

A.

Finance Commission

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FINANCE COMMISSION OF TEXAS

MEETING DATE**June 21, 2019**

MEETING LOCATIONFinance Commission Building
William F. Aldridge Hearing Room
2601 North Lamar Boulevard
Austin, Texas 78705

CONTACT INFORMATION.....Phone: (512) 936-6222
Website: www.fc.texas.gov

FUTURE MEETING DATESAugust 16, 2019
.....October 18, 2019
.....December 20, 2019

*** The State of Texas fiscal year begins September 1 and ends August 31. The dates noted meet the minimum statutory requirement of six meetings per calendar year. Fin. Code §11.106*

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FINANCE COMMISSION AGENDA

Friday, June 21, 2019

8:00 a.m.

Or Upon Adjournment of the Audit Committee Meeting

Finance Commission Building

William F. Aldridge Hearing Room

2601 N. Lamar Blvd.

Austin, Texas 78705

Section A.3 will take up agenda items A1, C2-C5 with NO DISCUSSION as notated in bold and italicized

Public comment on any agenda item or issue under the jurisdiction of the Finance Commission agencies is allowed unless the comment is in reference to a rule proposal for which the public comment period has ended. However, upon majority vote of the Commission, public comment may be allowed related to final rule adoption.

A. FINANCE COMMISSION MATTERS

1. ***Review and Approval of the Minutes of the April 12, 2019 Finance Commission Meeting***
2. General Public Comment
3. Consent Agenda
4. Finance Commission Operations
5. Audit Committee Report
 - A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies 2019 Second Quarter Financial Statements
 1. Office of Consumer Credit Commissioner
 2. Texas Department of Banking
 3. Department of Savings and Mortgage Lending
 - B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Texas Financial Education Endowment (TFEE) 2020-2021 Funding Priorities
 - C. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Appointment of a New Grant Advisory Committee Member
 - D. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action to Approve an Amount for the Upcoming 2020-21 Grant Cycle for the Texas Financial Education Endowment (TFEE)
6. Discussion of and Possible Vote to Take Action on Sunset Recommendation 2.6 – “Direct the Finance Commission to minimize duplication of agency functions and promote more cost efficient administration of the finance agencies.”

7. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff
8. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property
9. Discussion and Consultation with Attorney and Possible Vote to Take Action Pursuant to §551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys, including matters related to the potential financial exposure of the Finance Commission Agencies and their officers and the Finance Commission and its officers and including matters of pending and contemplated litigation
10. Discussion of and Consultation on Security Audit, possible issue related to confidential or sensitive information, security breach audit and assessment, or security assessments or deployment related to information resources technology as authorized by Tex. Govt. Code Secs. 551.076 and 551.089

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities
2. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, New Rules, and a Repeal in 7 TAC, Part 1, Chapter 2, and Part 5, Chapters 82, 83, 84, 85, 86, 87, 88, and 89, Concerning Licensing, Registration, Administration, Complaints, and Appeals
3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Chapter 85, Subchapter A, Concerning Rules of Operation for Pawnshops
4. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

Texas Office of Consumer Credit Commissioner v. Tim McMahan d/b/a Advantage Auto; Cause No. D-1-GN-17-005451, in the 98th District Court of Travis County, Texas

Ernest Polk v. Texas Office of Consumer Credit Commissioner; Cause No. 2018-04375, in the 281st Judicial District Court of Harris County, Texas

State of Texas v. Cash Auto Sales, Inc. f/k/a Larry Lake d/b/a Cash Auto Sales and VIP Finance of Texas, Inc. f/k/a Travis Lake d/b/a VIP Finance; Cause No. 05-18-00198-CV, in the Court of Appeals for the Fifth Judicial District, Dallas, Texas

C. TEXAS DEPARTMENT OF BANKING

1. Industry Status and Departmental Operations: a) Current Issues Affecting Department's Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities

2. *Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 1, Chapter 9, Concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings, Resulting from Rule Review*
3. *Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 1, Chapter 10, Concerning Contract Procedures, Resulting from Rule Review*
4. *Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 12, Concerning Loans and Investments, Resulting from Rule Review*
5. *Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 25, Concerning Prepaid Funeral Contracts, Resulting from Rule Review*
6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, Part 2, Chapter 11, §§11.10, 11.11 and 11.12 Concerning Complaint Handling Procedures
7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, Part 1, Chapter 3, §3.24 Concerning Notification in Event of Cybersecurity Breach of State Banks
8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, Part 2, Chapter 17, §17.5 Concerning Notification in Event of Cybersecurity Breach of State Trust Companies
9. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, Part 2, Chapter 33, §33.30 Concerning Notification in Event of Cybersecurity Breach of Money Services Businesses
10. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 2, Chapter 25, §§25.13, 25.23, and 25.24 Concerning Assessments on Prepaid Funeral Contract Sellers
11. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 2, Chapter 26, §26.1 Concerning Assessments on Perpetual Care Cemeteries
12. Discussion and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeal of 7 TAC, Part 2, Chapter 24, §§24.1 – 24.4 Concerning Cemetery Brokers
13. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

D. DEPARTMENT OF SAVINGS AND MORTGAGE LENDING

1. Industry Status and Departmental Operations – State Savings Bank Activity: a) Industry Status; and b) State Savings Bank Charter and Application Activity
2. Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; and c) Consumer Complaints
3. Fiscal and Departmental Operations: a) Funding Status/Audits/Financial Reporting; and b) Staffing
4. Legal Activity: a) Enforcement; b) Gift Reporting; and c) Legislative Activities

5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, Part 4, Chapter 52 as found in the following sections: §52.10 Definitions, §52.11 Complaint Processing, §52.12 Complaint Resolution and Disposition, §52.13 Complaint Review and Reporting
6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 4, Chapter 61, §61.1, Concerning Hearings Officer
7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 4, Chapter 64, §64.10, Concerning Savings and Loan Association Complaint Notices
8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 4, Chapter 76, §76.122, Concerning Hearings Officer and §76.71, Concerning Savings Bank Complaint Notices
9. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 4, Chapter 79, §79.20, Concerning Investigations and §79.30, Concerning Hearings and Appeals
10. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 4, Chapter 80, §80.301, Concerning Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions and §80.302, Concerning Hearings and Appeals
11. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 4, Chapter 81, §81.301, Concerning Investigations and §81.302, Concerning Hearings and Appeals
12. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation

NOTE: The Finance Commission may go into executive session (close its meeting to the public) on any agenda item if appropriate and authorized by the Open Meetings Act, Texas Government Code, Chapter 551.

Meeting Accessibility: Under the Americans with Disabilities Act, the Finance Commission will accommodate special needs. Those requesting auxiliary aids or services should notify the Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 936-6222, as far in advance of the meeting as possible.

**MINUTES OF THE
FINANCE COMMISSION MEETING
Friday, April 12, 2019**

The Finance Commission of Texas convened at 8:00 a.m. on April 12, 2019 with the following members present:

Finance Commission Members in Attendance:

Paul W. Plunket, Chairman
Phillip Holt, Vice Chair
Bob Borochoff
Hector Cerna
Molly Curl
Stacy G. London
Will Lucas

Finance Commission Chairman Paul Plunket announced a quorum with seven members present.

Chairman Paul Plunket made a motion to excuse Vince Puente, Lori McCool and Cliff McCauley from the Finance Commission meeting held on April 12, 2019. There were no objections and the motion passed unanimously. (:19 on audio file)

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
A. Finance Commission Matters		
1. Review and Approval of the Minutes of the February 15, 2019 Finance Commission Meeting	On Consent Agenda – Item A1	1:23 start of discussion
2. General Public Comment	No Action Required.	:56 start of discussion
3. Consent Agenda – Item A1	Will Lucas made a motion to Approve Consent Agenda item A1. Stacy London seconded, and the motion passed.	1:23 start of discussion 1:45 vote
4. Finance Commission Operations	No Action Required.	2:10 start of discussion

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
5. Audit Committee Report		
<p>A. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Agencies' February 28, 2019 Investment Officer Reports</p> <ol style="list-style-type: none"> 1. Texas Department of Banking 2. Department of Savings and Mortgage Lending 3. Office of Consumer Credit Commissioner 	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Agencies' February 28, 2019 Investment Officer Reports passed.</p>	<p>6:55 start of discussion</p> <p>7:12 Vote</p>
<p>B. Discussion of and Possible Vote to Recommend that the Finance Commission Take Action on the Office of Consumer Credit Commissioner's Internal Audit Report as Prepared and Presented by McConnell & Jones LLP Regarding the Investment Administration Controls of the Texas Financial Education Endowment Fund.</p>	<p>Coming upon Recommendation from the Audit Committee, no second is required and the motion to Approve the Office of Consumer Credit Commissioner's Internal Audit Report as Prepared and Presented by McConnell & Jones LLP Regarding the Investment Administration Controls of the Texas Financial Education Endowment Fund was made by Molly Curl. Molly Curl then made a motion to amend pages 23 and 25 of the Audit Report adding green checks to note that all requirements have been met. Hector Cerna seconded, and the amended motion passed.</p>	<p>7:26 start of discussion</p> <p>8:30 Vote</p>
<p>6. Update on Efficiency Audit Services by McConnell & Jones, LLP</p>	<p>No Action Required.</p>	<p>9:15 start of discussion</p>
<p>7. Discussion of and Possible Vote to Take Action on the Finance Commission Agencies' Fiscal Year 2019 Mid-Term Accomplishment Reports</p>	<p>Phillip Holt made a motion to Approve the Finance Commission Agencies' Fiscal Year 2019 Mid-Term Accomplishment Reports. Bob Borochoff seconded, and the motion passed.</p>	<p>40:30 start of discussion</p> <p>52:25 vote</p>
<p>8. Discussion of the Report of the Financial Condition of the State Banking System (Note: Report provided separately)</p>	<p>No Action Required.</p>	<p>52:47 start of discussion</p>
<p>9. Discussion of and Possible Vote to Take Action Regarding Personnel Matters Pursuant to §551.074, Texas Government Code: Deliberations with Respect to the Duties and Compensation of a Person Holding the Position of Executive Director of the Finance Commission, Deliberations with Respect to the Duties and Compensation of Persons Holding the Position of Agency Commissioner Positions, and Other Staff</p>	<p>Deferred to Executive Session – no vote taken.</p>	<p>n/a</p>

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
10. Discussion of and Possible Vote to Take Action Regarding Facility Planning and Real Property Matters Pursuant to §551.072, Texas Government Code: Deliberations Regarding the Purchase, Exchange, Lease or Value of Real Property	Deferred to Executive Session – no vote taken.	n/a
11. Discussion and Consultation with Attorney and Possible Vote to Take Action pursuant to §551.071, Texas Government Code, for the purpose of seeking the advice or attorney-client privileged communications from our attorneys, including matters related to the potential financial exposure of the Finance Commission Agencies and their officers and the Finance Commission and its officers and including matters of pending and contemplated litigation	Deferred to Executive Session – no vote taken.	n/a
12. Discussion of and Consultation on Security Audit, possible issue related to confidential or sensitive information, security breach audit and assessment, or security assessments or deployment related to information resources technology as authorized by Tex. Govt. Code Secs. 551.076 and 551.089	Deferred to Executive Session – no vote taken.	n/a
B. Texas Department of Banking		
1. Industry Status and Departmental Operations: a) Current Issues Affecting Department's Regulated Entities; b) Bank and Trust Division Activities; c) Corporate Division Activities; d) Special Audits Division Activities; e) Administrative, Staffing and Fiscal Division Activities; f) Strategic Support Division Activities including Consumer Complaint Data; g) Legal Division Activities including Enforcement Activity and Gift Reporting; and h) Legislative Activities	No Action Required.	1:07:16 start of discussion
2. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Action Required.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
C. Department of Savings and Mortgage Lending		
1. Industry Status and Departmental Operations – State Savings Bank Activity: a) Industry Status; and b) State Savings Bank Charter and Application Activity	No Action Required.	1:35:00 start of discussion
2. Discussion of and Possible Vote to Take Action on the Maximum Annual Assessment Rate Schedule for Texas State Savings Banks	Molly Curl made a motion to approve the Maximum Annual Assessment Rate Schedule for Texas State Savings Banks. Will Lucas seconded and the motion passed.	1:39:21 start of discussion 1:41:47 Vote
3. Industry Status and Departmental Operations – Mortgage Lending Activity: a) Residential Mortgage Loan Originators; b) Mortgage Examination; and c) Consumer Complaints	No Action Required.	1:42:12 start of discussion
4. Fiscal and Departmental Operations: a) Funding Status/Audits/Financial Reporting; and b) Staffing	No Action Required.	1:46:01 start of discussion
5. Legal Activity: a) Enforcement; b) Gift Reporting; and c) Legislative Activities	No Action Required.	1:47:27 start of discussion
6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §80.201(a) and (b), concerning Loan Status Forms	Stacy London made a motion to approve the Proposal and Publication for Comment of Amendments to 7 TAC §80.201(a) and (b), concerning Loan Status Forms. Phillip Holt seconded and the motion passed.	2:11:12 start of discussion 2:14:09 Vote
7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC §81.201(a) and (b), concerning Loan Status Forms	Phillip Holt made a motion to approve the Proposal and Publication for Comment of Amendments to 7 TAC §81.201(a) and (b), concerning Loan Status Forms. Stacy London seconded and the motion passed.	2:14:33 start of discussion 2:15:53 vote
8. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation	No Action Required.	n/a

AGENDA ITEM	ACTION	LOCATION ON AUDIO FILE
D. Office of Consumer Credit Commissioner		
1. Industry Status and Departmental Operations: a) Consumer Protection and Assistance Division Activities; b) Licensing Division Activities; c) Administration Division Activities; d) Financial Division Activities; e) Legal Division Activities; and f) Legislative Activities	No Action Required.	2:16:28 start of discussion
2. Discussion of and Possible Vote to Take Action on Anticipated and Pending Litigation <i>Texas Office of Consumer Credit Commissioner v. Tim McMahan d/b/a Advantage Auto</i> ; Cause No. D-1-GN-17-005451, in the 98th District Court of Travis County, Texas <i>Ernest Polk v. Texas Office of Consumer Credit Commissioner</i> ; Cause No. 2018-04375, in the 281st Judicial District Court of Harris County, Texas <i>State of Texas v. Cash Auto Sales, Inc. f/k/a Larry Lake d/b/a Cash Auto Sales and VIP Finance of Texas, Inc. f/k/a Travis Lake d/b/a VIP Finance</i> ; Cause No. 05-18-00198-CV, in the Court of Appeals for the Fifth Judicial District, Dallas, Texas	No Action Required.	n/a

Chairman Paul Plunket called for an Executive Session at 10:55 a.m. (2:38:52 on the audio file). The open meeting resumed at 11:36 a.m. (2:39:52 on the audio file.)

There being no further business, Chairman Paul Plunket adjourned the meeting of the Finance Commission at 11:37 a.m. (2:40:31 on the audio file).

Paul W. Plunket, Chairman
Finance Commission of Texas

Charles G. Cooper, Executive Director
Finance Commission of Texas

Brenda Medina, Executive Assistant
Finance Commission of Texas

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Finance Commission of Texas

Consent Agenda

June 21, 2019

A. Finance Commission Matters

1. Review and Approval of the Minutes of the April 12, 2019 Finance Commission Meeting.

C. Texas Department of Banking

2. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 9, Concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings, Resulting from Rule Review
3. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 10, Concerning Contract Procedures, Resulting from Rule Review
4. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 12, Concerning Loans and Investments, Resulting from Rule Review
5. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 25, Concerning Prepaid Funeral Contracts, Resulting from Rule Review

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B.

**Office of Consumer Credit
Commissioner**

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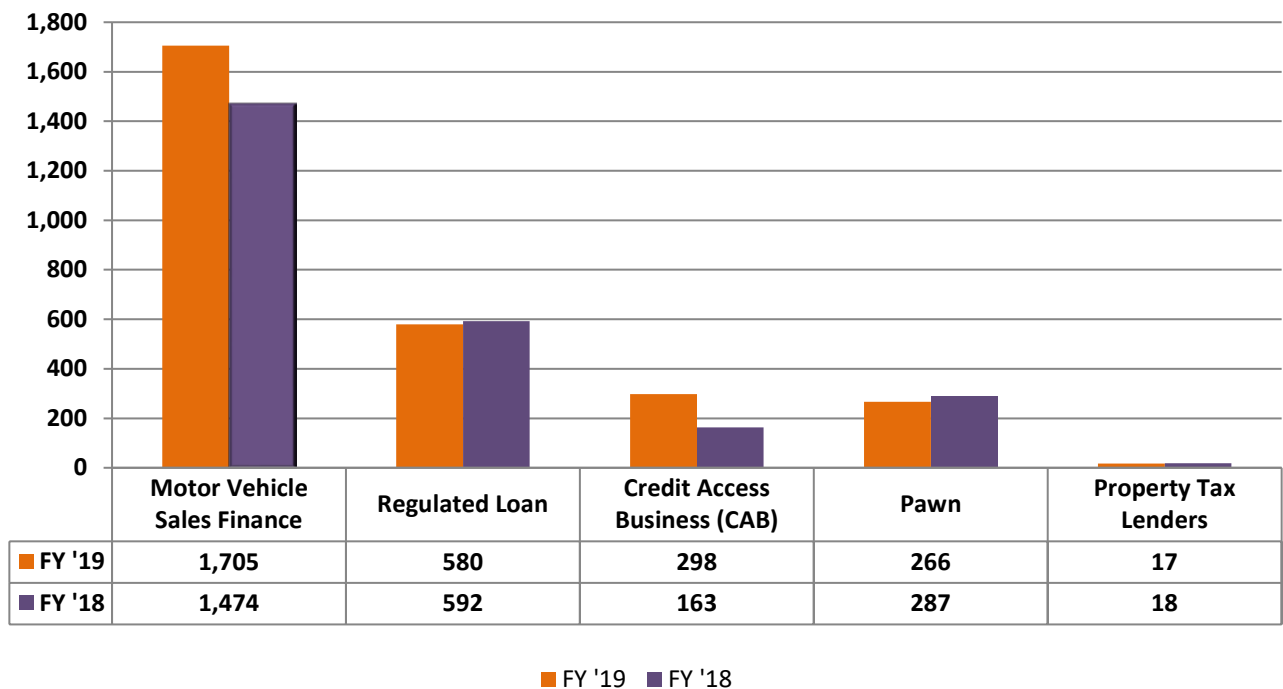
Consumer Protection and Consumer Assistance Report

The examination process for prorated FY 2019 goals is on track to meet the FY 2019 goals. Currently, the Consumer Protection Department is completing two large Credit Access Business enterprise level exams. Additionally, one Credit Access Business enterprise level exam is in the planning stages.

Austin area staff attended the most recent regional field examiner staff meetings to discuss exam process updates and travel guidelines.

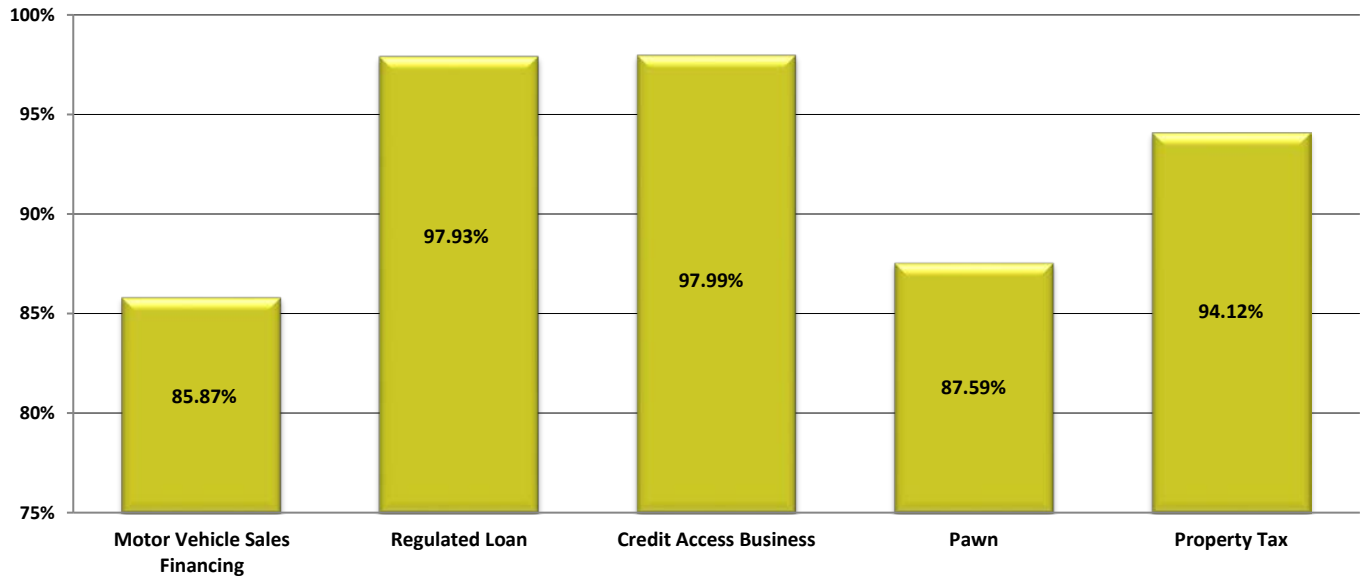
The two groups of financial examiners hired in the first quarter of FY 2019 are in the process of field certifications in Motor Vehicle Sales Finance. Four examiners completed classroom training modules in Subchapter F Regulated Lending and Pawnshops and are currently receiving field training. The Consumer Assistance department hired a new investigator who is currently in training. Two financial examiners successfully completed Financial Examiner III testing.

