

(1) a suit to recover the civil penalty imposed under this section; and

(2) an action in the name of the state to restrain or enjoin a person from violating this chapter.

(b) Before bringing the action, the attorney general or prosecuting attorney shall give the person notice of the person's noncompliance and liability for a civil penalty. The notice must:

(1) contain guidance to assist the person in complying with this chapter;

(2) advise the person of the prohibition under Section 604A.002; and

(3) state that the person may be liable for a civil penalty for a subsequent violation of Section 604A.002.

(b-1) If the person complies with Section 604A.002 not later than the 30th day after the date of the notice under Subsection (b), the violation is cured and the person is not liable for the civil penalty. A person who has previously received notice of noncompliance under Subsection (b) is not entitled to notice of or the opportunity to cure a subsequent violation of Section 604A.002.

(c) The attorney general or the prosecuting attorney, as appropriate, is entitled to recover reasonable expenses incurred in obtaining injunctive relief, civil penalties, or both, under this section, including reasonable attorney's fees, court costs, and investigatory costs.

Transferred, redesignated and amended from Finance Code, Subchapter E, Chapter 59 by Acts 2015, 84th Leg., R.S., c. 113, § 1, eff. Sept. 1, 2015.

Federal Statutes & Regulations

1. Fair Credit Billing Act (15 U.S.C. §§ 1666-1666j)

Title 15. Commerce and Trade

CHAPTER 41. CONSUMER CREDIT PROTECTION

SUBCHAPTER I. CONSUMER CREDIT COST DISCLOSURE

PART D—CREDIT BILLING

§ 1666. Correction of billing errors.

(a) Written notice by obligor to creditor; time for and contents of notice; procedure upon receipt of notice by creditor

If a creditor, within sixty days after having transmitted to an obligor a statement of the obligor's account in connection with an extension of consumer credit, receives at the address disclosed under section 1637(b)(10) of this title a written notice (other than notice on a payment stub or other payment medium supplied by the creditor if the creditor so stipulates with the disclosure required under section 1637(a)(7) of this title) from the obligor in which the obligor—

(1) sets forth or otherwise enables the creditor to identify the name and account number (if any) of the obligor,

(2) indicates the obligor's belief that the statement contains a billing error and the amount of such billing error, and

(3) sets forth the reasons for the obligor's belief (to the extent applicable) that the statement contains a billing error, the creditor shall, unless the obligor has, after giving such written notice and before the expiration of the time limits herein specified, agreed that the statement was correct—

(A) not later than thirty days after the receipt of the notice, send a written acknowledgment thereof to the obligor, unless the action required in subparagraph (B) is taken within such thirty-day period, and

(B) not later than two complete billing cycles of the creditor (in no event later than ninety days) after the receipt of the notice and prior to taking any action to collect the amount, or any part thereof, indicated by the obligor under paragraph (2) either—

(i) make appropriate corrections in the account of the obligor, including the crediting of any finance charges on amounts erroneously billed, and transmit to the obligor a notification of such corrections and the creditor's explanation of any change in the amount indicated by the obligor under paragraph (2) and, if any such change is made and the obligor so requests, copies of documentary evidence of the obligor's indebtedness; or

(ii) send a written explanation or clarification to the obligor, after having conducted an investigation, setting forth to the extent applicable the reasons why the creditor believes the account of the obligor was correctly shown in the statement and, upon request of the obligor, provide copies of documentary evidence of the obligor's indebtedness. In the case of a billing error where the obligor alleges that the creditor's billing statement reflects goods not delivered to the obligor or his designee in accordance with the agreement made at the time of the transaction, a creditor may not construe such amount to be correctly shown unless he determines that such goods were actually delivered, mailed, or otherwise sent to the obligor and provides the obligor with a statement of such determination. After complying with the provisions of this subsection with respect to an alleged billing error, a creditor has no further responsibility under this section if the obligor continues to make substantially the same allegation with respect to such error.

(b) Billing error

For the purpose of this section, a ''billing error'' consists of any of the following:

(1) A reflection on a statement of an extension of credit which was not made to the obligor or, if made, was not in the amount reflected on such statement.

(2) A reflection on a statement of an extension of credit for which the obligor requests additional clarification including documentary evidence thereof.

(3) A reflection on a statement of goods or services not accepted by the obligor or his designee or not delivered to the obligor or his designee in accordance with the agreement made at the time of a transaction.

(4) The creditor's failure to reflect properly on a statement a payment made by the obligor or a credit issued to the obligor.

(5) A computation error or similar error of an accounting nature of the creditor on a statement.

(6) Failure to transmit the statement required under section 1637(b) of this title to the last address of the obligor which has been disclosed to the creditor, unless that address was furnished less than twenty days before the end of the billing cycle for which the statement is required.

(7) Any other error described in regulations of the Bureau.

(c) Action by creditor to collect amount or any part thereof regarded by obligor to be a billing error

For the purposes of this section, ''action to collect the amount, or any part thereof, indicated by an obligor under paragraph (2)'' does not include the sending of statements of account, which may include finance charges on amounts in dispute, to the obligor following written notice from the obligor as specified under subsection (a) of this section, if—

(1) the obligor's account is not restricted or closed because of the failure of the obligor to pay the amount indicated under paragraph (2) of subsection (a) of this section, and

(2) the creditor indicates the payment of such amount is not required pending the creditor's compliance with this section. Nothing in this section shall be construed to prohibit any action by a creditor to collect any amount which has not been indicated by the obligor to contain a billing error.

(d) Restricting or closing by creditor of account regarded by obligor to contain a billing error

Pursuant to regulations of the Bureau, a creditor operating an open end consumer credit plan may not, prior to the sending of the written explanation or clarification required under paragraph (B)(ii), restrict or close an account with respect to which the obligor has indicated pursuant to subsection (a) of this section that he believes such account to contain a billing error solely because of the obligor's failure to pay the amount indicated to be in error. Nothing in this subsection shall be deemed to prohibit a creditor from applying against the credit limit on the obligor's account the amount indicated to be in error.

(e) Effect of noncompliance with requirements by creditor

Any creditor who fails to comply with the requirements of this section or section 1666a of this title forfeits any right to collect from the obligor the amount indicated by the obligor under paragraph (2) of subsection (a) of this section, and any finance charges thereon, except that the amount required to be forfeited under this subsection may not exceed $50.

(Pub. L. 90-321, title I, § 161, as added Pub. L. 93-495, title III, § 306, Oct. 28, 1974, 88 Stat. 1512; amended Pub. L. 96-221, title VI § 613(g), 620, Mar. 31, 1980, 94 Stat. 177, 184; amended Pub. L. 111-203,title X §§ 1087, 1100A(2), July 21, 2010, 124 Stat. 2086, 2107.)

§ 1666a. Regulation of credit reports.

(a) Reports by creditor on obligor's failure to pay amount regarded as billing error

After receiving a notice from an obligor as provided in section 1666(a) of this title, a creditor or his agent may not directly or indirectly threaten to report to any person adversely on the obligor's credit rating or credit standing because of the obligor's failure to pay the amount indicated by the obligor under section 1666(a)(2) of this title, and such amount may not be reported as delinquent to any third party until the creditor has met the requirements of section 1666 of this title and has allowed the obligor the same number of days (not less than ten) thereafter to make payment as is provided under the credit agreement with the obligor for the payment of undisputed amounts.

(b) Reports by creditor on delinquent amounts in dispute; notification of obligor of parties notified of delinquency

If a creditor receives a further written notice from an obligor that an amount is still in dispute within the time allowed for payment under subsection (a) of this section, a creditor may not report to any third party that the amount of the obligor is delinquent because the obligor has failed to pay an amount which he has indicated under section 1666(a)(2) of this title, unless the creditor also reports that the amount is in dispute and, at the same time, notifies the obligor of the name and address of each party to whom the creditor is reporting information concerning the delinquency.

(c) Reports by creditor of subsequent resolution of delinquent amounts

A creditor shall report any subsequent resolution of any delinquencies reported pursuant to subsection (b) of this section to the parties to whom such delinquencies were initially reported.

(Pub. L. 90-321, title I, § 162, as added Pub. L. 93-495, title III, § 306, Oct. 28, 1974, 88 Stat. 1513.)

§ 1666b. Timing of payments.

(a) Time to make payments

A creditor may not treat a payment on a credit card account under an open end consumer credit plan as late for any purpose, unless the creditor has adopted reasonable procedures designed to ensure that each periodic statement including the information required by section 1637(b) of this title is mailed or delivered to the consumer not later than 21 days before the payment due date.

(b) Grace period

If an open end consumer credit plan provides a time period within which an obligor may repay any portion of the credit extended without incurring an additional finance charge, such additional finance charge may not be imposed with respect to such portion of the credit extended for the billing cycle of which such period is a part, unless a statement which includes the amount upon which the finance charge for the period is based was mailed or delivered to the consumer not later than 21 days before the date specified in the statement by which payment must be made in order to avoid imposition of that finance charge.

(Pub. L. 90–321, title I, § 163, as added Pub. L. 93–495, title III, § 306, Oct. 28, 1974, 88 Stat. 1514; amended Pub. L. 111–24, title I, § 106(b)(1), May 22, 2009, 123 Stat. 1742; Pub. L. 111–93, § 2,Nov. 6, 2009, 123 Stat. 2998.)

§ 1666c. Prompt and fair crediting of payments .

(a) In general

Payments received from an obligor under an open end consumer credit plan by the creditor shall be posted promptly to the obligor's account as specified in regulations of the Bureau. Such regulations shall prevent a finance charge from being imposed on any obligor if the creditor has received the obligor's payment in readily identifiable form, by 5:00 p.m. on the date on which such payment is due, in the amount, manner, and location indicated by the creditor to avoid the imposition thereof.

(b) Application of payments

(1) In general

Upon receipt of a payment from a cardholder, the card issuer shall apply amounts in excess of the minimum payment amount first to the card balance bearing the highest rate of interest, and then to each successive balance bearing the next highest rate of interest, until the payment is exhausted.

(2) Clarification relating to certain deferred interest arrangements

A creditor shall allocate the entire amount paid by the consumer in excess of the minimum payment amount to a balance on which interest is deferred during the last 2 billing cycles immediately preceding the expiration of the period during which interest is deferred.

(c) Changes by card issuer

If a card issuer makes a material change in the mailing address, office, or procedures for handling cardholder payments, and such change causes a material delay in the crediting of a cardholder payment made during the 60-day period following the date on which such change took effect, the card issuer may not impose any late fee or finance charge for a late payment on the credit card account to which such payment was credited.

(Pub. L. 90–321, title I, § 164, as added Pub. L. 93–495, title III, § 306, Oct. 28, 1974, 88 Stat. 1514; amended Pub. L. 111–24, title I, § 104, May 22, 2009, 123 Stat. 1741; Pub. L. 111–203, title X, §§ 1087, 1100A(2), July 21, 2010, 124 Stat. 2086, 2107.)

§ 1666d. Treatment of credit balances.

Whenever a credit balance in excess of $1 is created in connection with a consumer credit transaction through (1) transmittal of funds to a creditor in excess of the total balance due on an account, (2) rebates of unearned finance charges or insurance premiums, or (3) amounts otherwise owed to or held for the benefit of an obligor, the creditor shall—

(A) credit the amount of the credit balance to the consumer's account;

(B) refund any part of the amount of the remaining credit balance, upon request of the consumer; and

(C) make a good faith effort to refund to the consumer by cash, check, or money order any part of the amount of the credit balance remaining in the account for more than six months, except that no further action is required in any

case in which the consumer's current location is not known by the creditor and cannot be traced through the consumer's last known address or telephone number.

(Pub. L. 90-321, title I, § 165, as added Pub. L. 93-495, title III, § 306, Oct. 28, 1974, 88 Stat. 1514; amended Pub. L. 96-221, title VI, § 621(a), Mar. 31, 1980, 94 Stat. 184.)

§ 1666e. Notification of credit card issuer by seller of return of goods, etc., by obligor; credit for account of obligor.

With respect to any sales transaction where a credit card has been used to obtain credit, where the seller is a person other than the card issuer, and where the seller accepts or allows a return of the goods or forgiveness of a debit for services which were the subject of such sale, the seller shall promptly transmit to the credit card issuer, a credit statement with respect thereto and the credit card issuer shall credit the account of the obligor for the amount of the transaction.

(Pub. L. 90-321, title I, § 166, as added Pub. L. 93-495, title III, § 306, Oct. 28, 1974, 88 Stat. 1514.)

§ 1666f. Inducements to cardholders by sellers of cash discounts for payments by cash, check or similar means; credit card surcharge prohibition; finance charge for sales transactions involving cash discounts .

(a) Cash discounts

With respect to credit card which may be used for extensions of credit in sales transactions in which the seller is a person other than the card issuer, the card issuer may not, by contract, or otherwise, prohibit any such seller from offering a discount to a cardholder to induce the cardholder to pay by cash, check, or similar means rather than use a credit card.

(b) Finance charge

With respect to any sales transaction, any discount from the regular price offered by the seller for the purpose of inducing payment by cash, checks, or other means not involving the use of an open-end credit plan or a credit card shall not constitute a finance charge as determined under section 1605 of this title if such discount is offered to all prospective buyers and its availability is disclosed clearly and conspicuously.

(Pub. L. 90-321, title I, § 167, as added Pub. L. 93-495, title III, § 306, Oct. 28, 1974, 88 Stat. 1515; amended Pub. L. 94-222, § 3(c)(1), Feb. 27, 1976, 90 Stat. 197; Pub. L. 97-25, title I, § 101, July 27, 1981, 95 Stat. 144.)

§ 1666g. Tie-in services prohibited for issuance of credit card.

Notwithstanding any agreement to the contrary, a card issuer may not require a seller, as a condition to participating in a credit card plan, to open an account with or procure any other service from the card issuer or its subsidiary or agent.

(Pub. L. 90-321, title I, § 168, as added Pub. L. 93-495, title III, § 306, Oct. 28, 1974, 88 Stat. 1515.)

§ 1666h. Offset of cardholder's indebtedness by issuer of credit card with funds deposited with issuer by cardholder; remedies of creditors under State law not affected.

(a) Offset against consumer's funds

A card issuer may not take any action to offset a cardholder's indebtedness arising in connection with a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer unless—

(1) such action was previously authorized in writing by the cardholder in accordance with a credit plan whereby the cardholder agrees periodically to pay debts incurred in his open end credit account by permitting the card issuer periodically to deduct all or a portion of such debt from the cardholder's deposit account, and

(2) such action with respect to any outstanding disputed amount not be taken by the card issuer upon request of the cardholder. In the case of any credit card account in existence on the effective date of this section, the previous written authorization referred to in clause (1) shall not be required until the date (after such effective date) when such account is renewed, but in no case later than one year after such effective date. Such written authorization shall be deemed to exist if the card issuer has previously notified the cardholder that the use of his credit card account will subject any funds which the card issuer holds in deposit accounts of such cardholder to offset against any amounts due and payable on his credit card account which have not been paid in accordance with the terms of the agreement between the card issuer and the cardholder.

(b) Attachments and levies

This section does not alter or affect the right under State law of a card issuer to attach or otherwise levy upon funds of a cardholder held on deposit with the card issuer if that remedy is constitutionally available to creditors generally.

(Pub. L. 90-321, title I, § 169, as added Pub. L. 93-495, title III, § 306, Oct. 28, 1974, 88 Stat. 1515.)

§ 1666i. Assertion by cardholder against card issuer of claims and defenses arising out of credit card transaction; prerequisites; limitation on amount of claims or defenses.

(a) Claims and defenses assertible

Subject to the limitation contained in subsection (b) of this section, a card issuer who has issued a credit card to a cardholder pursuant to an open end consumer credit plan shall be subject to all claims (other than tort claims) and defenses arising out of any transaction in which the credit card is used as a method of payment or extension of credit if (1) the obligor has made a good faith attempt to obtain satisfactory resolution of a disagreement or problem relative to the transaction from the person honoring the credit card; (2) the amount of the initial transaction exceeds $50; and (3) the place where the initial transaction occurred was in the same State as the mailing address previously provided by the cardholder or was within 100 miles from such address, except that the limitations set forth in clauses (2) and (3) with respect to an obligor's right to assert claims and defenses against a card issuer shall not be applicable to any transaction in which the person honoring the credit card (A) is the same person as the card issuer, (B) is controlled by the card issuer, (C) is under direct or indirect common control with the card issuer, (D) is a franchised dealer in the card issuer's products or services, or (E) has obtained the order for such transaction through a mail solicitation made by or participated in by the card issuer in which the cardholder is solicited to enter into such transaction by using the credit card issued by the card issuer.

(b) Amount of claims and defenses assertible

The amount of claims or defenses asserted by the cardholder may not exceed the amount of credit outstanding with respect to such transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of such claim or defense. For the purpose of determining the amount of credit outstanding in the preceding sentence, payments and credits to the cardholder's account are deemed to have been applied, in the order indicated, to the payment of: (1) late charges in the order of their entry to the account; (2) finance charges in order of their entry to the account; and (3) debits to the account other than those set forth above, in the order in which each debit entry to the account was made.

(Pub. L. 90-321, title I, § 170, as added Pub. L. 93-495, title III, § 306, Oct. 28, 1974, 88 Stat. 1515.)

