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MISCELLANEOUS STATUTES

TEXAS BUSINESS AND COMMERCE CODE CHAPTER 3. NEGOTIABLE INSTRUMENTS

§3.506. PROCESSING FEE BY HOLDER OF PAYMENT DEVICE. (a) For purposes of this section, "payment device" means any check, item, paper or electronic payment, or other payment device used as a medium for payment.

(b) On return of a payment device to the holder following dishonor of the payment device by a payor, the holder, the holder's assignee, agent, or representative, or any other person retained by the holder to seek collection of the face value of the dishonored payment device may charge the drawer or indorser a reasonable processing fee of not more than \$30.

(c) A person may not charge a processing fee to a drawer or indorser under this section if the fee has been collected under Article 102.007(e) or 102.0071, Code of Criminal Procedure. If a processing fee has been collected under this section and the holder subsequently receives a fee collected under Article 102.007(e) or 102.0071, Code of Criminal Procedure, the holder shall immediately refund the fee previously collected from the drawer or indorser.

(d) Notwithstanding Subtitle B, Title 4, Finance Code, or any other law, a contract made under Subtitle B, Title 4, Finance Code, may provide that on return of a dishonored payment device given in payment under the contract, the holder may charge the obligor under the contract the processing fee authorized by this section, and the fee may be added to the unpaid balance owed under the contract. Interest may not be charged on the fee during the term of the contract.

(e) This section does not affect any right or remedy to which the holder of a payment device may be entitled under any rule, written contract, judicial decision, or other statute.

CHAPTER 9. SECURED TRANSACTIONS

§9.203. ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST; PROCEEDS; SUPPORTING OBLIGATIONS; FORMAL REQUISITES. (a) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) Except as otherwise provided in Subsections (c)–(j), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) value has been given;

(2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) one of the following conditions is met:

(A) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) the collateral is not a certificated security and is in the possession of the secured party under Section 9.313 pursuant to the debtor's security agreement;

(C) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under Section 8.301 pursuant to the debtor's security agreement; or

(D) the collateral is deposit accounts, electronic chattel paper, investment property, letter-of-credit rights, or electronic documents, and the secured party has control under Section 7.106, 9.104, 9.105, 9.106, or 9.107 pursuant to the debtor's security agreement.

(c) Subsection (b) is subject to Section 4.210 on the security interest of a collecting bank, Section 5.118 on the security interest of a letter-of-credit issuer or nominated person, Section 9.110 on a security interest arising under Chapter 2 or 2A, and Section 9.206 on security interests in investment property.

(d) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this chapter or by contract:

(1) the security agreement becomes effective to create a security interest in the person's property; or

(2) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) the agreement satisfies Subsection (b)(3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) another agreement is not necessary to make a security interest in the property enforceable.

(f) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by Section 9.315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

(j) If a secured party holds a security interest that applies under this chapter to minerals, including oil and gas, upon their extraction and the security interest also qualifies under applicable law as a lien on those minerals before their extraction, the security interest before and after production is a single continuous and uninterrupted lien on the property. This subsection is a statement of the law of this state as it existed before the effective date of this subsection and applies with respect to minerals, including oil and gas, regardless of when the minerals were extracted.

§9.301. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS. Except as otherwise provided in Sections 9.303 through 9.306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in Subdivision (4), while tangible negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) perfection of a security interest in the goods by filing a fixture filing;

(B) perfection of a security interest in timber to be cut; and

(C) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

§9.303. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN GOODS COVERED BY A CERTIFICATE OF TITLE. (a) This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(b) Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

§9.314. PERFECTION BY CONTROL. (a) A security interest in investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, or electronic documents may be perfected by control of the collateral under Section 7.106, 9.104, 9.105, 9.106, or 9.107.

(b) A security interest in deposit accounts, electronic chattel paper, letter-of-credit rights, or electronic documents is perfected by control under Section 7.106, 9.104, 9.105, or 9.107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) A security interest in investment property is perfected by control under Section 9.106 from the time the secured party obtains control and remains perfected by control until:

(1) the secured party does not have control; and

(2) one of the following occurs:

(A) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) if the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

§9.324. PRIORITY OF PURCHASE-MONEY SECURITY INTERESTS. (a) Except as otherwise provided in Subsection (g), a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in Section 9.327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.

(b) Subject to Subsection (c) and except as otherwise provided in Subsection (g), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in Section 9.330, and, except as otherwise provided in Section 9.327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

- (1) the purchase-money security interest is perfected when the debtor receives possession of the inventory;
- (2) except where excused by Section 9.343 (oil and gas production), the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;
- (3) the holder of the conflicting security interest receives any required notification within five years before the debtor receives possession of the inventory; and
- (4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) Subsections (b)(2)–(4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

- (1) if the purchase-money security interest is perfected by filing, before the date of the filing; or
- (2) if the purchase-money security interest is temporarily perfected without filing or possession under Section 9.312(f), before the beginning of the 20-day period under that subsection.

(d) Subject to Subsection (e) and except as otherwise provided in Subsection (g), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in Section 9.327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

- (1) the purchase-money security interest is perfected when the debtor receives possession of the livestock;
- (2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;
- (3) the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and
- (4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(e) Subsections (d)(2)–(4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

- (1) if the purchase-money security interest is perfected by filing, before the date of the filing; or
- (2) if the purchase-money security interest is temporarily perfected without filing or possession under Section 9.312(f), before the beginning of the 20-day period under that subsection.

(f) Except as otherwise provided in Subsection (g), a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in Section 9.327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) If more than one security interest qualifies for priority in the same collateral under Subsection (a), (b), (d), or (f):

- (1) a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and
- (2) in all other cases, Section 9.322(a) applies to the qualifying security interests.

§9.601. RIGHTS AFTER DEFAULT; JUDICIAL ENFORCEMENT; CONSIGNOR OR BUYER OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, OR PROMISSORY NOTES. (a) After default, a secured party has

the rights provided in this subchapter and, except as otherwise provided in Section 9.602, those provided by agreement of the parties. A secured party:

- (1) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and
 - (2) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.
- (b) A secured party in possession of collateral or control of collateral under Section 7.106, 9.104, 9.105, 9.106, or 9.107 has the rights and duties provided in Section 9.207.
- (c) The rights under Subsections (a) and (b) are cumulative and may be exercised simultaneously.
- (d) Except as otherwise provided in Subsection (g) and Section 9.605, after default, a debtor and an obligor have the rights provided in this subchapter and by agreement of the parties.
- (e) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:
- (1) the date of the perfection of the security interest or agricultural lien in the collateral;
 - (2) the date of filing a financing statement covering the collateral; or
 - (3) any date specified in a statute under which the agricultural lien was created.
- (f) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.
- (g) Except as otherwise provided in Section 9.607(c), this subchapter imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

§9.602. WAIVER AND VARIANCE OF RIGHTS AND DUTIES. Except as otherwise provided in Section 9.624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

- (1) Section 9.207(b)(4)(C), which deals with use and operation of the collateral by the secured party;
- (2) Section 9.210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;
- (3) Section 9.607(c), which deals with collection and enforcement of collateral;
- (4) Sections 9.608(a) and 9.615(c) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;
- (5) Sections 9.608(a) and 9.615(d) to the extent that they require accounting for or payment of surplus proceeds of collateral;
- (6) Section 9.609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;
- (7) Sections 9.610(b), 9.611, 9.613, and 9.614, which deal with disposition of collateral;
- (8) Section 9.615(f), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;
- (9) Section 9.616, which deals with explanation of the calculation of a surplus or deficiency;
- (10) Sections 9.620, 9.621, and 9.622, which deal with acceptance of collateral in satisfaction of obligation;
- (11) Section 9.623, which deals with redemption of collateral;
- (12) Section 9.624, which deals with permissible waivers; and
- (13) Sections 9.625 and 9.626, which deal with the secured party's liability for failure to comply with this chapter.

§9.609. SECURED PARTY'S RIGHT TO TAKE POSSESSION AFTER DEFAULT. (a) After default, a secured party:

- (1) may take possession of the collateral; and
 - (2) without removal, may render equipment unusable and dispose of collateral on the debtor's premises under Section 9.610.
- (b) A secured party may proceed under Subsection (a):
- (1) pursuant to judicial process; or
 - (2) without judicial process, if it proceeds without breach of the peace.
- (c) If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party that is reasonably convenient to both parties.