Examinations Conducted: Sept - Apr Fiscal Year Comparison

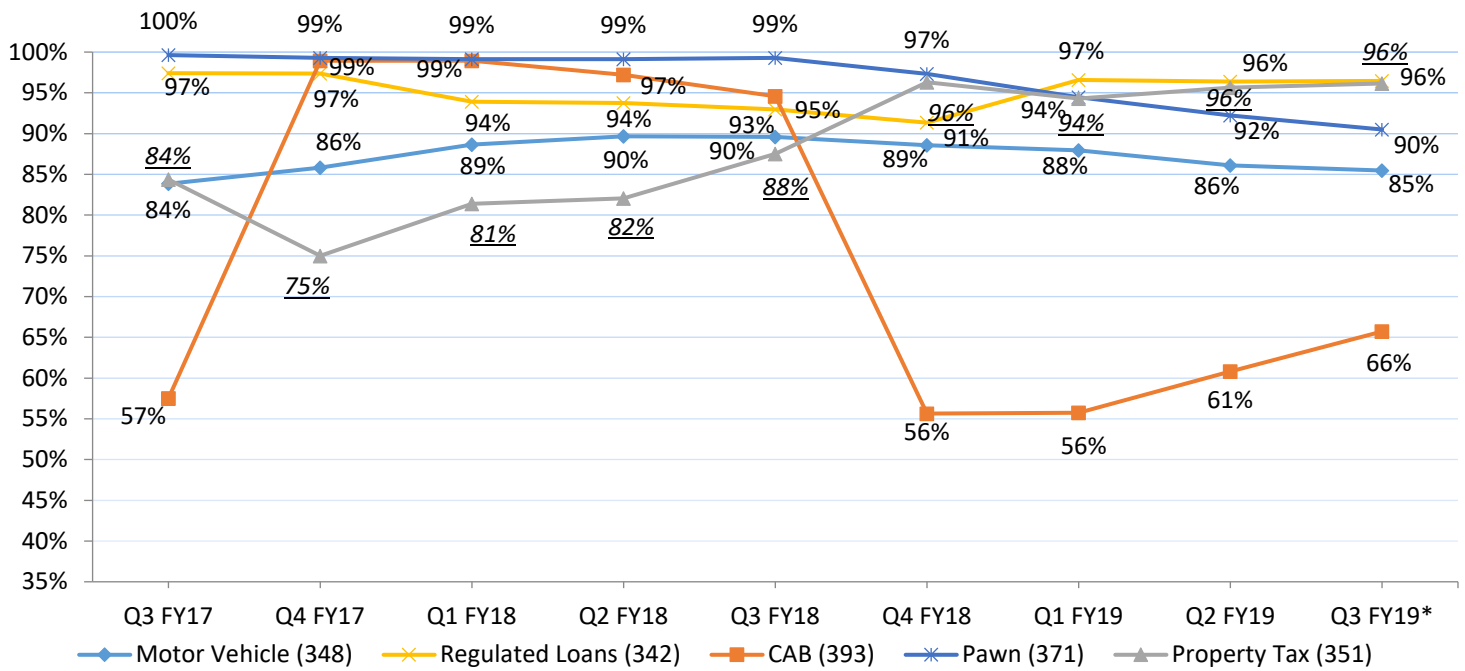


The first chart below reflects an acceptable level of compliance for examinations conducted during the first six months of FY 2019. All five license types are within an acceptable level of compliance (85%). The second chart shows acceptable compliance levels over a 12-month trailing period.

Acceptable Level of Compliance FY '19 (Sept 2018 - Apr 2019)



Acceptable Compliance Levels - Trailing 12 Months (at quarter end)



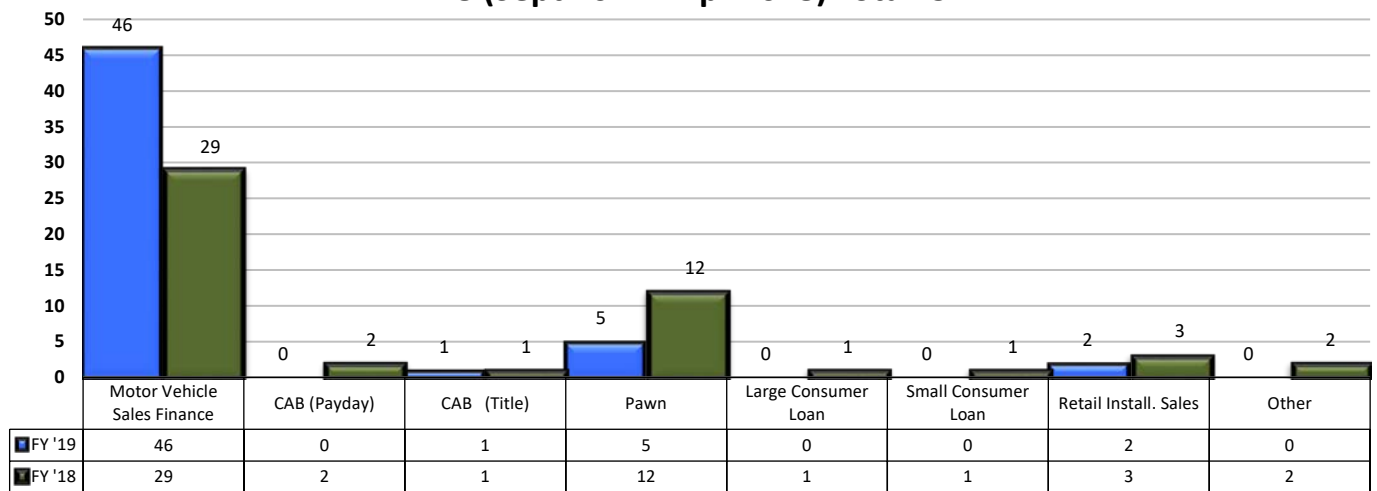
Motor Vehicle Sales Finance investigations and complaints are at a high level. The majority of the investigations and complaints are attributed to unlicensed activity and issues relating to repossessions.

Investigations

At the end of the 2nd quarter, the agency completed 40 investigations, 50% of the FY 2019 goal of 80 investigations. Motor Vehicle Sales Finance was the largest category comprising 87.5 % of the overall number of investigations completed for the first half of FY 2019 with unlicensed activity as the top issue.

Investigations Completed

FY '19 (Sept 2018 - Apr 2019) Total: 54
FY '18 (Sept 2017 - Apr 2018) Total: 51

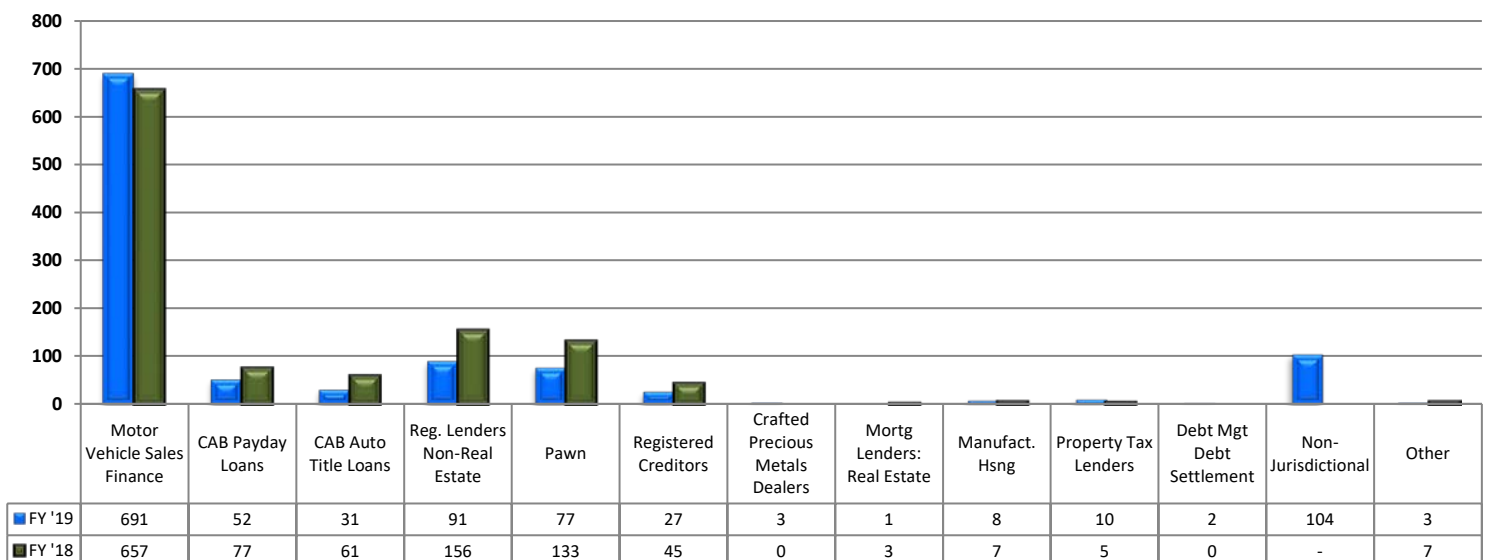


Consumer Assistance

For this period, 1,100 complaints were processed of which 104 were classified as non-jurisdictional.

Complaints Processed

FY '19 (Sept 2018 - Apr 2019) Total: 1,100
FY '18 (Sept 2017 - Apr 2018) Total: 1,151

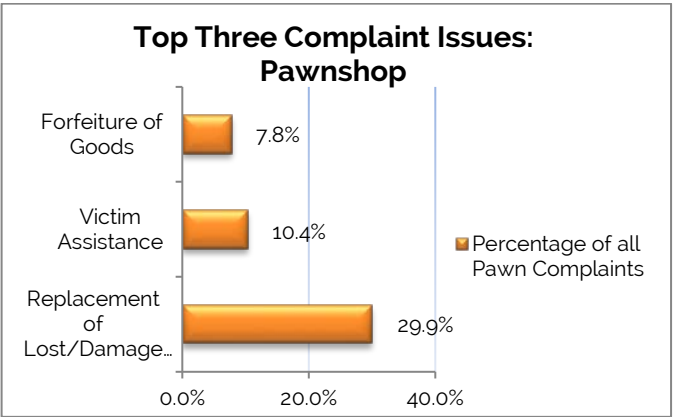
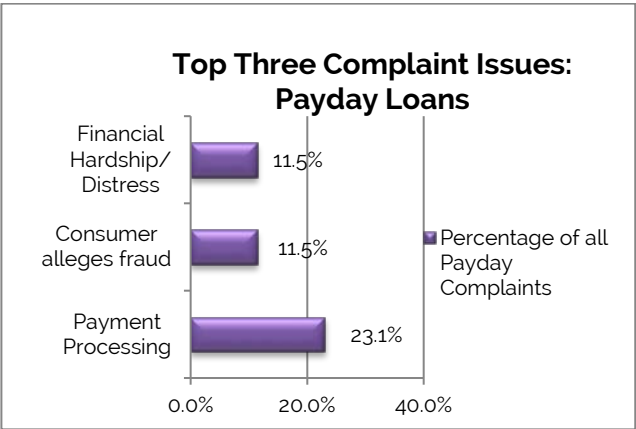
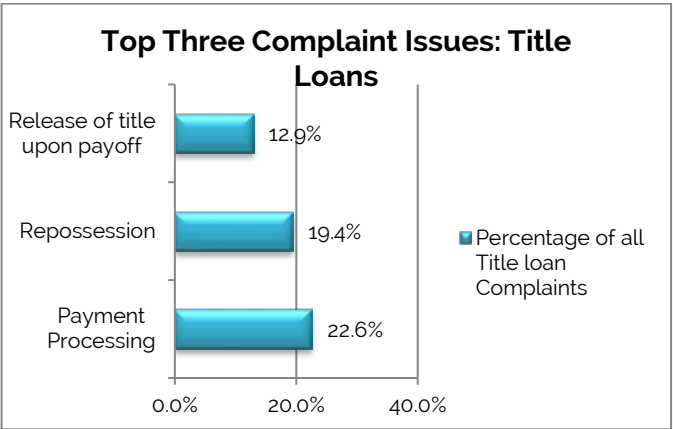
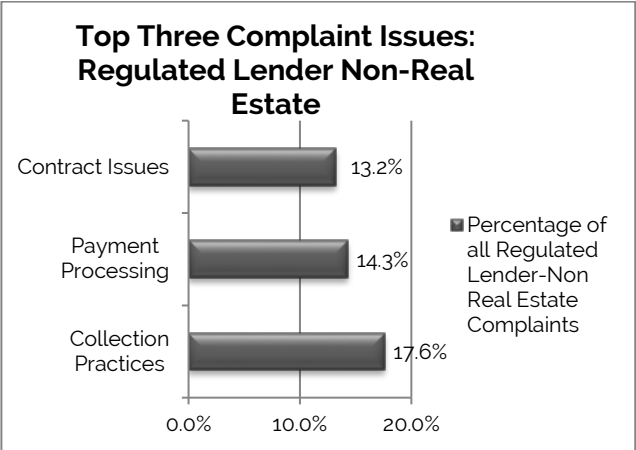
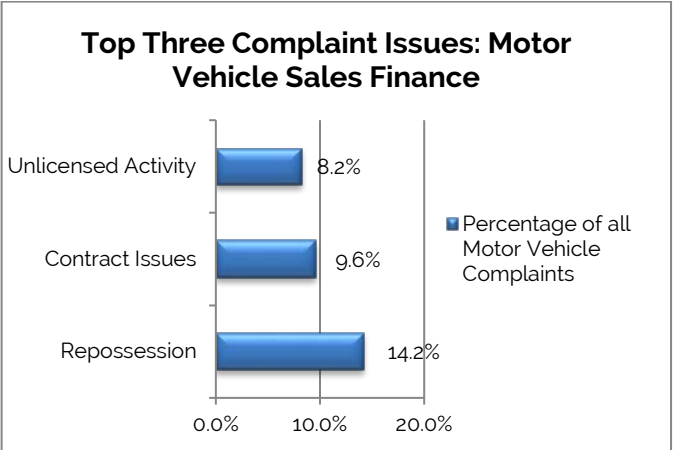


The top four areas of complaints are (1) Motor Vehicle Sales Finance (MVSF), (2) Regulated Lenders Non-Real Estate, (3) Credit Access Business (CAB) and (4) Pawn.

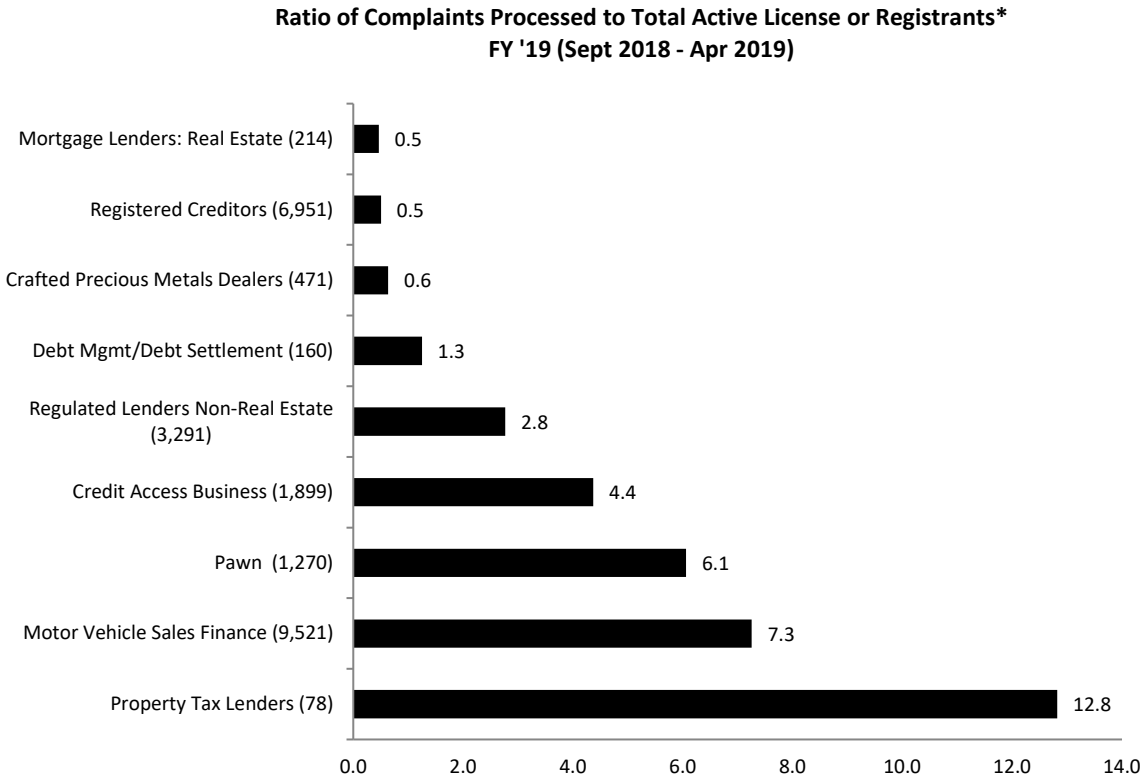
MVSF complaints were the largest complaint category at 62.8%. The second largest number of complaints came from Regulated Lenders Non-Real Estate at 8.3%. The third largest category of complaints came from CAB complaints at 7.5% collectively; separately, these are 4.7% for payday loans and 2.8% for title loans. The fourth largest category was Pawn at 7% complaints.

Regulated Lender Non-Real Estate contract issues include allegations that terms are different than agreed to and wanting contracts reviewed for compliance.

Each of the following charts represent the three top complaint areas per license type:



Comparison of complaints processed to the number of active license or registrant population is noted on the chart below. The highest ratio involved Property Tax Lenders, followed by Motor Vehicle Sales Finance as the second highest, Pawn as the third, and Credit Access Business as the fourth highest.



■ Complaints per Hundred Licenses

*License-Registrant levels as of 5-01-2019

CAB Reporting Update

Presented are selected statistics of 1st quarter (Jan-March) data compared through the years. The majority of new loans have multiple scheduled payments scheduled to last around five months. Depending on the loan structure, the multiple payments could either be principal reducing or fee and interest only with the principal due at maturity. Also presented in this chart, is the fee charged per product that takes into account the term of the loan. Additionally, repossessions increased 39% over last year's Q1 data and this represents the highest quarterly total since Q4 2014.

Data Highlights (All Loan Types) Q1 Comparison	2019	2018	2017	2016	2015	2014
Number of new payday loans	426,745	453,457	495,132	489,990	493,761	514,981
Number of new auto title loans	67,594	65,167	56,503	58,492	68,531	89,707
Percentage of payday loans due in multiple installments	54%	45%	42%	39%	35%	32%
Percentage of auto title loans due in multiple installments	53%	55%	43%	41%	13%	17%
Number of vehicles repossessed under all auto title loans	11,438	8,256	7,623	8,315	9,722	10,693
Total number of locations reporting activity	1,745	1,841	1,837	2,502	2,613	2,957

Payday Loans Q1	Single Installment			Multiple Installment		
	2019	2018	2017	2019	2018	2017
Number of consumers obtaining loans	132,899	176,333	203,505	211,762	180,724	183,786
Number of new loans	195,291	247,719	287,217	231,454	205,738	207,915
Number of total refinances ¹	263,957	444,954	494,597	87,927	53,428	63,274
Average loan amount	\$469	\$486	\$468	\$650	\$608	\$553
Average fee per \$100 borrowed	\$23	\$24	\$24	\$133	\$145	\$150
Average original term (in days)	21	22	19	143	149	143
Average Fee Converted to a Daily Rate ²	1.07%	1.11%	1.25%	0.93%	0.98%	1.04%

Title Loans Q1	Single Installment			Multiple Installment		
	2019	2018	2017	2019	2018	2017
Number of consumers obtaining loans	26,277	25,795	28,567	34,208	33,587	22,378
Number of new loans	31,457	29,557	32,407	36,137	35,610	24,096
Number of total refinances ¹	155,119	154,782	181,009	37,929	29,251	22,247
Average loan amount	\$1,518	\$1,323	\$1,444	\$1,279	\$1,139	\$1,056
Average fee per \$100 borrowed	\$15	\$16	\$16	\$118	\$117	\$131
Average original term (in days)	30	30	30	155	154	155
Average Fee Converted to a Daily Rate ²	0.52%	0.54%	0.56%	0.76%	0.76%	0.84%

1 Refinance activity represents all renewals, including the renewals of loans that originated in prior quarters.

2 Based on averages, per dollar borrowed a consumer would pay this percentage per day. The APR could be approximated by multiplying this rate by 365; however, it could be significantly higher if the multiple installment loans reduce principal with each payment and the total fees remain the same.



Licensing Report- June 2019

Mirand Diamond, Director

Renewals

Renewal for pawn shops and pawn employees is currently open and ongoing. Pawnshops with an active license received a discount of 10% this year and the department is coordinating with stakeholders to effectively communicate and ensure a smooth renewal process. Currently it is projected that 99% of pawn shops will renew and 70% of pawn employees will complete renewal.

Motor vehicle and commercial motor vehicle sales finance licensees must renew by July 31st and renewal is currently open online in ALECS. It is projected that 88% of this industry will renew.

Applications Processing

The number of pending business license applications has incrementally increased due to an intentional delay of applications from final approval until after the renewal period and increased customer service contacts to the department due to the renewal period. This has also impacted pawn employee application processing, but all application volumes should be back to goal levels in the next four to six weeks.