§ 1666i–1. Limits on interest rate, fee, and finance charge increases applicable to outstanding balances.

(a) In general

In the case of any credit card account under an open end consumer credit plan, no creditor may increase any annual percentage rate, fee, or finance charge applicable to any outstanding balance, except as permitted under subsection (b).

(b) Exceptions

The prohibition under subsection (a) shall not apply to—

(1) an increase in an annual percentage rate upon the expiration of a specified period of time, provided that—

(A) prior to commencement of that period, the creditor disclosed to the consumer, in a clear and conspicuous manner, the length of the period and the annual percentage rate that would apply after expiration of the period;

(B) the increased annual percentage rate does not exceed the rate disclosed pursuant to subparagraph (A); and

(C) the increased annual percentage rate is not applied to transactions that occurred prior to commencement of the period;

(2) an increase in a variable annual percentage rate in accordance with a credit card agreement that provides for changes in the rate according to operation of an index that is not under the control of the creditor and is available to the general public;

(3) an increase due to the completion of a workout or temporary hardship arrangement by the obligor or the failure of the obligor to comply with the terms of a workout or temporary hardship arrangement, provided that—

(A) the annual percentage rate, fee, or finance charge applicable to a category of transactions following any such increase does not exceed the rate, fee, or finance charge that applied to that category of transactions prior to commencement of the arrangement; and

(B) the creditor has provided the obligor, prior to the commencement of such arrangement, with clear and conspicuous disclosure of the terms of the arrangement (including any increases due to such completion or failure); or

(4) an increase due solely to the fact that a minimum payment by the obligor has not been received by the creditor within 60 days after the due date for such payment, provided that the creditor shall—

(A) include, together with the notice of such increase required under section 1637 (i) of this title, a clear and conspicuous written statement of the reason for the increase and that the increase will terminate not later than 6 months after the date on which it is imposed, if the creditor receives the required minimum payments on time from the obligor during that period; and

(B) terminate such increase not later than 6 months after the date on which it is imposed, if the creditor receives the required minimum payments on time during that period.

(c) Repayment of outstanding balance

(1) In general

The creditor shall not change the terms governing the repayment of any outstanding balance, except that the creditor may provide the obligor with one of the methods described in paragraph (2) of repaying any outstanding balance, or a method that is no less beneficial to the obligor than one of those methods.

(2) Methods

The methods described in this paragraph are—

(A) an amortization period of not less than 5 years, beginning on the effective date of the increase set forth in the notice required under section 1637 (i) of this title; or

(B) a required minimum periodic payment that includes a percentage of the outstanding balance that is equal to not more than twice the percentage required before the effective date of the increase set forth in the notice required under section 1637 (i) of this title.

(d) Outstanding balance defined

For purposes of this section, the term "outstanding balance" means the amount owed on a credit card account under an open end consumer credit plan as of the end of the 14th day after the date on which the creditor provides notice of an increase in the annual percentage rate, fee, or finance charge in accordance with section 1637 (i) of this title.

(Pub. L. 90–321, title I, § 171, as added Pub. L. 111–24, title I, § 101(b)(2), May 22, 2009, 123 Stat. 1736.)

§ 1666i–2. Additional limits on interest rate increases.

(a) Limitation on increases within first year

Except in the case of an increase described in paragraph (1), (2), (3), or (4) of section 1666i–1 (b) of this title, no increase in any annual percentage rate, fee, or finance charge on any credit card account under an open end consumer credit plan shall be effective before the end of the 1-year period beginning on the date on which the account is opened.

(b) Promotional rate minimum term

No increase in any annual percentage rate applicable to a credit card account under an open end consumer credit plan that is a promotional rate (as that term is defined by the Bureau) shall be effective before the end of the 6-month period beginning on the date on which the promotional rate takes effect, subject to such reasonable exceptions as the Bureau may establish, by rule.

(Pub. L. 90–321, title I, § 172, as added Pub. L. 111–24, title I, § 101(d), May 22, 2009, 123 Stat. 1738; amended Pub. L. 111-203,title X § 1100A(2), July 21, 2010, 124 Stat. 2107.)

§ 1666j. Applicability of State laws.

(a) Consistency of provisions

This part does not annul, alter, or affect, or exempt any person subject to the provisions of this part from complying with, the laws of any State with respect to credit billing practices, except to the extent that those laws are inconsistent with any provision of this part, and then only to the extent of the inconsistency. The Bureau is authorized to determine whether such inconsistencies exist. The Bureau may not determine that any State law is inconsistent with any provision of this part if the Bureau determines that such law gives greater protection to the consumer.

(b) Exemptions by Bureau from credit billing requirements

The Bureau shall by regulation exempt from the requirements of this part any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this part or that such law gives greater protection to the consumer, and that there is adequate provision for enforcement.

(c) Finance charge or other charge for credit for sales transactions involving cash discounts

Notwithstanding any other provisions of this subchapter, any discount offered under section 1666f(b) of this title shall not be considered a finance charge or other charge for credit under the usury laws of any State or under the laws of any State relating to disclosure of information in connection with credit transactions, or relating to the types, amounts or rates of charges, or to any element or elements of charges permissible under such laws in connection with the extension or use of credit.

(Pub. L. 90-321, title I, § 171, as added Pub. L. 93-495, title III, § 306, Oct. 28, 1974, 88 Stat. 1516; amended Pub. L. 94-222, § 3(d), Feb. 27, 1976, 90 Stat. 198; amended Pub. L. 111-203,title X § 1087, July 21, 2010, 124 Stat. 2086; amended Pub. L. 111-203,title X §§ 1087, 1100A(2), July 21, 2010, 124 Stat. 2086, 2107.)

2. Federal Debt Collection Practices Act (15 U.S.C. §§ 1692-1692o)

Title 15. Commerce and Trade

CHAPTER 41. CONSUMER CREDIT PROTECTION

SUBCHAPTER V. DEBT COLLECTION PRACTICES

§ 1692. Congressional findings and declaration of purpose .

(a) Abusive practices

There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

(b) Inadequacy of laws

Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

(c) Available non-abusive collection methods

Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

(d) Interstate commerce

Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.

(e) Purposes

It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

(Pub. L. 90-321, title VIII, § 802, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 874.)

§ 1692a. Definitions .

As used in this subchapter—

(1) The term ‘‘Bureau’’ means the Bureau of Consumer Financial Protection.

(2) The term ‘‘communication’’ means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) The term ‘‘consumer’’ means any natural person obligated or allegedly obligated to pay any debt.

(4) The term ‘‘creditor’’ means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(5) The term ‘‘debt’’ means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

(6) The term ‘‘debt collector’’ means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. For the purpose of section 1692f(6) of this title, such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include—

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors; and

(F) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7) The term ''location information'' means a consumer's place of abode and his telephone number at such place, or his place of employment.

(8) The term ''State'' means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing.

(Pub. L. 90-321, title VIII, § 803, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 875; amended Pub. L. 99-361, July 9, 1986, 100 Stat. 768; amended Pub. L. 111-203,title X §§ 1089(2), 1100A, July 21, 2010, 124 Stat. 2092.)

§ 1692b. Acquisition of location information .

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall—

(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(2) not state that such consumer owes any debt;

(3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such person is erroneous or incomplete and that such person now has correct or complete location information;

(4) not communicate by post card;

(5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

(6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector.

(Pub. L. 90-321, title VIII, § 804, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 876.)

§ 1692c. Communication in connection with debt collection.

(a) Communication with the consumer generally

Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—

(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antemeridian and before 9 o'clock postmeridian, local time at the consumer's location;

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

(3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(b) Communication with third parties

Except as provided in section 1692b of this title, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a postjudgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

(c) Ceasing communication

If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except—

(1) to advise the consumer that the debt collector's further efforts are being terminated;

(2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or

(3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy. If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(d) ''Consumer'' defined

For the purpose of this section, the term ''consumer'' includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator.

(Pub. L. 90-321, title VIII, § 805, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 876.)

§ 1692d. Harassment or abuse.

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 1681a(f) or 1681b(3) [1] of this title.

(4) The advertisement for sale of any debt to coerce payment of the debt.

(5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

(6) Except as provided in section 1692b of this title, the placement of telephone calls without meaningful disclosure of the caller's identity.

(Pub. L. 90-321, title VIII, § 806, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 877.)

§ 1692e. False or misleading representations .

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of—

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to—

(A) lose any claim or defense to payment of the debt; or

(B) become subject to any practice prohibited by this subchapter.

(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 1681a(f) of this title.

(Pub. L. 90-321, title VIII, § 807, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 877; amended Pub. L. 104-208, div. A, title II, § 2305(a), Sept. 30, 1996, 110 Stat. 3009-425.)

§ 1692f. Unfair practices .

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

(2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

(3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if—

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B) there is no present intention to take possession of the property; or

(C) the property is exempt by law from such dispossession or disablement.

(7) Communicating with a consumer regarding a debt by post card.

(8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business.

(Pub. L. 90-321, title VIII, § 808, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 879.)

§ 1692g. Validation of debts .

(a) Notice of debt; contents

Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) Disputed debts

If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) of this section that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. Collection activities and communications that do not otherwise violate this subchapter may continue during the 30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.

(c) Admission of liability

The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

(d) Legal pleadings

A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).

(e) Notice provisions

The sending or delivery of any form or notice which does not relate to the collection of a debt and is expressly required by title 26, title V of Gramm-Leach-Bliley Act [15 U.S.C. 6801 et seq.], or any provision of Federal or State law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.

(Pub. L. 90–321, title VIII, § 809, as added Pub. L. 95–109, Sept. 20, 1977, 91 Stat. 879; amended Pub. L. 109–351, title VIII, § 802,Oct. 13, 2006, 120 Stat. 2006.)

§ 1692h. Multiple debts.

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and, where applicable, shall apply such payment in accordance with the consumer's directions.

(Pub. L. 90-321, title VIII, § 810, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 880.)

§ 1692i. Legal actions by debt collectors .

(a) Venue

Any debt collector who brings any legal action on a debt against any consumer shall—

(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity—

(A) in which such consumer signed the contract sued upon; or

(B) in which such consumer resides at the commencement of the action.

(b) Authorization of actions

Nothing in this subchapter shall be construed to authorize the bringing of legal actions by debt collectors.

(Pub. L. 90-321, title VIII, § 811, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 880.)

§ 1692j. Furnishing certain deceptive forms .

(a) It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

(b) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 1692k of this title for failure to comply with a provision of this subchapter.

(Pub. L. 90-321, title VIII, § 812, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 880.)

§ 1692k. Civil liability.

(a) Amount of damages

Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of such failure;

(2)(A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000; or

(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(b) Factors considered by court

In determining the amount of liability in any action under subsection (a) of this section, the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a)(2)(A) of this section, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B) of this section, the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

(c) Intent

A debt collector may not be held liable in any action brought under this subchapter if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) Jurisdiction

An action to enforce any liability created by this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

(e) Advisory opinions of Commission

No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Bureau, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(Pub. L. 90-321, title VIII, § 813, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 881; amended Pub. L. 111-203,title X § 1089(1), July 21, 2010, 124 Stat. 2091, 2092.)

§ 1692*l*. Administrative enforcement.

(a) Federal Trade Commission

The Federal Trade Commission shall be authorized to enforce compliance with this title, except to the extent that enforcement of the requirements imposed under this title is specifically committed to another Government agency under any of paragraphs (1) through (5) of subsection (b), subject to subtitle B of the Consumer Financial Protection Act of 2010. For purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), a violation of this title shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Federal Trade Commission H. R. 4173-718 under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person with this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act, including the power to enforce the provisions of this title, in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(b) Applicable provisions of law

Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with any requirements imposed under this subchapter shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act; and

(C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;

(2) the Federal Credit Union Act (12 U.S.C. 1751 et seq.), by the National Credit Union Administration Board with respect to any Federal credit union;

(3) subtitle IV of title 49, by the Secretary of Transportation, with respect to all carriers subject to the jurisdiction of the Surface Transportation Board;

(4) part A of subtitle VII of title 49, by the Secretary of Transportation with respect to any air carrier or any foreign air carrier subject to that part;

(5) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 406 of that Act (7 U.S.C. 226, 227)), by the Secretary of Agriculture with respect to any activities subject to that Act. The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101); and

(6) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this title.

(c) Agency powers

For the purpose of the exercise by any agency referred to in subsection (b) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter any other authority conferred on it by law, except as provided in subsection (d) of this section.

(d) Rules and regulations

Except as provided in section 1029(a) of the Consumer Financial Protection Act of 2010, the Bureau may prescribe rules with respect to the collection of debts by debt collectors, as defined in this title.

(Pub. L. 90-321, title VIII, § 814, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 881; amended Pub. L. 95-630, title V, § 501, Nov. 10, 1978, 92 Stat. 3680; Pub. L. 98-443, § 9(n), Oct. 4, 1984, 98 Stat. 1708; Pub. L. 101-73, title VII, § 744(n), Aug. 9, 1989, 103 Stat. 440; Pub. L. 102-242, title II, § 212(e), Dec. 19, 1991, 105 Stat. 2301; Pub. L. 102-550, title XVI, § 1604(a)(8), Oct. 28, 1992, 106 Stat. 4082; Pub. L. 104-88, title III, § 316, Dec. 29, 1995, 109 Stat. 949; amended Pub. L. 111-203,title X §§ 1089(3), (4), 1100A, July 21, 2010, 124 Stat. 2092, 2093.)

[1] See References in Text note below.

The Federal Trade Commission Act, referred to in subsec. (a), is act Sept. 26, 1914, c. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables. Section 25(a) of the Federal Reserve Act, referred to in subsec. (b)(1)(B), which is classified to subchapter II (§ 611 et seq.) of chapter 6 of Title 12, Banks and Banking, was renumbered section 25A of that act by Pub. L. 102-242, title I, § 142(e)(2), Dec. 19, 1991, 105 Stat. 2281. Section 25 of the Federal Reserve Act is classified to subchapter I (§ 601 et seq.) of chapter 6 of

Title 12. The Federal Credit Union Act, referred to in subsec. (b)(3), is act June 26, 1934, c. 750, 48 Stat. 1216, as amended, which is classified generally to chapter 14 (§ 1751 et seq.) of Title 12. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables. The Packers and Stockyards Act, 1921, referred to in subsec. (b)(6), is act Aug. 15, 1921, c. 64, 42 Stat. 159, as amended, which is classified generally to chapter 9 (§ 181 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 181 of Title 7 and Tables.

§ 1692m. Reports to Congress by the Bureau; views of other Federal agencies .

(a) Not later than one year after the effective date of this subchapter and at one-year intervals thereafter, the Bureau shall make reports to the Congress concerning the administration of its functions under this subchapter, including such recommendations as the Bureau deems necessary or appropriate. In addition, each report of the Bureau shall include its assessment of the extent to which compliance with this subchapter is being achieved and a summary of the enforcement actions taken by the Bureau under section 1692l of this title.

(b) In the exercise of its functions under this subchapter, the Bureau may obtain upon request the views of any other Federal agency which exercises enforcement functions under section 1692l of this title.

(Pub. L. 90-321, title VIII, § 815, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 882; amended Pub. L. 111-203,title X §§ 1089(1), July 21, 2010, 124 Stat. 2092.)

§ 1692n. Relation to State laws .

This subchapter does not annul, alter, or affect, or exempt any person subject to the provisions of this subchapter from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection provided by this subchapter.

(Pub. L. 90-321, title VIII, § 816, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 883.)

§ 1692o. Exemption for State regulation .

The Bureau shall by regulation exempt from the requirements of this subchapter any class of debt collection practices within any State if the Bureau determines that under the law of that State that class of debt collection practices is subject to requirements substantially similar to those imposed by this subchapter, and that there is adequate provision for enforcement.

(Pub. L. 90-321, title VIII, § 817, as added Pub. L. 95-109, Sept. 20, 1977, 91 Stat. 883; amended Pub. L. 111-203,title X §§ 1089(1), July 21, 2010, 124 Stat. 2092.)

§ 1692p. Exception for Certain Bad Check Enforcement Programs Operated by Private Entities.

(a) In general

(1) Treatment of certain private entities

Subject to paragraph (2), a private entity shall be excluded from the definition of a debt collector, pursuant to the exception provided in section 1692a (6) of this title, with respect to the operation by the entity of a program described in paragraph (2)(A) under a contract described in paragraph (2)(B).