§9.610. DISPOSITION OF COLLATERAL AFTER DEFAULT. (a) After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(b) Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(c) A secured party may purchase collateral:

(1) at a public disposition; or

(2) at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like that by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) A secured party may disclaim or modify warranties under Subsection (d):

(1) in a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(2) by communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) A record is sufficient to disclaim warranties under Subsection (e) if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

§9.611. NOTIFICATION BEFORE DISPOSITION OF COLLATERAL. (a) In this section, "notification date" means the earlier of the date on which:

(1) a secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(2) the debtor and any secondary obligor waive the right to notification.

(b) Except as otherwise provided in Subsection (d), a secured party that disposes of collateral under Section 9.610 shall send to the persons specified in Subsection (c) a reasonable authenticated notification of disposition.

(c) To comply with Subsection (b), the secured party shall send an authenticated notification of disposition to:

(1) the debtor;

(2) any secondary obligor; and

(3) if the collateral is other than consumer goods:

(A) any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(B) any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) identified the collateral;

(ii) was indexed under the debtor's name as of that date; and

(iii) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Section 9.311(a).

(d) Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) A secured party complies with the requirement for notification prescribed by Subsection (c)(3)(B) if:

(1) not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in Subsection (c)(3)(B); and

(2) before the notification date, the secured party:

(A) did not receive a response to the request for information; or

(B) received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

§9.612. TIMELINESS OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL. (a) Except as otherwise provided in Subsection (b), whether a notification is sent within a reasonable time is a question of fact.

(b) In a transaction other than a consumer transaction, a notification of disposition sent after default and 10 days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

§9.613. CONTENTS AND FORM OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL: GENERAL.

Except in a consumer-goods transaction, the following rules apply:

- (1) The contents of a notification of disposition are sufficient if the notification:
 - (A) describes the debtor and the secured party;
 - (B) describes the collateral that is the subject of the intended disposition;
 - (C) states the method of intended disposition;
 - (D) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and
 - (E) states the time and place of a public sale or the time after which any other disposition is to be made.
- (2) Whether the contents of a notification that lacks any of the information specified in Subdivision (1) are nevertheless sufficient is a question of fact.
- (3) The contents of a notification providing substantially the information specified in Subdivision (1) are sufficient, even if the notification includes:
 - (A) information not specified by that subdivision; or
 - (B) minor errors that are not seriously misleading.
- (4) A particular phrasing of the notification is not required.
- (5) The following form of notification and the form appearing in Section 9.614(3), when completed, each provide sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: _____ [*Name of debtor, obligor, or other person to which the notification is sent*]

From: _____ [*Name, address, and telephone number of secured party*]

Name of Debtor(s): _____ [*Include only if debtor(s) are not an addressee*]

[*For a public disposition:*]

We will sell [or lease or license, *as applicable*] the [*describe collateral*] [to the highest qualified bidder] in public as follows:

Day and Date: _____

Time: _____

Place: _____

[*For a private disposition:*]

We will sell [or lease or license, *as applicable*] the _____ [*describe collateral*] privately sometime after _____ [*day and date*].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, *as applicable*] [for a charge of \$____]. You may request an accounting by calling us at _____ [*telephone number*].

§9.614. CONTENTS AND FORM OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL: CONSUMER-GOODS TRANSACTION. In a consumer-goods transaction, the following rules apply:

- (1) A notification of disposition must provide the following information:
 - (A) the information specified in Section 9.613(1);
 - (B) a description of any liability for a deficiency of the person to which the notification is sent;
 - (C) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under Section 9.623 is available; and
 - (D) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.
- (2) A particular phrasing of the notification is not required.
- (3) The following form of notification, when completed, provides sufficient information:

_____ [*Name and address of secured party*]

_____ [*Date*]

NOTICE OF OUR PLAN TO SELL PROPERTY

_____ [Name and address of any obligor who is also a debtor]

Subject: _____ [Identification of Transaction]

We have your _____ [describe collateral], because you broke promises in our agreement.

[For a public disposition:]

We will sell _____ [describe collateral] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: _____

Time: _____

Place: _____

You may attend the sale and bring bidders if you want.

[For a private disposition:]

We will sell _____ [describe collateral] at private sale sometime after _____ [date]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you _____ [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at _____ [telephone number].

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at _____ [telephone number] [or write us at _____ [secured party's address] _____] and request a written explanation. [We will charge you \$_____ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]

If you need more information about the sale call us at _____ [telephone number] [or write us at _____ [secured party's address] _____].

We are sending this notice to the following other people who have an interest in _____ [describe collateral] or who owe money under your agreement:

_____ [Names of all other debtors and obligors, if any]

(4) A notification in the form of Subdivision (3) is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of Subdivision (3) is sufficient, even if it includes errors in information not required by Subdivision (1), unless the error is misleading with respect to rights arising under this chapter.

(6) If a notification under this section is not in the form of Subdivision (3), law other than this chapter determines the effect of including information not required by Subdivision (1).

§9.615. APPLICATION OF PROCEEDS OF DISPOSITION; LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS. (a) A secured party shall apply or pay over for application the cash proceeds of disposition in the following order to:

(1) the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(2) the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) the secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(B) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) a secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under Subsection (a)(3).

(c) A secured party need not apply or pay over for application noncash proceeds of disposition under this section unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by Subsection (a) and permitted by Subsection (c):

(1) unless Subsection (a)(4) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) the obligor is liable for any deficiency.

(e) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

(1) the debtor is not entitled to any surplus; and

(2) the obligor is not liable for any deficiency.

(f) The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this subchapter to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(1) the transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(2) the amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(g) A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) takes the cash proceeds free of the security interest or other lien;

(2) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

§9.616. EXPLANATION OF CALCULATION OF SURPLUS OR DEFICIENCY. (a) In this section:

(1) "Explanation" means a writing that:

(A) states the amount of the surplus or deficiency;

(B) provides an explanation in accordance with Subsection (c) of how the secured party calculated the surplus or deficiency;

(C) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(D) provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) "Request" means a record:

(A) authenticated by a debtor or consumer obligor;

(B) requesting that the recipient provide an explanation; and

(C) sent after disposition of the collateral under Section 9.610.

(b) In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under Section 9.615, the secured party shall:

(1) send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

(B) within 14 days after receipt of a request; or

(2) in the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) To comply with Subsection (a)(1)(B), a writing must provide the following information in the following order:

(1) the aggregate amount of obligations secured by the security interest under which the disposition was made and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A) if the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession; or

(B) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition;

(2) the amount of proceeds of the disposition;

(3) the aggregate amount of the obligations after deducting the amount of proceeds;

(4) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in Subdivision (1); and

(6) the amount of the surplus or deficiency.

(d) A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of Subsection (a) is sufficient, even if it includes minor errors that are not seriously misleading.

(e) A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to Subsection (b)(1). The secured party may require payment of a charge not exceeding \$25 for each additional response.

§9.620. ACCEPTANCE OF COLLATERAL IN FULL OR PARTIAL SATISFACTION OF OBLIGATION; COMPULSORY DISPOSITION OF COLLATERAL. (a) Except as otherwise provided in Subsection (g), a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(1) the debtor consents to the acceptance under Subsection (c);

(2) the secured party does not receive, within the time set forth in Subsection (d), a notification of objection to the proposal authenticated by:

(A) a person to which the secured party was required to send a proposal under Section 9.621; or

(B) any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;

(3) if the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and

(4) Subsection (e) does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to Section 9.624.

(b) A purported or apparent acceptance of collateral under this section is ineffective unless:

(1) the secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and

(2) the conditions of Subsection (a) are met.

(c) For purposes of this section:

(1) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and

(2) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:

(A) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(B) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(C) does not receive a notification of objection authenticated by the debtor within 20 days after the proposal is sent.

(d) To be effective under Subsection (a)(2), a notification of objection must be received by the secured party:

(1) in the case of a person to which the proposal was sent pursuant to Section 9.621, within 20 days after notification was sent to that person; and

(2) in other cases:

(A) within 20 days after the last notification was sent pursuant to Section 9.621; or

(B) if a notification was not sent, before the debtor consents to the acceptance under Subsection (c).

(e) A secured party that has taken possession of collateral shall dispose of the collateral pursuant to Section 9.610 within the time specified in Subsection (f) if:

(1) 60 percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(2) 60 percent of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.

- (f) To comply with Subsection (e), the secured party shall dispose of the collateral:
 - (1) within 90 days after taking possession; or
 - (2) within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.
- (g) In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

§9.621. NOTIFICATION OF PROPOSAL TO ACCEPT COLLATERAL. (a) A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

- (1) any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;
- (2) any other secured party or lienholder that, 10 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:
 - (A) identified the collateral;
 - (B) was indexed under the debtor's name as of that date; and
 - (C) was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and
- (3) any other secured party that, 10 days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Section 9.311(a).