Other Updates

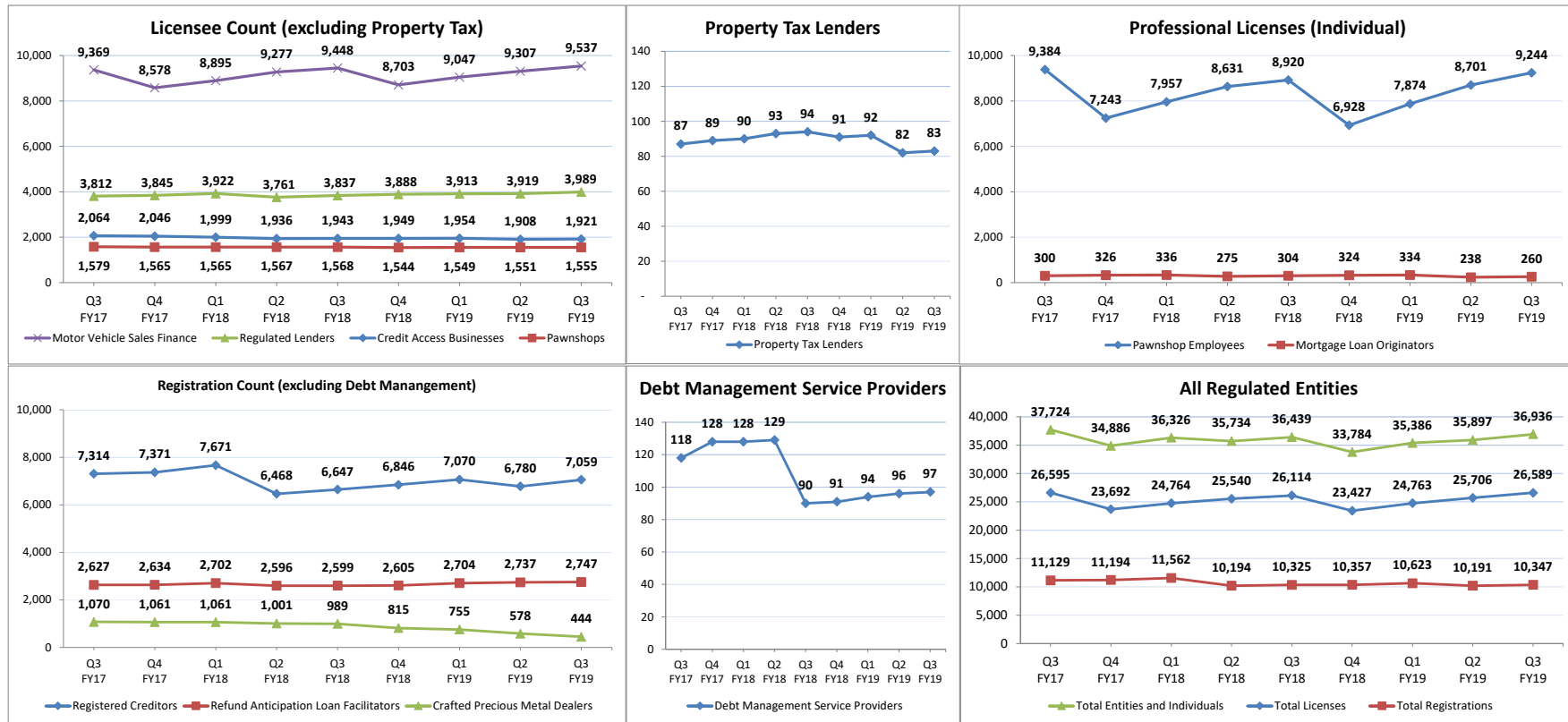
The licensing director attended the annual conference and training of the National Association of Consumer Credit Administrators in June with other staff from the agency.

The department is also working to modify systems and processes to accommodate the new pawn employee opt-in licensing program brought on by the passage of the agency sunset bill.

Regulated Entity Population Trends

The following charts reflect the number of OCCC regulated entities at the end of each quarter in fiscal years 2017 and 2018 to current data.

Number of OCCC Regulated Entities Quarterly Comparison of FY17-19





ADMINISTRATION REPORT

Juan V. Garcia, DIRECTOR OF STRATEGIC COMMUNICATIONS, ADMINISTRATION AND PLANNING

COMMUNICATIONS

The Texas Legislature adjourned “*sine die*” (Final adjournment of a legislative session. Literally, the phrase means adjournment "without a day" specified to reconvene) on May 27. A total of 10,877 bills were filed during the 86th Legislative Session. This includes all bills, all resolutions and both joint and concurrent resolutions. From this total, only 42% passed (30% House Bills; 12% were Senate Bills). The breakout was as follows:

86th Regular Session - 2019										
Status	HB	HCR	HJR	HR	SB	SCR	SJR	SR	Total HB & SB	Total
Introduced	4,765	186	147	2,217	2,559	68	70	865	7,324	10,877
Passed	969	102	7	2,155	460	23	3	862	1,429	4,581
Vetoed	1	-	n/a	n/a	6	-	n/a	n/a	7	7

The OCCC Sunset Bill (HB 1442) passed both chambers on May 25 and was sent to the Governor’s Office on May 26. Sunday, June 16, 2019 is the last day for the governor to sign, veto or file bills without his signature.

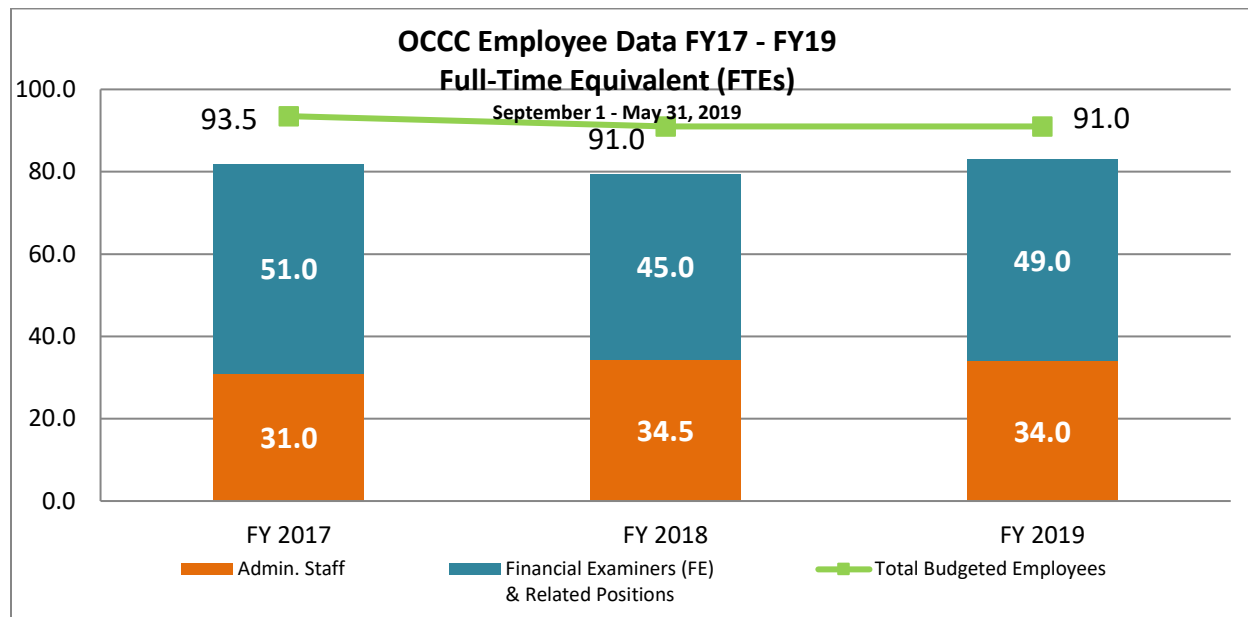
Agency staff continues to provide a combination of live presentations and communication through various channels to regulated entities. Year-to-date, more than 1,200 industry participants attended staff presentations regarding compliance matters and the regulatory role and responsibilities of the agency at training seminars.

HUMAN RESOURCES

For this reporting period (April-May), the Agency ended with 83 FTEs. Currently the agency is seeking to fill the following positions:

Vacancy	Status
Attorney I	Active – Accepting Applications
Financial Examiner I – II (1-Houston)	Active – Accepting Applications

The chart below compares administrative staff vs. financial examiners (FEs) for the last three fiscal years.



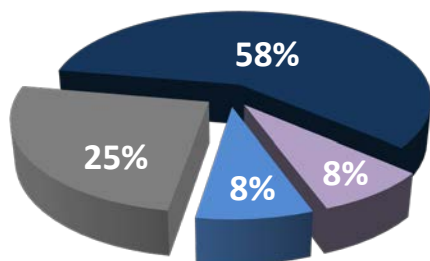
During this period, the Agency had a total of 4 separations: *[3] voluntary resignations and one dismissal*. The current turnover rate is 14.2% or 11.8% when only including voluntary separations and interagency separations. The chart below represents year-to-date data.

OCCC Turnover Categories

FY 19 - All Employees

(09/01/18 - 5/31/19)

12 total - 1 Interagency Transfer, 7 Voluntary Resignations, 3 Retirements, 1 Dismissal



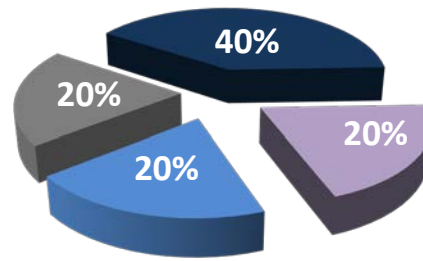
■ Interagency Transfer ■ Retirement
■ Voluntary Resignation ■ Dismissal

OCCC Turnover

FY 19 - FE Series

(09/01/18 - 5/31/19)

4 total - 1 Interagency Transfer, 2 Voluntary Resignations, 1 Retirement, 1 Dismissal



■ Interagency Transfer ■ Retirement
■ Voluntary Resignation ■ Dismissal

Finally, on May 7th, the OCCC received an official certificate from the governor's office recognizing the Agency's commitment to combat Human Trafficking in the State of Texas by ensuring all agency staff was trained to "*Be the One*" in recognizing and reporting suspected human trafficking.

FINANCIAL EDUCATION

In April, the Financial Education Specialist participated in the Austin Community College (ACC) Money Management Office “ACC Credit Day!” This was the first year that ACC Credit Day was held in conjunction with the ACC job fair. This event bundled financial education and career services to promote participation. The Financial Education Specialist along with other volunteers pulled credit reports and provided individualized financial credit education to 51 participants seeking services at ACC’s job fair.

In addition, the Financial Education Specialist attended FLCCT’s Financial Wellness & Innovation Summit in April. The summit brought leaders and stakeholders from different sectors together to discuss solutions for improving financial capability in the Texas community. The event encouraged participants to collaborate in creating initiatives that will bridge the financial literacy gap by empowering service providers to support economic development in low- income populations. Presentations were offered by CFPB, Prosperity Now, Federal Reserve Bank of Dallas, Dell Medical School, and Austin Community Foundation.

INFORMATION TECHNOLOGY

Compliance

IT has been working with the Auditors and providing document requests for the current Change Management audit.

Hardware and Systems

One internal server is being updated in phases, with an end goal of upgrading to Windows Server 2019. Other Windows-based servers will follow.

OCCC has eleven enterprise computers running on Windows 7, with plans to replace or upgrade to Windows 10 before the end of CY’19. Microsoft has announced discontinuation of Windows 7 support as of January 2020.

Security & Software

The ALECS core rebuild update, a massive revision necessary to capture JavaScript-based security improvements, is projected to be released June 2019.



Accounting Report

Christina Cuellar Hoke, Manager

The Accounting department will be attending the AFR training courses offered by the Comptroller's office. Also, Governmental Accounting Standards Board (GASB) questionnaires have been submitted to the Office of the Comptroller of Public Accounts, as per their request. In preparation for the upcoming months, the department has already held meetings to discuss FY2020 budget preparations and deadlines.

Information was also gathered, reviewed, and supplied for the Efficiency Audit to assist in completing the audit.

The department submitted completed Fiscal Notes to the Legislative Budget Board and the Governor's Office for all applicable bills in the 86th Legislature Session.



Legal Department Report

Michael Rigby, General Counsel

June 2019

Enforcement Report

Orders for Reporting and Net Asset Violations

In April 2019, the OCCC issued 14 enforcement orders against credit access businesses that did not timely and accurately file their 2018 fourth quarter and annual reports by the deadline of January 31, 2019. Ten of these orders were injunctions requiring the licensees to file timely and accurate reports. Four of these orders imposed an administrative penalty for violating a previous injunction.

In April, the OCCC also issued nine enforcement orders against property tax lenders that did not timely and accurately file their 2018 annual reports by the deadline of March 31, 2019. Six of these orders were injunctions requiring the licensees to file timely and accurate reports. Three of the orders imposed an administrative penalty for violating a previous injunction.

In April, the OCCC also issued 10 enforcement orders against regulated lenders for failing to maintain net assets required under Chapter 342 of the Texas Finance Code. All of these orders are injunctions that require the licensees to cease and desist violating the net asset requirement, to submit a new balance sheet, and to file timely and accurate annual reports reflecting compliance with the net asset requirement.

Performance Report

The following table summarizes enforcement actions closed by the OCCC during the last three fiscal years, and the current fiscal year-to-date as of May 31, 2019. These figures reflect enforcement actions that have been fully resolved by formal order, informal resolution, or dismissal. Actions that are still pending are not included in the table.

Enforcement Actions Closed as of May 31, 2019				
	FYTD 2019	FY 2018	FY 2017	FY 2016
Injunction Actions				
Crafted Precious Metal Dealer	0	0	0	0
Credit Access Business	36	27	47	25
Debt Management Provider	0	5	2	1
Manufactured Housing	0	0	1	0
Motor Vehicle Sales Finance	12	19	31	18
Pawnshop	80	39	37	1
Pawnshop Employee	67	48	69	0
Property Tax Lender	8	2	2	16
Registered Creditor	0	1	1	1
Regulated Lender	19	12	37	88
Residential Mortgage Loan Originator	0	1	1	0
Total Injunction Actions	222	154	230	157
Administrative Penalty Actions				
Crafted Precious Metal Dealer	0	0	0	2
Credit Access Business	6	6	23	97
Debt Management Provider	0	1	0	1
Motor Vehicle Sales Finance	9	26	106	129
Pawnshop	5	6	3	40
Pawnshop Employee	0	0	0	1
Property Tax Lender	3	6	2	3
Regulated Lender	5	0	13	0
Residential Mortgage Loan Originator	0	0	0	1
Total Administrative Penalty Actions	28	45	147	273
Revocation / Suspension Actions				
Crafted Precious Metal Dealer	0	0	0	0
Credit Access Business	0	0	3	2
Motor Vehicle Sales Finance	0	1	2	9
Pawnshop	0	0	1	3
Pawnshop Employee	1	0	1	2
Property Tax Lender	0	0	0	0
Regulated Lender	0	0	1	1
Residential Mortgage Loan Originator	0	0	0	0
Total Revocation / Suspension Actions	1	1	8	17
Application Denial and Protest Actions				
Credit Access Business	0	0	0	0
Motor Vehicle Sales Finance	2	0	1	3
Pawnshop	0	0	1	1
Pawnshop Employee	0	0	0	7
Property Tax Lender	0	0	0	0
Regulated Lender	0	0	0	0
Residential Mortgage Loan Originator	0	0	1	0
Total App. Denial and Protest Actions	2	0	3	11
Total Actions Closed	253	200	388	458

From April 1, 2019 to May 31, 2019, the OCCC:

- closed 27 cases with final orders,
- opened 25 cases in order to assess administrative penalties,
- opened 27 cases in order to issue injunctions,
- participated in no contested case hearings, and
- opened no cases challenging an application denial.

The OCCC has one hearing scheduled between June 1, 2019, and July 31, 2019.

Administrative Rule Report

At the June meeting, the OCCC is presenting two proposed rule actions to implement the OCCC Sunset bill, HB 1442. One rule action would implement requirements for pawnshops and pawnshop employees, while the other rule action would implement across-the-board requirements for licensing and administration.

At the August meeting, the OCCC intends to present a proposed rule action regarding a single equivalent daily rate for regulated loans (implementing HB 3855), a proposed rule action regarding documentary fees for motor-driven cycles (implementing HB 3171), and a proposed rule action regarding licensing for military spouses (implementing SB 1200).

At the October meeting, the OCCC intends to present a rule action regarding negotiated rulemaking and alternative dispute resolution, to implement remaining portions of HB 1442.

Litigation

State of Texas v. Cash Auto Sales, Inc. and VIP Finance of Texas, Inc.

In 2017, the OCCC issued an Order to Cease and Desist, to Take Affirmative Action, and to Make Restitution against VIP Finance of Texas, Inc. The OCCC alleges that VIP violated the Texas Finance Code by engaging in unlicensed regulated lending, engaging in unlicensed motor vehicle sales finance, requiring the purchase of automobile clubs in credit transactions, and charging unreasonable automobile club fees.

VIP argues that the OCCC's enforcement action is barred because of a 1998 judgment, in which a Dallas district court held that VIP was not violating the Texas Credit Code and dismissed the State's claims against VIP. On February 22, 2018, a Dallas district court granted VIP's request for a temporary injunction against the OCCC. The OCCC appealed the case to the Dallas court of appeals, arguing that the Dallas district court does not have jurisdiction over the case.

On May 23, 2019, the Dallas court of appeals ruled in the OCCC's favor, dismissing the Dallas district court case. The court of appeals found that the current enforcement action against VIP deals with different transactions from the 1998 case. The court of appeals reversed the district court's denial of the OCCC's plea to the jurisdiction, reversed the district court's temporary injunction, and ordered VIP to pay the OCCC's costs of appeal. On June 7, VIP filed a motion for rehearing with the court of appeals.

The OCCC is represented in the district court and court of appeals by the Financial Litigation and Charitable Trusts Division of the Office of the Attorney General. The district court case number is DC-96-11528. The court of appeals case number is 05-18-00198-CV.

Office of Consumer Credit Commissioner v. Tim McMahan d/b/a Advantage Auto

In June 2016, the OCCC issued an injunction against Tim McMahan d/b/a Advantage Auto, alleging that Mr. McMahan engaged in unlicensed activity under Chapters 342, 348, and 393 of the Texas Finance Code. In June 2017, the OCCC issued an order assessing an administrative penalty for violating the injunction.

In October 2017, at the OCCC's request, the Office of the Attorney General filed a lawsuit in Travis County district court against Mr. McMahan. A trial on the merits was held in on March 5, 2019, and Mr. McMahan did not appear. The court entered a final judgment ordering Mr. McMahan to pay the previously ordered administrative penalty to the OCCC. Mr. McMahan did not request a new trial or appeal the district court's judgment, so the court's judgment is now final.

The OCCC is represented in the district court by the Financial Litigation and Charitable Trusts Division of the Office of the Attorney General. The case number is D-1-GN-17-005451, in the 98th District Court of Travis County, Texas.

Federal Rulemaking

CFPB Payday Lending Rule

On June 5, 2019, the Consumer Financial Protection Bureau (CFPB) changed the deadline to comply with the mandatory underwriting provisions of its Payday Lending Rule. The mandatory underwriting provisions would generally require creditors to verify the consumer's income and reasonably determine that the consumer has the ability to repay the loan according to its terms, while also meeting major financial obligations and basic living expenses. The previous August 19, 2019 compliance date is being delayed by 15 months, to November 19, 2020.

In a separate rule action, the CFPB has proposed rescinding the rule's mandatory underwriting provisions. The CFPB issued the proposal because it has determined that the evidence used to support these provisions was not sufficient. The official comment period for this proposal ended on May 15, 2019.

These rule actions do not affect the current August 19, 2019 compliance date for the rule's payment provisions, which would require creditors to provide written notice before withdrawing payments, and would generally prohibit creditors from attempting further withdrawals after two consecutive withdrawal attempts fail.

In addition to these rule actions, the Payday Lending Rule is also subject to a stay because of a pending lawsuit. In April 2018, the Community Financial Services Association of America and the Consumer Services Alliance of Texas filed a lawsuit against the CFPB to invalidate the Payday Lending Rule. The complaint argues that the rule is unconstitutional, exceeds the CFPB's statutory authority, and violates the federal Administrative Procedure Act. The case is pending in the federal district court for the Western District of Texas in Austin, with case number 1:19-cv-00295-LY. The court has issued an order staying the rule's compliance date pending further order of the court.

CFPB Debt Collection Rule

On May 7, 2019, the CFPB proposed a rule to implement the Fair Debt Collection Practices Act, which protects consumers against harassment by third-party debt collectors. The proposed rule would generally limit collectors to no more than seven attempts by telephone per week to reach a consumer about a specific debt. The rule would also allow consumers to opt out of future communications by email or text message. The rule would require debt collectors to provide consumers with an itemization of the debt with information about how the consumer can respond, and would prohibit a collector from suing or threatening to sue if the collector knows or should know that the statute of limitations has expired.

The CFPB will accept comments on the proposed rule until 90 days after the proposal is published in the *Federal Register*. The CFPB has proposed that the rule's effective date would be one year after the final adopted rule is published.

FTC Safeguards Rule

On April 4, 2019, the Federal Trade Commission published proposed amendments to the Safeguards Rule, which implements the Gramm–Leach–Bliley Act. Currently, the Safeguards Rule requires financial institutions to develop, implement, and maintain an information security program, in order to ensure security and confidentiality of consumer information. The proposed amendments would add specific requirements for implementing the information security program, including appointment of a chief information security officer, implementation of multi-factor authentication for those with access to customer information, and use of audit trails to respond to security events.

The proposed amendments would exempt smaller financial institutions (those maintaining information for fewer than 5,000 consumers) from some of the rule's requirements, but would still require these institutions to maintain a written information security program, appoint a chief information security officer, perform risk assessments, and regularly test systems.

The FTC will accept comments on the proposed amendments until August 2, 2019.

FTC Privacy Rule

On April 4, 2019, the FTC published proposed amendments to the Privacy Rule, which implements the Gramm–Leach–Bliley Act's privacy provisions for motor vehicle dealers that are not subject to the CFPB's authority. The proposed amendments would update definitions to conform to the Dodd-Frank Act, and would remove examples that now fall outside the FTC's authority.

The comment period for the proposed amendments ended on June 3, 2019.

Advisory Bulletins

From April 1, 2019 to May 31, 2019, the OCC did not issue any advisory bulletins.

Official Interpretation Requests

From April 1, 2019 to May 31, 2019, the OCC did not receive any requests for official interpretations. As of May 31, 2019, there were no pending requests for official interpretations.