(2) Conditions of applicability

Paragraph (1) shall apply if—

(A) a State or district attorney establishes, within the jurisdiction of such State or district attorney and with respect to alleged bad check violations that do not involve a check described in subsection (b), a pretrial diversion program for alleged bad check offenders who agree to participate voluntarily in such program to avoid criminal prosecution;

(B) a private entity, that is subject to an administrative support services contract with a State or district attorney and operates under the direction, supervision, and control of such State or district attorney, operates the pretrial diversion program described in subparagraph (A); and

(C) in the course of performing duties delegated to it by a State or district attorney under the contract, the private entity referred to in subparagraph (B)—

(i) complies with the penal laws of the State;

(ii) conforms with the terms of the contract and directives of the State or district attorney;

(iii) does not exercise independent prosecutorial discretion;

(iv) contacts any alleged offender referred to in subparagraph (A) for purposes of participating in a program referred to in such paragraph—

(I) only as a result of any determination by the State or district attorney that probable cause of a bad check violation under State penal law exists, and that contact with the alleged offender for purposes of participation in the program is appropriate; and

(II) the alleged offender has failed to pay the bad check after demand for payment, pursuant to State law, is made for payment of the check amount;

(v) includes as part of an initial written communication with an alleged offender a clear and conspicuous statement that—

(I) the alleged offender may dispute the validity of any alleged bad check violation;

(II) where the alleged offender knows, or has reasonable cause to believe, that the alleged bad check violation is the result of theft or forgery of the check, identity theft, or other fraud that is not the result of the conduct of the alleged offender, the alleged offender may file a crime report with the appropriate law enforcement agency; and

(III) if the alleged offender notifies the private entity or the district attorney in writing, not later than 30 days after being contacted for the first time pursuant to clause (iv), that there is a dispute pursuant to this subsection, before further restitution efforts are pursued, the district attorney or an employee of the district attorney authorized to make such a determination makes a determination that there is probable cause to believe that a crime has been committed; and

(vi) charges only fees in connection with services under the contract that have been authorized by the contract with the State or district attorney.

(b) Certain checks excluded

A check is described in this subsection if the check involves, or is subsequently found to involve—

(1) a postdated check presented in connection with a payday loan, or other similar transaction, where the payee of the check knew that the issuer had insufficient funds at the time the check was made, drawn, or delivered;

(2) a stop payment order where the issuer acted in good faith and with reasonable cause in stopping payment on the check;

(3) a check dishonored because of an adjustment to the issuer's account by the financial institution holding such account without providing notice to the person at the time the check was made, drawn, or delivered;

(4) a check for partial payment of a debt where the payee had previously accepted partial payment for such debt;

(5) a check issued by a person who was not competent, or was not of legal age, to enter into a legal contractual obligation at the time the check was made, drawn, or delivered; or

(6) a check issued to pay an obligation arising from a transaction that was illegal in the jurisdiction of the State or district attorney at the time the check was made, drawn, or delivered.

(c) Definitions

For purposes of this section, the following definitions shall apply:

(1) State or district attorney

The term "State or district attorney" means the chief elected or appointed prosecuting attorney in a district, county (as defined in section 2 of title 1), municipality, or comparable jurisdiction, including State attorneys general who act as chief elected or appointed prosecuting attorneys in a district, county (as so defined), municipality or comparable jurisdiction, who may be referred to by a variety of titles such as district attorneys, prosecuting attorneys, commonwealth's attorneys, solicitors, county attorneys, and state's attorneys, and who are responsible for the prosecution of State crimes and violations of jurisdiction-specific local ordinances.

(2) Check

The term "check" has the same meaning as in section 5002 (6) of title 12.

(3) Bad check violation

The term "bad check violation" means a violation of the applicable State criminal law relating to the writing of dishonored checks.

(Pub. L. 90–321, title VIII, § 818, as added Pub. L. 109–351, title VIII, § 801(a)(2), Oct. 13, 2006, 120 Stat. 2004.)

3. Magnuson-Moss Warranty Act (15 U.S.C. §§ 2301-2312)

Title 15. Commerce and Trade

CHAPTER 50—CONSUMER PROTECTION WARRANTIES

§ 2301. Definitions .

For the purposes of this chapter:

(1) The term ‘‘consumer product’’ means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed).

(2) The term ‘‘Commission’’ means the Federal Trade Commission.

(3) The term ‘‘consumer’’ means a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of an implied or written warranty (or service contract) applicable to the product, and any other person who is entitled by the terms of such warranty (or service contract) or under applicable State law to enforce against the warrantor (or service contractor) the obligations of the warranty (or service contract).

(4) The term ‘‘supplier’’ means any person engaged in the business of making a consumer product directly or indirectly available to consumers.

(5) The term ‘‘warrantor’’ means any supplier or other person who gives or offers to give a written warranty or who is or may be obligated under an implied warranty.

(6) The term ‘‘written warranty’’ means—

(A) any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or

(B) any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace, or take other remedial action with respect to such product in the event that such product fails to meet the specifications set forth in the undertaking, which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

(7) The term ‘‘implied warranty’’ means an implied warranty arising under State law (as modified by sections 2308 and 2304(a) of this title) in connection with the sale by a supplier of a consumer product.

(8) The term ‘‘service contract’’ means a contract in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance or repair (or both) of a consumer product.

(9) The term ‘‘reasonable and necessary maintenance’’ consists of those operations

(A) which the consumer reasonably can be expected to perform or have performed and

(B) which are necessary to keep any consumer product performing its intended function and operating at a reasonable level of performance.

(10) The term ‘‘remedy’’ means whichever of the following actions the warrantor elects:

(A) repair,

(B) replacement, or

(C) refund;

except that the warrantor may not elect refund unless (i) the warrantor is unable to provide replacement and repair is not commercially practicable or cannot be timely made, or (ii) the consumer is willing to accept such refund.

(11) The term ‘‘replacement’’ means furnishing a new consumer product which is identical or reasonably equivalent to the warranted consumer product.

(12) The term ‘‘refund’’ means refunding the actual purchase price (less reasonable depreciation based on actual use where permitted by rules of the Commission).

(13) The term ‘‘distributed in commerce’’ means sold in commerce, introduced or delivered for introduction into commerce, or held for sale or distribution after introduction into commerce.

(14) The term ‘‘commerce’’ means trade, traffic, commerce, or transportation –

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(15) The term ‘‘State’’ means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, or American Samoa. The term ‘‘State law’’ includes a law of the United States applicable only to the District of Columbia or only to a territory or possession of the United States; and the term ‘‘Federal law’’ excludes any State law.

(Pub. L. 93-637, Title I, § 101, Jan. 4, 1975, 88 Stat. 2183.)

§ 2302. Rules governing contents of warranties .

(a) Full and conspicuous disclosure of terms and conditions; additional requirements for contents

In order to improve the adequacy of information available to consumers, prevent deception, and improve competition in the marketing of consumer products, any warrantor warranting a consumer product to a consumer by means of a written warranty shall, to the extent required by rules of the Commission, fully and conspicuously disclose in simple and readily understood language the terms and conditions of such warranty. Such rules may require inclusion in the written warranty of any of the following items among others:

(1) The clear identification of the names and addresses of the warrantors.

(2) The identity of the party or parties to whom the warranty is extended.

(3) The products or parts covered.

(4) A statement of what the warrantor will do in the event of a defect, malfunction, or failure to conform with such written warranty - at whose expense - and for what period of time.

(5) A statement of what the consumer must do and expenses he must bear.

(6) Exceptions and exclusions from the terms of the warranty.

(7) The step-by-step procedure which the consumer should take in order to obtain performance of any obligation under the warranty, including the identification of any person or class of persons authorized to perform the obligations set forth in the warranty.

(8) Information respecting the availability of any informal dispute settlement procedure offered by the warrantor and a recital, where the warranty so provides, that the purchaser may be required to resort to such procedure before pursuing any legal remedies in the courts.

(9) A brief, general description of the legal remedies available to the consumer.

(10) The time at which the warrantor will perform any obligations under the warranty.

(11) The period of time within which, after notice of a defect, malfunction, or failure to conform with the warranty, the warrantor will perform any obligations under the warranty.

(12) The characteristics or properties of the products, or parts thereof, that are not covered by the warranty.

(13) The elements of the warranty in words or phrases which would not mislead a reasonable, average consumer as to the nature or scope of the warranty.

(b) Availability of terms to consumer; manner and form for presentation and display of information; duration; extension of period for written warranty or service contract

(1)(A) The Commission shall prescribe rules requiring that the terms of any written warranty on a consumer product be made available to the consumer (or prospective consumer) prior to the sale of the product to him.

(B) The Commission may prescribe rules for determining the manner and form in which information with respect to any written warranty of a consumer product shall be clearly and conspicuously presented or displayed so as not to mislead the reasonable, average consumer, when such information is contained in advertising, labeling, point-of-sale material, or other representations in writing.

(2) Nothing in this chapter (other than paragraph (3) of this subsection) shall be deemed to authorize the Commission to prescribe the duration of written warranties given or to require that a consumer product or any of its components be warranted.

(3) The Commission may prescribe rules for extending the period of time a written warranty or service contract is in effect to correspond with any period of time in excess of a reasonable period (not less than 10 days) during which the consumer is deprived of the use of such consumer product by reason of failure of the product to conform with the written warranty or by reason of the failure of the warrantor (or service contractor) to carry out such warranty (or service contract) within the period specified in the warranty (or service contract).

(c) Prohibition on conditions for written or implied warranty; waiver by Commission

No warrantor of a consumer product may condition his written or implied warranty of such product on the consumer's using, in connection with such product, any article or service (other than article or service provided without charge under the terms of the warranty) which is identified by brand, trade, or corporate name; except that the prohibition of this subsection may be waived by the Commission if—

(1) the warrantor satisfies the Commission that the warranted product will function properly only if the article or service so identified is used in connection with the warranted product, and

(2) the Commission finds that such a waiver is in the public interest. The Commission shall identify in the Federal Register, and permit public comment on, all applications for waiver of the prohibition of this subsection, and shall publish in the Federal Register its disposition of any such application, including the reasons therefor.

(d) Incorporation by reference of detailed substantive warranty provisions

The Commission may by rule devise detailed substantive warranty provisions which warrantors may incorporate by reference in their warranties.

(e) Applicability to consumer products costing more than $5

The provisions of this section apply only to warranties which pertain to consumer products actually costing the consumer more than $5.

(Pub. L. 93-637, Title I, § 102, Jan. 4, 1975, 88 Stat. 2185.)

§ 2303. Designation of written warranties .

(a) Full (statement of duration) or limited warranty

Any warrantor warranting a consumer product by means of a written warranty shall clearly and conspicuously designate such warranty in the following manner, unless exempted from doing so by the Commission pursuant to subsection (c) of this section:

(1) If the written warranty meets the Federal minimum standards for warranty set forth in section 2304 of this title, then it shall be conspicuously designated a ''full (statement of duration) warranty''.

(2) If the written warranty does not meet the Federal minimum standards for warranty set forth in section 2304 of this title, then it shall be conspicuously designated a ''limited warranty''.

(b) Applicability of requirements, standards, etc., to representations or statements of customer satisfaction

This section and sections 2302 and 2304 of this title shall not apply to statements or representations which are similar to expressions of general policy concerning customer satisfaction and which are not subject to any specific limitations.

(c) Exemptions by Commission

In addition to exercising the authority pertaining to disclosure granted in section 2302 of this title, the Commission may by rule determine when a written warranty does not have to be designated either ''full (statement of duration)'' or ''limited'' in accordance with this section.

(d) Applicability to consumer products costing more than $10 and not designated as full warranties

The provisions of subsections (a) and (c) of this section apply only to warranties which pertain to consumer products actually costing the consumer more than $10 and which are not designated ''full (statement of duration) warranties''.

(Pub. L. 93-637, Title I, § 103, Jan. 4, 1975, 88 Stat. 2187.)

§ 2304. Federal minimum standards for warranties.

(a) Remedies under written warranty; duration of implied warranty; exclusion or limitation on consequential damages for breach of written or implied warranty; election of refund or replacement

In order for a warrantor warranting a consumer product by means of a written warranty to meet the Federal minimum standards for warranty

(1) such warrantor must as a minimum remedy such consumer product within a reasonable time and without charge, in the case of a defect, malfunction, or failure to conform with such written warranty;

(2) notwithstanding section 2308(b) of this title, such warrantor may not impose any limitation on the duration of any implied warranty on the product;

(3) such warrantor may not exclude or limit consequential damages for breach of any written or implied warranty on such product, unless such exclusion or limitation conspicuously appears on the face of the warranty; and

(4) if the product (or a component part thereof) contains a defect or malfunction after a reasonable number of attempts by the warrantor to remedy defects or malfunctions in such product, such warrantor must permit the consumer

to elect either a refund for, or replacement without charge of, such product or part (as the case may be). The Commission may by rule specify for purposes of this paragraph, what constitutes a reasonable number of attempts to remedy particular kinds of defects or malfunctions under different circumstances. If the warrantor replaces a component part of a consumer product, such replacement shall include installing the part in the product without charge.

(b) Duties and conditions imposed on consumer by warrantor

(1) In fulfilling the duties under subsection (a) of this section respecting a written warranty, the warrantor shall not impose any duty other than notification upon any consumer as a condition of securing remedy of any consumer product which malfunctions, is defective, or does not conform to the written warranty, unless the warrantor has demonstrated in a rulemaking proceeding, or can demonstrate in an administrative or judicial enforcement proceeding (including private enforcement), or in an informal dispute settlement proceeding, that such a duty is reasonable.

(2) Notwithstanding paragraph (1), a warrantor may require, as a condition to replacement of, or refund for, any consumer product under subsection (a) of this section, that such consumer product shall be made available to the warrantor free and clear of liens and other encumbrances, except as otherwise provided by rule or order of the Commission in cases in which such a requirement would not be practicable.

(3) The Commission may, by rule define in detail the duties set forth in subsection (a) of this section and the applicability of such duties to warrantors of different categories of consumer products with ''full (statement of duration)'' warranties.

(4) The duties under subsection (a) of this section extend from the warrantor to each person who is a consumer with respect to the consumer product.

(c) Waiver of standards

The performance of the duties under subsection (a) of this section shall not be required of the warrantor if he can show that the defect, malfunction, or failure of any warranted consumer product to conform with a written warranty, was caused by damage (not resulting from defect or malfunction) while in the possession of the consumer, or unreasonable use (including failure to provide reasonable and necessary maintenance).

(d) Remedy without charge

For purposes of this section and of section 2302(c) of this title, the term ''without charge'' means that the warrantor may not assess the consumer for any costs the warrantor or his representatives incur in connection with the required remedy of a warranted consumer product. An obligation under subsection (a)(1)(A) of this section to remedy without charge does not necessarily require the warrantor to compensate the consumer for incidental expenses; however, if any incidental expenses are incurred because the remedy is not made within a reasonable time or because the warrantor imposed an unreasonable duty upon the consumer as a condition of securing remedy, then the consumer shall be entitled to recover reasonable incidental expenses which are so incurred in any action against the warrantor.

(e) Incorporation of standards to products designated with full warranty for purposes of judicial actions

If a supplier designates a warranty applicable to a consumer product as a ''full (statement of duration)'' warranty, then the warranty on such product shall, for purposes of any action under section 2310(d) of this title or under any State law, be deemed to incorporate at least the minimum requirements of this section and rules prescribed under this section.

(Pub. L. 93-637, Title I, § 104, Jan. 4, 1975, 88 Stat. 2187.)

§ 2305. Full and limited warranting of a consumer product .

Nothing in this chapter shall prohibit the selling of a consumer product which has both full and limited warranties if such warranties are clearly and conspicuously differentiated.

(Pub. L. 93-637, Title I, § 105, Jan. 4, 1975, 88 Stat. 2188.)

§ 2306. Service contracts; rules for full, clear and conspicuous disclosure of terms and conditions; addition to or in lieu of written warranty.

(a) The Commission may prescribe by rule the manner and form in which the terms and conditions of service contracts shall be fully, clearly, and conspicuously disclosed.

(b) Nothing in this chapter shall be construed to prevent a supplier or warrantor from entering into a service contract with the consumer in addition to or in lieu of a written warranty if such contract fully, clearly, and conspicuously discloses its terms and conditions in simple and readily understood language.

(Pub. L. 93-637, Title I, § 106, Jan. 4, 1975, 88 Stat. 2188.)

§ 2307. Designation of representatives by warrantor to perform duties under written or implied warranty.

Nothing in this chapter shall be construed to prevent any warrantor from designating representatives to perform duties under the written or implied warranty: *Provided*, That such warrantor shall make reasonable arrangements for compensation of such designated representatives, but no such designation shall relieve the warrantor of his direct responsibilities to the consumer or make the representative a cowarrantor.

(Pub. L. 93-637, Title I, § 107, Jan. 4, 1975, 88 Stat. 2189.)

§ 2308. Implied warranties .

(a) Restrictions on disclaimers or modifications

No supplier may disclaim or modify (except as provided in subsection (b) of this section) any implied warranty to a consumer with respect to such consumer product if (1) such supplier makes any written warranty to the consumer with respect to such consumer Product, or (2) at the time of sale, or within 90 days thereafter, such supplier enters into a service contract with the consumer which applies to such consumer product.

(b) Limitation on duration

For purposes of this chapter (other than section 2304(a)(2) of this title), implied warranties may be limited in duration to the duration of a written warranty of reasonable duration, if such limitation is conscionable and is set forth in clear and unmistakable language and prominently displayed on the face of the warranty.

(c) Effectiveness of disclaimers, modifications, or limitations

A disclaimer, modification, or limitation made in violation of this section shall be ineffective for purposes of this chapter and State law.

(Pub. L. 93-637, Title I, § 108, Jan. 4, 1975, 88 Stat. 2189.)

§ 2309. Procedures applicable to promulgation of rules by Commission .