(b) A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in Subsection (a).

§9.622. EFFECT OF ACCEPTANCE OF COLLATERAL. (a) A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

- (1) discharges the obligation to the extent consented to by the debtor;
- (2) transfers to the secured party all of a debtor's rights in the collateral;
- (3) discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and
- (4) terminates any other subordinate interest.

(b) A subordinate interest is discharged or terminated under Subsection (a), even if the secured party fails to comply with this chapter.

§9.623. RIGHT TO REDEEM COLLATERAL. (a) A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

- (b) To redeem collateral, a person shall tender:
 - (1) fulfillment of all obligations secured by the collateral; and
 - (2) the reasonable expenses and attorneys' fees described in Section 9.615(a)(1).
- (c) A redemption may occur at any time before a secured party:
 - (1) has collected collateral under Section 9.607;
 - (2) has disposed of collateral or entered into a contract for its disposition under Section 9.610; or
 - (3) has accepted collateral in full or partial satisfaction of the obligation it secures under Section 9.622.

§9.624. WAIVER. (a) A debtor or secondary obligor may waive the right to notification of disposition of collateral under Section 9.611 only by an agreement to that effect entered into and authenticated after default.

(b) A debtor may waive the right to require disposition of collateral under Section 9.620(e) only by an agreement to that effect entered into and authenticated after default.

(c) Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under Section 9.623 only by an agreement to that effect entered into and authenticated after default.

CHAPTER 20. REGULATION OF CONSUMER CREDIT REPORTING AGENCIES

§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.

§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.

§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.

§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.

§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.

§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.

§20.034. REQUESTING SECURITY FREEZE. (a) On written request sent by certified mail that includes proper identification provided by a consumer and a copy of a valid police report, investigative report, or complaint made under Section 32.51, Penal Code, 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).

§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.

§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.

§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) A consumer reporting agency may not charge a fee for a request under Subsection (a) or (b).

§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;
- (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.

§20.0385. APPLICABILITY OF SECURITY ALERT AND SECURITY FREEZE. 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.

§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.

§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. The amount of the charge may not exceed \$8. On January 1 of

each year, a consumer reporting agency may increase the charge for disclosure to a consumer or for placing 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; or

(5) a request for a security alert made by a consumer.

§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; or

(5) 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)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.

§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

¹ House Bill 1893, 79th Legislature, Regular Session, as enrolled added §20.05(b-1) which applies only to a consumer report furnished by a consumer reporting agency on or after the effective date of this Act. A consumer report furnished before the effective date of this Act is covered by the law in effect on the date the consumer report was furnished, and the former law is continued in effect for that purpose. This Act takes effect June 17, 2005.

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.

§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.

§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.

§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.

§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.

§20.11.² 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.

§20.11.³ 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.

§20.12. DECEPTIVE TRADE PRACTICE. A violation of this chapter is a false, misleading, or deceptive act or practice under Subchapter E, Chapter 17.

§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

² House Bill 2409, 78th Legislature, Regular Session, as enrolled added §20.11(a)-(c).

³ Senate Bill 473, 78th Legislature, Regular Session, as enrolled added §§20.11, 20.12, and 20.13.

(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.

CHAPTER 35. MISCELLANEOUS

§35.53. NOTICE OF LAW; DISPUTE RESOLUTION FORUM APPLICABLE TO CONTRACT. (a) This section applies to a contract only if:

(1) the contract is for the sale, lease, exchange, or other disposition for value of goods for the price, rental, or other consideration of \$50,000 or less;

(2) any element of the execution of the contract occurred in this state and a party to the contract is:

(A) an individual resident of this state; or

(B) an association or corporation created under the laws of this state or having its principal place of business in this state; and

(3) Section 1.301 of this code does not apply to the contract.

(b) If a contract to which this section applies contains a provision making the contract or any conflict arising under the contract subject to the laws of another state, to litigation in the courts of another state, or to arbitration in another state, the provisions must be set out conspicuously in print, type, or other form of writing that is bold-faced, capitalized, underlined, or otherwise set out in such a manner that a reasonable person against whom the provision may operate would notice. If the provision is not set out as provided by this subsection, the provision is voidable by a party against whom it is sought to be enforced.

(c) *Repealed by Acts 1993, 73rd Leg., ch. 570, Sec. 16(4), eff. Sept. 1, 1993.*

§35.61. BUSINESS RECEIPT CONTAINING CREDIT CARD OR DEBIT CARD INFORMATION. (a) This section does not apply to a transaction in which the sole means of recording a person's credit card or debit card account number on a receipt or other document evidencing the transaction is by handwriting or by an imprint or copy of the credit card or debit card.

(b) A person that accepts a credit card or debit card for the transaction of business may not print more than the last four digits of the credit card or debit card account number or the month and year of the credit card's or debit card's expiration date on a receipt or other document that evidences the transaction and that is provided to a cardholder.

(c) A person who provides, leases, or sells a cash register or other machine used to print receipts or other documents evidencing credit card or debit card transactions shall provide notice of the requirements of this section to the recipient, lessee, or buyer, as applicable, of the machine.

(d) A court may not certify an action brought under this section as a class action.

(e) A person who violates Subsection (b) is liable to the state for a civil penalty in an amount not to exceed \$500 for each calendar month during which a violation occurs. The civil penalty may not be imposed for more than one violation that occurs in a month. The attorney general or the prosecuting attorney in the county in which the violation occurs may bring suit to recover the civil penalty imposed under this section.

(f) The attorney general may bring an action in the name of the state to restrain or enjoin a person from violating Subsection (b).

CHAPTER 39. CANCELLATION OF CERTAIN CONSUMER TRANSACTIONS

§39.001. DEFINITIONS. In this chapter:

(1) "Consumer" means an individual who seeks or acquires real or personal property, services, money, or credit for personal, family, or household purposes.

(2) "Consumer transaction" means a transaction in which one or more of the parties is a consumer.

(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 any approved branch and any registered loan production office.

§39.002. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a consumer transaction in which 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, and 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:

- (1) for the purchase of goods or services for consideration that exceeds \$25 payable in installments or in cash; or
- (2) for 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 at 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.

§39.003. CONSUMER'S RIGHT TO CANCEL. In addition to any other rights or remedies available, a consumer may cancel a consumer transaction to which this chapter applies not later than midnight of the third business day after the date the consumer signs an agreement or offer to purchase.

§39.004. NOTICE BY MERCHANT. (a) A merchant must provide a consumer with a complete receipt or copy of any 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) show the date of the transaction;
- (3) contain the name and address of the merchant; and
- (4) contain 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, a statement in bold-faced 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."

(c) The merchant must attach to the document provided under Subsection (a) 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 Subsection (a); and
- (3) contain the following information and statements in 10-point bold-faced 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) "

(d) 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 this section.

(e) A consumer transaction in which the contract price does not exceed \$200 complies with the notice requirements of this section 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 them, 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 set forth on the face or reverse side of the sales ticket.

§39.005. MERCHANT'S COMPENSATION. A merchant is not entitled to compensation for services performed under a consumer transaction if the consumer cancels the transaction under this chapter.

§39.006. RETENTION OF GOODS OR REAL PROPERTY. Until a merchant has complied with this chapter, a consumer with possession of goods or right or title to real property delivered by the merchant:

(1) may retain possession of the goods or 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.

§39.007. DUTY OF CONSUMER. (a) Within a reasonable time after a cancellation under this chapter, the consumer on demand must tender to the merchant any goods or 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.

§39.008. VIOLATIONS. (a) A merchant may not:

(1) fail to include on both copies of the form described by Section 39.004(c):

(A) the name of the merchant;

(B) the address of the merchant's place of business;

(C) the date of the transaction; and

(D) a date not earlier than the third business day after the date of the transaction by which the consumer must give notice of cancellation;

(2) 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;

(3) at the time the consumer signs the contract or purchases the goods, services, or real property, fail to inform the consumer orally of the right to cancel the transaction;

(4) misrepresent in any manner the consumer's right to cancel;

(5) negotiate, transfer, sell, or assign any 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 was signed or the goods or services were purchased;

(6) 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 to abandon any shipped or delivered goods; or

(7) fail or refuse to honor a valid cancellation under this chapter by a consumer and fail before the end of the 10th business day after the date the merchant receives the 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 any 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.

(b) A sale or contract entered into under a consumer transaction in violation of Subsection (a) is void.

(c) A merchant who violates a provision of this chapter is liable to the consumer for:

(1) any actual damages suffered by the consumer as a result of the violation;

(2) reasonable attorney's fees; and

(3) court costs.