Public Information Requests

From April 1, 2019 to May 31, 2019, the OCCC received 28 requests for information under the Texas Public Information Act, with no referrals to the Office of the Attorney General.

Gifts Received by the OCCC

From April 1, 2019 to May 31, 2019, the OCCC received one gift. The American Association of Residential Mortgage Regulators (AARMR) provided a \$690 scholarship that allowed an OCCC Financial Examiner to attend its 2019 Spring Training School: Compliance Risk Management from April 30-May 2, 2019, in Little Rock, Arkansas.



Summary of 2019 Legislation

Matthew Nance, Deputy General Counsel

June 2019

This is a summary of the Texas Legislature's recently passed legislation that affects the OCCC and its regulated industries. Most of the bills are awaiting the governor's approval as of June 7, and most are scheduled to go into effect on September 1, 2019. Bills that have already been approved, or that have a different effective date, are noted below.

Bills affecting credit transactions and the OCCC's authority

HB 1442—OCCC Sunset bill

This bill continues the OCCC's existence as a state agency until September 1, 2031, replacing the current sunset date of September 1, 2019. The bill also makes the following changes related to the OCCC's operations and authority, based on recommendations of the Sunset Advisory Commission:

- **Pawnshop employee license program:** The bill provides that pawnshops may, but are not required to, participate in the pawnshop employee license program. This change is in response to Sunset Staff Recommendation 3.1, which was to discontinue pawnshop employee licensing.
- **Good moral character standard:** The bill removes provisions stating that pawnshop and pawnshop employee license applicants must be of "good moral character." These provisions implement Sunset Staff Recommendation 5.1, which stated that "good moral character" is a subjective standard that should be removed from the statute.
- **License and registration terms:** The bill authorizes the Finance Commission to set the term of each license and registration (up to two years), and to set the expiration date for each license and registration. These provisions implement Sunset Staff Recommendation 5.2.
- **Complaint processing:** The bill simplifies statutory provisions regarding complaint processing, in order to meet the Sunset Advisory Commission's across-the-board requirements. This provision implements Sunset Staff Recommendation 5.3.
- **Disclosure to complainant:** The bill authorizes the OCCC to disclose a summary of investigation information to a complainant, implementing Sunset Staff Recommendation 5.4.
- **Investigation upon reasonable cause:** The bill removes a provision requiring the OCCC to wait for a response from an entity before conducting an investigation, authorizing the OCCC to conduct an investigation upon reasonable cause to believe that a violation has occurred. This implements Sunset Staff Recommendation 5.5.
- **Enforcement authority for crafted precious metal dealers:** The bill amends the OCCC's general enforcement authority provisions to apply to crafted precious metal dealers, implementing Sunset Staff Recommendation 5.7.

- ***Denying renewal of licenses and registrations:*** The bill authorizes the OCCC to deny renewal for licensees or registrants that fail to comply with an order issued by the OCCC, implementing Sunset Staff Recommendation 5.8.
- ***General restitution authority:*** The bill removes language limiting the OCCC's restitution authority to persons "injured by the violation," so that the OCCC will be generally authorized to order restitution for violations. This provision implements Sunset Staff Recommendation 5.9.
- ***Restitution authority for crafted precious metal dealers:*** The bill amends the OCCC's restitution authority provision to apply to crafted precious metal dealers, implementing Sunset Staff Recommendation 5.10.
- ***Notice and opportunity for hearing:*** The bill specifies that the OCCC may take certain actions after "notice and opportunity for a hearing," amending provisions that currently require notice and a hearing. These provisions implement the first part of Sunset Staff Recommendation 5.11.
- ***Appeals to Finance Commission:*** The bill removes current Finance Code provisions stating that certain matters may be appealed to the Texas Finance Commission, while maintaining a respondent's opportunity for judicial review in district court under the Administrative Procedure Act. These provisions implement the second part of Sunset Staff Recommendation 5.11.
- ***Negotiated rulemaking and alternative dispute resolution:*** The bill requires the Finance Commission to adopt rules for negotiated rulemaking and alternative dispute resolution, in accordance with model guidelines from the State Office of Administrative Hearings. This implements Sunset Staff Recommendation 7.2.
- ***Advisory committees:*** The bill authorizes the OCCC to appoint advisory committees, implementing Sunset Staff Recommendation 7.3.
- ***Study of high-cost lending:*** The bill removes provisions requiring the OCCC to study agricultural and small business lending, develop models for lower-cost alternatives to high-cost loans, and track the location of lenders. However, the bill maintains general requirements for the OCCC to study high-cost lending and alternatives.
- ***Territorial application and online lending:*** The bill amends various chapters of the Finance Code to specify that they apply to transactions extended to a person located in Texas at the time of the transaction. For property tax loans, the bill specifies that Chapter 351 of the Finance Code applies to loans for real property located in Texas. The bill also specifies that a lender may make a regulated loan or property tax loan online from a licensed office.

The OCCC currently intends to implement HB 1442 in three rule actions:

- At the June 2019 Finance Commission meeting, the OCCC is presenting a proposed rule action that would set license and registration terms, describe complaint processes, and specify requirements for appealing the denial of a debt cancellation agreement.
- Also at the June 2019 meeting, the OCCC is presenting a proposed rule action that would implement the pawnshop employee license program, set license terms for pawnshops and pawnshop employees, and remove the "good moral character" standard.
- At the October 2019 meeting, the OCCC intends to present a rule action relating to negotiated rulemaking and alternative dispute resolution.

SB 614—Finance Commission, DOB, & SML Sunset bill

This bill continues the Texas Finance Commission’s existence until September 1, 2031, replacing the current sunset date of September 1, 2019. The bill amends various provisions of the Finance Code and Health and Safety Code enforced by the Texas Department of Banking and the Texas Department of Savings and Mortgage Lending.

The bill requires the finance agencies, including the OCCC, to create a training manual for Finance Commission members. These provisions implement Sunset Staff Recommendation 7.1. The bill has been approved by the governor, and will go into effect on September 1, 2019.

HB 3855—Single equivalent daily rate for regulated loans

Currently, Chapter 342, Subchapter E of the Finance Code allows a lender to charge a three-tiered interest rate. This bill specifies that the lender may charge this amount by either: (1) applying an applicable daily rate to each bracket of the unpaid principal balance, or (2) applying a single equivalent daily rate to the entire principal balance.

At the August 2019 Finance Commission meeting, the OCCC intends to present a rule action to implement HB 3855 by adding a reference to the single equivalent daily rate.

HB 3171—Classification of mopeds and motorcycles

This bill amends classification provisions and requirements in the Texas Transportation Code for mopeds and motorcycles. The bill removes the term “motor-driven cycle” from the Transportation Code, and also removes this term from the Finance Code provision describing the documentary fee for motorcycles and mopeds.

At the August 2019 meeting, the OCCC intends to present a rule action to implement HB 3171 by removing the phrase “motor-driven cycle” in the rule on documentary fees for motorcycles and mopeds.

SB 2330—Temporary authority for residential mortgage loan originators

This bill provides that a registered mortgage loan originator, or a residential mortgage loan originator licensed in another state, has temporary authority to act as a residential mortgage loan originator while employed by a licensed entity in Texas. The bill also provides temporary authority for a residential mortgage loan originator licensed under one Finance Code chapter to act under another chapter. The temporary authority lasts 120 days from the date the originator submits an appropriate application to the appropriate state agency. The bill is scheduled to go into effect on November 24, 2019.

HB 996—Debt collection after statute of limitations

This bill prohibits a debt buyer from bringing a legal action against a consumer to collect a consumer debt after the applicable statute of limitations described in the Texas Civil Practice and Remedies Code (describing a four-year period for contracts and debts) or the Texas Business and Commerce Code

(describing a six-year period for notes). If this time period has expired, the cause of action is not revived by later activity on the debt.

HB 1254—Agricultural designation for property subject to home equity loan

This bill removes a Texas Tax Code provision that currently prohibits agricultural designation of real property subject to a home equity loan. The bill has been approved by the governor, and will go into effect on January 1, 2020.

HB 4390—Privacy of personal identifying information after data breach

This bill amends and adds requirements for disclosing breaches of system security where sensitive personal information has been acquired by an unauthorized individual. The bill requires a person to disclose a breach to affected individuals within 60 days after determining that a breach has occurred, replacing current language that requires the report “as quickly as possible.” The bill also requires the person to notify the attorney general if the breach involved at least 250 Texas residents. The bill’s amended notification requirements are scheduled to go into effect on January 1, 2020.

SB 604—TxDMV Sunset bill

This bill extends the current sunset date for the Texas Department of Motor Vehicles, and amends various statutes dealing with TxDMV’s authority. In particular, the bill authorizes digital license plates, which are electronic displays installed on a vehicle instead of a physical license plate. The authorization is limited to vehicles that are part of a commercial fleet, vehicles owned or operated by a governmental entity, and non-passenger vehicles. The bill allows the provider of a digital license plate to charge a fee for the digital license plate in installments.

SB 2128—Recording paper copies of electronic property records

This bill amends requirements for county property records. The bill requires a county clerk to record a paper or tangible copy of an electronic record if the copy contains an image of an electronic signature, the signature is sworn or acknowledged, and the copy has been declared to be true and correct by a notary public or other officer.

Bills affecting state agency administration:

HB 1342—Denial of license based on criminal history

This bill amends Chapter 53 of the Texas Occupations Code, which allows state agencies to deny a license application based on criminal history. The bill explains that the chapter’s intent is to enhance employment opportunities for those who have been convicted and discharged a sentence.

The bill removes a provision allowing denial, suspension, or revocation for offenses committed within the last five years that do not directly relate to the licensed occupation. Before denying, suspending, or

revoking a license based on criminal history, the bill requires an agency to consider correlation between the crime and the occupation, and to consider evidence of the person's compliance with community supervision, parole, or mandatory supervision. The bill provides that before denying a license application based on criminal history, an agency must provide the applicant with written notice of the reason for the intended denial, and must allow the applicant at least 30 days to provide any relevant information.

The bill applies to all license applications submitted on or after September 1, 2019. The state auditor is required to publish a best practices guide for applicants by September 1, 2020.

In future rule reviews, the OCCC intends to present amendments to rules on evaluation of criminal history, to update references to Chapter 53's requirements as amended by this bill. In addition, the OCCC intends to make necessary changes to its review of license applications to ensure compliance for applications filed on or after September 1.

SB 1200—Out-of-state licensing for spouses of military members

This bill provides that a military spouse may engage in a licensed occupation in Texas without an applicable license, if the spouse is licensed in good standing in another jurisdiction with licensing requirements that are substantially equivalent to Texas's requirements. The military spouse must notify the agency of intent to practice in Texas, must submit proof of residency, and receive confirmation from the agency of licensure in the other jurisdiction. The military spouse must comply with laws and regulations related to the licensed occupation. The authority is limited to three years, and applies only while the service member is stationed in Texas. The bill requires state agencies to adopt rules implementing the bill's provisions no later than December 1, 2019.

The OCCC intends to present a proposed rule action implementing this bill at the Finance Commission's August 2019 meeting.

HB 1791—Carrying handguns on government property

This bill prohibits state agencies from taking any action that states or implies that a handgun license holder is prohibited from carrying a handgun on government-owned property, unless carrying the handgun is prohibited by other law. This expands a current provision prohibiting a state agency from posting a sign stating that handguns are prohibited on government-owned property.

HB 2110—Mobile access in state agency customer satisfaction surveys

This bill relates to state agency measurement and the management of customer satisfaction. This bill adds text messages, mobile applications, and mobile website access to the current list of items included on the customer satisfaction evaluation. The bill also requires an agency to report information on customer satisfaction upon request by the Legislative Budget Board or the governor's office, in addition to the report currently required on June 1 of each even-numbered year. The bill is scheduled to go into effect immediately upon the governor's signature.

HB 3834—Cybersecurity training for state employees

This bill requires state employees to complete a certified cybersecurity training program each year if they use a computer to complete at least 25% of required duties. The bill also describes requirements for the Department of Information Resources' certification of a cybersecurity program. The bill is scheduled to go into effect immediately upon the governor's signature.

HB 3875—Cloud compatibility for IT systems

This bill requires agencies to ensure that automated information systems and major information resources projects are capable of being run on cloud computing services. This requirement replaces current language stating that agencies "shall consider" cloud computing service options.

SB 27—Recovery for frivolous regulatory action by state agency

This bill amends requirements for recovery of attorney's fees for a frivolous action by a state agency. Under current law, in a civil suit brought by a state agency, a party may recover attorney's fees and expenses if the state agency's action is frivolous, unreasonable, or without foundation. The bill limits this recovery to \$1 million. The bill authorizes an administrative law judge to award up to \$1 million for attorney's fees and costs to a prevailing party, if there is a determination that the regulatory action is frivolous. The bill has been approved by the governor, and will go into effect on September 1, 2019.

SB 37—Prohibiting license denial based on student loan default

This bill prohibits a state agency from denying, suspending, or revoking a license based on a person's student loan default, breach of a student loan contract, or breach of a scholarship contract. Currently, the Texas SAFE Act allows a financial agency to deny a residential mortgage loan originator application based on a failure to show financial responsibility. The bill amends this provision to specify that a denial may not be based on student loan default. The bill was approved by the governor and went into effect immediately on June 7, 2019.

SB 64—State agency cybersecurity

This bill requires the Department of Information Resources to submit a report by October 1 of each even-numbered year, prioritizing state agency cybersecurity projects and projects to modernize or replace legacy systems. The bill requires each state agency to coordinate with DIR to implement this requirement.

If a state agency experiences a system security breach, the bill requires the agency to provide an analysis of the event to DIR not later than the 10th day after the agency recovers from the breach. The bill limits civil liability for a person who discloses a potential security issue to a governmental entity in good faith.

The bill allows state agencies to spend funds as appropriate to reimburse employees for certification related to information technology or cybersecurity. The bill requires each state agency to consider using next generation technology, including cryptocurrency, blockchain, and artificial intelligence. The bill has

been approved by the governor, and will go into effect on September 1, 2019.

SB 65—State agency contracting

This bill amends requirements for state agency contracting. The bill requires agencies to retain electronic contract solicitation documents in their original electronic form. For major information resource projects of at least \$10 million, the bill requires a state agency to submit the contract to an interagency quality assurance team, so that the team may review the contract and provide recommendations on final negotiated terms.

For contracts where the value exceeds \$5 million, the bill requires a state agency to review the vendor's performance at least once each year, and at key milestones identified in the contract. Before awarding a contract to a vendor, the bill requires a state agency to assess the vendor, through an assessment certified by the procurement director. The bill also requires each contract file to include a checklist to ensure compliance with state laws and rules, and provides that the Texas Comptroller of Public Accounts will develop and periodically update a model contract file checklist for use by state agencies.

The bill generally goes into effect on September 1, 2019, and requires DIR, the comptroller, and affected state agencies to adopt necessary rules and procedures as soon as practicable after September 1.

SB 241—State agency reports

This bill amends various provisions relating to state agency reports. The bill changes the deadline for submitting the biennial information security plan from October 15 of even-numbered years to June 1 of even-numbered years. The bill also requires state agencies to provide an organizational chart to the Department of Information Resources, showing that the agency's information resources manager reports directly to the agency head or deputy agency head.

SB 494—Open meetings and public information requirements for emergencies and catastrophes

This bill relates to open meetings and public information requirements during an emergency. The bill allows notice of an emergency meeting to be posted one hour before the meeting (replacing a current two-hour requirement), and limits a governmental body to taking actions that (1) either directly relate to responding to the emergency, or (2) were listed in a previously posted meeting notice.

The bill allows a governmental body to suspend requirements under the Public Information Act if the governmental body is impacted by a catastrophe. To suspend the requirements, the governmental body must submit a notice to the attorney general and must provide a notice of suspension to the public. The bill has been approved by the governor, and will go into effect on September 1, 2019.

SB 646—Construction and purchase approval for SDSI agencies

This bill requires a self-directed semi-independent agency to obtain written authorization from the governor before allocating money for the purchase of real property or to construct a building on real property. To apply for an authorization, the agency must submit a detailed description to the Texas

Facilities Commission with a request for analysis of available state property satisfying the agency's need. The bill has been approved by the governor, and will go into effect on September 1, 2019.

SB 943—Public information and state agency contracts

This bill provides that contracting information is public under the Public Information Act unless the statute provides otherwise. The bill lists several types of contract and offer terms that are expressly made public, including the price that a governmental body will pay under a contract, identity of parties, effective dates, and contract duration terms. The bill is scheduled to go into effect on January 1, 2020, and applies to public information requests received on or after that date.

SB 944—Public information, private devices, and temporary custodians

This bill requires current and former state employees who maintain public information on a privately owned device to transfer the information to the governmental body or preserve the information in its original form. If a public information officer is aware that information is in the possession of a temporary custodian, the bill requires the public information officer to make reasonable efforts to obtain the information from the temporary custodian.

The bill specifies that an agency may designate one mailing address and one email address for receiving public information requests. The bill requires the attorney general to create a public information request form, and requires a governmental body that allows use of the form to post the form on its website.

The bill is scheduled to go into effect on September 1, 2019, and requires the attorney general to create the public information request form by October 1, 2019.

SB 1640—Open meetings and criminal offense for prohibited communications

This bill provides that it is a criminal offense for a member of a governmental body to engage in at least one communication in a series of communications without a quorum of members of the body, where the member knew that the series of communications would involve a quorum, and would constitute a deliberation concerning an issue within the body's jurisdiction. This provision replaces a current provision describing a criminal offense for conspiracy to evade open meetings laws. The bill is scheduled to go into effect immediately upon the governor's signature.

SB 1793—Participation in comptroller's contract for travel services

Current law requires state agencies to participate in the Comptroller of Public Accounts' contracts for travel services. This bill specifies that an officer or employee who is engaged in official business of the governmental entity may participate in the comptroller's contract for travel services. The bill allows the comptroller to charge a fee to the participating governmental entity, up to the costs incurred by the comptroller in providing services.

Legislative Bill No. and Description	Rule Item/Purpose	Proposal Date	Adoption Date
House Bill 1442 Relating to the continuation and functions of the OCCC, the licensing and registration of persons regulated by the OCCC, and certain consumer financial transactions regulated by the OCCC	Licensing, Registration, Administration, Complaints, and Appeals - <i>Proposed Amendments, New, and Repeal</i> 7 TAC, Part 1, Chapter 2 and Part 5, Chapters 82, 83, 84, 85, 86, 87, 88, and 89 To implement HB 1442's licensing and administrative provisions by setting license and registration terms; describing the OCCC complaint processes; and specifying requirements for appealing the denial of a debt cancellation agreement <i>Precomment draft distributed May 14, 2019</i> <i>Stakeholder meeting held May 23, 2019</i>	06/21/2019	
House Bill 1442 Relating to the continuation and functions of the OCCC, the licensing and registration of persons regulated by the OCCC, and certain consumer financial transactions regulated by the OCCC	Rules of Operation for Pawnshops - <i>Proposed Amendments</i> 7 TAC, Part 5, Chapter 85, Subchapter A To implement HB 1442's pawnshop-related provisions by implementing the optional pawnshop employee license program; amending pawnshop employee license fees; setting license terms; and removing the "good moral character" standard <i>Precomment draft distributed May 14, 2019</i> <i>Stakeholder meeting held May 23, 2019</i>	06/21/2019	
Senate Bill 1200 Relating to the authority of certain military spouses to engage in a business or occupation in this state	Residential Mortgage Loan Originators Applying for Licensure with the OCCC Under the SAFE Act - <i>Proposed New</i> 7 TAC, Part 1, Chapter 2 To implement SB 1200 by providing licensing procedures for spouses of military members	08/16/2019	
House Bill 3855 Relating to methods of computing interest charges on certain consumer loans	Rules for Regulated Lenders - <i>Proposed Amendments</i> 7 TAC, Part 5, Chapter 83, Subchapter A To implement HB 3855 by adding a reference to the single equivalent daily rate	08/16/2019	
House Bill 3171 Relating to the classification and operation of mopeds and certain motorcycles	Retail Creditors - <i>Proposed Amendments</i> 7 TAC, Part 5, Chapter 86 To implement HB 3171 by removing a reference to "motor-driven cycle" in the current rule on documentary fees for motorcycles and mopeds	08/16/2019	

Legislative Bill No. and Description	Rule Item/Purpose	Proposal Date	Adoption Date
<p>House Bill 1442 Relating to the continuation and functions of the OCCC, the licensing and registration of persons regulated by the OCCC, and certain consumer financial transactions regulated by the OCCC</p> <p>Senate Bill 614 Relating to the continuation and functions of the Finance Commission of Texas, the Texas Department of Banking, and the Department of Savings and Mortgage Lending, to the training requirements applicable to the agencies overseen by the Finance Commission of Texas, and to the regulation of certain financial institutions and businesses</p>	<p>Negotiated Rulemaking - Proposed New and Amendments 7 TAC, Part 1, Chapter 5 7 TAC, Part 1, Chapter 9</p> <p>To implement HB 1442 and SB 614 by providing the finance agencies with negotiated rulemaking procedures</p>	10/18/2019	
<p>House Bill 1442 (See bill description above)</p> <p>Senate Bill 614 (See bill description above)</p>	<p>Alternative Dispute Resolution - Proposed New 7 TAC, Part 1, Chapter 5</p> <p>To implement HB 1442 and SB 614 by providing the finance agencies with alternative dispute resolution procedures</p>	10/18/2019	
Not applicable	<p>Residential Mortgage Loan Originators Applying for Licensure with the OCCC Under the SAFE Act - Rule Review 7 TAC, Part 1, Chapter 2</p> <p>To conduct standard rule review under Tex. Gov't Code, §2001.039; to ensure consistency with agency procedures; and to make technical corrections</p>	12/20/2019	

Legislative Bill No. and Description	Rule Item/Purpose	Proposal Date	Adoption Date
Not applicable	Retail Creditors - Rule Review 7 TAC, Part 5, Chapter 86 To conduct standard rule review under Tex. Gov't Code, §2001.039; to ensure consistency with agency procedures; and to make technical corrections	12/20/2019	
Not applicable	Chapter 342, Plain Language Contract Provisions - Rule Review 7 TAC, Part 5, Chapter 90 To conduct standard rule review under Tex. Gov' t Code, §2001.039; to ensure consistency with agency procedures; and to make technical corrections	TBD FY 2020	

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

2. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments, New Rules, and a Repeal in 7 TAC, Part 1, Chapter 2, and Part 5, Chapters 82, 83, 84, 85, 86, 87, 88, and 89, Concerning Licensing, Registration, Administration, Complaints, and Appeals

PURPOSE: The purpose of the proposed amendments, new rules, and repeal in 7 TAC, Part 1, Chapter 2, and Part 5, Chapters 82, 83, 84, 85, 86, 87, 88, and 89 is to implement provisions related to licensing and administration in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner. The Texas Legislature passed HB 1442 in the 2019 legislative session.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments, new rules, and repeal in 7 TAC, Part 1, Chapter 2, and Part 5, Chapters 82, 83, 84, 85, 86, 87, 88, and 89 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the amendments, new rules, and repeal in 7 TAC, Part 1, Chapter 2, and Part 5, Chapters 82, 83, 84, 85, 86, 87, 88, and 89.