(a) Oral presentation

Any rule prescribed under this chapter shall be prescribed in accordance with section 553 of title 5; except that the Commission shall give interested persons an opportunity for oral presentations of data, views, and arguments, in addition to written submissions. A transcript shall be kept of any oral presentation. Any such rule shall be subject to judicial review under section 57a(e) of this title in the same manner as rules prescribed under section 57a(a)(1)(B) of this title, except that section 57a(e)(3)(B) of this title shall not apply.

(b) Warranties and warranty practices involved in sale of used motor vehicles

The Commission shall initiate within one year after January 4, 1975, a rulemaking proceeding dealing with warranties and warranty practices in connection with the sale of used motor vehicles; and, to the extent necessary to supplement the protections offered the consumer by this chapter, shall prescribe rules dealing with such warranties and practices. In prescribing rules under this subsection, the Commission may exercise any authority it may have under this chapter, or other law, and in addition it may require disclosure that a used motor vehicle is sold without any warranty and specify the form and content of such disclosure.

(Pub. L. 93-637, Title I, § 109, Jan. 4, 1975, 88 Stat. 2189.)

§ 2310. Remedies in consumer disputes.

(a) Informal dispute settlement procedures; establishment; rules setting forth minimum requirements; effect of compliance by warrantor; review of informal procedures or implementation by Commission; application to existing informal procedures

(1) Congress hereby declares it to be its policy to encourage warrantors to establish procedures whereby consumer disputes are fairly and expeditiously settled through informal dispute settlement mechanisms.

(2) The Commission shall prescribe rules setting forth minimum requirements for any informal dispute settlement procedure which is incorporated into the terms of a written warranty to which any provision of this chapter applies. Such rules shall provide for participation in such procedure by independent or governmental entities.

(3) One or more warrantors may establish an informal dispute settlement procedure which meets the requirements of the Commission's rules under paragraph (2). If –

(A) a warrantor establishes such a procedure,

(B) such procedure, and its implementation, meets the requirements of such rules, and

(C) he incorporates in a written warranty a requirement that the consumer resort to such procedure before pursuing any legal remedy under this section respecting such warranty, then (i) the consumer may not commence a civil action (other than a class action) under subsection (d) of this section unless he initially resorts to such procedure; and (ii) a class of consumers may not proceed in a class action under subsection (d) of this section except to the extent the court determines necessary to establish the representative capacity of the named plaintiffs, unless the named plaintiffs (upon notifying the defendant that they are named plaintiffs in a class action with respect to a warranty obligation) initially resort to such procedure. In the case of such a class action which is brought in a district court of the United States, the representative capacity of the named plaintiffs shall be established in the application of rule 23 of the Federal Rules of Civil Procedure. In any civil action arising out of a warranty obligation and relating to a matter considered in such a procedure, any decision in such procedure shall be admissible in evidence.

(4) The Commission on its own initiative may, or upon written complaint filed by any interested person shall, review the bona fide operation of any dispute settlement procedure resort to which is stated in a written warranty to be a prerequisite to pursuing a legal remedy under this section. If the Commission finds that such procedure or its implementation fails to comply with the requirements of the rules under paragraph (2), the Commission may take appropriate remedial action under any authority it may have under this chapter or any other provision of law.

(5) Until rules under paragraph (2) take effect, this subsection shall not affect the validity of any informal dispute settlement procedure respecting consumer warranties, but in any action under subsection (d) of this section, the court may invalidate any such procedure if it finds that such procedure is unfair.

(b) Prohibited acts

It shall be a violation of section 45(a)(1) of this title for any person to fail to comply with any requirement imposed on such person by this chapter (or a rule thereunder) or to violate any prohibition contained in this chapter (or a rule thereunder).

(c) Injunction proceedings by Attorney General or Commission for deceptive warranty, noncompliance with requirements, or violating prohibitions; procedures; definitions

(1) The district courts of the United States shall have jurisdiction of any action brought by the Attorney General (in his capacity as such), or by the Commission by any of its attorneys designated by it for such purpose, to restrain (A) any warrantor from making a deceptive warranty with respect to a consumer product, or (B) any person from failing to comply with any requirement imposed on such person by or pursuant to this chapter or from violating any prohibition contained in this chapter. Upon proper showing that, weighing the equities and considering the Commission's or Attorney General's likelihood of ultimate success, such action would be in the public interest and after notice to the defendant, a temporary restraining order or preliminary injunction may be granted without bond. In the case of an action brought by the Commission, if a complaint under section 45 of this title is not filed within such period (not exceeding 10 days) as may be specified by the court after the issuance of the temporary restraining order or preliminary injunction, the order or injunction shall be dissolved by the court and be of no further force and effect. Any suit shall be brought in the district in which such person resides or transacts business. Whenever it appears to the court that the ends of justice require that other persons should be parties in the action, the court may cause them to be summoned whether or not they reside in the district in which the court is held, and to that end process may be served in any district.

(2) For the purposes of this subsection, the term ''deceptive warranty'' means (A) a written warranty which (i) contains an affirmation, promise, description, or representation which is either false or fraudulent, or which, in light of all of the circumstances, would mislead a reasonable individual exercising due care; or (ii) fails to contain information which is necessary in light of all of the circumstances, to make the warranty not misleading to a reasonable individual exercising due care; or (B) a written warranty created by the use of such terms as ''guaranty'' or ''warranty'', if the terms and conditions of such warranty so limit its scope and application as to deceive a reasonable individual.

(d) Civil action by consumer for damages, etc.; jurisdiction; recovery of costs and expenses; cognizable claims

(1) Subject to subsections (a)(3) and (e) of this section, a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief –

(A) in any court of competent jurisdiction in any State or the District of Columbia; or

(B) in an appropriate district court of the United States, subject to paragraph (3) of this subsection.

(2) If a consumer finally prevails in any action brought under paragraph (1) of this subsection, he may be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of cost and expenses (including attorneys' fees based on actual time expended) determined by the court to have been reasonably incurred by the plaintiff for or in connection with the commencement and prosecution of such action, unless the court in its discretion shall determine that such an award of attorneys' fees would be inappropriate.

(3) No claim shall be cognizable in a suit brought under paragraph (1)(B) of this subsection –

(A) if the amount in controversy of any individual claim is less than the sum or value of $25;

(B) if the amount in controversy is less than the sum or value of $50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit; or

(C) if the action is brought as a class action, and the number of named plaintiffs is less than one hundred.

(e) Class actions; conditions; procedures applicable

No action (other than a class action or an action respecting a warranty to which subsection (a)(3) of this section applies) may be brought under subsection (d) of this section for failure to comply with any obligation under any written or implied warranty or service contract, and a class of consumers may not proceed in a class action under such subsection with respect to such a failure except to the extent the court determines necessary to establish the representative capacity of the named plaintiffs, unless the person obligated under the warranty or service contract is afforded a reasonable opportunity to cure such failure to comply. In the case of such a class action (other than a class action respecting a warranty to which subsection (a)(3) of this section applies) brought under subsection (d) of this section for breach of any written or implied warranty or service contract, such reasonable opportunity will be afforded by the named plaintiffs and they shall at that time notify the defendant that they are acting on behalf of the class. In the case of such a class action which is brought in a district court of the United States, the representative capacity of the named plaintiffs shall be established in the application of rule 23 of the Federal Rules of Civil Procedure.

(f) Warrantors subject to enforcement of remedies

For purposes of this section, only the warrantor actually making a written affirmation of fact, promise, or undertaking shall be deemed to have created a written warranty, and any rights arising thereunder may be enforced under this section only against such warrantor and no other person.

(Pub. L. 93-637, Title I, § 110, Jan. 4, 1975, 88 Stat. 2189.)

§ 2311. Applicability to other laws.

(a) Federal Trade Commission Act and Federal Seed Act

(1) Nothing contained in this chapter shall be construed to repeal, invalidate, or supersede the Federal Trade Commission Act (15 U.S.C. 41 et seq.) or any statute defined therein as an Antitrust Act.

(2) Nothing in this chapter shall be construed to repeal, invalidate, or supersede the Federal Seed Act (7 U.S.C. 1551 et seq.) and nothing in this chapter shall apply to seed for planting.

(b) Rights, remedies, and liabilities

(1) Nothing in this chapter shall invalidate or restrict any right or remedy of any consumer under State law or any other Federal law.

(2) Nothing in this chapter (other than sections 2308 and 2304(a)(2) and (4) of this title) shall (A) affect the liability of, or impose liability on, any person for personal injury, or (B) supersede any provision of State law regarding consequential damages for injury to the person or other injury.

(c) State warranty laws

(1) Except as provided in subsection (b) of this section and in paragraph (2) of this subsection, a State requirement –

(A) which relates to labeling or disclosure with respect to written warranties or performance thereunder;

(B) which is within the scope of an applicable requirement of sections 2302, 2303, and 2304 of this title (and rules implementing such sections), and

(C) which is not identical to a requirement of section 2302, 2303, or 2304 of this title (or a rule thereunder), shall not be applicable to written warranties complying with such sections (or rules thereunder).

(2) If, upon application of an appropriate State agency, the Commission determines (pursuant to rules issued in accordance with section 2309 of this title) that any requirement of such State covering any transaction to which this chapter applies

(A) affords protection to consumers greater than the requirements of this chapter and

(B) does not unduly burden interstate commerce, then such State requirement shall be applicable (notwithstanding the provisions of paragraph (1) of this subsection) to the extent specified in such determination for so long as the State administers and enforces effectively any such greater requirement.

(d) Other Federal warranty laws

This chapter (other than section 2302(c) of this title) shall be inapplicable to any written warranty the making or content of which is otherwise governed by Federal law. If only a portion of a written warranty is so governed by Federal law, the remaining portion shall be subject to this chapter.

(Pub. L. 93-637, Title I, § 111, Jan. 4, 1975, 88 Stat. 2192.)

§ 2312. Effective dates .

(a) Effective date of chapter

Except as provided in subsection (b) of this section, this chapter shall take effect 6 months after January 4, 1975, but shall not apply to consumer products manufactured prior to such date.

(b) Effective date of section 2302(a)

Section 2302(a) of this title shall take effect 6 months after the final publication of rules respecting such section; except that the Commission, for good cause shown, may postpone the applicability of such sections until one year after such final publication in order to permit any designated classes of suppliers to bring their written warranties into compliance with rules promulgated pursuant to this chapter.

(c) Promulgation of rules

The Commission shall promulgate rules for initial implementation of this chapter as soon as possible after January 4, 1975, but in no event later than one year after such date.

(Pub. L. 93-637, Title I, § 112, Jan. 4, 1975, 88 Stat. 2192.)

4. Magnuson-Moss Warranty Act Regulations (16 C.F.R. §§ 700.1-700.12)

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER G. RULES, REGULATIONS, STATEMENTS AND INTERPRETATIONS UNDER THE MAGNUSON-MOSS WARRANTY ACT

PART 700—INTERPRETATIONS OF MAGNUSON-MOSS WARRANTY ACT

Authority: Magnuson-Moss Warranty Act, Pub. L. 93-637, 15 U.S.C. 2301.

§ 700.1 Products covered.

(a) The Act applies to written warranties on tangible personal property which is normally used for personal, family, or household purposes. This definition includes property which is intended to be attached to or installed in any real property without regard to whether it is so attached or installed. This means that a product is a "consumer product" if the use of that type of product is not uncommon. The percentage of sales or the use to which a product is put by any individual buyer is not determinative. For example, products such as automobiles and typewriters which are used for both personal and commercial purposes come within the definition of consumer product. Where it is unclear whether a particular product is covered under the definition of consumer product, any ambiguity will be resolved in favor of coverage.

(b) Agricultural products such as farm machinery, structures and implements used in the business or occupation of farming are not covered by the Act where their personal, family, or household use is uncommon. However, those agricultural products normally used for personal or household gardening (for example, to produce goods for personal consumption, and not for resale) are consumer products under the Act.

(c) The definition of "Consumer product" limits the applicability of the Act to personal property, "including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed." This provision brings under the Act separate items of equipment attached to real property, such as air conditioners, furnaces, and water heaters.

(d) The coverage of separate items of equipment attached to real property includes, but is not limited to, appliances and other thermal, mechanical, and electrical equipment. (It does not extend to the wiring, plumbing, ducts, and other items which are integral component parts of the structure.) State law would classify many such products as fixtures to, and therefore a part of, realty. The statutory definition is designed to bring such products under the Act regardless of whether they may be considered fixtures under state law.

(e) The coverage of building materials which are not separate items of equipment is based on the nature of the purchase transaction. An analysis of the transaction will determine whether the goods are real or personal property. The numerous products which go into the construction of a consumer dwelling are all consumer products when sold "over the counter," as by hardware and building supply retailers. This is also true where a consumer contracts for the purchase of such materials in connection with the improvement, repair, or modification of a home (for example, paneling, dropped ceilings, siding, roofing, storm windows, remodeling). However, where such products are at the time of sale integrated into the structure of a dwelling they are not consumer products as they cannot be practically distinguished from realty. Thus, for example, the beams, wallboard, wiring, plumbing, windows, roofing, and other structural components of a dwelling are not consumer products when they are sold as part of real estate covered by a written warranty.

(f) In the case where a consumer contracts with a builder to construct a home, a substantial addition to a home, or other realty (such as a garage or an in-ground swimming pool) the building materials to be used are not consumer products. Although the materials are separately identifiable at the time the contract is made, it is the intention of the

parties to contract for the construction of realty which will integrate the component materials. Of course, as noted above, any separate items of equipment to be attached to such realty are consumer products under the Act.

(g) Certain provisions of the Act apply only to products actually costing the consumer more than a specified amount. Section 103, 15 U.S.C. 2303, applies to consumer products actually costing the consumer more than $10, excluding tax. The $10 minimum will be interpreted to include multiple-packaged items which may individually sell for less than $10, but which have been packaged in a manner that does not permit breaking the package to purchase an item or items at a price less than $10. Thus, a written warranty on a dozen items packaged and priced for sale at $12 must be designated, even though identical items may be offered in smaller quantities at under $10. This interpretation applies in the same manner to the minimum dollar limits in section 102, 15 U.S.C. 2302, and rules promulgated under that section.

(h) Warranties on replacement parts and components used to repair consumer products are covered; warranties on services are not covered. Therefore, warranties which apply solely to a repairer's workmanship in performing repairs are not subject to the Act. Where a written agreement warrants both the parts provided to effect a repair and the workmanship in making that repair, the warranty must comply with the Act and the rules thereunder.

(i) The Act covers written warranties on consumer products "distributed in commerce" as that term is defined in section 101(13), 15 U.S.C. 2301(13). Thus, by its terms the Act arguably applies to products exported to foreign jurisdictions. However, the public interest would not be served by the use of Commission resources to enforce the Act with respect to such products. Moreover, the legislative intent to apply the requirements of the Act to such products is not sufficiently clear to justify such an extraordinary result. The Commission does not contemplate the enforcement of the Act with respect to consumer products exported to foreign jurisdictions. Products exported for sale at military post exchanges remain subject to the same enforcement standards as products sold within the United States, its territories and possessions.

[42 FR 36114, July 13, 1977, as amended at 80 FR 42721, July 20, 2015]

§ 700.2 Date of manufacture.

Section 112 of the Act, 15 U.S.C. 2312, provides that the Act shall apply only to those consumer products manufactured after July 4, 1975. When a consumer purchases repair of a consumer product the date of manufacture of any replacement parts used is the measuring date for determining coverage under the Act. The date of manufacture of the consumer product being repaired is in this instance not relevant. Where a consumer purchases or obtains on an exchange basis a rebuilt consumer product, the date that the rebuilding process is completed determines the Act's applicability.

[42 FR 36114, July 13, 1977; 42 FR 38341, July 28, 1977, as amended at 80 FR 42721, July 20, 2015]

§ 700.3 Written warranty.

(a) The Act imposes specific duties and liabilities on suppliers who offer written warranties on consumer products. Certain representations, such as energy efficiency ratings for electrical appliances, care labeling of wearing apparel, and other product information disclosures may be express warranties under the Uniform Commercial Code. However, these disclosures alone are not written warranties under this Act. Section 101(6), 15 U.S.C. 2301(6), provides that a written affirmation of fact or a written promise of a specified level of performance must relate to a specified period of time in order to be considered a "written warranty."[1] A product information disclosure without a specified time period to which the disclosure relates is therefore not a written warranty. In addition, section 111(d), 15 U.S.C. 2311(d), exempts from the Act (except section 102(c), 15 U.S.C. 2302(c)) any written warranty the making or content of which is required by federal law. The Commission encourages the disclosure of product information which is not deceptive and which may benefit consumers, and will not construe the Act to impede information disclosure in product advertising or labeling.