(d) 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.

(e) 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.

§39.009. 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.

TEXAS EDUCATION CODE
CHAPTER 53B. HIGHER EDUCATION LOAN AUTHORITIES

§53B.47. GUARANTEED STUDENT LOANS AND ALTERNATE EDUCATION LOANS; BONDS FOR THE PURCHASE OF EDUCATION LOAN NOTES. (a) An authority may, upon approval of the city or cities which created the same, issue revenue bonds or otherwise borrow money to obtain funds to purchase or to make guaranteed student loans. Revenue bonds issued for such purpose shall be issued in accordance with and with the effect provided in this chapter. Such bonds shall be payable from and secured by a pledge of revenues derived from or by reason of the ownership of guaranteed student loans and investment income after deduction of such expenses of operating the loan program as may be specified by the bond resolution or trust indenture.

(b) An authority may cause money to be expended to make or purchase for its account guaranteed student loans that are guaranteed by the Texas Guaranteed Student Loan Corporation or that are executed by or on behalf of students who:

- (1) are residents of this state; or
- (2) have been admitted to attend an accredited institution within this state.

(c) The authority shall contract with a nonprofit corporation, organized under the laws of this state, whereby such corporation will provide the reports and other information required for continued participation in the federally guaranteed loan program provided by the Higher Education Act of 1965, as amended.

(d) The authority, as a municipal corporation of the state, is charged with a portion of the responsibility of the state to provide educational opportunities in keeping with all applicable state and federal laws. Nothing in this section shall be construed as a prohibition against establishing policies to limit the purchase of guaranteed student loans to guaranteed student loans executed by students attending school in a certain geographical area or by students who are residents of the area.

(e) In addition to establishing an authority under the provisions of this chapter, the governing body of a city or cities may request a qualified nonprofit corporation to exercise the powers enumerated and provided in this section for and on its behalf. If the qualified nonprofit corporation agrees to exercise such powers, the directors of such corporation shall thereafter be appointed by and be subject to removal by the governing body of the city or cities, and except as provided in this section, Sections 53B.14, 53B.15, 53B.31, 53B.32, 53B.38, and 53B.41 through 53B.43 apply to and govern such corporation, its procedures, and bonds. Notwithstanding the provisions of Section 53B.42, a qualified nonprofit corporation which has been requested to exercise the powers enumerated and requested in this section may invest or cause a trustee or custodian on behalf of such qualified nonprofit corporation to invest its funds, including the proceeds of any bonds, notes, or other obligations issued by such qualified nonprofit corporation and any monies which are pledged to the payment thereof, in:

(1) certificates of deposit or other time or demand accounts of banks and savings and loan associations which are insured by the Federal Deposit Insurance Corporation, provided the amount of any certificate of deposit in excess of that covered by such insurance must be secured by a first and prior pledge of government obligations having a market value of not less than 100 percent of the excess unless a nationally recognized rating agency has given the senior securities of the bank issuing the certificate of deposit the highest or next to the highest investment rating available;

- (2) repurchase agreements;
- (3) guaranteed student loans and alternative education loans; or
- (4) a security issued by another nonprofit corporation acting under this section.

(f) A nonprofit corporation, whether acting at the request of a city or cities under Subsection (e) or acting as a servicer or administrator for another corporation that purchases guaranteed student loans, or that on its own behalf issues securities or otherwise obtains funds to purchase or make guaranteed student loans or alternative education loans, may:

(1) exercise the powers granted by the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes);

- (2) service loans purchased or made from its funds or contract with another person to service the loans;
- (3) grant a security interest in a trust estate securing its securities; and
- (4) make investments as authorized by Subsection (e).

(g) A security interest in a trust estate granted under Subsection (f)(3) is attached and perfected at the time the security interest is executed and delivered by the nonprofit corporation. The security interest grants to the secured party a first prior perfected security interest in the trust estate for the benefit of the secured party without regard to the location of the assets that constitute the trust estate.

(h) An alternative education loan may be made under this section only by a qualified alternative education loan lender. An alternative education loan may not be in an amount in excess of the difference between the cost of attendance and the amount of other student assistance to the student, other than loans under Section 428B(a)(1), Higher Education Act of 1965 (20 U.S.C. Section 1078-2) (relating to parent loans), for which the student borrower may be eligible. An alternative

education loan covered by this subsection is subject to Chapter 342, Finance Code, as applicable, except that:

(1) the maximum interest rate on the loan may not exceed the rate permitted under Subchapter A, Chapter 303, Finance Code; and

(2) application and origination fees may be agreed to by the parties and assessed at the inception of the loan, provided that if any such fees constitute additional interest under applicable law, the effective rate of interest agreed to over the stated term of the loan may not exceed the rate allowed by Subchapter A, Chapter 303, Finance Code, and accrued unpaid interest may be added to unpaid principal at the beginning of the agreed repayment period at the borrower's option and in accordance with the terms of the agreement for purposes of determining the total principal amount due at the inception of the repayment period.

(i) An authority or nonprofit corporation making education loans under this section is exempt from the licensing requirements of Chapter 342, Finance Code.

TEXAS GOVERNMENT CODE
CHAPTER 83. CERTAIN UNAUTHORIZED PRACTICE OF LAW

§83.001. PROHIBITED ACTS. (a) A person, other than a person described in Subsection (b), may not charge or receive, either directly or indirectly, any compensation for all or any part of the preparation of a legal instrument affecting title to real property, including a deed, deed of trust, note, mortgage, and transfer or release of lien.

(b) This section does not apply to:

(1) an attorney licensed in this state;

(2) a licensed real estate broker or salesperson performing the acts of a real estate broker pursuant to Chapter 1101, Occupations Code; or

(3) a person performing acts relating to a transaction for the lease, sale, or transfer of any mineral or mining interest in real property.

(c) This section does not prevent a person from seeking reimbursement for costs incurred by the person to retain a licensed attorney to prepare an instrument.

§83.002. EXPENSES. This chapter does not prevent an attorney from paying secretarial, paralegal, or other ordinary and reasonable expenses necessarily and actually incurred by the attorney for the preparation of legal instruments.

§83.003. FORMS. This chapter does not prevent a person from completing lease or rental forms that:

(1) have been prepared by an attorney licensed in this state and approved by the attorney for the particular kind of transaction involved; or

(2) have been prepared by the property owner or prepared by an attorney and required by the property owner.

§83.004. CUMULATIVE REMEDIES. This chapter is not exclusive and does not limit or restrict the definition of the practice of law in the State Bar Act (Chapter 81). This chapter does not limit or restrict any remedy provided in the State Bar Act or any other law designed to eliminate the unauthorized practice of law by lay persons and lay agencies.

§83.005. RECOVERY. A person who pays a fee prohibited by this chapter may bring suit for and is entitled to:

(1) recovery of the fee paid;

(2) damages equal to three times the fee paid; and

(3) court costs and reasonable and necessary attorney's fees.

§83.006. UNAUTHORIZED PRACTICE OF LAW. A violation of this chapter constitutes the unauthorized practice of law and may be enjoined by a court of competent jurisdiction.

**TEXAS HEALTH AND SAFETY CODE
CHAPTER 382. CLEAN AIR ACT**

§382.203. VEHICLES SUBJECT TO PROGRAM; EXEMPTIONS. (a) The inspection and maintenance program applies to any gasoline-powered vehicle that is:

- (1) required to be registered in and is primarily operated in an affected county; and
- (2) at least two and less than 25 years old; or
- (3) subject to test-on-resale requirements under Section 548.3011, Transportation Code.

(b) In addition to a vehicle described by Subsection (a), the program applies to:

- (1) a vehicle with United States governmental plates primarily operated in an affected county;
- (2) a vehicle operated on a federal facility in an affected county; and
- (3) a vehicle primarily operated in an affected county that is exempt from motor vehicle registration requirements or eligible under Chapter 502, Transportation Code, to display an "exempt" license plate.

(c) The Department of Public Safety of the State of Texas by rule may waive program requirements, in accordance with standards adopted by the commission, for certain vehicles and vehicle owners, including:

(1) the registered owner of a vehicle who cannot afford to comply with the program, based on reasonable income standards;

(2) a vehicle that cannot be brought into compliance with emissions standards by performing repairs;

(3) a vehicle:

(A) on which at least \$100 has been spent to bring the vehicle into compliance; and

(B) that the department:

(i) can verify was driven fewer than 5,000 miles since the last safety inspection; and

(ii) reasonably determines will be driven fewer than 5,000 miles during the period before the next safety inspection is required; and

(4) a vehicle for which parts are not readily available.