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Title 7. Banking and Securities

Part 1. Finance Commission of Texas

Chapter 2. Residential Mortgage Loan Originators Applying for Licensure with the Office of Consumer Credit Commissioner Under the Secure and Fair Enforcement for Mortgage Licensing Act

Part 5. Office of Consumer Credit Commissioner

Chapter 82. Administration

Chapter 83. Regulated Lenders and Credit Access Businesses

Chapter 84. Motor Vehicle Installment Sales

Chapter 85. Pawnshops and Crafted Precious Metal Dealers

Chapter 86. Retail Creditors

Chapter 87. Tax Refund Anticipation Loans

Chapter 88. Consumer Debt Management Services

Chapter 89. Property Tax Lenders

The Finance Commission of Texas (commission) proposes amendments to 7 TAC, Chapter 2, concerning Residential Mortgage Loan Originators Applying for Licensure with the Office of Consumer Credit Commissioner Under the Secure and Fair Enforcement for Mortgage Licensing Act; Chapter 83, concerning Regulated Lenders and Credit Access Businesses; Chapter 84, concerning Motor Vehicle Installment Sales; Chapter 85, concerning Pawnshops and Crafted Precious Metal Dealers; Chapter 86, concerning Retail Creditors; Chapter 87, concerning Tax Refund Anticipation Loans; Chapter 88, concerning Consumer Debt Management Services; and Chapter 89, concerning Property Tax Lenders. The commission also proposes new §82.4, and proposes the repeal of §82.4, in 7 TAC, Chapter 82, concerning Administration. Additionally, the commission proposes new §84.617, in 7 TAC, Chapter 84, concerning Motor Vehicle Installment Sales; and proposes new §86.103, in 7 TAC, Chapter 86, concerning Retail Creditors.

In general, the purpose of the proposed amendments and new rule in 7 TAC, Chapters 2, 82, 83, 84, 85, 86, 87, 88, and 89

is to implement provisions related to licensing and administration in HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC's existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill addresses three issues that are relevant to this proposal. First, the bill authorizes the commission to set the term of each license or registration issued by the OCCC, for a period up to two years. Second, the bill simplifies statutory provisions regarding complaint processing, in order to meet the Sunset Advisory Commission's across-the-board requirements. Third, the bill removes current provisions from the Texas Finance Code stating that certain matters may be appealed to the commission, while maintaining a respondent's opportunity for judicial review in district court under the Administrative Procedure Act.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then

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held a stakeholder meeting and webinar regarding the rule changes. Several stakeholders provided verbal feedback during the stakeholder meeting, and the OCCC received four written precomments from stakeholders. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

In general, this proposal is intended to fulfill three purposes. First, proposed amendments specify the license term, renewal process, and expiration date for each type of license or registration issued by the OCCC (except for pawnshops and pawnshop employees, which are being addressed in a separate proposal). These amendments implement Texas Finance Code, §14.112 (as added by HB 1442), which provides that the commission shall prescribe the licensing or registration period for licenses and registrations issued by the OCCC. Second, a proposed new rule specifies procedures for how the OCCC processes consumer complaints. Third, a proposed amendment specifies procedures for appealing the denial of a debt cancellation agreement. In addition, the proposed amendments modernize or remove obsolete language.

The individual purposes of the proposed amendments, new rules, and repeal are provided in the following paragraphs.

In §2.201, proposed amendments specify the term, renewal process, and expiration date for a residential mortgage loan originator license. The proposed amendments maintain the current one-year term, the current December 31 expiration date, and the current reinstatement period from January 1 through the last day of February, all of which are currently

described in §2.104. The title of §2.201 is also amended to state "License Term, Renewal, and Expiration," to ensure that the rule's title clearly conveys its contents, and to ensure consistency with other rules being amended in this proposal. In addition, proposed amendments shorten the titles of Chapter 2 and its two subchapters, in order to make these titles more simple and concise, and to clarify that Chapter 2 applies to residential mortgage loan originators regulated by the OCCC, not just those applying for licensure.

Section 82.4 is proposed for repeal and replacement with a new rule, to specify procedures for complaint processing. The proposed new rule is based on Texas Finance Code, §14.062 (as amended by HB 1442), which provides that the OCCC will maintain a system to act efficiently on complaints, will make information available describing complaint procedures, and will periodically notify complaint parties of the status of the complaint. The new rule is also proposed in response to a recommendation of the Sunset Advisory Commission, which directed the OCCC and the commission to develop an updated complaint process in rule. The Sunset Advisory Commission identified the following best practices that should be included in the complaint procedure rule: details on the phrases of the complaint process; overall timeline goals; intervals for notifying parties of the status of the complaint; a process for providing a summary of complaint resolution to the parties; information about appealing the OCCC's resolution of a complaint; procedures governing administrative dismissal of complaints; procedures for defining, counting, and reporting types of complaints; and definitions of how the OCCC distinguishes between complaints and inquiries. Sunset Advisory Commission,

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Finance Agencies Report with Staff Decisions, p. 57 (Sept. 2018).

In proposed new §82.4, subsection (a) defines the terms "complainant," "complaint," "inquiry," and "OCCC." The rule distinguishes between a complaint and an inquiry by defining a complaint to refer to a communication that expresses dissatisfaction with a transaction or alleges wrongful conduct, and by defining an inquiry to refer to a communication other than a complaint. In the precomment draft, the OCCC had included communications requesting assistance with a transaction in the definition of "complaint." The OCCC received an informal precomment that recommended against including requests for assistance in the definition, and pointed to a definition used by the Consumer Financial Protection Bureau. Based on this input, the OCCC believes that the proposed definition appropriately captures the sense of the term "complaint," and will help ensure that the OCCC accurately counts complaints.

Proposed §82.4(b) describes the procedures by which the OCCC processes complaints. The subsection explains that it will send a summary of the complaint and supporting documentation to the person who is the subject of the complaint, and that the person must respond by the deadline identified by the OCCC. The subsection explains that the OCCC will make reasonable efforts to resolve the complaint within 90 days. The subsection also describes circumstances where the OCCC may close complaints, including situations where the complaint is not supported by the evidence, is not within the OCCC's jurisdiction, contains no violation, or is resolved to the satisfaction of the parties. The subsection describes the process for appealing a complaint determination to

senior staff of the OCCC consumer protection department. In response to a precomment, the subsection explains that the OCCC will notify the complaint parties of a request to appeal a complaint determination. One precommenter expressed concern about whether the complaint appeal process conflicted with Chapter 2001 of the Texas Government Code (the Administrative Procedure Act). If a complaint results in an enforcement action against a person, the rule's complaint appeal process would not affect that person's due process rights to appeal the enforcement action under the Administrative Procedure Act. For this reason, the OCCC does not believe that the complaint appeal process creates any inconsistency with the due process rights provided under the Administrative Procedure Act.

Proposed new §82.4(c) explains that the OCCC will quarterly review certain closed complaints, that the OCCC will quarterly report complaint activity to the commission, and that the OCCC will make complaint procedure information available on its website.

In §83.309, a proposed amendment removes a subsection dealing with the date of license expiration for regulated lenders, because expiration is addressed in separate proposed amendments at §83.403. In addition, a proposed amendment changes the title of §83.309 from "License Status" to "License Inactivation or Voluntary Surrender," to provide more clarity about the subject matter of the section. Throughout §83.309 and other sections in this proposal, proposed amendments replace the use of the word "commissioner" with the agency's acronym, "OCCC." The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for

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action by the agency, as opposed to the commissioner specifically. Proposed amendments to the section also update a citation and simplify references to filing a license amendment.

In §83.403, proposed amendments specify the term, renewal process, and expiration date for a regulated lender license. The proposed amendments maintain the current one-year term and the current December 31 expiration date. New subsection (e) also explains that an expired license may be reinstated during the 180-day period described in Texas Finance Code, Chapter 349. The OCCC received an informal precomment explaining that regulated lenders under Chapter 342, Subchapter F of the Texas Finance Code favor a one-year license period, and that this period may help avoid confusion that could occur if the OCCC used a two-year licensing period.

In §83.3009, a proposed amendment removes a subsection dealing with the date of license expiration for credit access businesses, because expiration is addressed in separate proposed amendments at §83.4002. In addition, a proposed amendment changes the title of §83.3009 from "License Status" to "License Inactivation or Voluntary Surrender," to provide more clarity about the subject matter of the section.

In §83.4002, proposed amendments specify the term, renewal process, and expiration date for a credit access business license. The proposed amendments maintain the current one-year term and the current December 31 expiration date.

In §84.309, proposed amendments specify the procedure for appealing the

denial of a debt cancellation agreement in a contested case. The amendments remove references to appealing a denial to the commission. This is based on Texas Finance Code, §354.005(d) (as amended by HB 1442), which specifies that the denial of a debt cancellation agreement may be appealed to district court after an opportunity for a hearing, and removes references to appealing the denial to the commission.

In §84.610, a proposed amendment removes a subsection dealing with the date of license expiration for motor vehicle sales finance licensees, because expiration is addressed separately in proposed new §84.617. In addition, a proposed amendment changes the title of §84.610 from "License Status" to "License Inactivation or Voluntary Surrender," to provide more clarity about the subject matter of the section.

Proposed new §84.617 specifies the term, renewal process, and expiration date for a motor vehicle sales finance license. The new rule maintains the current one-year term, and changes the expiration date from July 31 to October 31. Subsection (e) also explains that an expired license may be reinstated during the 180-day period described in Texas Finance Code, Chapter 349. A temporary provision explains that licenses obtained or renewed in 2019 will be effective until October 31, 2020.

Based on an initial analysis, the OCCC believes that the October 31 date will better align with the OCCC's fiscal year, and will better enable the OCCC to enjoy the operational efficiencies associated with staggering different types of license and registration renewals throughout the year. As an alternative to the rule changes as

proposed, the OCCC is also considering moving to the October 31 renewal date in phrases, where the motor vehicle sales finance licensees would be divided into two groups, one of which would be required to renew by July 31, 2020, and the other of which would be required to renew by October 31, 2020. The OCCC invites comments on this issue.

The OCCC received two precomments recommending a staggered two-year renewal cycle for motor vehicle sales finance licensees. While the OCCC is open to considering two-year renewal in the future, the OCCC has several concerns. Currently, the motor vehicle sales finance licensee population sees a large amount of yearly turnover, with many new licensees coming into business each year and many other licenses expiring. Based on this turnover, the OCCC is concerned that a two-year renewal period would create additional complex and difficult situations pertaining to communications between licensees who have experienced changes in status or location and the OCCC. . The OCCC is also concerned that the process of sending notifications to different portions of the licensed population on different dates would create confusion for licensees, who are most familiar with yearly renewal occurring on a common date for each license type. In addition, the OCCC is concerned about the additional costs that would result for the agency, including costly system modifications and fundamental changes to budget structure.

In §85.1007, proposed amendments specify the term, renewal process, and expiration date for a crafted precious metal dealer registration. The proposed amendments maintain the current one-year term and the current December 31 expiration

date. Additional proposed amendments specify that December 31 is the due date for renewal fees, and that a registration for a temporary location is effective from the date of its issuance until it expires on December 31.

In §86.102, a proposed amendment removes a paragraph stating that the registration fee must be paid within 60 days of commencing operations, while another proposed amendment adds a statement that a person must pay a \$250 late filing fee under Chapter 349 of the Texas Finance Code. These proposed amendments would ensure that the rule provides a clear reference to the statutory process for late registration under Chapter 349. Another proposed reference removes a reference to the October 31 due date for the annual registration fee, because the due date is addressed separately in proposed new §86.103.

Proposed new §86.103 specifies the term, renewal process, and expiration date for registered creditors. The new rule maintains the current one-year term, and specifies that registrations expire on November 30. Proposed §86.103 also specifies the process for late renewal of an expired registration.

In §87.107, proposed amendments specify the term, renewal process, and expiration date for a refund anticipation loan facilitator registration. The proposed amendments maintain the current one-year term and the current December 31 expiration date.

In §88.201, proposed amendments specify the term, renewal process, and expiration date for a debt management services provider registration. The proposed amendments maintain the current one-year

term, and specify that a registration expires on January 31.

In §89.309, a proposed amendment removes a subsection dealing with the date of license expiration for property tax lenders, because expiration is addressed in separate proposed amendments at §89.403. In addition, a proposed amendment changes the title of §89.309 from "License Status" to "License Inactivation or Voluntary Surrender," to provide more clarity about the subject matter of the section.

In §89.403, proposed amendments specify the term, renewal process, and expiration date for a property tax lender license. The proposed amendments maintain the current one-year term and the current December 31 expiration date. New subsection (e) also explains that an expired license may be reinstated during the 180-day period described in Texas Finance Code, Chapter 349.

Christina Cuellar Hoke, Manager of Accounting, has determined that for the first five-year period the proposed rule changes are in effect there will be fiscal implications for state government as a result of administering the rules. During the first fiscal year, FY 2020, the OCCC will experience decreased revenue as a result of shifting the license fee renewal period for motor vehicle sales finance licensees from a July 31 deadline to an October 31 deadline. As a result of moving this deadline, licensees that renew in June or July of 2019 will not be required to renew until October 2020. Consequently, during FY 2020, the OCCC will not receive any renewal fees from the vast majority of motor vehicle sales finance licensees, for an estimated revenue reduction of \$3.4 million. During the following four fiscal years (FY 2021-2024),

there will be no fiscal implications for state government as a result of administering the rules. Because motor vehicle sales finance license renewal will resume in September and October of 2020, the OCCC's revenue from license renewals in FY 2021 through 2024 is anticipated to be unaffected. However, revenue from renewing motor vehicle sales finance licensees will be received earlier during each of these years. The OCCC does not anticipate an impact on the costs to the state as a result of administering the rules. Additionally, Ms. Cuellar Hoke has determined that for the first five-year period the proposed rule changes are in effect there will be no fiscal implications for local government as a result of administering the rules.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the rule changes are in effect, the public benefits anticipated as a result of the proposal will be that the commission's rules will be more easily understood by applicants and licensees, will reflect current agency procedures, and will be more easily enforced. Additional benefits of the proposed amendments are increased efficiencies and modernized rule language.

The proposed rule changes would maintain the one-year term and annual renewal requirement for each license or registration, and would not increase any fee amounts currently described in the rules. For this reason, there is no anticipated cost to persons who are required to comply with the rule changes as proposed. There will be no adverse economic effect on small businesses, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will

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not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent agency that does not receive legislative appropriations. As discussed earlier, the proposed rule changes would result in a decrease in fees paid to the agency for the first year, but not for subsequent years. The proposal repeals §82.4 and replaces it with a new rule regarding complaint processing, in order to implement recommendations of the Texas Sunset Advisory Commission. The proposal also creates new rules §84.617 and §86.103 as part of the implementation of HB 1442. The proposal does not expand or limit an existing regulation. The proposed rule changes do not increase or decrease the number of individuals subject to the rules' applicability. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

The amendments and new rules in 7 TAC, Chapters 82, 83 Subchapter A, 84, 86, 87, and 89 are proposed under Texas Finance Code §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 and Chapter 14 of the Texas Finance Code. The amendments to 7 TAC, Chapter 2 are proposed under Texas Finance Code §180.004, which authorizes the commission to adopt rules necessary to implement Texas Finance Code, Chapter 180. The amendments to 7 TAC, Chapter 83, Subchapter B are proposed under Texas Finance Code, §393.622, which authorizes the commission to adopt rules necessary to enforce and administer Texas Finance Code, Chapter 393, Subchapter G. The

amendments to 7 TAC, Chapter 85 are proposed under Texas Occupations Code §1956.0611, which authorizes the commission to adopt rules necessary to implement Texas Occupations Code, Chapter 1956, Subchapter B. The amendments to 7 TAC, Chapter 88 are proposed under Texas Finance Code §394.214, which authorizes the commission to adopt rules to carry out Texas Finance Code, Chapter 394, Subchapter C. In addition, the proposed amendments in §§2.201, 83.403, 83.4002, 85.1007, 87.107, 88.201, and 89.403, and proposed new §84.617 and §86.103 are authorized under Texas Finance Code §14.112 (as added by HB 1442), which authorizes the commission to set license and registration terms.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 14, 180, 342, 345, 347, 348, 351, 352, 353, 354, 393, and 394; and Texas Occupations Code, Chapter 1956.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

Title 7, Texas Administrative Code

Part 1. Finance Commission of Texas

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Chapter 2. Residential Mortgage Loan Originators Regulated by ~~[Applying for Licensure with]~~ the Office of Consumer Credit Commissioner ~~[Under the Secure and Fair Enforcement for Mortgage Licensing Act]~~

Subchapter A. Application Procedures ~~[for Office of Consumer Credit Commissioner Applicants]~~

Subchapter B. Operational Requirements ~~[for Office of Consumer Credit Commissioner Licensees]~~

§2.201. License Term, Renewal, and Expiration.

(a) License term. A new residential mortgage loan originator license is effective from the date of its issuance until December 31. A license must be renewed annually in order to remain effective. After renewal, a license is effective for a term of one year, from January 1 to December 31.

(b) ~~(a)~~ Requirements. A license may be renewed if:

(1) the RMLO submits a completed application for renewal through the NMLS together with the payment of the applicable renewal application fee;

(2) the OCCC determines that the RMLO continues to meet the minimum requirements for license issuance, including financial responsibility, character, and general fitness, as provided in Texas Finance Code, §180.055, and subsection (g) of this section; and

(3) the RMLO provides satisfactory evidence that the RMLO has completed the

continuing education requirements of Texas Finance Code, §180.060.

(c) Due date for annual fees. Annual renewal fees are due by December 31 of each year.

(d) Expiration. A residential mortgage loan originator license expires on December 31 if the annual renewal fee has not been paid by December 31. After expiration, a license may be reinstated during the period from January 1 through the last day of February.

(e) ~~(b)~~ Rejection of renewal. Renewal of a license may be rejected for reasons provided in Texas Finance Code, §180.201.

(f) ~~(e)~~ Additional information. The OCCC may require additional, clarifying, or supplemental information from any applicant for the renewal of a license pursuant to Texas Finance Code, Chapter 180 in order to determine compliance with the law.

(g) ~~(d)~~ Additional background checks. After initial issuance of a license, the OCCC may require additional criminal and credit background checks in order to determine an RMLO's continuing compliance with the law.

Part 5. Office of Consumer Credit Commissioner

Chapter 82. Administration

{{The following section will replace current section 82.4, which will be repealed.}}

§82.4. Consumer Complaint Process.

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(a) Definitions.

(1) "Complainant" means a person who files a complaint with the OCCC.

(2) "Complaint" means a communication received by the OCCC consumer assistance department that expresses dissatisfaction with a transaction or alleges wrongful conduct. For purposes of this section, the OCCC will collect the following items and information regarding a complaint, if available:

(A) the complainant's name and contact information;

(B) the name of the person against whom the complaint is submitted;

(C) the date and place of the alleged misconduct, violation, or transaction;

(D) a description of the facts or conduct alleged to violate applicable statutes or rules, and the transaction; and

(E) any written documentation supporting the complaint.

(3) "Inquiry" means a communication received by the OCCC consumer assistance department that is not a complaint.

(4) "OCCC" means the Office of Consumer Credit Commissioner of the State of Texas.

(b) Complaint processing.

(1) Complaints and inquiries filed with the OCCC are generally considered

public information, unless a specific statutory exception applies.

(2) Upon receipt of a complaint and at the request of the complainant, the OCCC will make a good faith effort to protect the complainant's identity to the extent possible.

(3) The OCCC will determine whether the complaint or inquiry relates to an activity that the OCCC regulates.

(4) If the OCCC does not regulate the activity that is the subject of the complaint or inquiry, the OCCC will close the complaint or inquiry and refer the person making the complaint or inquiry to the appropriate regulatory entity, if known.

(5) If the OCCC regulates the activity that is the subject of a complaint, the OCCC will send a summary of the complaint and appropriate supporting documentation to the person that is the subject of the complaint.

(6) The OCCC will prioritize complaints for purposes of determining the order in which complaints are investigated, taking into account the seriousness of the allegations made in a complaint and the length of time a complaint has been pending.

(7) A person that receives a complaint forwarded by the OCCC must respond by the deadline identified by the OCCC when it forwards the complaint.

(8) The OCCC will monitor how long each complaint is open, and will make all reasonable efforts to resolve complaints within 90 days of receipt. The OCCC will notify the complainant of their complaint status at least quarterly until final disposition, unless such notice would

jeopardize an ongoing complaint analysis, a field investigation, or a pending enforcement action.