(b) Certain terms, or conditions, of sale of a consumer product may not be "written warranties" as that term is defined in section 101(6), 15 U.S.C. 2301(6), and should not be offered or described in a manner that may deceive consumers as to their enforceability under the Act. For example, a seller of consumer products may give consumers an unconditional right to revoke acceptance of goods within a certain number of days after delivery without regard to defects or failure to meet a specified level of performance. Or a seller may permit consumers to return products for any reason for credit toward purchase of another item. Such terms of sale taken alone are not written warranties under the Act. Therefore, suppliers should avoid any characterization of such terms of sale as warranties. The use of such terms as "free trial period" and "trade-in credit policy" in this regard would be appropriate. Furthermore, such terms

[1] A "written warranty" is also created by a written affirmation of fact or a written promise that the product is defect free, or by a written undertaking of remedial action within the meaning of section 101(6)(B), 15 U.S.C. 2301(6)(B).

of sale should be stated separately from any written warranty. Of course, the offering and performance of such terms of sale remain subject to section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

(c) The Magnuson-Moss Warranty Act generally applies to written warranties covering consumer products. Many consumer products are covered by warranties which are neither intended for, nor enforceable by, consumers. A common example is a warranty given by a component supplier to a manufacturer of consumer products. (The manufacturer may, in turn, warrant these components to consumers.) The component supplier's warranty is generally given solely to the product manufacturer, and is neither intended to be conveyed to the consumer nor brought to the consumer's attention in connection with the sale. Such warranties are not subject to the Act, since a written warranty under section 101(6) of the Act, 15 U.S.C. 2301(6), must become "part of the basis of the bargain between a supplier and a buyer for purposes other than resale." However, the Act applies to a component supplier's warranty in writing which is given to the consumer. An example is a supplier's written warranty to the consumer covering a refrigerator that is sold installed in a boat or recreational vehicle. The supplier of the refrigerator relies on the boat or vehicle assembler to convey the written agreement to the consumer. In this case, the supplier's written warranty is to a consumer, and is covered by the Act.

[42 FR 36114, July 13, 1977, as amended at 80 FR 42721, July 20, 2015]

§ 700.4 Parties "actually making'' a written warranty.

Section 110(f) of the Act, 15 U.S.C. 2310(f), provides that only the supplier "actually making" a written warranty is liable for purposes of FTC and private enforcement of the Act. A supplier who does no more than distribute or sell a consumer product covered by a written warranty offered by another person or business and which identifies that person or business as the warrantor is not liable for failure of the written warranty to comply with the Act or rules thereunder. However, other actions and written and oral representations of such a supplier in connection with the offer or sale of a warranted product may obligate that supplier under the Act. If under State law the supplier is deemed to have "adopted" the written affirmation of fact, promise, or undertaking, the supplier is also obligated under the Act. Suppliers are advised to consult State law to determine those actions and representations which may make them co-warrantors, and therefore obligated under the warranty of the other person or business.

[42 FR 36114, July 13, 1977, as amended at 80 FR 42721, July 20, 2015]

§ 700.5 Expressions of general policy.

(a) Under section 103(b), 15 U.S.C. 2303(b), statements or representations of general policy concerning customer satisfaction which are not subject to any specific limitation need not be designated as full or limited warranties, and are exempt from the requirements of sections 102, 103, and 104 of the Act, 15 U.S.C. 2302-2304, and rules thereunder. However, such statements remain subject to the enforcement provisions of section 110 of the Act, 15 U.S.C. 2310, and to section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

(b) The section 103(b), 15 U.S.C. 2303(b), exemption applies only to general policies, not to those which are limited to specific consumer products manufactured or sold by the supplier offering such a policy. In addition, to qualify for an exemption under section 103(b), 15 U.S.C. 2303(b), such policies may not be subject to any specific limitations. For example, policies which have an express limitation of duration or a limitation of the amount to be refunded are not exempted. This does not preclude the imposition of reasonable limitations based on the circumstances in each instance a consumer seeks to invoke such an agreement. For instance, a warrantor may refuse to honor such an expression of policy where a consumer has used a product for 10 years without previously expressing any dissatisfaction with the product. Such a refusal would not be a specific limitation under this provision.

[42 FR 36114, July 13, 1977, as amended at 80 FR 42721, July 20, 2015]

§ 700.6 Designation of warranties.

(a) Section 103 of the Act, 15 U.S.C. 2303, provides that written warranties on consumer products manufactured after July 4, 1975, and actually costing the consumer more than $10, excluding tax, must be designated either "Full (statement of duration) Warranty" or "Limited Warranty". Warrantors may include a statement of duration in a limited warranty designation. The designation or designations should appear clearly and conspicuously as a caption, or prominent title, clearly separated from the text of the warranty. The full (statement of duration) warranty and limited warranty are the exclusive designations permitted under the Act, unless a specific exception is created by rule.

(b) Based on section 104(b)(4), 15 U.S.C. 2304(b)(4), the duties under subsection (a) of section 104, 15 U.S.C. 2304, extend from the warrantor to each person who is a consumer with respect to the consumer product. Section 101(3), 15 U.S.C. 2301(3), defines a consumer as a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of an implied or written warranty (or service

contract) applicable to the product. Therefore, a full warranty may not expressly restrict the warranty rights of a transferee during its stated duration. However, where the duration of a full warranty is defined solely in terms of first purchaser ownership there can be no violation of section 104(b)(4), 15 U.S.C. 2304(b)(4), since the duration of the warranty expires, by definition, at the time of transfer. No rights of a subsequent transferee are cut off as there is no transfer of ownership "during the duration of (any) warranty." Thus, these provisions do not preclude the offering of a full warranty with its duration determined exclusively by the period during which the first purchaser owns the product, or uses it in conjunction with another product. For example, an automotive battery or muffler warranty may be designated as "full warranty for as long as you own your car." Because this type of warranty leads the consumer to believe that proof of purchase is not needed so long as he or she owns the product a duty to furnish documentary proof may not be reasonably imposed on the consumer under this type of warranty. The burden is on the warrantor to prove that a particular claimant under this type of warranty is not the original purchaser or owner of the product. Warrantors or their designated agents may, however, ask consumers to state or affirm that they are the first purchaser of the product.

[42 FR 36114, July 13, 1977, as amended at 80 FR 42721, July 20, 2015]

§ 700.7 Use of warranty registration cards.

(a) Under section 104(b)(1) of the Act, 15 U.S.C. 2304(b)(1), a warrantor offering a full warranty may not impose on consumers any duty other than notification of a defect as a condition of securing remedy of the defect or malfunction, unless such additional duty can be demonstrated by the warrantor to be reasonable. Warrantors have in the past stipulated the return of a "warranty registration" or similar card. By "warranty registration card" the Commission means a card which must be returned by the consumer shortly after purchase of the product and which is stipulated or implied in the warranty to be a condition precedent to warranty coverage and performance.

(b) A requirement that the consumer return a warranty registration card or a similar notice as a condition of performance under a full warranty is an unreasonable duty. Thus, a provision such as, "This warranty is void unless the warranty registration card is returned to the warrantor" is not permissible in a full warranty, nor is it permissible to imply such a condition in a full warranty.

(c) This does not prohibit the use of such registration cards where a warrantor suggests use of the card as one possible means of proof of the date the product was purchased. For example, it is permissible to provide in a full warranty that a consumer may fill out and return a card to place on file proof of the date the product was purchased. Any such suggestion to the consumer must include notice that failure to return the card will not affect rights under the warranty, so long as the consumer can show in a reasonable manner the date the product was purchased. Nor does this interpretation prohibit a seller from obtaining from purchasers at the time of sale information requested by the warrantor.

[42 FR 36114, July 13, 1977, as amended at 80 FR 42721, July 20, 2015]

§ 700.8 Warrantor's decision as final.

A warrantor shall not indicate in any written warranty or service contract either directly or indirectly that the decision of the warrantor, service contractor, or any designated third party is final or binding in any dispute concerning the warranty or service contract. Nor shall a warrantor or service contractor state that it alone shall determine what is a defect under the agreement. Such statements are deceptive since section 110(d) of the Act, 15 U.S.C. 2310(d), gives state and federal courts jurisdiction over suits for breach of warranty and service contract.

[42 FR 36114, July 13, 1977, as amended at 80 FR 42721, July 20, 2015]

§ 700.9 Duty to install under a full warranty.

Under section 104(a)(1) of the Act, 15 U.S.C. 2304(a)(1), the remedy under a full warranty must be provided to the consumer without charge. If the warranted product has utility only when installed, a full warranty must provide such installation without charge regardless of whether or not the consumer originally paid for installation by the warrantor or his agent. However, this does not preclude the warrantor from imposing on the consumer a duty to remove, return, or reinstall where such duty can be demonstrated by the warrantor to meet the standard of reasonableness under section 104(b)(1), 15 U.S.C. 2304(b)(1).

[42 FR 36114, July 13, 1977, as amended at 80 FR 42721, July 20, 2015]

§ 700.10 Prohibited tying.

(a) Section 102(c), 15 U.S.C. 2302(c), prohibits tying arrangements that condition coverage under a written warranty on the consumer's use of an article or service identified by brand, trade, or corporate name unless that article or service is provided without charge to the consumer.

(b) Under a limited warranty that provides only for replacement of defective parts and no portion of labor charges, section 102(c), 15 U.S.C. 2302(c), prohibits a condition that the consumer use only service (labor) identified by the warrantor to install the replacement parts. A warrantor or his designated representative may not provide parts under the warranty in a manner which impedes or precludes the choice by the consumer of the person or business to perform necessary labor to install such parts.

(c) No warrantor may condition the continued validity of a warranty on the use of only authorized repair service and/or authorized replacement parts for non-warranty service and maintenance (other than an article of service provided without charge under the warranty or unless the warrantor has obtained a waiver pursuant to section 102(c) of the Act, 15 U.S.C. 2302(c)). For example, provisions such as, "This warranty is void if service is performed by anyone other than an authorized `ABC' dealer and all replacement parts must be genuine `ABC' parts," and the like, are prohibited where the service or parts are not covered by the warranty. These provisions violate the Act in two ways. First, they violate the section 102(c), 15 U.S.C. 2302(c), ban against tying arrangements. Second, such provisions are deceptive under section 110 of the Act, 15 U.S.C. 2310, because a warrantor cannot, as a matter of law, avoid liability under a written warranty where a defect is unrelated to the use by a consumer of "unauthorized" articles or service. In addition, warranty language that implies to a consumer acting reasonably in the circumstances that warranty coverage requires the consumer's purchase of an article or service identified by brand, trade or corporate name is similarly deceptive. For example, a provision in the warranty such as, "use only an authorized `ABC' dealer" or "use only `ABC' replacement parts," is prohibited where the service or parts are not provided free of charge pursuant to the warranty. This does not preclude a warrantor from expressly excluding liability for defects or damage caused by "unauthorized" articles or service; nor does it preclude the warrantor from denying liability where the warrantor can demonstrate that the defect or damage was so caused.

[42 FR 36114, July 13, 1977, as amended at 80 FR 42721, July 20, 2015]

§ 700.11 Written warranty, service contract, and insurance distinguished for purposes of compliance under the Act.

(a) The Act recognizes two types of agreements which may provide similar coverage of consumer products, the written warranty, and the service contract. In addition, other agreements may meet the statutory definitions of either "written warranty" or "service contract," but are sold and regulated under state law as contracts of insurance. One example is the automobile breakdown insurance policies sold in many jurisdictions and regulated by the state as a form of casualty insurance. The McCarran-Ferguson Act, 15 U.S.C. 1011 *et seq.,* provides that most federal laws (including the Magnuson-Moss Warranty Act) shall not be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance. While three specific laws are subject to a separate proviso, the Magnuson-Moss Warranty Act is not one of them. Thus, to the extent the Magnuson-Moss Warranty Act's service contract provisions apply to the business of insurance, they are effective so long as they do not invalidate, impair, or supersede a State law enacted for the purpose of regulating the business of insurance.

(b) "Written warranty" and "service contract" are defined in sections 101(6) and 101(8) of the Act, 15 U.S.C. 2301(6) and 15 U.S.C. 2301(8), respectively. This means that it must be conveyed at the time of sale of the consumer product and the consumer must not give any consideration beyond the purchase price of the consumer product in order to benefit from the agreement. It is not a requirement of the Act that an agreement obligate a supplier of the consumer product to a written warranty, but merely that it be part of the basis of the bargain between a supplier and a consumer. This contemplates written warranties by third-party non-suppliers.

(c) A service contract under the Act must meet the definitions of section 101(8), 15 U.S.C. 2301(8). An agreement which would meet the definition of written warranty in section 101(6)(A) or (B), 15 U.S.C. 2301(6)(A) or (B), but for its failure to satisfy the basis of the bargain test is a service contract. For example, an agreement which calls for some consideration in addition to the purchase price of the consumer product, or which is entered into at some date after the purchase of the consumer product to which it applies, is a service contract. An agreement which relates only to the performance of maintenance and/or inspection services and which is not an undertaking, promise, or affirmation with respect to a specified level of performance, or that the product is free of defects in materials or workmanship, is a service contract. An agreement to perform periodic cleaning and inspection of a product over a specified period of time, even when offered at the time of sale and without charge to the consumer, is an example of such a service contract.

[42 FR 36114, July 13, 1977, as amended at 80 FR 42722, July 20, 2015]

§ 700.12 Effective date of 16 CFR parts 701 and 702.

The Statement of Basis and Purpose of the final rules promulgated on December 31, 1975, provides that parts 701 and 702 of this chapter will become effective one year after the date of promulgation, December 31, 1976. The Commission intends this to mean that these rules apply only to written warranties on products manufactured after December 31, 1976.

[42 FR 36114, July 13, 1977]

5. FTC Rule 433—Preservation of Consumers' Claims and Defenses

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER D. TRADE REGULATION RULES

PART 433—PRESERVATION OF CONSUMERS' CLAIMS AND DEFENSES

Authority: 38 Stat. 717, as amended; (15 U.S.C. 41, et seq.)

§ 433.1 Definitions.

(a) *Person*. An individual, corporation, or any other business organization.

(b) *Consumer*. A natural person who seeks or acquires goods or services for personal, family, or household use.

(c) *Creditor*. A person who, in the ordinary course of business, lends purchase money or finances the sale of goods or services to consumers on a deferred payment basis; Provided, such person is not acting, for the purposes of a particular transaction, in the capacity of a credit card issuer.

(d) *Purchase money loan*. A cash advance which is received by a consumer in return for a "Finance Charge'' within the meaning of the Truth in Lending Act and Regulation Z, which is applied, in whole or substantial part, to a purchase of goods or services from a seller who

(1) refers consumers to the creditor or

(2) is affiliated with the creditor by common control, contract, or business arrangement.

(e) F*inancing a sale*. Extending credit to a consumer in connection with a "Credit Sale'' within the meaning of the Truth in Lending Act and Regulation Z.

(f) *Contract*. Any oral or written agreement, formal or informal, between a creditor and a seller, which contemplates or provides for cooperative or concerted activity in connection with the sale of goods or services to consumers or the financing thereof.

(g) *Business arrangement*. Any understanding, procedure, course of dealing, or arrangement, formal or informal, between a creditor and a seller, in connection with the sale of goods or services to consumers or the financing thereof.

(h) *Credit card issuer*. A person who extends to cardholders the right to use a credit card in connection with purchases of goods or services.

(i) *Consumer credit contract*. Any instrument which evidences or embodies a debt arising from a "Purchase Money Loan'' transaction or a "financed sale'' as defined in paragraphs (d) and (e) of this section.

(j) *Seller*. A person who, in the ordinary course of business, sells or leases goods or services to consumers.

[40 FR 53506, Nov. 18, 1975]

§ 433.2 Preservation of consumers' claims and defenses, unfair or deceptive acts or practices.

In connection with any sale or lease of goods or services to consumers, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, it is an unfair or deceptive act or practice within the meaning of section 5 of that Act for a seller, directly or indirectly, to:

(a) Take or receive a consumer credit contract which fails to contain the following provision in at least ten point, bold face, type:

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

or,

(b) Accept, as full or partial payment for such sale or lease, the proceeds of any purchase money loan (as purchase money loan is defined herein), unless any consumer credit contract made in connection with such purchase money loan contains the following provision in at least ten point, bold face, type:

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

[40 FR 53506, Nov. 18, 1975; 40 FR 58131, Dec. 15, 1975]

§ 433.3 Exemption of sellers taking or receiving open end consumer credit contracts before November 1, 1977 from requirements of § 433.2(a).

(a) Any seller who has taken or received an open end consumer credit contract before November 1, 1977, shall be exempt from the requirements of 16 CFR part 433 with respect to such contract provided the contract does not cut off consumers' claims and defenses.

(b) *Definitions*. The following definitions apply to this exemption:

(1) All pertinent definitions contained in 16 CFR 433.1.

(2) Open end consumer credit contract: a consumer credit contract pursuant to which "open end credit'' is extended.

(3) "Open end credit'': consumer credit extended on an account pursuant to a plan under which a creditor may permit an applicant to make purchases or make loans, from time to time, directly from the creditor or indirectly by use of a credit card, check, or other device, as the plan may provide. The term does not include negotiated advances under an open-end real estate mortgage or a letter of credit.

(4) Contract which does not cut off consumers' claims and defenses: A consumer credit contract which does not constitute or contain a negotiable instrument, or contain any waiver, limitation, term, or condition which has the effect of limiting a consumer's right to assert against any holder of the contract all legally sufficient claims and defenses which the consumer could assert against the seller of goods or services purchased pursuant to the contract.