(d) The program does not apply to a:

(1) motorcycle;

(2) slow-moving vehicle as defined by Section 547.001, Transportation Code; or

(3) vehicle that is registered but not operated primarily in a county or group of counties subject to a motor vehicle emissions inspection program established under Subchapter F, Chapter 548, Transportation Code.

TEXAS INSURANCE CODE
CHAPTER 549. PROHIBITED PRACTICES RELATING TO PROPERTY INSURANCE

§549.0551. REQUIRING CERTAIN AMOUNTS OF COVERAGE. (a) A lender may not require as a condition of financing a residential mortgage or providing other financing arrangements for residential property, including a mobile or manufactured home, that a borrower purchase homeowners insurance coverage, mobile or manufactured home insurance coverage, or other residential property insurance coverage in an amount that exceeds the replacement value of the dwelling and its contents, regardless of the amount of the mortgage or other financing arrangement entered into by the borrower.

(b) For purposes of this section, a lender may not include the fair market value of the land on which a dwelling is located in the replacement value of the dwelling and its contents.

TEXAS PROPERTY CODE
CHAPTER 41. INTERESTS IN LAND

§41.002. DEFINITION OF HOMESTEAD. (a) If used for the purposes of an urban home or as both an urban home and a place to exercise a calling or business, the homestead of a family or a single, adult person, not otherwise entitled to a homestead, shall consist of not more than 10 acres of land which may be in one or more contiguous lots, together with any improvements thereon.

(b) If used for the purposes of a rural home, the homestead shall consist of:

(1) for a family, not more than 200 acres, which may be in one or more parcels, with the improvements thereon;

or

(2) for a single, adult person, not otherwise entitled to a homestead, not more than 100 acres, which may be in one or more parcels, with the improvements thereon.

(c) A homestead is considered to be urban if, at the time the designation is made, the property is:

(1) located within the limits of a municipality or its extraterritorial jurisdiction or a platted subdivision; and

(2) served by police protection, paid or volunteer fire protection, and at least three of the following services provided by a municipality or under contract to a municipality:

(A) electric;

(B) natural gas;

(C) sewer;

(D) storm sewer; and

(E) water.

(d) The definition of a homestead as provided in this section applies to all homesteads in this state whenever created.

§41.005. VOLUNTARY DESIGNATION OF HOMESTEAD. (a) If a rural homestead of a family is part of one or more parcels containing a total of more than 200 acres, the head of the family and, if married, that person's spouse may voluntarily designate not more than 200 acres of the property as the homestead. If a rural homestead of a single adult person, not otherwise entitled to a homestead, is part of one or more parcels containing a total of more than 100 acres, the person may voluntarily designate not more than 100 acres of the property as the homestead.

(b) If an urban homestead of a family, or an urban homestead of a single adult person not otherwise entitled to a homestead, is part of one or more contiguous lots containing a total of more than 10 acres, the head of the family and, if married, that person's spouse or the single adult person, as applicable, may voluntarily designate not more than 10 acres of the property as the homestead.

(c) Except as provided by Subsection (e) or Subchapter B, to designate property as a homestead, a person or persons, as applicable, must make the designation in an instrument that is signed and acknowledged or proved in the manner required for the recording of other instruments. The person or persons must file the designation with the county clerk of the county in which all or part of the property is located. The clerk shall record the designation in the county deed records. The designation must contain:

(1) a description sufficient to identify the property designated;

(2) a statement by the person or persons who executed the instrument that the property is designated as the homestead of the person's family or as the homestead of a single adult person not otherwise entitled to a homestead;

(3) the name of the current record title holder of the property; and

(4) for a rural homestead, the number of acres designated and, if there is more than one survey, the number of acres in each.

(d) A person or persons, as applicable, may change the boundaries of a homestead designated under Subsection (c) by executing and recording an instrument in the manner required for a voluntary designation under that subsection. A change under this subsection does not impair rights acquired by a party before the change.

(e) Except as otherwise provided by this subsection, property on which a person receives an exemption from taxation under Section 11.43, Tax Code, is considered to have been designated as the person's homestead for purposes of this subchapter if the property is listed as the person's residence homestead on the most recent appraisal roll for the appraisal district established for the county in which the property is located. If a person designates property as a homestead under Subsection (c) or Subchapter B and a different property is considered to have been designated as the person's homestead under this subsection, the designation under Subsection (c) or Subchapter B, as applicable, prevails for purposes of this chapter.

(f) If a person or persons, as applicable, have not made a voluntary designation of a homestead under this section as of the time a writ of execution is issued against the person, any designation of the person's or persons' homestead must be made in accordance with Subchapter B.

(g) An instrument that made a voluntary designation of a homestead in accordance with prior law and that is on file with the county clerk on September 1, 1987, is considered a voluntary designation of a homestead under this section.

§41.006. CERTAIN SALES OF HOMESTEAD. (a) Except as provided by Subsection (c), any sale or purported sale in whole or in part of a homestead at a fixed purchase price that is less than the appraised fair market value of the property at the time of the sale or purported sale, and in connection with which the buyer of the property executes a lease of the property to the seller at lease payments that exceed the fair rental value of the property, is considered to be a loan with all payments made from the seller to the buyer in excess of the sales price considered to be interest subject to Title 4, Finance Code.

(b) The taking of any deed in connection with a transaction described by this section is a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code, and the deed is void and no lien attaches to the homestead property as a result of the purported sale.

(c) This section 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.

§41.007. HOME IMPROVEMENT CONTRACT. (a) A contract described by Section 41.001(b)(3) must contain the following warning conspicuously printed, stamped, or typed in a size equal to at least 10-point bold type or computer equivalent, next to the owner's signature line on the contract:

"IMPORTANT NOTICE: You and your contractor are responsible for meeting the terms and conditions of this contract. If you sign this contract and you fail to meet the terms and conditions of this contract, you may lose your legal ownership rights in your home. KNOW YOUR RIGHTS AND DUTIES UNDER THE LAW."

(b) A violation of Subsection (a) 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 the provisions of the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code).

§41.008. CONFLICT WITH FEDERAL LAW. To the extent of any conflict between this subchapter and any federal law that imposes an upper limit on the amount, including the monetary amount or acreage amount, of homestead property a person may exempt from seizure, this subchapter prevails to the extent allowed under federal law.

TEXAS TAX CODE
CHAPTER 152. TAXES ON SALE, RENTAL, AND USE OF MOTOR VEHICLES

§152.047. COLLECTION OF TAX ON SELLER-FINANCED SALE. (a) Except as inconsistent with this chapter and rules adopted under this chapter, the seller of a motor vehicle shall report and pay the tax imposed on a seller-financed sale to the comptroller on the seller's receipts from seller-financed sales in the same manner as the sales tax is reported and paid by a retailer under Sections 151.401, 151.402, 151.405, 151.406, 151.409, 151.423, 151.424, and 151.425.

(b) If a note, mortgage, account receivable, or other document evidencing the purchaser's indebtedness to the seller of a vehicle sold subject to a seller-financed sale does not bear interest, it will be conclusively presumed that the total consideration for the sale is principal.

(c) If a note, mortgage, account receivable, or other document evidencing the purchaser's indebtedness to the seller of a vehicle sold subject to a seller-financed sale bears interest, it is conclusively presumed that interest accrues and is paid by the purchaser on a straight line basis.

(d) The seller shall add the tax imposed on a seller-financed sale to the sales price of the vehicle sold, and when added, the tax is:

- (1) a part of the sales price;
- (2) a debt owed to the seller by the purchaser; and
- (3) recoverable at law in the same manner as the sales price.

(e) Regardless of the accounting method used by the seller, the seller shall collect and pay the tax imposed on a seller-financed sale to the comptroller as the seller receives the proceeds of the sale.

(f) If the seller fails to apply, not later than the 60th day after the date the motor vehicle is delivered to the purchaser, for registration and a Texas certificate of title for a motor vehicle sold in a seller-financed sale in accordance with Section 152.069, the seller is liable for all unpaid tax on the total consideration, and the tax is due and must be sent to the comptroller with the first report after the expiration of the prescribed period.

(g) If a seller factors, assigns, or otherwise transfers the right to receive payments, all unpaid tax is due on the total consideration not reported at the time the agreement is factored, assigned, or otherwise transferred. The seller shall report and submit the tax in the report period in which the right to receive the payment is factored, assigned, or otherwise transferred. The seller may not take a deduction in the amount of tax due if a transfer at a discount is made.

(h) The comptroller may proceed against the purchaser in a seller-financed sale for the amount of any tax not paid by the purchaser.

(i) The comptroller shall adopt rules and promulgate forms necessary to implement this section.