(9) If the OCCC determines that the complaint is not supported by the evidence, is not within the OCCC's jurisdiction, contains no violation, or is resolved to the satisfaction of the parties, the complaint will be closed. Upon closure, the OCCC will promptly send a closure summary outlining the results of the complaint analysis to all parties to the complaint.

(10) The OCCC will notify all parties to the complaint within 10 business days of closing the complaint.

(11) A complainant who disagrees with the disposition of a complaint may appeal by sending a written appeal request to the OCCC consumer assistance department within 30 calendar days after the date of the closure summary. Upon receipt of an appeal request, the OCCC will notify the complaint parties of the request, and a senior member of the OCCC consumer protection department will review all information and make a determination regarding the complaint. The OCCC will send a letter of its final findings to the complaint parties.

(c) Complaint review and reporting.

(1) The OCCC will maintain records of all complaints received in accordance with its retention policy. These records will include the information required in Texas Finance Code, §14.062.

(2) Complaints closed administratively, due to lack of jurisdiction, or due to lack of evidence will be reviewed

quarterly by the consumer assistance manager.

(3) At least quarterly, the OCCC will submit to the Finance Commission a report of the sources, subjects, types, and dispositions of complaint activity during the preceding period.

(4) The OCCC will make available on its website information describing procedures for complaint receipt, investigation, and closure.

Chapter 83. Regulated Lenders and Credit Access Businesses

Subchapter A. Rules for Regulated Lenders

Division 3. Application Procedures

§83.309. License *Inactivation or Voluntary Surrender* [~~Status~~].

(a) Inactivation of active license. A licensee may cease operating under a regulated loan license and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 30 calendar days prior to the anticipated inactivation date. Notification must be provided by filing a license amendment [~~filed on the Amendment to a License~~] or an approved electronic submission as prescribed by the OCCC [~~commissioner~~]. The notice must include the new mailing address for the license, the effective date of the inactivation, and the fee for amending the license. A licensee must continue to pay the yearly renewal fees for an inactive license as outlined in §83.310 of this title (relating to Fees), or the license will expire as described by §83.403 of this title (relating to License Term and Annual Renewal).

(b) Activation of inactive license. A licensee may activate an inactive license by giving notice of the intended activation not less than 30 calendar days prior to the anticipated activation date. Notification must be provided by filing a license amendment ~~[filed on the Amendment to a License]~~ or an approved electronic submission as prescribed by the OCCC ~~[commissioner]~~. The notice must include the contemplated new address of the licensed office, the approximate date of activation, and the fee for amending the license as outlined in §83.310 of this title.

(c) (No change.)

~~[(d) Expiration. A license will expire on the later of December 31 of each year or the 16th day after the written notice of delinquency is given unless the annual assessment fees have been paid by the due date for license renewal. A licensee that pays the annual assessment fees will automatically be renewed even though a new license may not be issued.]~~

Division 4. License

§83.403. License Term, Renewal, and Expiration ~~[Notice of Delinquency in Payment of Annual Assessment Fee].~~

(a) License term and renewal. A new license is effective from the date of its issuance until December 31. A license must be renewed annually to remain effective. After renewal, a license is effective for a term of one year, from January 1 to December 31.

(b) Due date for annual assessment fee. The annual assessment fee is due by December 1 of each year.

(c) Notice of delinquency. If a licensee does not pay the annual assessment fee, the OCCC will send a notice of delinquency. Notice ~~[For purposes of Texas Finance Code, §342.155, and §83.309(d) of this title (relating to License Status), notice]~~ of delinquency ~~[in the payment of an annual assessment fee]~~ is given when the OCCC sends the ~~[delinquency]~~ notice:

(1) by mail to the address on file with the OCCC as a master file address; or

(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address.

(d) Expiration. If a licensee does not pay the annual assessment fee, the license will expire on the later of:

(1) December 31 of each year; or

(2) the 16th day after notice of delinquency is given under subsection (c) of this section.

(e) Reinstatement. As provided by Texas Finance Code, §349.301 and §349.303(a), if a license was in good standing when it expired, a person may reinstate the expired license not later than the 180th day after its expiration date by paying the annual assessment fee and a \$1,000 late filing fee.

Subchapter B. Rules for Credit Access Businesses

Division 3. Application Procedures

§83.3009. License Inactivation or Voluntary Surrender ~~[Status].~~

(a) Inactivation of active license. A licensee may cease operating under a credit access business license and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 30 calendar days prior to the anticipated inactivation date. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the OCCC [commissioner]. The notice must include the new mailing address for the license, the effective date of the inactivation, and the fee for amending the license. A licensee must continue to pay the yearly renewal fees for an inactive license as outlined in §83.3010 of this title (relating to Fees), or the license will expire as described by §83.4002 of this title (relating to License Term and Annual Renewal).

(b) Activation of inactive license. A licensee may activate an inactive license by giving notice of the intended activation not less than 30 calendar days prior to the anticipated activation date. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the OCCC [commissioner]. The notice must include the contemplated new address of the licensed office, the approximate date of activation, and the fee for amending the license as outlined in §83.3010 of this title.

(c) (No change.)

~~[(d) Expiration. A license will expire on the later of December 31 of each year or the 16th day after the written notice of delinquency is given unless the annual assessment fees have been paid by the due date for license renewal. A licensee that pays the annual assessment fees will~~

~~automatically be renewed even though a new license may not be issued.]~~

Division 4. License

§83.4002. License Term, Renewal, and Expiration ~~[Notice of Delinquency in Payment of Annual Assessment Fee].~~

(a) License term and renewal. A new license is effective from the date of its issuance until December 31. A license must be renewed annually to remain effective. After renewal, a license is effective for a term of one year, from January 1 to December 31.

(b) Due date for annual assessment fee. The annual assessment fee is due by December 1 of each year.

(c) Notice of delinquency. If a licensee does not pay the annual assessment fee, the OCCC will send a notice of delinquency. Notice [For purposes of Texas Finance Code, §393.613, notice] of delinquency [in the payment of an annual assessment fee] is given when the OCCC sends the [delinquency] notice:

(1) by mail to the address on file with the OCCC as a master file address; or

(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address.

(d) Expiration. If a licensee does not pay the annual assessment fee, the license will expire on the later of:

(1) December 31 of each year; or

(2) the 16th day after notice of delinquency is given under subsection (c) of this section.

Chapter 84. Motor Vehicle Installment Sales

Subchapter C. Insurance and Debt Cancellation Agreements

§84.309. Debt Cancellation Agreements Requiring Insurance.

(a) Purpose and scope. This section applies to a debt cancellation agreement described by Texas Finance Code, Chapter 354, that includes insurance coverage as part of the retail buyer's responsibility to the holder. Debt cancellation agreements must be submitted to the OCCC for approval, as provided by Texas Finance Code, §354.005(a). The denial of a debt cancellation agreement may be appealed in a contested case ~~[to the Finance Commission of Texas]~~, as provided by Texas Finance Code, §354.005(d). This section describes the requirements for submitting a debt cancellation agreement to the OCCC and the requirements for appealing the denial of a debt cancellation agreement ~~[to the commission]~~.

(b) - (f) (No change.)

(g) Proposal for decision. In connection with a contested case under this section, the administrative law judge will issue a proposal for decision to the commissioner ~~[commission]~~. The proposal for decision will include a recommendation regarding whether the OCCC's denial of the agreement should be affirmed or reversed. The proposal for decision may include a recommendation that costs be assigned to a party, to the extent authorized by law.

(h) Final ~~[Commission's final]~~ order. The commissioner ~~[commission]~~ will issue a final order after review of the administrative law judge's proposal for decision. The final order will include a statement of whether the OCCC's denial of the agreement is affirmed or reversed. The final order may include an assignment of costs to a party, to the extent authorized by law.

(i) Judicial review of ~~[commission's]~~ final order. A final order ~~[of the commission]~~ under subsection (h) may be appealed to a Travis County district court, as provided by Texas Government Code, §2001.176.

Subchapter F. Licensing

§84.610. License Inactivation or Voluntary Surrender ~~[Status]~~.

(a) Inactivation of active license. A licensee may cease operating under a motor vehicle sales finance license and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 10 calendar days prior to the anticipated inactivation date. Registered offices will be designated as closed when a license is inactivated. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the OCCC ~~[commissioner]~~. The notice must include the new mailing address for the license, the effective date of the inactivation, and the fee for amending the license. A licensee must continue to pay the yearly renewal fees for an inactive license as outlined in §84.611 of this title (relating to Fees), or the license will expire.

(b) Activation of inactive license. A licensee may activate an inactive license by

giving notice of the intended activation not less than 10 calendar days prior to the anticipated activation date. Registered offices must be listed and appropriate fees paid upon activation of a license. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the OCCC [eommissioner]. The notice must include the contemplated new address of the licensed office, the approximate date of activation, and the fee for amending the license as outlined in §84.611 of this title.

(c) (No change.)

~~[(d) Expiration. A license will expire the later of July 31 of each year or the 16th day after the written notice of delinquency is given unless the annual assessment fees have been paid by the due date for license renewal. A licensee that pays the annual assessment fees will automatically be renewed even though a new license may not be issued. For purposes of this subsection, notice of delinquency in the payment of an annual assessment fee is given when the OCCC sends the delinquency notice:]~~

~~[(1) by mail to the address on file with the OCCC as a master file address; or]~~

~~[(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address.]~~

(d) [(e)] Surrendering to avoid administrative action. A licensee may not surrender a license after an administrative action has been initiated without the written agreement of the OCCC.

§84.617. License Term, Renewal, and Expiration.

(a) License term and renewal. A new license is effective from the date of its issuance until October 31. A license must be renewed annually to remain effective. After renewal, a license is effective for a term of one year, from November 1 of a calendar year to October 31 of the next calendar year.

(b) Due date for annual assessment fee. The annual assessment fee is due by October 1 of each year.

(c) Notice of delinquency. If a licensee does not pay the annual assessment fee, the OCCC will send a notice of delinquency. Notice of delinquency is given when the OCCC sends the notice:

(1) by mail to the address on file with the OCCC as a master file address; or

(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address.

(d) Expiration. If a licensee does not pay the annual assessment fee, the license will expire on the later of:

(1) October 31 of each year; or

(2) the 16th day after notice of delinquency is given under subsection (c) of this section.

(e) Reinstatement. As provided by Texas Finance Code, §349.301 and §349.303(a), if a license was in good standing when it expired, a person may reinstate the expired license not later than the 180th day after its expiration date by paying the annual assessment fee and a \$1,000 late filing fee.

(f) Temporary provision. Notwithstanding subsections (a) and (d) of this section, if a licensee renews a license during 2019, or obtains a new license on or after August 1, 2019, then the license will be effective until October 31, 2020. The license must be renewed in order to remain in effect after October 31, 2020. This subsection expires on January 1, 2021.

Subchapter B. Rules for Crafted Precious Metal Dealers

Division 1. Registration Procedures

§85.1007. Registration Term, [Annual] Renewal, and Expiration.

(a) Generally. An initial registration for a permanent location is effective from the date of its issuance until December 31. For each calendar year following the initial registration for a permanent registered location, a crafted precious metal dealer must renew the registration annually. A registration for a permanent registered location expires on December 31 of each year. After renewal, a registration is effective for a term of one year, from January 1 to December 31.

(b) Renewal procedure. A crafted precious metal dealer may renew its registration for a permanent registered location by providing the following:

(1) the fees required by §85.1011 of this title (relating to Fees); and

(2) any information required by the OCCC.

(c) Due date for renewal fees and information. The fees and information

described by subsection (b) of this section are due by December 31 of each year.

(d) [(e)] Late renewal.

(1) If a crafted precious metal dealer renews its registration on or before the 30th day following expiration (i.e., on or before January 30), then there is no late renewal fee.

(2) If a crafted precious metal dealer renews its registration after the 30th day following expiration, but on or before the 180th day following expiration, then the dealer must pay a late renewal fee of \$50 for each permanent registered location, in addition to the fees described by §85.1011 of this title.

(3) A registration for a permanent registered location may not be renewed after the 180th day following expiration. In order to obtain a registration, the crafted precious metal dealer must reapply under §85.1002 of this title (relating to Filing of New Application).

(e) [(d)] Administrative penalty. If a person has engaged in the purchase of crafted precious metal while its registration was not effective, the person may be subject to an administrative penalty under Texas Occupations Code, §1956.0615.

(f) [(e)] Temporary locations. A registration for a temporary location is effective from the date of its issuance until it expires on December 31. A registration for a temporary location is not renewable.

Chapter 86. Retail Creditors

Subchapter A. Registration of Retail Creditors

PROPOSED AMENDMENTS, NEW RULES, & REPEAL
7 TAC, CHAPTERS 2, 82, 83, 84, 85, 86, 87, 88, AND 89
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§86.102. [~~Annual Registration~~] Fees.

(a) (No change.)

(b) Annual fee. An annual fee is required under the provisions of Texas Finance Code, §345.351 or §347.451 and will be payable as follows:

(1) A retail seller, creditor, holder, or assignee must pay a registration fee for every chapter under which business is conducted.

~~[(2) A retail seller, holder, creditor, or assignee who begins business under Texas Finance Code, Chapter 345 or 347 must pay the annual fee within 60 days after the first day of commencing regulated operations.]~~

~~[(3) The annual fee for each subsequent calendar year will be due and payable by October 31 of each year.]~~

(2) [(4)] The registration is not transferable between locations. A retail seller, creditor, holder, or assignee must obtain a registration for each new location. [Each new location must comply with the provisions in paragraph (2) of this subsection.]

(3) [(5)] No annual fee is required for a location operated by a retail seller, creditor, holder, or assignee operating under the provisions of Texas Finance Code, Chapter 345 or 347, provided the personnel at the location are not conducting regulated business with the consumer (e.g., storage, web-hosting, or data processing facility).

(c) Late filing fee. As provided by Texas Finance Code, §349.302(b), a person must

pay a \$250 late filing fee for each registered location if the person:

(1) obtains a new registration after the person has begun engaging in business under Texas Finance Code, Chapter 345 or 347; or

(2) obtains a renewal more than 30 days after expiration.

(d) [(e)] Evidence of registration. The Office of Consumer Credit Commissioner (OCCC) will issue a certificate evidencing registration under the provisions of Texas Finance Code, Chapter 345 or 347, and this section. A registrant may print a copy of its registration certificate through the OCCC's online licensing portal.

(e) [(d)] Registration duplicates sent by mail. If a registrant does not print its registration certificate online, the registrant may request that the OCCC mail a registration duplicate for a fee of \$10 per certificate mailed.

§86.103. Registration Term, Renewal, and Expiration.

(a) Registration term and renewal. An initial registration is effective from the date of its issuance until November 30. A registration must be renewed annually to remain effective. After renewal, a registration is effective for a term of one year, from December 1 of a calendar year to November 30 of the next calendar year.

(b) Due date for annual fee. The annual fee is due by November 30 of each year.

(c) Expiration. If a registrant does not pay the annual fee, the registration will expire on November 30.

(d) Late renewal. A person may renew an expired registration by December 30 by paying the annual fee. In order to renew an expired registration after December 30, a person must pay any registration fee for a prior year and the late filing fee described by §86.102 of this title (relating to Fees).

Chapter 87. Tax Refund Anticipation Loans

Subchapter A. Registration Procedures

§87.107. *Registration Term.* [~~Annual~~]
Renewal, and Expiration.

(a) Registration term and renewal. An initial registration is effective from the date of its issuance until December 31. A registration must be renewed annually to remain effective. After renewal, a registration is effective for a term of one year, from January 1 to December 31.

(b) [~~(a)~~] Renewal requirements. A registered tax refund anticipation loan facilitator may renew its registration by providing the following:

(1) the renewal fees required by §87.105(c) of this title (relating to Fees);

(2) any late filing fees required by §87.105(d) of this title; and

(3) any other information required by the OCCC [~~commissioner~~].

(c) Due date for renewal fee. The annual renewal fee and information described by subsection (b) are due by December 31 of each year.

(d) [~~(b)~~] Expiration. If a facilitator does not pay the annual renewal fee, the

registration will expire on December 31. A facilitator may not renew a registration that has been expired for more than one year. If a facilitator's registration has been expired for more than one year, then the facilitator must apply for a new registration under §87.102 of this title (relating to Filing of New Application) in order to obtain a registration.

Chapter 88. Consumer Debt Management Services

Subchapter B. Annual Requirements

§88.201. *Registration Term.* [~~Annual~~]
Renewal, and Expiration.

(a) Registration term and renewal. An initial registration is effective from the date of its issuance until January 31. A registration must be renewed annually to remain effective. After renewal, a registration is effective for a term of one year, from February 1 of a calendar year to January 31 of the next calendar year.

(b) Renewal requirements. A [~~Not later than February 1, a~~] registered debt management services provider may renew its registration by providing the following:

(1) an annual report, according to §88.202 of this title (relating to Annual Report);

(2) the annual fee [~~fees~~] required by §88.107(f) [~~§88.107(e)~~] of this title (relating to Fees); and

(3) any other information required by the OCCC.

(c) Due date for renewal fee. The annual fee and information described by subsection (b) are due by January 31 of each year.

(c) Expiration. If a provider does not renew its registration, the registration will expire on January 31.

Chapter 89. Property Tax Lenders

Subchapter C. Application Procedures

§89.309. License *Inactivation or Voluntary Surrender* [Status].

(a) Inactivation of active license. A licensee may cease operating under a license and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 30 calendar days prior to the anticipated inactivation date. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the OCCC ~~[commissioner]~~. The notice must include the new mailing address for the license, the effective date of the inactivation, and the fee for amending the license. A licensee must continue to pay the yearly renewal fees for an inactive license as outlined in §89.310 of this title (relating to Fees), or the license will expire as described by §89.403 of this title (relating to License Term and Annual Renewal).

(b) Activation of inactive license. A licensee may activate an inactive license by giving notice of the intended activation not less than 30 calendar days prior to the anticipated activation date. Notification must be provided by filing a license amendment or an approved electronic submission as prescribed by the OCCC ~~[commissioner]~~. The notice must include the contemplated new address of the licensed office, the approximate date of activation, and the fee for amending the license as outlined in §89.310 of this title.

(c) (No change.)

~~[(d) Expiration. A license will expire on the later of December 31 of each year or the 16th day after the written notice of delinquency is given unless the annual assessment fees have been paid by the due date for license renewal. A licensee that pays the annual assessment fees will automatically be renewed even though a new license may not be issued.]~~

Subchapter D. License

§89.403. License Term, Renewal, and Expiration ~~[Notice of Delinquency in Payment of Annual Assessment Fee].~~

(a) License term and renewal. A new license is effective from the date of its issuance until December 31. A license must be renewed annually to remain effective. After renewal, a license is effective for a term of one year, from January 1 to December 31.

(b) Due date for annual assessment fee. The annual assessment fee is due by December 1 of each year.

(c) Notice of delinquency. If a licensee does not pay the annual assessment fee, the OCCC will send a notice of delinquency. Notice ~~[For purposes of Texas Finance Code, §351.155, and §89.309(d) of this title (relating to License Status), notice]~~ of delinquency ~~[in the payment of an annual assessment fee]~~ is given when the OCCC sends the ~~[delinquency]~~ notice:

(1) by mail to the address on file with the OCCC as a master file address; or

(2) by e-mail to the address on file with the OCCC as a master file e-mail address, if the licensee has provided a master file e-mail address.

(d) Expiration. If a licensee does not pay the annual assessment fee, the license will expire on the later of:

(1) December 31 of each year; or

(2) the 16th day after notice of delinquency is given under subsection (c) of this section.

(e) Reinstatement. As provided by Texas Finance Code, §349.301 and §349.303(a), if a license was in good standing when it expired, a person may reinstate the expired license not later than the 180th day after its expiration date by paying the annual assessment fee and a \$1,000 late filing fee.

Certification

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on June 21, 2019.

Laurie B. Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner

B. OFFICE OF CONSUMER CREDIT COMMISSIONER

3. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Chapter 85, Subchapter A, Concerning Rules of Operation for Pawnshops

PURPOSE: The purpose of the proposed amendments to 7 TAC, Chapter 85, Subchapter A is to implement the pawnshop-related provisions of HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner. The Texas Legislature passed HB 1442 in the 2019 legislative session.

RECOMMENDED ACTION: The agency requests that the Finance Commission approve the amendments to 7 TAC, Chapter 85, Subchapter A for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we approve for publication and comment the amendments to 7 TAC, Chapter 85, Subchapter A.

Title 7. Banking and Securities

Part 5. Office of Consumer Credit Commissioner

Chapter 85. Pawnshops and Crafted Precious Metal Dealers

Subchapter A. Rules of Operation for Pawnshops

The Finance Commission of Texas (commission) proposes amendments to 7 TAC, Chapter 85, Subchapter A, §§85.102, 85.104, 85.202, 85.206, 85.210, 85.302, 85.303, 85.304, 85.306, 85.308, 85.601, 85.603, 85.604, 85.701, and 85.702, concerning Rules of Operation for Pawnshops.

The proposed amendments affect rules contained in Division 1, concerning General Provisions; Division 2, concerning Pawnshop License; Division 3, concerning Pawnshop Employee License; Division 6, concerning License Revocation, Suspension, and Surrender; and Division 7, concerning Enforcement; Penalties.

In general, the purpose of the proposed amendments to 7 TAC, Chapter 85, Subchapter A is to implement the pawnshop-related provisions of HB 1442, the Sunset legislation for the Office of Consumer Credit Commissioner (OCCC). The Texas Legislature passed HB 1442 in the 2019 legislative session.

HB 1442 continues the OCCC's existence as a state agency, and was passed in response to recommendations of the Texas Sunset Advisory Commission. The bill's amendments to Chapter 371 relate mainly to four issues. First, the bill provides that pawnshops may, but are not required to, participate in the pawnshop employee license program. Second, the bill removes provisions stating that pawnshop and pawnshop employee license applicants must be of "good moral character." Third, the bill authorizes the commission to set the term of

pawnshop and pawnshop employee licenses for a period up to two years. Fourth, the bill authorizes the commission to set pawnshop employee license fee amounts in accordance with Texas Finance Code, §14.107, replacing current statutory provisions containing a \$25 initial fee and a \$15 annual renewal fee.