[42 FR 19490, Apr. 14, 1977, as amended at 42 FR 46510, Sept. 16, 1977]

6. Federal Arbitration Act (9 U.S.C. §§ 1-16)

Title 9—Arbitration

CHAPTER 1—GENERAL PROVISIONS

§ 1. "Maritime transactions" and "commerce" defined; exceptions to operation of title.

"Maritime transaction", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

(July 30, 1947, c. 392, 61 Stat. 670.)

§ 2. Validity, irrevocability, and enforcement of agreements to arbitrate.

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract or as otherwise provided in chapter 4..

(July 30, 1947, c. 392, 61 Stat. 670; Pub. L. 117–90, § 2(b)(1)(A), Mar. 3, 2022, 136 Stat. 27.)

§ 3. Stay of proceedings where issue therein referable to arbitration.

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

(July 30, 1947, c. 392, 61 Stat. 670.)

§ 4. Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination.

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day

of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

(July 30, 1947, c. 392, 61 Stat. 671; Sept. 3, 1954, c. 1263, § 19, 68 Stat. 1233.)

§ 5. Appointment of arbitrators or umpire.

If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in the agreement the arbitration shall be by a single arbitrator.

(July 30, 1947, c. 392, 61 Stat. 671.)

§ 6. Application heard as motion.

Any application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided.

(July 30, 1947, c. 392, 61 Stat. 671.)

§ 7. Witnesses before arbitrators; fees; compelling attendance.

The arbitrators selected either as prescribed in this title or otherwise, or a majority of them, may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses before masters of the United States courts. Said summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpoenas to appear and testify before the court; if any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon petition the United States district court for the district in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the United States.

(July 30, 1947, c. 392, 61 Stat. 672; Oct. 31, 1951, c. 655, § 14, 65 Stat. 715.)

§ 8. Proceedings begun by libel in admiralty and seizure of vessel or property.

If the basis of jurisdiction be a cause of action otherwise justiciable in admiralty, then, notwithstanding anything herein to the contrary, the party claiming to be aggrieved may begin his proceeding hereunder by seizure of the vessel or other property of the other party according to the usual course of admiralty proceedings, and the court shall then have jurisdiction to direct the parties to proceed with the arbitration and shall retain jurisdiction to enter its decree upon the award.

(July 30, 1947, c. 392, 61 Stat. 672.)

§ 9. Award of arbitrators; confirmation; jurisdiction; procedure.

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall

be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

(July 30, 1947, c. 392, 61 Stat. 672.)

§ 10. Same; vacation; grounds; rehearing.

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

(1) where the award was procured by corruption, fraud, or undue means;

(2) where there was evident partiality or corruption in the arbitrators, or either of them;

(3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or

(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(b) If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

(c) The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

(July 30, 1947, c. 392, 61 Stat. 672; Pub. L. 101–552, § 5, Nov. 15, 1990, 104 Stat. 2745; Pub. L. 102–354, § 5(b)(4), Aug. 26, 1992, 106 Stat. 946; Pub. L. 107–169, § 1, May 7, 2002, 116 Stat. 132.)

§ 11. Same; modification or correction; grounds; order.

In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration

(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

(b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.

(c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

(July 30, 1947, c. 392, 61 Stat. 673.)

§ 12. Notice of motions to vacate or modify; service; stay of proceedings.

Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

(July 30, 1947, c. 392, 61 Stat. 673.)

§ 13. Papers filed with order on motions; judgment; docketing; force and effect; enforcement.

The party moving for an order confirming, modifying, or correcting an award shall, at the time such order is filed with the clerk for the entry of judgment thereon, also file the following papers with the clerk:

(a) The agreement; the selection or appointment, if any, of an additional arbitrator or umpire; and each written extension of the time, if any, within which to make the award.

(b) The award.

(c) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

The judgment shall be docketed as if it was rendered in an action.

The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

(July 30, 1947, c. 392, 61 Stat. 673.)

§ 14. Contracts not affected.

This title shall not apply to contracts made prior to January 1, 1926.

(July 30, 1947, c. 392, 61 Stat. 674.)

§ 15. Inapplicability of the Act of State doctrine.

Enforcement of arbitral agreements, confirmation of arbitral awards, and execution upon judgments based on orders confirming such awards shall not be refused on the basis of the Act of State doctrine.

(Added Pub. L. 100–669, § 1, Nov. 16, 1988, 102 Stat. 3969.)

§ 16. Appeals.

(a) An appeal may be taken from

(1) an order

(A) refusing a stay of any action under section 3 of this title,

(B) denying a petition under section 4 of this title to order arbitration to proceed,

(C) denying an application under section 206 of this title to compel arbitration,

(D) confirming or denying confirmation of an award or partial award, or

(E) modifying, correcting, or vacating an award;

(2) an interlocutory order granting, continuing, or modifying an injunction against an arbitration that is subject to this title; or

(3) a final decision with respect to an arbitration that is subject to this title.

(b) Except as otherwise provided in section 1292 (b) of title 28, an appeal may not be taken from an interlocutory order

(1) granting a stay of any action under section 3 of this title;

(2) directing arbitration to proceed under section 4 of this title;

(3) compelling arbitration under section 206 of this title; or

(4) refusing to enjoin an arbitration that is subject to this title.

(Added Pub. L. 100–702, title X, § 1019(a), Nov. 19, 1988, 102 Stat. 4670, § 15; renumbered § 16, Pub. L. 101–650, title III, § 325(a)(1), Dec. 1, 1990, 104 Stat. 5120.)

Tie-In Statutes

Introduction

Prior to 1995, the DTPA permitted a consumer who prevailed to recover all "actual damages." Actual damages is generally defined to include all damages recoverable at common law, and includes damages for mental anguish, and the so-called "soft damages," such as pain and suffering and loss of consortium. As discussed above, this term has been replaced as the DTPA's general damage standard with the less inclusive term "economic damages." Actual damages, however, may still be recovered in cases brought through the so-called "tie-in statutes."

Since the enactment of the DTPA, the legislature has chosen to incorporate its provisions into many other statutes dealing with consumer-related issues. This is accomplished by making a violation of those statutes a violation of the DTPA, actionable under the provisions of the DTPA. Because these statutes tie them to the DTPA, they are generally referred to as "tie-in statutes."

Section 17.50(h) of the DTPA provides that if the consumer brings a claim through another law, i.e. a tie-in statute, the consumer may recover any "actual damages" incurred. For purposes of DTPA "additional damages" in an action brought through a tie-in statute, the term "economic damages" is replaced with the term actual damages.

The term actual damages has been defined to include any damages recoverable at common law. The amount of damages recoverable is determined by the total loss of the consumer. The term includes all compensatory damages, as well as damages for mental anguish and pain and suffering. Perhaps the most signifi cant change made by the 1995 amendments was the replacement of the term "actual damages, "with "economic damages." Section 17.50(h), however, reinstates the former "actual damages" standard in any case brought through a tie-in statute. A consumer who brings a claim through a tie-in statute is entitled to recover damages under the more generous damage standard of "actual damages," and treble that amount upon a showing that the defendant acted "knowingly." It is in the interest of all consumer attorneys to carefully review the more than thirty tie-in statutes to see if a possible claim may be brought, in addition to the more standard laundry list, unconscionability and warranty claims.

List of Tie-In Statutes

Tie-In Statute	Citation
Business Opportunity Act	Tex. Bus. & Com. Code § 51.302
Cemetery and Crematory Services, Funeral Directing, and Embalming	Tex. Occ. Code § 641.159
Certain Consumer Transactions, Cancellation of	Tex. Bus. & Com. Code § 601.204
Certain Electronic Mail, Regulation of	Tex. Bus. & Com. Code § 321.103
Certain Fuel Mixtures, Sales and Regulation of	Tex. Ag. Code § 17.152
Certain Sales Of Homestead	Tex. Prop. Code § 41.006(b)
Cigarette Tax, Enforcement	Tex. Tax Code § 154.4095
Coastal Public Lands Management Act of 1973	Tex. Nat. Res. Code § 33.135(d)
Consumer Credit Reporting Agencies, Regulation of	Tex. Bus. & Com. Code § 20.12
Consumer Rebate Response and Grace Period for Corrections	Tex. Bus. & Com. Code § 35.43
Consumer Contracts Created by Acceptance of Check or Other Draft, Regulation of	Tex. Bus. & Com. Code § 603.101
Contest and Gift Giveaway Act	Tex. Bus. & Com. Code § 621.252
Credit Service Organizations	Tex. Fin. Code § 393.504
Debt Collection Act	Tex. Fin. Code § 392.404(a)
Disclosure to Purchaser of Property	Tex. Nat. Res. Code § 61.025(d)
Disposition of Insurance Proceeds	Tex. Prop. Code § 5.078(d), (e)
Executory Contract for Conveyance, Oral Agreements Prohibited	Tex. Prop. Code § 5.072(e)(1), (f)
Health Spa Act	Tex. Occ. Code § 702.403
Home Improvement Contract	Tex. Prop. Code § 41.007(b)
(Identity Theft) Unauthorized Use of Indentifying Information	Tex. Bus. & Com. Code § 521.152
Interest in Land, Disclaimer and Disclosure Required	Tex. Prop. Code § 41.0051(c)
Invention Development Services Contract	Tex. Bus. & Com. Code § 52.153
Medical Liability, Arbitration Agreements	Tex. Civ. Prac. & Rem. Code § 74.451(c)
Occupational and Business Regulation	Tex. Rev. Civ. Stat. Art. 9020 § 9(c)
Personnel Services	Tex. Occ. Code § 2501.204
Private Action for Damages Authorized	Tex. Ins. Code § 541.151
Private Child Support Enforcement Agencies	Tex. Fin. Code § 396.353(a)
Rental-Purchase Agreements	Tex. Bus. & Com. Code § 92.202
Representation as Attorney	Tex. Gov. Code § 406.017(f)
Residential Service Company Act	Tex. Occ. Code § 1303.405
Self-Service Storage Facility Liens	Tex. Prop. Code § 59.005
Seller's Disclosure of Property Condition	Tex. Prop. Code § 5.069(d)(a), (e)
Seller's Disclosure of Tax Payments and Insurance Coverage	Tex. Prop. Code § 5.070(b)(1)
Speech-Language Pathologists and Audiologist, Licensing and Regulation of	Tex. Occ. Code § 401.501
Talent Agencies, Regulation of	Tex. Occ. Code § 2105.251
Telephone Solicitation, Regulation of	Tex. Bus. & Com. Code § 302.303
Texas Manufactured Housing Standards Act	Tex. Occ. Code § 1201.603
Texas Membership Camping Resort Act	Tex. Prop. Code § 222.011(a)
Texas Motor Vehicle Commission Code	Tex. Occ. Code §§ 2301.204, 2301.607
Texas Optometry Act	Tex. Occ. Code § 351.604
Texas Timeshare Act	Tex. Prop. Code § 221.071(a)
Treatment Facilities Marketing Practices Act	Tex. Health & Safety Code § 164.013
Unfair Claim Settlement Practices Act	Tex. Ins. Code § 542.004(c)
Unfair Methods of Competition and Unfair or Deceptive Acts or Practices	Tex. Ins. Code § 541.151
Texas Controlled Substances Act	Tex. Health & Safety Code, § 481.1191
Motor Vehicle Installment Sales	Tex. Fin. Code § 348.014
Commercial Vehicle Installment Sales	Tex. Fin. Code § 353.017

Summary of Selected Tie-In Statutes

Below is a summary of selected Acts that have tie-in provisions, making a violation of that law a violation of the DTPA, actionable through section 17.50(h). Numerous other Acts have tie-in provisions as identified in the preceding chart.

Business Opportunity Act.

1. Objective

The Business Opportunity Act is designed to offer protection to people who purchase or lease products, equipment, supplies, or services that will be used by or for the purchaser to begin a for-profit business in which the seller will continue to participate. (Act: Tex. Bus. & Com. Code § 51.001 et seq.; Tie-in statute: § 51.302).

2. Scope

For the Business and Opportunity Act to apply, three elements must be present. First, there must be a payment of more than $500. Second, there must be a promise by the seller that the buyer will earn a profit greater than the initial payment. Third, the seller must promise to either: provide or help to provide a location for the buyer; or, provide a sales, production, or marketing plan; or, buy back products manufactured by the buyer with the merchandise purchased from the seller.

Exceptions

There are several exceptions to the applicability of the Business Opportunity Act; the most significant being that it does not apply to any arrangement defined as a franchise by federal law.

3. Major Provisions

a. Statutory Compliance

The Business Opportunity Act provides that before the sale or offer of a sale of a business opportunity, the seller must register the opportunity with the secretary of state, and file a bond with the state. The seller must provide the buyer with a written disclosure statement that complies with the Act. The seller must also use a business opportunity contract that complies with the Act. An assignee of the contract is subject to all claims and defenses that the purchaser may have against the seller.

b. Prohibited Conduct

A seller may not:

i) employ a representation, device, scheme, or artifice to deceive a purchaser;

ii) make an untrue statement of material fact or omit to state a material fact;

iii) represent that the business opportunity provides or will provide income or earning potential unless the seller has documented data to support the claims and the data is disclosed to the purchaser;

iv) make a claim or representation in advertising or promotional material or in an oral sales presentation that is inconsistent with the information required to be disclosed by the Act.

Certain Sales of Homestead.

1. Objective

To protect against an improper sham loan against a homestead, Texas prohibits a “sale-leaseback” of a homestead. If a homestead is sold at a price that is less than the appraised fair market value of the property, and in connection with the sale the buyer executes a lease of the property to the seller at a lease payment that exceeds fair rental value, all payments in excess of the sales price are considered interest. (Act: Tex. Prop. Code § 41.001 et seq.; Tie-in statute: § 41.006(b)).

2. Scope

The law applies to any sale of a homestead. This law does not apply to the sale of a family homestead to a parent, stepparent, grandparent, child, stepchild, brother, half brother, sister, half sister, or grandchild of an adult member of the family.

3. Major Provisions

Under this law, the deed given to the buyer is void and no lien attaches to the homestead as a result of the purported sale.

Coastal Public Lands Management Act of 1973.

1. Objective

This Act is designed to protect a purchaser of real property adjoining and abutting the tidally influenced waters of the state. (Act: Tex. Nat. Res. Code § 33.001 et seq.; Tie-in statute: § 33.135(d)).

2. Scope

The Act applies to any sale of an interest in real property other than a mineral, leasehold, or security interest.

3. Major Provision

The Act requires that any person who sells, transfers, or conveys an interest in real property subject to the Act must include a statutory notice as part of a written executory contract for the sale, transfer, or conveyance. The notice must comply with the statute and is designed to inform the buyer that the property adjoins and shares a common boundary with the tidally influenced submerged lands of the state. The notice must also advise the purchaser to seek the advice of an attorney before completing the sale. Failure to include this notice shall be grounds for the purchaser to terminate such contract. Upon termination any earnest money shall be returned to the party making the deposit.

Contest and Giveaway Act.

1. Objective

The Texas Contest and Giveaway Act is designed to provide the maximum disclosure to, and fair treatment of, people who enter into a contest or gift giveaway through which the person is solicited to attend a sales presentation. (Act: Tex. Bus. & Com. Code § 621.001 et seq.; Tie-in statute: § 621.252).

2. Scope

The Contest and Giveaway Act applies to any promotion where there is an offer of a prize or a gift to induce a person to attend a sales presentation.

3. Major Provisions

a. Gifts

A person subject to the Contest and Giveaway Act may not use the term gift in a false, misleading, or deceptive manner. For example, the person offering the gift must clearly and conspicuously disclose that attendance at a sales presentation is required, must disclose the value of the gift, and may not require the person to purchase anything in connection with the gift unless at the time of the notification the offeror clearly and conspicuously discloses that the purchase of a good or service is required.

b. Contests and Drawings

An offeror may not notify a person that the person has won a prize or drawing unless, at the time of the notification, the offeror clearly and conspicuously discloses that attendance at a sales presentation is required, a description of the product being sold, and, the approximate duration of the sale's presentation. An offeror also may not use the term prize or a similar term in a false, misleading, or deceptive manner. For example, the offeror must not misrepresent the odds of winning a prize or misrepresent the rules or terms of participation in a contest. The offeror also must fully disclose the terms and rules of the contest or drawing. The offeror also must maintain detailed records of the contest or drawing that must, upon request, be provided to any person who requests the information.

Health Spa Act.

1. Objective

The Health Spa Act is designed to protect the public against fraud, deceit and financial hardship and to foster and encourage competition, fair dealing, and prosperity in the field of health spa operations. (Act: Tex. Occ. Code §§ 702.001 et seq.; Tie-in statute: § 702.403). The Act prohibits and restricts practices by which the public has been injured in connection with contracts for and the marketing of health spa services.

2. Scope

The Heath Spa Act applies to any business involved in the sale of memberships that provide the members instruction in a program of physical exercise or provide the members use of the facilities of the health spa for a program of physical exercise. The public generally refers to such "health spas" as "health clubs." The term does not include private clubs owned and operated by the members, an entity exclusively operated for the purpose of teaching dance or aerobic exercise, or an entity engaged exclusively in physical rehabilitation.