§152.106. PROHIBITED ADVERTISING; CRIMINAL PENALTY. (a) A person who is required by Chapter 503, Transportation Code, to hold a dealer's general distinguishing number commits an offense if the person directly or indirectly advertises, holds out, or states to a customer or to the public that the person:

- (1) will assume, absorb, or refund a part of the tax imposed by this chapter; or
- (2) will not add the tax imposed by this chapter to the sales price of the motor vehicle sold, leased, or rented.

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

TEXAS TRANSPORTATION CODE
CHAPTER 548. COMPULSORY INSPECTION OF VEHICLES

§548.102. TWO-YEAR INITIAL INSPECTION PERIOD FOR PASSENGER CAR OR LIGHT TRUCK.

- (a) The initial inspection period is two years for a passenger car or light truck that:
- (1) is sold in this state;
 - (2) has not been previously registered in this or another state; and
 - (3) on the date of sale is of the current or preceding model year.

(b) This section does not affect a requirement that a motor vehicle emission inspection be conducted during an initial inspection period in a county covered by an inspection and maintenance program approved by the United States Environmental Protection Agency under Section 548.301 and the Clean Air Act (42 U.S.C. Section 7401 *et seq.*).

§548.503. INITIAL TWO-YEAR INSPECTION OF PASSENGER CAR OR LIGHT TRUCK. (a) The fee for inspection of a passenger car or light truck under Section 548.102 shall be set by the department by rule on or before September 1 of each year. A fee set by the department under this subsection must be based on the costs of producing certificates, providing inspections, and administering the program, but may not be less than \$21.75.

(b) The department shall require an inspection station to make an advance payment of \$14.75 for a certificate to be issued under this section. Additional payment may not be required of the station for the certificate. The inspection station may waive the fee due from the owner of the vehicle inspected. A refund for an unissued certificate shall be made in the same manner as provided for other certificate refunds.

**TEXAS CONSTITUTION
ARTICLE 16. GENERAL PROVISIONS**

§11. USURY; RATE OF INTEREST IN ABSENCE OF LEGISLATION. The Legislature shall have authority to classify loans and lenders, license and regulate lenders, define interest and fix maximum rates of interest; provided, however, in the absence of legislation fixing maximum rates of interest all contracts for a greater rate of interest than ten per centum (10%) per annum shall be deemed usurious; provided, further, that in contracts where no rate of interest is agreed upon, the rate shall not exceed six per centum (6%) per annum. Should any regulatory agency, acting under the provisions of this Section, cancel or refuse to grant any permit under any law passed by the Legislature; then such applicant or holder shall have the right of appeal to the courts and granted a trial de novo as that term is used in appealing from the justice of peace court to the county court. (Amended Aug. 11, 1891, and Nov. 8, 1960.)

§50. HOMESTEAD; PROTECTION FROM FORCED SALE; MORTGAGES, TRUST DEEDS AND LIENS. (a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for:

- (1) the purchase money thereof, or a part of such purchase money;
- (2) the taxes due thereon;
- (3) an owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;
- (4) the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner;
- (5) work and material used in constructing new improvements thereon, if contracted for in writing, or work and material used to repair or renovate existing improvements thereon if:
 - (A) the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead;
 - (B) the contract for the work and material is not executed by the owner or the owner's spouse before the fifth day after the owner makes written application for any extension of credit for the work and material, unless the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing;
 - (C) the contract for the work and material expressly provides that the owner may rescind the contract without penalty or charge within three days after the execution of the contract by all parties, unless the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing; and
 - (D) the contract for the work and material is executed by the owner and the owner's spouse only at the office of a third-party lender making an extension of credit for the work and material, an attorney at law, or a title company;
- (6) an extension of credit that:
 - (A) is secured by a voluntary lien on the homestead created under a written agreement with the consent of each owner and each owner's spouse;
 - (B) is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the extension of credit is made;
 - (C) is without recourse for personal liability against each owner and the spouse of each owner, unless the owner or spouse obtained the extension of credit by actual fraud;
 - (D) is secured by a lien that may be foreclosed upon only by a court order;
 - (E) does not require the owner or the owner's spouse to pay, in addition to any interest, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit;
 - (F) is not a form of open-end account that may be debited from time to time or under which credit may be extended from time to time unless the open-end account is a home equity line of credit;
 - (G) is payable in advance without penalty or other charge;
 - (H) is not secured by any additional real or personal property other than the homestead;
 - (I) is not secured by homestead property designated for agricultural use as provided by statutes governing property tax, unless such homestead property is used primarily for the production of milk;

(J) may not be accelerated because of a decrease in the market value of the homestead or because of the owner's default under other indebtedness not secured by a prior valid encumbrance against the homestead;

(K) is the only debt secured by the homestead at the time the extension of credit is made unless the other debt was made for a purpose described by Subsections (a)(1)-(a)(5) or Subsection (a)(8) of this section;

(L) is scheduled to be repaid:

(i) in substantially equal successive periodic installments, not more often than every 14 days and not less often than monthly, beginning no later than two months from the date the extension of credit is made, each of which equals or exceeds the amount of accrued interest as of the date of the scheduled installment; or

(ii) if the extension of credit is a home equity line of credit, in periodic payments described under Subsection (t)(8) of this section;

(M) is closed not before:

(i) the 12th day after the later of the date that the owner of the homestead submits an application to the lender for the extension of credit or the date that the lender provides the owner a copy of the notice prescribed by Subsection (g) of this section;

(ii) one business day after the date that the owner of the homestead receives a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the documentation to the owner or the lender may modify previously provided documentation on the date of closing; and

(iii) the first anniversary of the closing date of any other extension of credit described by Subsection (a)(6) of this section secured by the same homestead property, except a refinance described by Paragraph (Q)(x)(f) of this subdivision;

(N) is closed only at the office of the lender, an attorney at law, or a title company;

(O) permits a lender to contract for and receive any fixed or variable rate of interest authorized under statute;

(P) is made by one of the following that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside or the property proposed to secure the loans is located in a certain area:

(i) a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States;

(ii) a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans;

(iii) a person licensed to make regulated loans, as provided by statute of this state;

(iv) a person who sold the homestead property to the current owner and who provided all or part of the financing for the purchase;

(v) a person who is related to the homestead property owner within the second degree of affinity or consanguinity; or

(vi) a person regulated by this state as a mortgage broker; and

(Q) is made on the condition that:

(i) the owner of the homestead is not required to apply the proceeds of the extension of credit to repay another debt except debt secured by the homestead or debt to another lender;

(ii) the owner of the homestead not assign wages as security for the extension of credit;

(iii) the owner of the homestead not sign any instrument in which blanks are left to be filled in;

(iv) the owner of the homestead not sign a confession of judgment or power of attorney to the lender or to a third person to confess judgment or to appear for the owner in a judicial proceeding;

(v) the lender, at the time the extension of credit is made, provide the owner of the homestead a copy of all documents signed by the owner related to the extension of credit;

(vi) the security instruments securing the extension of credit contain a disclosure that the extension of credit is the type of credit defined by Section 50(a)(6), Article XVI, Texas Constitution;

(vii) within a reasonable time after termination and full payment of the extension of credit, the lender cancel and return the promissory note to the owner of the homestead and give the owner, in recordable form, a release of the lien securing the extension of credit or a copy of an endorsement and assignment of the lien to a lender that is refinancing the extension of credit;

(viii) the owner of the homestead and any spouse of the owner may, within three days after the extension of credit is made, rescind the extension of credit without penalty or charge;

(ix) the owner of the homestead and the lender sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made;

(x) except as provided by Subparagraph (xi) of this paragraph, the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the lender or holder fails to comply with the lender's or holder's obligations under the extension of credit and fails to correct the failure to comply not later than the 60th day after the date the lender or holder is notified by the borrower of the lender's failure to comply by:

(a) paying to the owner an amount equal to any overcharge paid by the owner under or related to the extension of credit if the owner has paid an amount that exceeds an amount stated in the applicable Paragraph (E), (G), or (O) of this subdivision;

(b) sending the owner a written acknowledgement that the lien is valid only in the amount that the extension of credit does not exceed the percentage described by Paragraph (B) of this subdivision, if applicable, or is not secured by property described under Paragraph (H) or (I) of this subdivision, if applicable;

(c) sending the owner a written notice modifying any other amount, percentage, term, or other provision prohibited by this section to a permitted amount, percentage, term, or other provision and adjusting the account of the borrower to ensure that the borrower is not required to pay more than an amount permitted by this section and is not subject to any other term or provision prohibited by this section;