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC did not receive any informal written precomments on the rule text draft, although several stakeholders provided verbal feedback during the stakeholder meeting. The agency believes that the participation of stakeholders in the rulemaking process is invaluable in presenting balanced proposals.

The proposed amendments are intended to fulfill the following purposes: (1) to implement the optional pawnshop employee license program; (2) to amend pawnshop employee license fees to \$50 for a new license and \$25 for a renewal; (3) to clarify provisions on license term, renewal, and expiration, while maintaining the current June 30 expiration date for pawnshops and pawnshop employees; and (4) to remove references to "good moral character" as a licensing standard, while maintaining the OCCC's review of an applicant's character and fitness. In addition, the proposed amendments modernize or remove obsolete language.

The individual purposes of the proposed amendments to each section are provided in the following paragraphs.

In §85.102, a proposed amendment to the definition of "pawnbroker" removes a statement that a pawnbroker may include a pawnshop employee, and adds a reference to the statutory reference of "pawnbroker" in Texas Finance Code, §371.003(6). Another proposed amendment in §85.102 adds a definition of the term "pawnshop employee license program," explaining that this term refers to the optional licensing program under Texas Finance Code, Chapter 371, Subchapter C.

Proposed amendments to §85.104 specify license terms and expiration dates for pawnshops and pawnshop employees. These amendments implement Texas Finance Code, §14.112, as added by HB 1442. Section 14.112 provides that the commission shall prescribe the licensing period for licenses issued under Chapter 371, not to exceed two years. The proposed amendments to §85.104 maintain the current one-year license period, as well as the current June 30 expiration date, for pawnshops and pawnshop employees. A proposed amendment at §85.104(c), sets the due date for the annual license fee at May 31. This is based on Texas Finance Code, §371.064 and §371.106, as amended by HB 1442, which require licensees to pay a license fee not later than the 30th day before expiration of the license. Proposed §85.104(e) explains that at the time of renewal, a pawnshop may provide written notification to participate in the pawnshop employee license program. This is based on Texas Finance Code, §371.101(a-1), as amended by HB 1442, which explains that a pawnbroker may provide written notification to participate at the time of renewal. In

§85.104, other proposed amendments provide additional clarity to the rule text.

In §85.202, a proposed amendment explains that a pawnshop may provide a notification to participate in the pawnshop employee license program at the time of the license application.

Proposed amendments to §85.206 remove references to "good moral character" as a licensing standard for pawnshops, while maintaining references to the OCCC's review of an applicant's character and fitness. These proposed amendments implement HB 1442's amendments to Texas Finance Code, §371.052, which remove provisions stating that pawnshop license applicants must be of "good moral character," while maintaining references to review of character and fitness. The statutory amendment is based on a recommendation of Sunset Advisory Commission staff, which stated that "good moral character" is a subjective standard that should be removed from the statute. A proposed amendment at §85.206(f)(1)(A)(iv) explains that the OCCC will review an applicant's criminal history as part of its review of character and fitness. Throughout §85.206, proposed amendments replace the use of the word "commissioner" with the agency's acronym, "OCCC." The agency believes that the use of "OCCC" will provide better clarity to the rules when the context calls for action by the agency, as opposed to the commissioner specifically.

In §85.210, a proposed amendment removes a subsection dealing with the date of license expiration, because expiration is addressed in the separate rule at §85.104. In addition, a proposed amendment changes the title of §85.210 from "License Status" to

"License Inactivation or Voluntary Surrender," to provide more clarity about the subject matter of the section.

In §85.302, a proposed amendment specifies that the requirement for a pawnshop to notify the OCCC of a pawnshop employee's termination applies if the pawnshop participates in the pawnshop employee license program.

In §85.303, a proposed amendment specifies that the requirement for a pawnshop to notify the OCCC of a pawnshop employee's hiring applies if the pawnshop participates in the pawnshop employee license program.

Proposed amendments to §85.304 remove references to "good moral character" as a licensing standard for pawnshop employees, while maintaining references to the OCCC's review of an applicant's character and fitness. These proposed amendments implement HB 1442's amendments to Texas Finance Code, §371.102, which remove provisions stating that pawnshop employee license applicants must be of "good moral character," while maintaining references to review of character and fitness. The proposed amendments to §85.304 are similar to the amendments to §85.206 described earlier in this proposal.

Proposed amendments to §85.306 update fee amounts for pawnshop employee licenses. For the initial investigation and annual fee, a proposed amendment contains a \$50 fee. For the annual renewal fee, a proposed amendment contains a \$25 fee. These proposed amendments implement HB 1442's amendments to Texas Finance Code, §371.103 and §371.106, which authorize the commission to set pawnshop employee

license fee amounts in accordance with Texas Finance Code, §14.107 in an amount necessary to recover the costs of administration.

The OCCC has determined that the proposed fee changes in §85.306 are necessary in order to ensure that pawnshop employee license fees appropriately fund the pawnshop employee license program. The commission is authorized to establish reasonable and necessary fees for the OCCC to carry out its functions under Chapter 371, and to set licensing fees under Chapter 371 at amounts necessary to recover the costs of administering the chapter. Tex. Fin. Code §14.107(a)-(b). As a self-directed, semi-independent agency, the OCCC is responsible for all direct and indirect costs of its operation, and is authorized to set fee amounts as necessary to carry out its functions. Tex. Fin. Code §16.003(b)-(c).

The OCCC performed an analysis of its current costs, determining how much cost should be allocated to each regulated license and registration type. This analysis showed that \$285,000 of yearly costs are currently associated with licensing and regulation of pawnshop employees. The OCCC also estimates that 30% of pawnshops will opt to participate in the optional pawnshop employee license program, and therefore, as a result of HB 1442, the total number of pawnshop employees is estimated to decrease by approximately 70%. Some costs of the pawnshop employee license program will stay the same, while others will decrease. The OCCC's initial analysis suggests that annual costs for pawnshop employees will decrease to approximately \$120,000. Based on this estimate, the OCCC has determined that a \$50 investigation and annual fee, with a \$25 annual renewal fee, would help ensure that revenues cover the

cost of the pawnshop employee license program over time.

A proposed amendment at §85.306(d) specifies that a pawnshop employee must provide relocation notice to the OCCC in accordance with the OCCC's instructions.

In §85.308, proposed amendments specify that the requirement to maintain pawnshop employee records applies if the pawnshop participates in the pawnshop employee license program.

In §85.601, which describes denial, suspension, or revocation based on criminal history, proposed amendments remove references to "good moral character." As with the proposed amendments to §85.206 and §85.304, the proposed amendments to §85.601 maintain references to the OCCC's review of character and fitness.

In §85.603, a proposed amendment updates a reference to §85.104 as amended by this proposal.

In §85.604, which describes enforcement actions that the OCCC may take against a pawnbroker or pawnshop employee, proposed amendments explain that the requirements imposed on pawnbrokers apply to all pawnbrokers, and the requirements imposed on pawnshop employees apply to employees of pawnbrokers that participate in the pawnshop employee license program.

In §85.701, which describes enforcement actions that the OCCC may take for failure to file a timely pawnshop employee license application, proposed amendments explain that the requirements imposed on pawnbrokers apply to all pawnbrokers, and the requirements imposed on pawnshop employees apply to employees of

pawnbrokers that participate in the pawnshop employee license program.

In §85.702, which describes enforcement actions that the OCCC may take for accepting prohibited merchandise, proposed amendments explain that the requirements imposed on pawnbrokers apply to all pawnbrokers, and the requirements imposed on pawnshop employees apply to employees of pawnbrokers that participate in the pawnshop employee license program.

Christina Cuellar Hoke, Manager of Accounting, has determined that for the first five-year period the proposed amendments are in effect there will be fiscal implications for state government as a result of administering the rules, and as a result of pawnshop employee licensing becoming optional under HB 1442. The OCCC estimates that 30% of pawnshops will opt to participate in the optional pawnshop employee license program, and therefore, the total number of pawnshop employees is estimated to decrease by approximately 70%. The OCCC estimates that for each of the first five fiscal years the rule is in effect, as a result of pawnshop employee licensing becoming optional, yearly costs for the pawnshop employee license program will decrease by approximately \$165,000. The OCCC estimates that for each of the first five fiscal years the rule is in effect, as a result of the proposed amendments and pawnshop employee licensing becoming optional, yearly revenues for the pawnshop employee license program will decrease by approximately \$92,000. Additionally, Ms. Cuellar Hoke has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for local government as a result of administering the rules.

Huffman Lewis, Director of Consumer Protection, has determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of the proposal will be that the commission's rules will be more easily understood by applicants and licensees, will reflect current agency procedures, and will be more easily enforced. The proposed amendments will also implement pawnshop employee licensing as an optional program in accordance with HB 1442, enabling pawnshops to determine whether to participate in pawnshop employee licensing based on their own needs. Additional benefits of the proposed amendments are increased efficiencies and modernized rule language.

The OCCC does not anticipate any cost to persons who are required to comply with the rule changes as proposed. Although the proposed amendments would adjust pawnshop employee license fee amounts, the licensing program is optional. Generally, pawnshop employee license fees have been paid by pawnshops. Under the proposed amendments, a pawnshop that chooses to participate in the program would experience a \$50 cost for each new pawnshop employee, and a \$25 per year cost to renew the license for each previously licensed employee. However, because this participation is not required, the OCCC does not anticipate costs to persons who are required to comply with the rule changes as proposed.

The OCCC does not anticipate any adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments. The OCCC anticipates that approximately 350 pawnshops will participate in the pawnshop employee

license program, and the OCCC believes that these pawnshops are small businesses or micro-businesses. Based on testimony provided to the Texas Legislature regarding HB 1442, the OCCC understands that many of these small businesses and micro-businesses wish to participate in pawnshop employee licensing because of the OCCC's review of the criminal history of pawnshop employee applicants. Because the program is optional, a pawnshop may choose not to participate in the program. The OCCC considered alternative methods of amending the rules to implement the pawnshop employee license program, including different pawnshop employee license fee amounts. However, the OCCC determined that these alternative methods would not meet the statutory objective of ensuring that licensing fees are set at amounts necessary to recover the costs of administering Chapter 371, as described by Texas Finance Code, §14.107. In order to obtain more complete information concerning the economic effect of these rule changes, the agency invites comments from interested stakeholders and the public on any economic impacts on small businesses, micro-businesses, or rural communities, as well as any alternative methods of achieving the purpose of the proposal while minimizing adverse impacts on small businesses, micro-businesses, or rural communities.

During the first five years the proposed rule changes will be in effect, the rules will not create or eliminate a government program. Implementation of the rule changes will not require the creation of new employee positions or the elimination of existing employee positions. Implementation of the rule changes will not require an increase or decrease in future legislative appropriations to the OCCC, because the OCCC is a self-directed, semi-independent

agency that does not receive legislative appropriations. As discussed earlier, the proposed rule changes, combined with the pawnshop employee license program becoming optional, will result in a decrease in fees paid to the agency. The proposal does not create a new regulation. The proposal does not expand or repeal an existing regulation. As discussed earlier, the proposal limits certain regulations regarding pawnshop employees to specify that they apply only to employees of pawnshops participating in the pawnshop employee license program, and to remove references to "good moral character" as a licensing standard, in accordance with HB 1442. The proposed rule changes decrease the number of individuals subject to rules governing pawnshop employees. The agency does not anticipate that the proposed rule changes will have an effect on the state's economy.

These amendments are proposed under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to administer Title 4 of the Texas Finance Code. Texas Finance Code, §371.006 also authorizes the commission to adopt rules for enforcement of Chapter 371 (the Texas Pawnshop Act). The proposed changes in §85.104 are authorized under Texas Finance Code, §14.112 (as added by HB 1442), which authorizes the commission to set license terms. The proposed fee changes in §85.306 are authorized under Texas Finance Code, §§14.107, 371.103, and 371.106 (as amended by HB 1442), which authorize the commission to set license fees for pawnshop employee licenses.

The statutory provisions affected by the proposal are contained in Texas Finance Code, Chapters 14 and 371.

Comments on the proposal may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to rule.comments@occc.texas.gov. To be considered, a written comment must be received on or before 5:00 p.m. central time on the 31st day after the date the proposal is published in the *Texas Register*. At the conclusion of business on the 31st day after the proposal is published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

Title 7, Texas Administrative Code

Chapter 85. Pawnshops and Crafted Precious Metal Dealers

Subchapter A. Rules of Operation for Pawnshops

Division 1. General Provisions

§85.102. Definitions.

Words and terms used in this subchapter that are defined in Texas Finance Code, Chapter 371, have the same meanings as defined in that chapter unless the context clearly indicates otherwise. The following words and terms, when used in this subchapter, will have the following meanings unless the context clearly indicates otherwise.

(1) - (9) (No change.)

(10) Pawnbroker--Has the meaning provided by Texas Finance Code, §371.003(6), and includes a [A] person who has an ownership interest in a pawnshop as

shown in an application for a pawnshop license filed with the OCC. ~~[When general duties and prohibitions are described, pawnbroker also includes a pawnshop employee unless the context indicates otherwise.]~~

(11) Pawnshop employee license program--The optional program for licensing pawnshop employees described by Texas Finance Code, Chapter 371, Subchapter C.

(12) ~~[(11)]~~ Pledged goods--Tangible personal property held by a pawnbroker as collateral for a pawn loan and that has not become the property of the pawnbroker by a taking into inventory due to non-payment of the loan.

(13) ~~[(12)]~~ Principal party--An adult individual with a substantial relationship to the proposed business of the applicant. The following individuals are principal parties:

(A) a proprietor;

(B) general partners;

(C) officers of privately held corporations, including the chief executive officer or president, the chief operating officer or vice president of operations, the chief financial officer or treasurer, and those with substantial responsibility for lending operations or compliance with the Texas Pawnshop Act;

(D) directors of privately held corporations;

(E) individuals associated with publicly held corporations designated by the applicant as follows:

(i) officers as provided by subparagraph (C) of this paragraph (as if the corporation was privately held); or

(ii) three officers or similar employees with significant involvement in the corporation's activities governed by the Texas Pawnshop Act. One of the persons designated must be responsible for assembling and providing the information required on behalf of the applicant and must sign the application for the applicant;

(F) voting members of a limited liability corporation;

(G) shareholders owning 5% or more of the outstanding voting stock;

(H) trustees and executors; and

(I) individuals designated as a principal party where necessary to fairly assess the applicant's financial responsibility, experience, character, general fitness, and sufficiency to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly as required by the commissioner.

§85.104. License Term, Renewal, and Expiration ~~[Renewal Dates of Licenses]~~.

(a) License term and renewal ~~[Licensing period and renewal due date]~~. A new pawnshop license or pawnshop employee license is effective from the date of its issuance until June 30. A pawnshop license and a pawnshop employee license must be renewed annually in order to remain effective. After renewal, a pawnshop license or pawnshop employee license is effective for a term of one year, from July 1 of one calendar year to June 30 of the next calendar

year ~~[are effective from July 1 through June 30 of each year]~~.

(b) Due date for annual fees. The annual fees for pawnshop licenses and pawnshop employee licenses are due by May 31 ~~[on June 1]~~ of each year for the following July 1 through June 30 term.

(c) ~~[(b)]~~ Notice of delinquency. If a licensed pawnshop or pawnshop employee does not pay the annual fees ~~[by June 1]~~, the OCCC will send a written notice of delinquency ~~[will be sent]~~ by June 15.

(1) If a pawnshop has provided a master file e-mail address to the OCCC, then the OCCC will:

(A) send any notice of delinquency for the pawnshop to the master file e-mail address on file for the pawnshop; and

(B) send any notice of delinquency for an employee of the pawnshop to the employee through the master file e-mail address on file for the pawnshop.

(2) If a pawnshop has not provided a master file e-mail address to the OCCC, then the OCCC will:

(A) send any notice of delinquency for the pawnshop by mail to the master file address on file for the pawnshop; and

(B) send any notice of delinquency for an employee of the pawnshop to the employee by mail through the master file address on file for the pawnshop.

(d) ~~[(e)]~~ Expiration of license. A pawnshop license and a pawnshop employee license will expire on the later of June 30 of each year or the 16th day after the written notice of delinquency is given unless the annual fees for the following term have been paid. To be accepted ~~[considered timely paid]~~, the fees must be postmarked or submitted by June 30. June 30 is the end of the license term for each year. For purposes of this subsection ~~[and §85.210(d) of this title (relating to License Status)]~~, notice of delinquency is given when the OCCC sends the ~~[delinquency]~~ notice by the method described in subsection (c) ~~[(b)]~~ of this section.

(e) Pawnshop employee license program. At the time of the annual renewal, a pawnshop may provide a written notification to participate in the pawnshop employee license program.

Division 2. Pawnshop License

§85.202. Filing of New Application.

(a) An application for issuance of a new pawnshop license must be submitted in a format prescribed by the OCCC at the date of filing and in accordance with the OCCC's instructions. The OCCC may accept the use of prescribed alternative formats in order to accept approved electronic submissions. Appropriate fees must be filed with the application, and the application must include the following:

(1) Required application information.
All questions must be answered.

(A) - (J) (No change.)

(2) Other required filings.

(A) - (H) (No change.)

(I) Pawnshop employee license program. At the time of the application, the applicant may provide a written notification to participate in the pawnshop employee license program.

(b) - (c) (No change.)

§85.206. Processing of Application.

(a) - (e) (No change.)

(f) Decision on application. The OCCC may approve or deny an application.

(1) Approval. The OCCC will approve the application upon payment of the appropriate fees and a finding of the eligibility and statutory location requirements.

(A) Eligibility requirements.

~~[(i) Good moral character. In evaluating an applicant's moral character the commissioner will consider criminal history information and the applicant's conduct and activities as described in §85.601 of this title (relating to Denial, Suspension, or Revocation Based on Criminal History).]~~

(i) [(ii)] A belief that the pawnshop will be operated lawfully and fairly. In evaluating this standard, the OCCC [commissioner] will consider an applicant's background and history. If the OCCC [commissioner] questions the applicant's ability to meet this standard, the OCCC [commissioner] may require further conditions, such as probation, to favorably consider an applicant for a license.

(ii) [(iii)] Financial responsibility. In evaluating the financial

responsibility of an applicant, the OCCC [commissioner] may investigate the history of an applicant and the principal parties of the applicant as to the payment of debts, taxes, and judgments, if any, and handling of financial affairs generally.

(iii) [(iv)] Experience. In evaluating experience, the OCCC [commissioner] will consider the applicant's background and history as well as the personnel that the applicant plans to use in the operation and management of the pawnshop.

(iv) [(v)] Character and [General] fitness [to—command—the confidence of the public]. In evaluating an applicant's character and fitness to command the confidence of the public, the OCCC will consider the [The] applicant's overall background and history, including the applicant's criminal history as described in §85.601 of this title (relating to Denial, Suspension, or Revocation Based on Criminal History) [will be considered]. Providing misleading information on the application or failing to disclose information to the OCCC may be grounds for denial.

(v) [(vi)] Net assets. Net assets are calculated by taking the sum of current assets and subtracting all liabilities either secured by those current assets or unsecured. Liabilities not included in the calculation are those liabilities that are secured by assets other than current assets including subordinated debt. Debt that is either unsecured or secured by current assets may be subordinated to the net asset requirement pursuant to an agreement of the parties providing that assets other than current assets are sufficient to secure the debt.

(2) (No change.)

(g) - (h) (No change.)

§85.210. License Inactivation or Voluntary Surrender [Status].

(a) Inactivation of active license. A licensee may cease operating a pawnshop and choose to inactivate the license. A license may be inactivated by giving notice of the cessation of operations not less than 30 calendar days prior to the anticipated inactivation date. Written notification must be submitted by filing a license amendment or an approved electronic submission as prescribed by the OCCC [commissioner]. The notice must include the new mailing address for the license, the effective date of the inactivation, the fee for amending the license, a certification that no loans will be made or collected under the license until it is activated, a notice to pledgors that pawn loans are being relocated, and a plan ensuring pledged goods are made available for redemption. If an active license is not being used for the active operation of a pawnshop, the OCCC [commissioner] may unilaterally place the license in inactive status. A licensee must continue to pay the annual assessment fees for an inactive license as outlined in §85.211 of this title (relating to Fees), or the license will expire as described by §85.104 of this title (relating to License Term, Renewal, and Expiration).

(b) Activation of inactive license. To activate an inactive license the holder of the inactive license must comply with the relocation requirements set forth in §85.203 of this title (relating to Relocation).

(c) (No change.)

~~[(d) Expiration. A license will expire on the later of June 30 of each year or the 16th day after the written notice of delinquency is given unless the annual assessment fees are paid as per §85.104 of this title (relating to Renewal Dates of Licenses). A licensee that pays the annual assessment fees will automatically be renewed even though a new license may not be issued.]~~

Division 3. Pawnshop Employee License

§85.302. Notification of Termination.

If a pawnshop employee ceases working at a pawnshop that participates in the pawnshop employee license program, then the pawnbroker must ~~[It is the responsibility of a pawnshop to]~~ notify the OCCC of the termination ~~[within a reasonable period of time when an employee ceases working at a pawnshop. A reasonable period of time is]~~ within one week from the issuance of the final wage payment or in accordance with a standard preapproved reporting schedule.

§85.303. Notification of Hiring.

If a licensed pawnshop employee begins working at a pawnshop participating in the pawnshop employee license program, and the pawnshop is different from the pawnshop on file for the employee's license, then the hiring pawnbroker must ~~[It is the responsibility of a pawnshop to]~~ notify the OCCC of the hiring ~~[within a reasonable period of time when a licensed employee begins working at a different pawnshop entity from that printed on the employee's license. A reasonable period of time is]~~ within one week from the issuance of the initial wage payment or in accordance with a standard preapproved reporting schedule.