3. Major Provisions

a. Registration/Bond

Due to problems with "fly-by-night" health spas that closed just as quickly as they opened, often leaving their customers with nothing but a pre-paid membership in a nonexistent club, the Health Spa Act requires health spas to obtain an operators' certificate. The Act also requires health spas generally to escrow memberships paid before the

club opens and pay a bond or post other security. Exceptions to the bond requirement may be made in cases where memberships are for a term of less than 31 days or the health spa has operated a facility at the same location in the state for five years.

b. Contract Terms

Perhaps the most significant element of the Health Spa Act is the requirement that all health spa contracts provide the purchaser with the right to cancel the contract within three business days after it is signed. The contract also must permit the purchaser to cancel if the health spa goes out of business and does not provide alternative facilities within 10 miles of the facility in which the customer was enrolled. A completed copy of the contract must be given to the purchaser before it is signed.

c. Available Plans

Each health spa must prepare a list of all membership plans offered for sale by the health spa. The list shall be disclosed on request to each prospective purchaser.

d. Prohibited Activities

Under the Health Spa Act a seller may not offer a special offer or discount unless it is available to all prospective members. A seller also may not make any material misrepresentations regarding:

i) the qualification of the staff;
ii) the availability or quality of facilities;
iii) the results that may be obtained through the plan; or
iv) membership rights.

e. Rules

The secretary of state shall adopt rules and regulations to assure compliance with the Heath Spa Act. (*See* Health Spa Regulations 1 TAC § 102.1 et seq.)

Home Improvement Contract.

1. Objective

This Act is designed to insure that homeowners are informed about the risks of entering into a home improvement contract. (Act: Tex. Prop. Code § 41.001 et seq.; Tie-in statute: § 41.007(b)).

2. Scope

The Act applies to any contractor that has the right to place an encumbrance on property because work and material were used in constructing improvements on the property pursuant to a written contract.

3. Major Provisions

The major provision of the Act requires that home improvement contracts contain a notice to the owner that failing to meet the terms of the contract can result in the loss of the home.

Licensing of Speech-Language Pathologists & Audiologists.

1. Objective

It is the policy of the State that in order to safeguard the public health, safety and welfare and to protect the public from unprofessional conduct by speech-language pathologists and audiologists it is necessary to provide regulation over persons offering such services. (Act: Tex. Occ. Code § 401.001 et seq.; Tie-in Statute: § 401.501).

2. Scope

This Act applies to speech-language pathologists and audiologists. Speech-language pathologist is defined as an individual who practices speech-language pathology, who makes a nonmedical evaluation, examines, or provides habilitative or rehabilitative services for persons who have or are suspected of having speech, voice, or language disorders. Audiologist is defined as a person who practices audiology who makes a nonmedical evaluation, who examines, counsels, or provides habilitative or rehabilitative services for persons who have or are suspected of having a hearing or vestibular disorder.

3. Major Provision

The statute includes a wide range of regulatory provisions. Only one, however, is actionable through the DTPA. It is a violation of the Act, actionable under the DTPA, for a person to practice or represent himself or herself as a speech-language pathologist or audiologist unless he or she is licensed in accordance with the Act.

Medical Liability, Arbitration Agreements.

1. Objective

The Medical Liability and Insurance Improvement Act is a substantial legislative enactment dealing with the "medical malpractice insurance crisis" in Texas. Only one of the Act's provisions is actionable through the DTPA. (Tie-in statute: Tex. Civ. Prac. & Rem. Code § 74.451(c)).

2. Scope

The Act applies to physicians, professional organizations of physicians, or other health care providers.

3. Major Provisions

The Act requires that no physician, professional organization of physicians, or other health care provider may request or compel a patient to execute an agreement to arbitrate unless the form of the agreement complies with the requirements of the Act. Specifically, the Act requires a notice that informs the patient that he or she is giving up valuable legal rights and that the agreement is invalid unless an attorney of the patient's choosing also signs it.

Personal Employment Services.

1. Objective

This Act is designed to protect consumers and businesses from unscrupulous business people who attempt to procure employment and do not performed as promised. (Act: Tex. Occ. Code § 2501.001 et seq.; Tie-in statute: § 2501.204).

2. Scope

The Act applies to a person who engages in a "personnel service." This term is defined to include a person who for a fee or without a fee offers or attempts to procure directly or indirectly permanent employment for an employee or attempts to procure a permanent employee for an employer.

Exemptions

This Act does not apply to a newspaper of general circulation or other publication that primarily communicates information other than information relating to employment positions and that does not adapt the information provided to the needs or desires of an individual applicant.

3. Major Provisions

a. Certificate of Authority

Any person desiring to own a personnel service must obtain a certificate of authority from the commissioner of licensing and regulation. (Tex. Fin. Code § 396.001 et seq.).

b. Conduct

A person who acts as a personnel service may not impose any fee for employment until the applicant has accepted an offer of employment resulting from an employment referral made by the personnel service. The service also may not split fees with an employer to whom the service has furnished services and may not procure or attempt to procure the discharge of a person from his or her current employer. Fees to a service may not exceed 20% of the applicant's gross wages if the position does not last more than 30 days and the applicant leaves the position with good cause. The Act also prohibits general misconduct by the service, including making false promises, or any misrepresentation or misleading statement of fact.

c. Referrals

No person who operates a personnel service may refer an applicant to a place of employment where a strike or lockout exists without furnishing the applicant a written statement of the existence of the strike or lockout. No service may refer an applicant to employment deleterious to his or her health or morals, if the service has knowledge of the deleterious condition.

Private Child Support Enforcement Agencies.

1. Objective

This Act is designed to protect people from unscrupulous private companies that claim to be able to collect child support. (Act: Tex. Fin. Code § 396.001 et seq.; Tie-in statute: § 396.353(a)).

2. Scope

The Act applies to any individual or nongovernmental entity who engages in the enforcement of child support ordered by a court or other tribunal for a fee or other consideration.

3. Major Provisions

The Act requires registration of Child Support Enforcement Agencies and prohibits them from engaging in false, misleading or deceptive acts or practices. It also requires written contracts that are clear and understandable.

Credit Service Organizations.

1. Objective

This Act is designed to protect consumers who are solicited to purchase or purchase the services of a credit service organization, commonly referred to as "credit repair services," in an attempt to improve their credit. (Act: Tex. Fin. Code §393.001 et seq.; Tie-in statute: § 393.504).

2. Scope

The Act applies to a "credit service organization" defined as a person who provides, or represents that the person can or will provide, for the payment of a valuable consideration, services designed to improve the person's credit history or rating or obtaining an extension of credit.

Exceptions

The Act does not apply to numerous entities that may engage in acts that fall within the scope of the Act but that are already licensed or do not have the potential for abuse. For example, the Act does not apply to licensed lenders, licensed real estate brokers, licensed attorneys, a consumer reporting agency or a non-profit organization.

3. Major Provisions

a. Registration

Before conducting business in this state, a credit service organization must register with the Secretary of State, pay a registration fee, and post a surety bond in the amount of $10,000.

b. Disclosure Statement

Before executing a contract with a consumer or receiving valuable consideration, a credit service organization shall provide the consumer with a disclosure document. The document must comply with the requirements of the Act. For example, it must contain a complete and detailed description of the services to be rendered, a complete and accurate statement of the consumer's right to review information maintained by a consumer reporting agency and that such review may be made without charge. Additionally, the statement must explain the consumer's right to dispute directly with the consumer reporting agency, that accurate information cannot be permanently removed from the consumer's file, and when information becomes obsolete and will automatically be deleted.

c. Form and Terms of Contract

The Act requires that the contract between the consumer and the credit service organization be in writing and contain terms fully describing the services the organization is to perform, as well as the payment terms of the agreement.

d. Notice of Cancellation

The contract must conspicuously state that it may be cancelled at any time before midnight of the third day after the date of the transaction.

e. Prohibitions

i) A credit service organization may charge or receive a fee from a consumer before completely performing all the services the organization has agreed to perform only if it has obtained a surety bond.

ii) A credit service organization may not charge or receive from a consumer valuable consideration solely for referring the consumer to a retail seller who may or will extend credit that is substantially the same as that available to the public.

f. False or Misleading Statements

The Act prohibits a credit service organization from using false or misleading representations, for example guaranteeing to "erase bad credit" or words to that effect, unless it is clearly disclosed that this can only be done if the information is inaccurate or obsolete. A credit service organization also is prohibited from directly or indirectly engaging in a fraudulent or deceptive act, practice, or course of business relating to the offer or sale of the services of the organization.

Regulation of Invention Development Services Act.

1. Objective

This Act is designed to protect individuals wishing to market their inventions through the use of an invention development service. (Act: Tex. Bus. & Com. Code § 52.001 et seq.; Tie-in statute: § 52.153.

2. Scope

The Regulation of Invention Services Act applies to any contract between a customer and an invention developer. An invention developer is defined as any individual, business entity, or agent/representative of a business entity that offers to perform invention development services for a customer including evaluating, perfecting, marketing, brokering, or promoting an invention and preparation of a patent application.

Exceptions

The Act does not apply to any government level departments, nonprofit, charitable organizations, attorneys acting within the scope of their license, any person registered by the U.S. Patent and Trademark office, and any invention developer that does not charge a fee or other type of reimbursement.

3. Major Provisions

The Act requires that the contract between a customer and an invention developer include certain mandatory provisions and disclosures. Payment may not be required until four working days after signing the contract and the day the customer receives a completed copy of the contract. The contract also must disclose the affect of assignment of an interest in the invention, the estimated profit, the time schedule and the services to be provided. The contract also must encourage the customer to consult an attorney prior to signing.

Rental-Purchase Agreements.

1. Objective

The Rental-Purchase Agreements law is designed to regulate rent-to-own agreements and the advertising of such agreements. (Act: Tex. Bus. & Com. Code § 92.001 et seq.; Tie-in statute: § 92.202). The primary objective is to insure that consumers are fully informed of the true nature of the transaction and the real costs involved.

2. Scope

This law applies to "rental-purchase" agreements. These are defined as agreements for the use of merchandise by a consumer for personal, family, or household purposes, for an initial period of four months or less that are automatically renewable with each payment, and that permit the consumer to become the owner of the merchandise.

3. Major Provisions

a. Agreement Provisions

A rental-purchase agreement must be written in plain English and in any other language used by the merchant in an advertisement related to the agreement. The law requires that the agreement make full disclosure to the consumer of the terms of the agreement. The law also limits what may be contained in the agreement and prohibits a confession of judgment, waiver of defenses or counterclaims, or an authorization of a breach of the peace in the repossession of the merchandise.

The agreement also must disclose whether the merchandise is new or used, the amount and total of payments, the cash price of the merchandise, and the amount the consumer may be responsible for if the merchandise is damaged or destroyed.

b. Advertisement

Advertisements must clearly and conspicuously state that the transaction advertised is a rental-purchase agreement; the total number of payments necessary to acquire ownership; and, that the consumer does not acquire ownership rights unless the merchandise is rented for a specified number of payments.

Representation as Attorney.

1. Objective

This is a very specific statute designed to deal with the problem of consumers being misled into believing that a notary public is an attorney. This problem arises most often within the Spanish speaking community where the Spanish definition of notary public would lead the consumer to believe that the person is an attorney. (Act: Tex. Gov't. Code § 406.001 et seq.; Tie-in statute: § 406.017(f)).

2. Scope

This law applies to a notary public who is not an attorney and who advertises the services of a notary public in a language other than English. The provisions of this law apply whether the advertisement is by signs, pamphlets, stationery, or other written communication or by radio or television.

3. Major Provisions

a. Notice

Any notary public who advertises his or her services must post or otherwise include with the advertisement a notice that the notary public is not an attorney. The notice must be in English and in the language of the advertisement. If the advertisement is by radio or television, the statement may be modified, but must include substantially the same message. The notice also must include the fees that a notary public may charge and a statement that the notary is not an attorney and cannot give legal advice.

b. Literal Translation

Literal translation of the phrase "notary public" into Spanish is prohibited.

Residential Service Company Act.

1. Objective

The Residential Services Company Act is designed to protect consumers from being mislead or deceived into purchasing home warranties. (Act: Tex. Occ. Code § 1303.001 et seq.; Tie-in statute: § 1303.405).

2. Scope

The Act applies to any "residential service contract." This term is defined to mean any contract or agreement whereby, for a fee, a person undertakes, for a specified period of time, to maintain, repair, or replace all or any part of the structural, components, the appliances, or the electrical, plumbing, heating, cooling, or air-conditioning systems of residential property.

Exceptions

The Act does not apply to a manufacturer or merchant who issues a service contract or warranty with respect to products it has sold. It also does not apply to "home warranty insurance" as defined in Section 2, Article 5.53-A of the Insurance Code.

3. Major Provisions

a. License

No person shall issue, or undertake or arrange to perform services pursuant to a residential service contract unless such person is licensed. The Act provides the procedures for obtaining a license and requires a bond or other security.

b. Prohibited Practices

No service company may cause or permit the use of advertising which is untrue or misleading, or any from of evidence of coverage which is deceptive. Unless licensed as an insurer, no company may use the terms insurance, casualty, surety, or any other words descriptive of insurance, casualty or surety business. Only those persons who comply with the provisions of the Act and are licensed may use the phrase "residential service company."

c. Evidence of Coverage

Every service contract holder is entitled to evidence of coverage under a service contract. The Act specifies what must be included in an evidence of coverage.

d. Nonwaiver of Remedies

A contract holder does not waive any remedy that the holder may have under any other law against any other person. All residential service contracts must include notice to the purchaser that the buyer may have other rights and remedies under the Deceptive Trade Practices Act which are in addition to any remedy which may be available under this contract.

e. Civil Penalty

Any plaintiff who shows a violation of this Act shall recover a civil penalty of $1,000 or actual damages, whichever is greater and court costs and attorney's fees.

Sales of Certain Fuel.

1. Objective

This Act protects consumers by requiring disclosure when motor fuel contains ethanol or methanol. (Act: Tex. Agric. Code § 17.001; Tie-in statute: § 17.152).

2. Scope

The Act applies to a motor fuel dealer, defined to mean any person who is the operator of a service station or other retail outlet and who delivers motor fuel into the fuel tanks of motor vehicles.

3. Major Provisions

a. Posting Notice

A motor fuel dealer may not sell or offer to sell any motor fuel containing ethanol or methanol without prominently displaying on the pump a sign that informs the purchaser that the fuel contains ethanol or methanol.

b. Sale of Motor Fuel With Lower Rating

A motor fuel dealer may not sell or offer for sale motor fuel with an automotive fuel rating that is lower than the rating posted on the pump.

c. Delivery of Motor Fuel With Lower Rating

A distributor or supplier of motor fuel may not deliver or transfer motor fuel to a motor fuel dealer if the fuel contains a fuel rating lower than the certification of the rating the distributor or supplier is required to make to the fuel dealer.

d. Documentation and Delivery Documents

The Act requires that a distributor, supplier, wholesaler, or jobber of motor fuel to comply with its provisions regarding the documentation of fuel mixture sales. It also requires that each fuel dealer keep records regarding it sales for one year.

Self-Service Storage Facility Liens.

1. Objective

The Self-Service Storage Facility Liens Act is designed to afford protection to tenants of self-storage facilities by regulating the process by which a tenant's property is sold to satisfy unpaid rent. (Act: Tex. Prop. Code § 59.001 et seq.; Tie-in statute: § 59.005).

2. Scope

The Act applies to any self-service storage facility, defined to mean real property that is rented to be used exclusively for storage of property and is cared for and controlled by the tenant.

3. Major Provisions

a. Creation of Lien

The Self-Service Storage Facility Act provides that a lien attaches to stored property from the date the tenant places the property at the self-storage facility. This lien takes priority over all other liens on the same property. The lien exists for the payment of charges that are due and unpaid by the tenant.

b. Redemption

The tenant may redeem the property seized under the lien prior to its sale by paying the amount of the lien and the lessor's reasonable expenses.

c. Enforcement of Lien

1) Judicial Enforcement

A lessor may enforce a lien under the Act only under a judgment of a court except as provided below. A lessor may enforce a lien without judicial assistance if the contract has a provision authorizing the seizure and sale in conspicuous bold print or underlined and the seizure and sale must comply with this Act.

2) Nonjudicial Enforcement

A lessor who enforces its lien without judgment must deliver to the tenant notice complying with the Act. The notice must inform the tenant that unless the claim is satisfied within fifteen days it may be sold at public auction. If the tenant fails to satisfy the claim, the lessor must publish or post notices advertising the sale. The notice of sale must comply with the Act and must include a general description of the property and the time, place and terms of the sale. The sale must be at public sale according to the terms specified in the notice.

3) Excess Proceeds of Sale

If the proceeds of the sale are greater than the amount of the lien and reasonable expenses, the excess proceeds must be returned to the tenant upon request or retained for two years if the tenant does not make a request. In such cases, after two years the excess proceeds belong to the lessor.

d. Good Faith Purchaser

A good faith purchaser of property sold to satisfy a lien under his Act takes the property free of a claim by a person against whom the lien was valid, regardless of whether the lessor has complied with the Act.

e. Waiver

The provisions of this Act may not be waived.

Texas Manufactured Housing Standards Act.

1. Objective

The Manufactured Housing Standards Act is designed to provide the citizens of Texas with safe, affordable, and well constructed housing. As part of this Act, warranty obligations are imposed upon sellers of manufactured homes. The failure to give these warranties and notices as required is actionable through the DTPA. (Act: Tex. Occ. Code § 1201.001 et seq.; Tie-in statute: § 1201.603).