(d) delivering the required documents to the borrower if the lender fails to comply with Subparagraph (v) of this paragraph or obtaining the appropriate signatures if the lender fails to comply with Subparagraph (ix) of this paragraph;

(e) sending the owner a written acknowledgement, if the failure to comply is prohibited by Paragraph (K) of this subdivision, that the accrual of interest and all of the owner's obligations under the extension of credit are abated while any prior lien prohibited under Paragraph (K) remains secured by the homestead; or

(f) if the failure to comply cannot be cured under Subparagraphs (x)(a)-(e) of this paragraph, curing the failure to comply by a refund or credit to the owner of \$1,000 and offering the owner the right to refinance the extension of credit with the lender or holder for the remaining term of the loan at no cost to the owner on the same terms, including interest, as the original extension of credit with any modifications necessary to comply with this section or on terms on which the owner and the lender or holder otherwise agree that comply with this section; and

(xi) the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the extension of credit is made by a person other than a person described under Paragraph (P) of this subdivision or if the lien was not created under a written agreement with the consent of each owner and each owner's spouse, unless each owner and each owner's spouse who did not initially consent subsequently consents;

(7) a reverse mortgage; or

(8) the conversion and refinance of a personal property lien secured by a manufactured home to a lien on real property, including the refinance of the purchase price of the manufactured home, the cost of installing the manufactured home on the real property, and the refinance of the purchase price of the real property.

(b) An owner or claimant of the property claimed as homestead may not sell or abandon the homestead without the consent of each owner and the spouse of each owner, given in such manner as may be prescribed by law.

(c) No mortgage, trust deed, or other lien on the homestead shall ever be valid unless it secures a debt described by this section, whether such mortgage, trust deed, or other lien, shall have been created by the owner alone, or together with his or her spouse, in case the owner is married. All pretended sales of the homestead involving any condition of defeasance shall be void.

(d) A purchaser or lender for value without actual knowledge may conclusively rely on an affidavit that designates other property as the homestead of the affiant and that states that the property to be conveyed or encumbered is not the homestead of the affiant.

(e) A refinance of debt secured by a homestead and described by any subsection under Subsections (a)(1)-(a)(5) that includes the advance of additional funds may not be secured by a valid lien against the homestead unless:

(1) the refinance of the debt is an extension of credit described by Subsection (a)(6) of this section; or

(2) the advance of all the additional funds is for reasonable costs necessary to refinance such debt or for a purpose described by Subsection (a)(2), (a)(3), or (a)(5) of this section.

(f) A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of this section, may not be secured by a valid lien against the homestead unless the refinance of the debt is an extension of credit described by Subsection (a)(6) or (a)(7) of this section.

(g) An extension of credit described by Subsection (a)(6) of this section may be secured by a valid lien against homestead property if the extension of credit is not closed before the 12th day after the lender provides the owner with the following written notice on a separate instrument:

"NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION 50(a)(6),ARTICLE XVI, TEXAS CONSTITUTION:

"SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME. SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

"(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;

"(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL BALANCES OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME;

"(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;

"(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY WITH A COURT ORDER;

"(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3 PERCENT OF THE LOAN AMOUNT;

"(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED FROM TIME TO TIME UNLESS IT IS A HOME EQUITY LINE OF CREDIT;

"(G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;

"(H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

"(I) THE LOAN MAY NOT BE SECURED BY AGRICULTURAL HOMESTEAD PROPERTY, UNLESS THE AGRICULTURAL HOMESTEAD PROPERTY IS USED PRIMARILY FOR THE PRODUCTION OF MILK;

"(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR HOME;

"(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY GIVEN TIME;

"(L) THE LOAN MUST BE SCHEDULED TO BE REPAYED IN PAYMENTS THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH PAYMENT PERIOD;

"(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND IF YOUR HOME WAS SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS PASSED FROM THE CLOSING DATE OF THE OTHER LOAN;

"(N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER, TITLE COMPANY, OR AN ATTORNEY AT LAW;

"(O) THE LENDER MAY CHARGE ANY FIXED OR VARIABLE RATE OF INTEREST AUTHORIZED BY STATUTE;

"(P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION;

"(Q) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MUST:

"(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER DEBT EXCEPT A DEBT THAT IS SECURED BY YOUR HOME OR OWED TO ANOTHER LENDER;

"(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

"(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH HAVE BLANKS LEFT TO BE FILLED IN;

"(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

"(5) PROVIDE THAT YOU RECEIVE A COPY OF ALL DOCUMENTS YOU SIGN AT CLOSING;

"(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION;

"(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF THE LIEN, WHICHEVER IS APPROPRIATE;

"(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

"(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSES; AND

"(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE LENDER'S OBLIGATIONS UNLESS THE LENDER CURES THE FAILURE TO COMPLY AS PROVIDED BY SECTION 50(a)(6)(Q)(x), ARTICLE XVI, OF THE TEXAS CONSTITUTION; AND

"(R) IF THE LOAN IS A HOME EQUITY LINE OF CREDIT:

"(1) YOU MAY REQUEST ADVANCES, REPAY MONEY, AND REBORROW MONEY UNDER THE LINE OF CREDIT;

"(2) EACH ADVANCE UNDER THE LINE OF CREDIT MUST BE IN AN AMOUNT OF AT LEAST \$4,000;

"(3) YOU MAY NOT USE A CREDIT CARD, DEBIT CARD, SOLICITATION CHECK, OR SIMILAR DEVICE TO OBTAIN ADVANCES UNDER THE LINE OF CREDIT;

"(4) ANY FEES THE LENDER CHARGES MAY BE CHARGED AND COLLECTED ONLY AT THE TIME THE LINE OF CREDIT IS ESTABLISHED AND THE LENDER MAY NOT CHARGE A FEE IN CONNECTION WITH ANY ADVANCE;

"(5) THE MAXIMUM PRINCIPAL AMOUNT THAT MAY BE EXTENDED, WHEN ADDED TO ALL OTHER DEBTS SECURED BY YOUR HOME, MAY NOT EXCEED 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LINE OF CREDIT IS ESTABLISHED;

"(6) IF THE PRINCIPAL BALANCE UNDER THE LINE OF CREDIT AT ANY TIME EXCEEDS 50 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME, AS DETERMINED ON THE DATE THE LINE OF CREDIT IS ESTABLISHED, YOU MAY NOT CONTINUE TO REQUEST ADVANCES UNDER THE LINE OF CREDIT UNTIL THE BALANCE IS LESS THAN 50 PERCENT OF THE FAIR MARKET VALUE; AND

"(7) THE LENDER MAY NOT UNILATERALLY AMEND THE TERMS OF THE LINE OF CREDIT.
"THIS NOTICE IS ONLY A SUMMARY OF YOUR RIGHTS UNDER THE TEXAS CONSTITUTION. YOUR RIGHTS ARE GOVERNED BY SECTION 50, ARTICLE XVI, OF THE TEXAS CONSTITUTION, AND NOT BY THIS NOTICE."

If the discussions with the borrower are conducted primarily in a language other than English, the lender shall, before closing, provide an additional copy of the notice translated into the written language in which the discussions were conducted.

(h) A lender or assignee for value may conclusively rely on the written acknowledgment as to the fair market value of the homestead property made in accordance with Subsection (a)(6)(Q)(ix) of this section if:

(1) the value acknowledged to is the value estimate in an appraisal or evaluation prepared in accordance with a state or federal requirement applicable to an extension of credit under Subsection (a)(6); and

(2) the lender or assignee does not have actual knowledge at the time of the payment of value or advance of funds by the lender or assignee that the fair market value stated in the written acknowledgment was incorrect.

(i) This subsection shall not affect or impair any right of the borrower to recover damages from the lender or assignee under applicable law for wrongful foreclosure. A purchaser for value without actual knowledge may conclusively presume that a lien securing an extension of credit described by Subsection (a)(6) of this section was a valid lien securing the extension of credit with homestead property if:

(1) the security instruments securing the extension of credit contain a disclosure that the extension of credit secured by the lien was the type of credit defined by Section 50(a)(6), Article XVI, Texas Constitution;

(2) the purchaser acquires the title to the property pursuant to or after the foreclosure of the voluntary lien; and

(3) the purchaser is not the lender or assignee under the extension of credit.

(j) Subsection (a)(6) and Subsections (e)-(i) of this section are not severable, and none of those provisions would have been enacted without the others. If any of those provisions are held to be preempted by the laws of the United States, all of those provisions are invalid. This subsection shall not apply to any lien or extension of credit made after January 1, 1998, and before the date any provision under Subsection (a)(6) or Subsections (e)-(i) is held to be preempted.