2. Scope

The Manufactured Housing Standards Act applies to manufactured housing or a manufactured home, defined to mean a HUD-code manufactured home or a mobile home. A mobile home is a structure that was constructed before 1976, transportable in one or more sections, which, when in the traveling mode, is eight body feet or more in width or 40 feel or more in length.

3. Major Provisions

a. Used Homes

1) Seal

A person may not sell, exchange, or lease-purchase or negotiate for the sale, exchange or lease-purchase of a used manufactured home to a consumer unless the appropriate seal or label is affixed to it. If the manufactured home does not have a seal or label, the person must apply to the Texas Department of Housing Standards for a seal and pay the fee. (The seal is the device used for titling purposes.)

2) Written Warranty

It is unlawful to sell, exchange, or lease-purchase a used manufactured home without giving a written warranty that the home is habitable. The consumer has sixty days after the date of sale to notify the seller in writing of any defects that make the home uninhabitable. Failure to give this notice of defects terminates the obligations and liabilities of the seller. The warranty must conspicuously disclose this requirement to the buyer.

Habitable

The term "habitable" means that there is no defect, damage, or deterioration to the home which creates a dangerous or unsafe situation or condition. It also requires that the plumbing, heating, and electrical systems are in working order, that the walls, floor and roof are free from substantial openings not designed and are structurally sound. Finally, it requires that all windows and doors are in place.

b. New Homes

1) Manufacturer's Warranty

The manufacturer shall warrant that each new HUD-Code manufactured home is constructed or assembled in accordance with all building codes, standards, requirements, and regulations prescribed by the U.S. Department of Housing and Urban Development. The manufacturer shall also warrant that the manufactured home and all appliances and equipment included in the home are free from defects in materials and workmanship.

Length of Warranty

The warranty provided by the Act shall be set forth in writing and must be in effect for at least one year.

2) Retailer's Warranty

The retailer shall give the buyer a written warranty that the installation will be completed in accordance with rules and regulation of the Texas department of Housing and Community Affairs. Additionally, the retailer shall warrant that any appliance or equipment installed with the home will be installed in accordance with the manufacturer's instructions and specifications.

Length of Warranty

The retailer's warranty provided by the Act shall be set forth in writing and must be in effect for at least one year.

3) Breach of Warranty

The consumer shall notify the retailer or manufacturer in writing of the need for warranty repair or service. If the manufacturer or retailer fails to provide warranty service within a reasonable time, the manufacturer or retailer must show good cause in writing why their license shall not be revoked. If the manufacturer or retailer does not provide warranty service as requested, the consumer may request the department to inspect the home. If after inspection it is determined that the home needs repair and the manufacturer fails to make the repairs, the department may suspend or revoke the manufacturer's or retailer's license.

4. Title

It is unlawful for the seller to sell a manufactured home without the appropriate transfer of a good and marketable title.

Texas Membership Camping Resort Act.

1. Objective

The Texas Membership Camping Resort Act is designed to protect consumers in the purchase of a right or interest in membership camping resorts. (Act: Tex. Prop. Code § 222.001 et seq.; Tie-in statute: § § 222.011(a)).

2. Scope

The Act applies to membership camping resorts in Texas or membership camping resorts located outside the state but offered for sale in Texas.

3. Major provisions

a. Registration

The Act requires that any person selling a membership camping contract interest be registered with the state. Registration includes basic disclosure of the business's owners and interests; a copy of the instrument used to create ownership in the resort or give access to its amenities; and a description of the seller's promotional plan.

b. Requirement for Promotion

The Act also sets out requirements for advertisements of such resorts. These ads must include:

1) a statement that the promotion is intended to solicit purchasers of membership interest or rights in a membership camping resort;

2) the full name of the operator, seller, and marketing company involved in the promotion;

3) the complete rules of the promotion;

4) the method of awarding, odds of winning, and approximate retail value of prizes, gifts, or other benefits and the date by which each will be awarded; and

5) restrictions, qualifications, or other conditions that the recipient must satisfy before the recipient is entitled to receive a prize, gift, or other benefit, including deadlines for visiting the resort or attending the sales promotion, minimum age qualifications, financial qualifications, or a requirement that both husband and wife must be present to receive the prize, gift or other benefits.

c. Requirement for contract

The statute sets out requirements for the contract selling a membership right or interest. The seller must give the purchaser a copy of the contract at the time it is signed. Additionally, certain information must be included in the contract such as the signatures of the seller and purchaser, the name and address of the seller, and the location of the membership camping resort. The contract also must include the date the purchaser signs the contract, a summary or copy of the rules and restrictions regulating the purchaser's use of the properties, any grounds for forfeiture, and a statement of whether the purchaser visited the location of the membership camping resort before signing the contract.

d. Right to Cancel

The statute provides that a purchaser may cancel, in person or by mail, without penalty, a membership camping contract before the fourth business day after the contract is executed if the purchaser did not visit the location of the membership camping resort before the contract was signed. All payments made by the purchaser before cancellation must be refunded before the 21st day after the date on which the seller receives notice of cancellation. Notice of this right must appear in bold-faced conspicuous type (larger than the remaining text) on the contract for sale.

e. Prohibited Activities

The seller may not:

1) fail to disclose information concerning a membership interest or membership right as described above;

2) fail to provide a purchaser with a copy of the membership camping contract and any other document signed by the purchaser or the operator in connection with the purchase of a membership interest or membership right;

3) make false or misleading statements about the camping sites or amenities;

4) predict specific or immediate increases in the value of the membership interest;

5) make false or misleading statements about the conditions under which the purchaser may use other membership camping resort camping sites or amenities;

6) represent that a prize, gift, or other benefit will be awarded in connection with a promotion with intent not to award that prize, gift, or other benefit;

7) represent that registration with the secretary of state constitutes approval or endorsement by the secretary of state;

8) offer or dispose of a membership interest or membership right under a membership camping contract without having complied with the registration requirements.

Texas Motor Vehicle Commission.

1. Objective

The Texas Motor Vehicle Commission protects consumers by regulating the distribution and sale of motor vehicles. The consumer protection sections of this law are generally referred to as the "Lemon Law." (Act: Tex. Occ. Code §§ 2301.204, 2301.601 et seq.; Tie-in statute: § 2301.607).

2. Scope

The Act ensures a sound system of distributing and selling motor vehicles through licensing and regulating manufacturers, distributors, converters, and dealers of those vehicles, and enforcing the Act in order to provide for compliance with manufacturer's warranties. The Act also prevents fraud, unfair practices, discrimination, and other abuses.

3. Major Provisions

a. Creation of Texas Motor Vehicle Board

The statute provides for the creation of an independent Motor Vehicle Commission within the Department of Transportation. Members of the board include dealers, manufacturers, and citizens without interests in businesses that deal with the sale, manufacture, conversion, etc., of motor vehicles.

b. Powers of the Board

The statute provides the board with the power to regulate all aspects of the distribution, sale, and lease of motor vehicles and to do whatever is necessary to exercise that power. This includes establishing qualifications for licenses, ensuring that the distribution, sale, and leasing of motor vehicles is conducted under the rules, and to provide for compliance warranties.

c. License Required

The statute requires that anyone acting as a dealer, manufacturer, distributor, converter, lessor, or repair service person of a motor vehicle, must have a license issued by and pursuant to the requirements of the Commission.

d. Penalties

The Act provides for civil penalties for anyone in violation of the board's regulations, including fines of up to $10,000.00 a day, cease and desist orders, and injunctions, for violations that create potential harm to the safety of the public or economic damage to the public.

e. Warranty Performance Obligations

The law requires a manufacturer, converter, or distributor to make any repairs necessary to conform the vehicle to applicable express warranties. An inability to conform the vehicle within a reasonable number of attempts by repairing or correcting any defect or condition that creates a serious safety hazard or substantially impairs the use or market value of the vehicle, requires the manufacturer, dealer, or converter to either:

(i) replace the motor vehicle with a comparable motor vehicle; or

(ii) accept return of the vehicle from the owner and refund to the owner the full purchase price less a reasonable allowance for the owner's use of the vehicle. The owner must also be reimbursed for reasonable incidental costs resulting from loss of use of the motor vehicle because of the nonconformity or defect.

When Available

A manufacturer has a reasonable number of attempts to conform a motor vehicle to the applicable warranties. Generally, the manufacturer will have exceeded a reasonable number of attempts, and a consumer has the right to require refund or replacement, whenever: (i) the same nonconformity has been subject to repair four or more times within the first 24 months or 24,000 miles and two of the attempts were within a period of 12 months or 12,000 miles after the date of sale. If it is a safety defect, only half as many repair attempts are required, or

(ii) if the vehicle is out of service for repair for 30 or more cumulative total days in 24 months or 24,000 miles.

f. Notice

The board provides a toll-free telephone number for providing information about a condition or defect that was the basis for repurchase or replacement and publishes an annual report on the motor vehicles ordered repurchased or replaced. The report must list the number of vehicles by brand name and model and include a brief description of the conditions or defects that caused the repurchase or replacement.

Texas Optometry Act.

1. Objective

The Texas Optometry Act protects consumers dealing with those who provide care for the eyes. [Act: Tex. Occ. Code §§ 351.001 et seq.; Tie-in statute: § 351.604).

2. Scope

The Act relates to the practice of optometry and ophthalmic dispensing and related activities. It regulates optometrists, dispensing opticians and the sale and advertising of optical products and creates the Texas Optometry Board.

3. Major Provisions

a. Therapeutic Optometrists

The Act requires a license of anyone engaged in administering and prescribing ophthalmic devices, over-the-counter oral and topical medications for the purpose of diagnosing and treating visual defects, conditions, and diseases. It outlines what a therapeutic optometrist may do, and when such a person must consult with an ophthalmologist. It establishes the education requirements for certification.

b. Establishment of Optometry Board

The Act provides for a regulatory board, establishes the qualifications for membership on the board, and the procedures by which the board will operate.

c. Requirements for License

The Act establishes the requirements for renewal of the annual optometry license. It also sets the terms and conditions under which a license may be refused, revoked or suspended, including fraud, deceit, misrepresentation, incompetence, criminal conviction, or abuse of substances.

d. Deceptive Advertising

The Act prohibits a person from publishing or displaying in any medium a false, deceptive, or misleading advertisement concerning ophthalmic services or materials, such as lenses, frames, and contact lenses. Advertisements must also indicate that a doctor's prescription is required for purchase. If the ad contains a price, it must indicate whether the cost includes the costs of examination and follow-up care, the time limitation on the offer, the limit per customer, total quantity available if no rainchecks are to be given, and the number of contact lenses for any specified price.

e. Professional Responsibility

The Act sets forth rules of professional responsibility. Specifically, it prohibits fee splitting with lay persons or any other physician except in partnership situations and misrepresentation of who is actually an owner or practicing in an establishment. The Act allows the use of trade names, as long as the actual licensed name is also used.

Texas Timeshare Act.

1. Objective

Historically, the term "timeshare" was closely associated with hard sell techniques and misleading advertising. The Texas Timeshare Act regulates the advertising and sale of property interests generally referred to as "timeshares." (Act: Tex. Prop. Code § 221.001 et seq.; Tie-in statute: § 221.071(a)).

2. Scope

The Act applies to timeshare estates or timeshare use.

a. Timeshare Estate

"Timeshare estate" is defined to mean any arrangement under which the purchaser receives a freehold estate or an estate for years in a timeshare property and the right to use an accommodation or amenities, or both, in that property for a timeshare period on a recurring basis.

b. Timeshare Use

"Timeshare use" means any arrangement, other than a hotel or motel operation, whether by lease, rental agreement, license, use agreement or other means, under which the purchaser receives a right to use an accommodation or amenities or both for a timeshare period on a recurring basis, but under which the purchaser does not receive a freehold estate or an estate for years in a timeshare property.

3. Major Provisions

a. Creation of Timeshare regime

The Act requires that any owner or developer of property intended to be used as a timeshare shall file and record a master deed creating a timeshare regime. Once a timeshare regime is created, each individual timeshare interest may be individually conveyed or encumbered and shall be entirely independent of all other time share interests.

b. Registration

A person may not offer or dispose of a timeshare interest unless the timeshare property is registered with the Texas Real Estate Commission in accordance with the Act.

c. Promotional Disclosure

The Act requires that before the use of any promotion in connection with the offering of a timeshare interest, the person who intends to use the promotion shall include certain information in its advertising. For example, the advertising must indicate that the promotion is intended to solicit purchasers of timeshare interests, the full name of the developer and seller, the complete rules of the promotion, and information regarding any prizes or gifts.

d. Timeshare Disclosure Statement

Before signing any agreement or contract to acquire a timeshare interest, the developer must give the purchaser a timeshare disclosure statement. The statement must comply with the Act. Among other provisions, it must include a complete description of the developer and the property as well as a description of the nature of the interest to be acquired and all fees and charges that may arise in connection with the acquisition.

Exceptions

The Act provides several exceptions to its disclosure requirements. For example, if promotional and timeshare disclosures do not need to be provided is the transfer of the interest is gratuitous, pursuant to a court order, by foreclosure, or if it may be cancelled by the purchaser at any time without penalty.

e. Right to Cancel

A purchaser may cancel a contract to purchase a timeshare interest before the sixth day after the date the contract is signed. Attached to each contract shall be a separate page that complies with the requirements of the Act informing the purchaser of this right.

f. Deceptive Practices

The Texas Timeshare Act provides that the following practices are prima facie false, misleading or deceptive.

i) failing to make disclosures required by the Act;

ii) making false or misleading statements of fact concerning the accommodations or amenities;

iii) predicating specific or immediate increases in value without a reasonable basis for such predications;

iv) misrepresenting the conditions under which an interest may be exchanged;

v) representing that a prize, gift or other benefit will be awarded in connection with a promotion with the intent not to award it;

vi) failing to give the customer a copy of the contract, unless the purchaser requests that it be mailed and it is mailed by the next business day;

vii) failing to provide annual fees and expenses or furnishing false information regarding fees and expenses.

Treatment Facilities Marketing Practices Act.

1. Objective

The purpose of this law is to safeguard the public against fraud, deceit, and, misleading marketing practices and to foster and encourage competition and fair dealing by mental health facilities. (Act: Tex. Health & Safety Code § 164.001 et seq.; Tie-in statute: § 164.013).

2. Scope

The Act applies to a treatment facility, defined to mean a chemical dependency facility and a mental health facility.

Exemptions

The Act does not apply to a treatment facility operated by the state of Texas, a federal agency, or a political subdivision, a community center, or, a facility operated by a not-for-profit or nonprofit organization.

3. Major Provisions

a. Soliciting and Contracting with Referral Sources

The Act regulates the soliciting of clients by a treatment facility by requiring that the facility disclose the purpose of any solicitation. For example, in the providing of educational programs to public schools or when contacting any potential referral source.

b. Qualified Mental Health Referral Service

The Act defines a qualified mental health referral service as one that meets all of the requirements of the Act. A treatment facility may not own, operate, manage, or control an intervention and assessment service that makes referrals to a treatment facility unless the service is a qualified mental health referral service as defined under the Act.

c. Disclosures and Representations

i) A treatment facility may not admit a patient without fully disclosing to the patient all relevant information regarding the facility and the patient's treatment. Among the items that must be disclosed in writing are the costs of treatment, the name of the attending physician and the current "patients bill of rights," as adopted by the Texas Department of Mental Health.

ii) A treatment facility may not misrepresent to a patient the availability or amount of insurance coverage available to the patient or the amount and percentage of a charge for which the patient will be billed.

iii) A treatment facility may not represent to a patient who requests to leave a treatment facility against medical advice that the patient will be involuntarily committed or that the patient's insurance company will refuse to pay all of the medical expenses incurred.

d. Prohibited Acts

A person may not advertise, expressly or impliedly, the services of a treatment facility through the use of promises of cure or guarantee of treatment results that cannot be substantiated or any unsubstantiated claims. The Act also prohibits advertising the availability of services unless and until such services are available and requires disclosure of the relationship between the facility and its soliciting agents, employees, or contractors.

Disclosure to Purchaser of Property.

1. Objective

This law is designed to protect a consumer who purchases waterfront property that may be subject to a lawsuit by the State of Texas. (Act: Tex. Nat. Res. Code § 61.001 et seq.; Tie-in statute: § 61.025(d)).

2. Scope

The law applies to any person who sells or conveys an interest, other than a mineral, leasehold, or security interest, in real property locates seaward of the Gulf Intercoastal Waterway to its southernmost point and then seaward to a specific longitudinal line.

3. Major Provisions

Any person selling property subject to this law must include the required statement prior to closing the transaction. Among the most significant requirements of the statement is the following disclosure:

> STRUCTURES ERECTED SEAWARD OF THE VEGATATION LINE (OR OTHER APPLICABLE EASMENT BOUNDRY) OR THAT BECOME SEAWARD OF THE VEGETATION LINE AS A RESULT OF NATURAL PROCESSES ARE SUBJECT TO A LAWSUIT BY THE STATE OF TEXAS TO REMOVE THE STRUCTURES.