(k) "Reverse mortgage" means an extension of credit:

(1) that is secured by a voluntary lien on homestead property created by a written agreement with the consent of each owner and each owner's spouse;

(2) that is made to a person who is or whose spouse is 62 years or older;

(3) that is made without recourse for personal liability against each owner and the spouse of each owner;

(4) under which advances are provided to a borrower based on the equity in a borrower's homestead;

(5) that does not permit the lender to reduce the amount or number of advances because of an adjustment in the interest rate if periodic advances are to be made;

(6) that requires no payment of principal or interest until:

(A) all borrowers have died;

(B) the homestead property securing the loan is sold or otherwise transferred;

(C) all borrowers cease occupying the homestead property for a period of longer than 12 consecutive months without prior written approval from the lender; or

(D) the borrower:

(i) defaults on an obligation specified in the loan documents to repair and maintain, pay taxes and assessments on, or insure the homestead property;

(ii) commits actual fraud in connection with the loan; or

(iii) fails to maintain the priority of the lender's lien on the homestead property, after the lender gives notice to the borrower, by promptly discharging any lien that has priority or may obtain priority over the lender's lien within 10 days after the date the borrower receives the notice, unless the borrower:

(a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to the lender;

(b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings so as to prevent the enforcement of the lien or forfeiture of any part of the homestead property; or

(c) secures from the holder of the lien an agreement satisfactory to the lender subordinating the lien to all amounts secured by the lender's lien on the homestead property;

(7) that provides that if the lender fails to make loan advances as required in the loan documents and if the lender fails to cure the default as required in the loan documents after notice from the borrower, the lender forfeits all principal and interest of the reverse mortgage, provided, however, that this subdivision does not apply when a governmental agency or instrumentality takes an assignment of the loan in order to cure the default;

(8) that is not made unless the owner of the homestead attests in writing that the owner received counseling regarding the advisability and availability of reverse mortgages and other financial alternatives;

(9) that requires the lender, at the time the loan is made, to disclose to the borrower by written notice the specific provisions contained in Subdivision (6) of this subsection under which the borrower is required to repay the loan;

(10) that does not permit the lender to commence foreclosure until the lender gives notice to the borrower, in the manner provided for a notice by mail related to the foreclosure of liens under Subsection (a)(6) of this section, that a ground for foreclosure exists and gives the borrower at least 30 days, or at least 20 days in the event of a default under Subdivision (6)(D)(iii) of this subsection, to:

(A) remedy the condition creating the ground for foreclosure;

(B) pay the debt secured by the homestead property from proceeds of the sale of the homestead property by the borrower or from any other sources; or

(C) convey the homestead property to the lender by a deed in lieu of foreclosure; and

(11) that is secured by a lien that may be foreclosed upon only by a court order, if the foreclosure is for a ground other than a ground stated by Subdivision (6)(A) or (B) of this subsection.

(l) Advances made under a reverse mortgage and interest on those advances have priority over a lien filed for record in the real property records in the county where the homestead property is located after the reverse mortgage is filed for record in the real property records of that county.

(m) A reverse mortgage may provide for an interest rate that is fixed or adjustable and may also provide for interest that is contingent on appreciation in the fair market value of the homestead property. Although payment of principal or interest shall not be required under a reverse mortgage until the entire loan becomes due and payable, interest may accrue and be compounded during the term of the loan as provided by the reverse mortgage loan agreement.

(n) A reverse mortgage that is secured by a valid lien against homestead property may be made or acquired without regard to the following provisions of any other law of this state:

(1) a limitation on the purpose and use of future advances or other mortgage proceeds;

(2) a limitation on future advances to a term of years or a limitation on the term of open-end account advances;

(3) a limitation on the term during which future advances take priority over intervening advances;

(4) a requirement that a maximum loan amount be stated in the reverse mortgage loan documents;

(5) a prohibition on balloon payments;

(6) a prohibition on compound interest and interest on interest;

(7) a prohibition on contracting for, charging, or receiving any rate of interest authorized by any law of this state authorizing a lender to contract for a rate of interest; and

(8) a requirement that a percentage of the reverse mortgage proceeds be advanced before the assignment of the reverse mortgage.

(o) For the purposes of determining eligibility under any statute relating to payments, allowances, benefits, or services provided on a means-tested basis by this state, including supplemental security income, low-income energy assistance, property tax relief, medical assistance, and general assistance:

(1) reverse mortgage loan advances made to a borrower are considered proceeds from a loan and not income; and

(2) undisbursed funds under a reverse mortgage loan are considered equity in a borrower's home and not proceeds from a loan.

(p) The advances made on a reverse mortgage loan under which more than one advance is made must be made according to the terms established by the loan documents by one or more of the following methods:

(1) an initial advance at any time and future advances at regular intervals;

(2) an initial advance at any time and future advances at regular intervals in which the amounts advanced may be

reduced, for one or more advances, at the request of the borrower;

(3) an initial advance at any time and future advances at times and in amounts requested by the borrower until the credit limit established by the loan documents is reached;

(4) an initial advance at any time, future advances at times and in amounts requested by the borrower until the credit limit established by the loan documents is reached, and subsequent advances at times and in amounts requested by the borrower according to the terms established by the loan documents to the extent that the outstanding balance is repaid; or

(5) at any time by the lender, on behalf of the borrower, if the borrower fails to timely pay any of the following that the borrower is obligated to pay under the loan documents to the extent necessary to protect the lender's interest in or the value of the homestead property:

(A) taxes;

(B) insurance;

(C) costs of repairs or maintenance performed by a person or company that is not an employee of the lender or a person or company that directly or indirectly controls, is controlled by, or is under common control with the lender;

(D) assessments levied against the homestead property; and

(E) any lien that has, or may obtain, priority over the lender's lien as it is established in the loan documents.

(q) To the extent that any statutes of this state, including without limitation, Section 41.001 of the Texas Property Code, purport to limit encumbrances that may properly be fixed on homestead property in a manner that does not permit encumbrances for extensions of credit described in Subsection (a)(6) or (a)(7) of this section, the same shall be superseded to the extent that such encumbrances shall be permitted to be fixed upon homestead property in the manner provided for by this amendment.

(r) The supreme court shall promulgate rules of civil procedure for expedited foreclosure proceedings related to the foreclosure of liens under Subsection (a)(6) of this section and to foreclosure of a reverse mortgage lien that requires a court order.

(s) The Finance Commission of Texas shall appoint a director to conduct research on the availability, quality, and prices of financial services and research the practices of business entities in the state that provide financial services under this section. The director shall collect information and produce reports on lending activity of those making loans under this section. The director shall report his or her findings to the legislature not later than December 1 of each year.

(t) A home equity line of credit is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which:

(1) the owner requests advances, repays money, and reborrows money;

(2) any single debit or advance is not less than \$4,000;

(3) the owner does not use a credit card, debit card, preprinted solicitation check, or similar device to obtain an advance;

(4) any fees described by Subsection (a)(6)(E) of this section are charged and collected only at the time the extension of credit is established and no fee is charged or collected in connection with any debit or advance;

(5) the maximum principal amount that may be extended under the account, when added to the aggregate total of the outstanding principal balances of all indebtedness secured by the homestead on the date the extension of credit is established, does not exceed an amount described under Subsection (a)(6)(B) of this section;

(6) no additional debits or advances are made if the total principal amount outstanding exceeds an amount equal to 50 percent of the fair market value of the homestead as determined on the date the account is established;

(7) the lender or holder may not unilaterally amend the extension of credit; and

(8) repayment is to be made in regular periodic installments, not more often than every 14 days and not less often than monthly, beginning not later than two months from the date the extension of credit is established, and:

(A) during the period during which the owner may request advances, each installment equals or exceeds the amount of accrued interest; and

(B) after the period during which the owner may request advances, installments are substantially equal.

(u) The legislature may by statute delegate one or more state agencies the power to interpret Subsections (a)(5)-(a)(7), (e)-(p), and (t), of this section. An act or omission does not violate a provision included in those subsections if the act or omission conforms to an interpretation of the provision that is:

(1) in effect at the time of the act or omission; and

(2) made by a state agency to which the power of interpretation is delegated as provided by this subsection or by an appellate court of this state or the United States.

(v) A reverse mortgage must provide that:

(1) the owner does not use a credit card, debit card, preprinted solicitation check, or similar device to obtain an

advance;

- (2) after the time the extension of credit is established, no transaction fee is charged or collected solely in connection with any debit or advance; and
- (3) the lender or holder may not unilaterally amend the extension of credit.