§85.304. Processing of Application.

(a) - (b) (No change.)

(c) Decision on application. The OCCC may approve or deny an application.

(1) Approval. The OCCC will approve the application upon payment of the appropriate fees and finding of the eligibility requirements. A license is the personal property of the employee and may not be retained by a pawnshop when an employee terminates employment with the pawnshop.

~~[(A) Good moral character. In evaluating an applicant's moral character the commissioner will consider criminal history information and the applicant's conduct and activities as described in §85.601 of this title (relating to Denial, Suspension, or Revocation Based on Criminal History).]~~

(A) [(B)] Good business repute. In evaluating an applicant's business repute, the OCCC [commissioner] will consider the applicant's background and history.

(B) [(C)] Character and fitness ~~[to warrant belief that pawnshop will be operated lawfully and fairly].~~ In evaluating the applicant's character and fitness to warrant the belief that the pawnshop will be operated lawfully and fairly, the OCCC will consider the [The] applicant's overall background and history, including the applicant's criminal history as described in §85.601 of this title (relating to Denial, Suspension, or Revocation Based on Criminal History) [will be considered]. Providing misleading information on the application or failing to disclose information to the OCCC may be grounds for denial.

(2) (No change.)

(d) - (f) (No change.)

§85.306. Fees.

(a) New licenses. A \$50 ~~[\$25]~~ nonrefundable investigation and annual fee is assessed each time an application for a new license is filed.

(b) (No change.)

(c) Annual renewal fees. The annual renewal fee for a pawnshop employee license is \$25 ~~[\$15]~~. The fee must be paid by May 31 ~~[June 30]~~ each year. A pawnshop employee license will expire on the later of June 30 or the 16th day after the written notice of delinquency is given unless the annual renewal fee has been paid.

(d) License amendments. An employee seeking to amend a license by changing the name of the licensee or relocating to another pawnshop is not required to pay an additional fee. Any relocation requires notice to the OCCC in accordance with the OCCC's instructions ~~[the format prescribed by the commissioner].~~

(e) - (f) (No change.)

§85.308. Availability of Pawnshop Employee License Information.

(a) Maintaining records. If a pawnbroker participates in the pawnshop employee license program, then the pawnbroker ~~[A pawnbroker]~~ must maintain adequate written documents demonstrating that all pawnshop employees are either properly licensed pursuant to Texas Finance Code, §371.101 or have applied for a pawnshop employee license.

(b) Availability of records. If a pawnbroker participates in the pawnshop employee license program, then during ~~[During]~~ an examination by the OCCC ~~[commissioner or the commissioner's representative,]~~ or an inspection by a peace officer, copies of the pawnshop employee licenses or copies of records relating to any pending applications for pawnshop employee licenses must be readily available.

Division 6. License Revocation, Suspension, and Surrender

§85.601. Denial, Suspension, or Revocation Based on Criminal History.

(a) - (c) (No change.)

(d) Crimes related to ~~[moral]~~ character and fitness.

(1) The OCCC may deny a pawnshop license application ~~[if the applicant is not of good moral character,]~~ if the applicant does not show that the business will be operated lawfully and fairly, or if the applicant does not show that the applicant or the applicant's owners have the financial responsibility, experience, character, and general fitness to command the confidence of the public, as provided by Texas Finance Code, §371.052(a).

(2) The OCCC may deny a pawnshop employee license if the applicant is not of ~~[good moral character and]~~ good business repute, or if the applicant does not possess the character and general fitness necessary to warrant the belief that the individual will operate the business lawfully and fairly, as provided by Texas Finance Code, §371.102(a).

(3) In conducting its review of ~~[moral]~~ character and fitness, the OCCC will consider the criminal history of the applicant and any principal parties. ~~[The OCCC considers the offenses described by subsections (c)(1) and (f)(2) of this section to be crimes involving moral character.]~~ If the applicant or a principal party has been convicted of an offense described by subsections (c)(1) or (f)(2) of this section, this reflects negatively on an applicant's ~~[moral]~~ character and fitness. The OCCC may deny a license application based on other criminal history of the applicant or its principal parties if, when the application is considered as a whole, the agency does not find that the financial responsibility, experience, character, and general fitness of the applicant are sufficient to command the confidence of the public and warrant the belief that the business will be operated lawfully and fairly. The OCCC will, however, consider the factors identified in subsection (c)(2) - (3) of this section in its review of ~~[moral]~~ character and fitness.

(e) (No change.)

(f) Other grounds for denial, suspension, or revocation. The OCCC may deny a license application, or suspend or revoke a license, based on any other ground authorized by statute, including the following:

(1) a conviction for an offense that does not directly relate to the duties and responsibilities of the occupation and that was committed less than five years before the date of application, as provided by Texas Occupations Code, §53.021(a)(2);

(2) a conviction for an offense listed in Texas Code of Criminal Procedure, art. 42A.054 or art. 62.001(6), as provided by

Texas Occupations Code, §53.021(a)(3) - (4);

(3) a conviction of a pawnshop licensee or a principal party for an offense directly related to the licensed occupation, as provided by Texas Finance Code, §371.251(a)(6);

(4) errors or incomplete information in the license application;

(5) a fact or condition that would have been grounds for denying the license application, and that either did not exist at the time of the application or the OCCC was unaware of at the time of application, as provided by Texas Finance Code, §371.251(a)(3) and §371.255(2);

(6) a finding by the OCCC that the financial responsibility, experience, character, or general fitness of a pawnshop licensee or a principal party do not command the confidence of the public or warrant the belief that the business will be operated lawfully, fairly, and within the purposes of this chapter, as provided by Texas Finance Code, §371.251(a)(7); and

(7) a finding by the OCCC that the ~~[moral]~~ character, business reputation, and general fitness of a pawnshop employee license holder do not warrant belief that the license holder will operate the business lawfully and fairly, as provided by Texas Finance Code, §371.255(3).

§85.603. Reinstatement of an Expired Pawnshop License.

If a pawnshop license expires as prescribed by §85.104 of this title (relating to License Term, Renewal, and Expiration ~~[Renewal Dates of Licenses]~~) for failure to pay annual assessment fees, the OCCC will

notify the pawnshop license holder by mailing notice to the current registered agent on file via certified mail that the license has expired and that the licensee may not make or renew a pawn loan. The holder of the expired license may elect to reinstate the license by submitting the fees required by §85.211(d) of this title (relating to Fees) and a \$1,000 reinstatement fee postmarked on or before December 27 of that same year. An expired pawnshop license holder may not conduct any licensed business at the formerly licensed location during the time the license is expired. Any unlicensed acts are subject to enforcement action by the OCCC should the holder of the expired license not cease operations upon expiration of the license on July 1. An expired license is considered an operating pawnshop location for the duration of the period of reinstatement right for the purpose of statutory distance requirements.

§85.604. Enforcement Action Against Pawnshop License or Pawnshop Employee License.

(a) Applicability. In this section:

(1) the requirements imposed on a pawnbroker apply to all pawnbrokers; and

(2) the requirements imposed on a pawnshop employee apply only to employees of pawnbrokers that participate in the pawnshop employee license program.

(b) [(a)] Generally. For the reasons in subsection (c) ~~[(b)]~~ of this section, the OCCC may take one or more of the following enforcement actions under Texas Finance Code, Chapters 14 and 371:

(1) an injunction;

(2) an administrative penalty;

(3) a suspension; or

(4) a revocation.

(c) ~~[(b)]~~ Basis for enforcement actions.

(1) - (9) (No change.)

Division 7. Enforcement; Penalties

§85.701. Failure to Timely File a Pawnshop Employee Application.

(a) Applicability. This section applies only to pawnbrokers that participate in the pawnshop employee license program and employees of these pawnbrokers.

(b) ~~[(a)]~~ Reasonable ground for denial. Failure to file a pawnshop employee application with the OCCC within 75 calendar days of the first day the employee participated or trained in a transaction subject to Texas Finance Code, §371.101(c), will be a reasonable ground for denial of the license. Should the OCCC find that no other ground is present on which to base a denial of the license, the OCCC may grant the license and take an enforcement action as provided in subsection (c) ~~[(b)]~~ of this section.

(c) ~~[(b)]~~ Enforcement actions. Failure to file a pawnshop employee application with the OCCC within 75 calendar days of the first day the employee participated or trained in a transaction subject to Texas Finance Code, §371.101(c), may subject both the pawnbroker ~~[pawnshop]~~ and the pawnshop employee to one or more of the following enforcement actions under Texas Finance Code, Chapters 14 and 371:

(1) an injunction;

(2) an administrative penalty;

(3) a suspension; or

(4) a revocation.

(d) ~~[(e)]~~ Pattern of violations. A pattern of violations may result in an additional enforcement action or denial.

§85.702. Accepting Prohibited Merchandise.

(a) Applicability. In this section:

(1) the requirements imposed on a pawnbroker apply to all pawnbrokers; and

(2) the requirements imposed on a pawnshop employee apply only to employees of pawnbrokers that participate in the pawnshop employee license program.

(b) ~~[(a)]~~ Reasonable ground for revocation. Reasonable ground for revocation of the license exists when a pawnbroker or pawnshop employee, knowingly or without exercising due care, fails to prevent a transaction of stolen property, in violation of Texas Finance Code, Chapter 371.

(c) ~~[(b)]~~ Enforcement actions. The acceptance of prohibited merchandise in violation of §85.418(a)(1) or (3) of this title (relating to Acceptance of Goods), may subject the pawnbroker ~~[pawnshop]~~ and pawnshop employee to one or more of the following enforcement actions under Texas Finance Code, Chapters 14 and 371:

(1) an injunction;

(2) an administrative penalty;

(3) a suspension; or

(4) a revocation.

(d) ~~[(e)]~~ Multiple violations. Multiple violations may result in an additional enforcement action.

Certification

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on June 21, 2019.

Laurie B. Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner

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C.

Texas Department of Banking

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TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705
512-475-1300 / 877-276-5554
www.dob.texas.gov

To: Finance Commission Members

From: Daniel Frasier, Director of Bank & Trust Supervision *DBF*

Date: June 7, 2019

Subject: Summary of the Bank & Trust Supervision Division Activities

Bank and Trust Supervision					FY 2019							
8/31/2017		8/31/2018			11/30/2018		2/28/2019		5/31/2019*		8/31/2019	
Industry Profile (# / Assets in billions)												
# Banks	240	\$252.9	236	\$257.3	233	\$257.7	231	\$261.6				
# Trust Co. (1)	17	\$108.5	17	\$107.4	18	\$108.0	18	\$101.4				
# FBA/FBB	10	\$56.1	7	\$66.3	7	\$64.8	7	\$68.0				
Examinations Performed												
Banks	103		107		26		23					
Trust Co.	26		27		5		3					
FBA/FBB	3		3		0		1					
Bank Uniform Financial Institution Composite Ratings												
1	123	51.3%	114	48.3%	111	47.6%	111	48.0%				
2	104	43.3%	111	47.0%	111	47.6%	109	47.2%				
3, 4, & 5	12	5.0%	11	4.7%	11	4.8%	11	4.8%				
Non-Rated	1	0.4%	0	-	0	-	0	-				

* Third quarter performance measure numbers are not yet available.

(1) Fiduciary assets for public trust companies (non-exempt) only.

The Department considers any bank with a Uniform Financial Institutions Composite Rating of 3, 4, or 5, to be a problem bank. The number of problem institutions remains stable and is in line with the normal range of between 3% and 5% of the total number of institutions. We expect that the number of problem banks to continue fluctuating in this range over the next six months.

Summary of the Bank & Trust Supervision Division Activities

Page 2

Enforcement Actions Outstanding (Number outstanding as of the date indicated)			FY 2019			
	8/31/2017	8/31/2018	11/30/2018	2/28/2019	5/31/2019*	8/31/2019
Banks - Safety and Soundness						
Formal	2	2	2	2		
Informal	22	17	17	16		
Banks - Bank Secrecy Act (BSA)						
Formal	0	0	1	0		
Informal	2	1	1	1		
Banks - Information Technology (IT)						
Formal	0	0	0	0		
Informal	2	3	2	3		
Trust Departments of Banks and Trust Companies						
Formal	0	0	0	0		
Informal	2	2	2	2		
Total Enforcement Actions Outstanding						
Formal	2	2	3	2		
Informal	28	23	22	22		
Total	30	25	25	24		

* Third quarter performance measure numbers are not yet available.

Formal actions include Orders to Cease and Desist, Consent Orders, Written Agreements and Supervisor Actions.

Informal actions include Determination Letters, Memoranda of Understanding, Commitment Letters and Board Resolutions.

Compliance actions are not included.

Compliance with Examination Priorities Percent of Examinations Conducted within Department Guidelines		
Entity Type	FY 2018	FY 2019 (YTD – May 2019)
Commercial Banks (All / DOB Only)	94% / 98%	93% / 92%
IT	96% / 100%	94% / 95%
Trust	100% / 100%	96% / 100%
Foreign Banks (FRB)	100%	100%
Trust Companies (DOB)	100%	100%
IT	100%	100%

Compliance with examination priorities for commercial banks exceeds the agency's goal of completing 95% of examinations within policy guidelines. As an ongoing reminder, U.S. Senate Bill 2155, which became law on May 24, 2018, raised the eligibility to qualify for an 18-month examination cycle for banks with \$1 billion in total assets to \$3 billion in total assets. This change effectively moved some of the agency's larger bank examinations into the second and third fiscal quarters of 2019. As a result of this change, examinations for

Summary of the Bank & Trust Supervision Division Activities

Page 3

two banks could start late between now and this fiscal year end, August 31, 2019. The effects of this examination cycle change are not expected to extend beyond the current fiscal year.

Division Highlights

- **Exposure to Chinese Tariffs on Agriculture Products.** We evaluated the potential effects of Chinese agriculture related tariffs on Texas state banks. Half of our bankers with the greatest exposure to agriculture were contacted, the majority of which are in west and northwest Texas. At this time, the agriculture tariffs are not expected to materially affect bank asset quality. Soybeans, which appear to be the most directly and adversely affected crop, is not widely grown in Texas. It was also noted that U. S. Department of Agriculture programs are directing billions of dollars to producers hurt by tariffs.
- **Large Bank Peer Review.** The Department is participating in the newly formed multi-state Large Bank Peer Review group to meet, discuss and share information related to the supervision of our largest financial institutions. The Department currently supervises five large bank organizations (LBOs) with assets in excess of \$10 billion. This multi-state peer group will assist the Department's Central Point of Contact (CPC) for each of our LBOs with a platform to share ideas, compare examination best practices, and otherwise improve upon the supervision processes for our LBOs.
- **Special Operations and Conferences:**
 - On March 27 and 28, 2019, Commissioner Cooper, Deputy Commissioner Purdom, and Director of Bank and Trust Supervision Frasier attended Independent Bankers Association of Texas (IBAT) Banking Day at the Capital.
 - The week of April 1, 2019, Commissioner Cooper and Deputy Commissioner Purdom attended the Conference of State Bank Supervisors (CSBS) Fly-In and Board Meeting in Washington, D. C.
 - On April 5, 2019, Commissioner Cooper participated in a Regulatory Panel at the Texas Bankers Association (TBA) Legal Conference.
 - On April 12, 2019, Review Examiner Whitson participated in a Regulatory Panel at the TBA Compliance School in Austin.
 - Beginning May 1, 2019, Commissioner Cooper, Deputy Commissioner Purdom, Director Frasier, Regional Director Reed, and Review Examiners Hodge and Wu attended the TBA Convention in Austin.
 - On May 10, 2019, Commissioner Cooper led a session on the Community Banking Leverage Ratio and Other Regulatory Issues at the IBAT CFO Summit.
 - The week of May 20, 2019, Commissioner Cooper, Director Frasier, Regional Director Kuntschik and Regional Review Examiner Millsap attended the CSBS Supervisory Forum in San Antonio. This event allows for state and federal regulators to meet and discuss supervision related issues.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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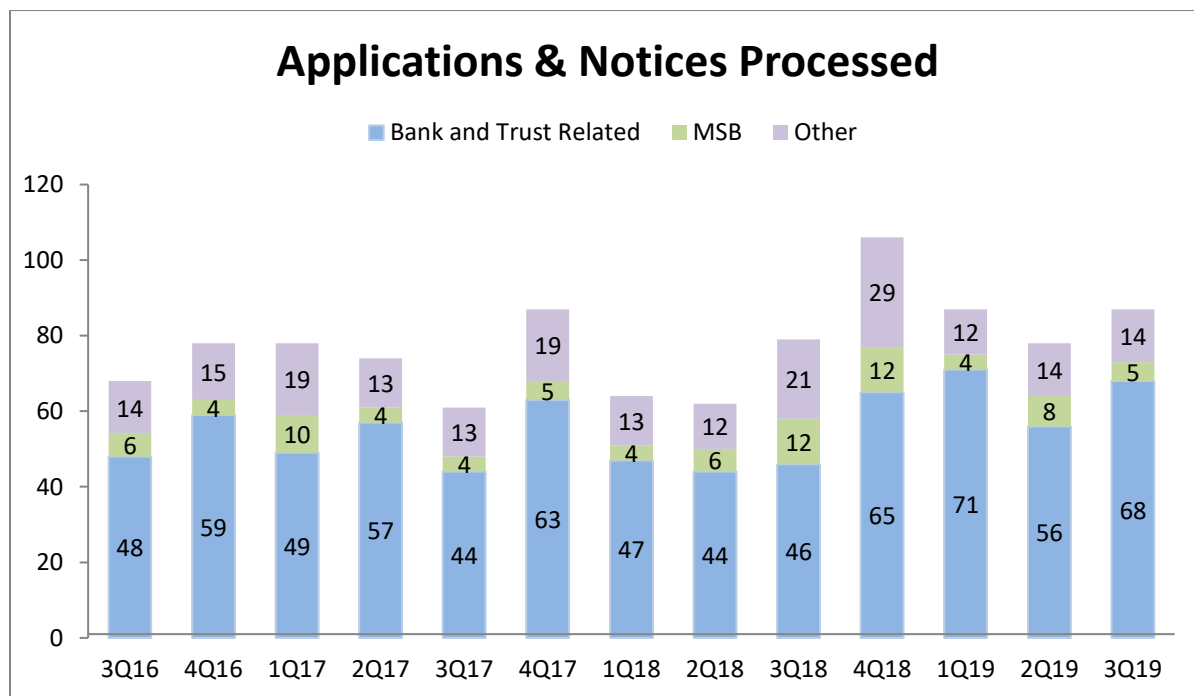
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To: Finance Commission Members

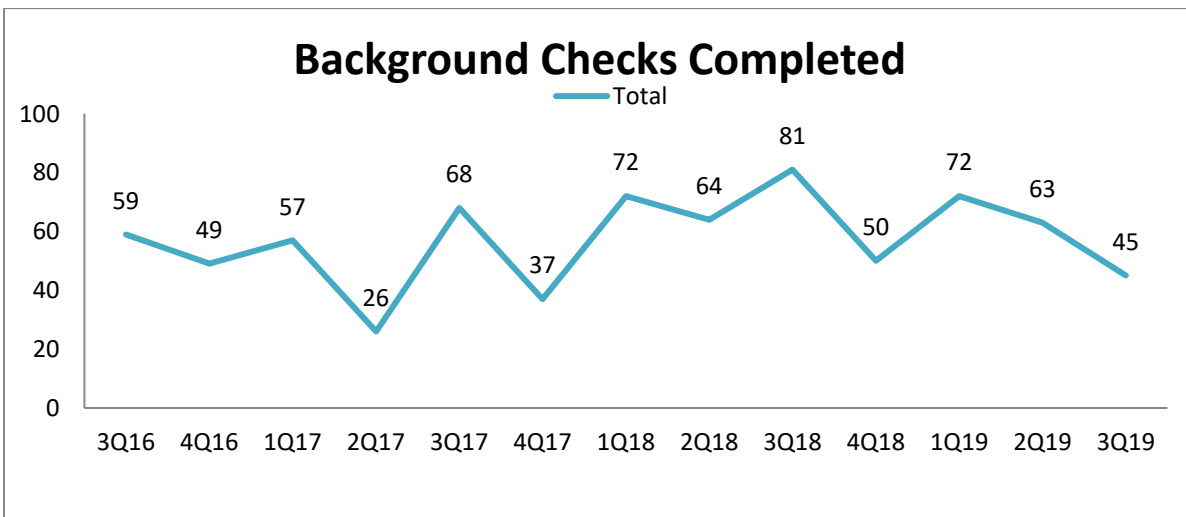
From: Mark Largent, Director of Corporate Activities

Date: June 7, 2019

Subject: Summary of the Corporate Division Activities



Information on a Fiscal Quarter Basis.



Information on a Fiscal Quarter Basis.

Entities/Activities	Applications and Notices Under Review (as of June 6, 2019)
Bank Related	14
Trust Companies	7
Money Services Business (MSB)	16
Others	3
Totals	40

Division Highlights

- Application volume continues to be significant while modestly below the level reported at the last Finance Commission meeting. Compared to our last report submitted to the Finance Commission, the Corporate Division's applications and notices presently under review by category type changed by:
 - Bank related decreased 7 (33%)
 - Trust company decreased 2 (22%)
 - MSB related increased 4 (33%)
 - Other increased 3 (0 reported in the last report)
- Charter, Conversion, and Merger Activity – The following transactions have consummated since Corporate's last report to the Finance Commission:
 - *Banks*
 - Grand Bank of Texas, Dallas, Texas, merged into BancorpSouth Bank, Tupelo, Mississippi [estimated loss in state banking assets of approximately \$344 million]
 - The Department closed The Enloe State Bank, Enloe, Texas, and its insured deposits were acquired by Legend Bank, N.A., Bowie, Texas, in an FDIC assisted transaction [estimated loss in state banking assets of approximately \$37 million]
 - *Trust Companies*
 - TMI Trust Company, Fort Worth, Texas, merged into Salem Trust Company, Tampa, Florida [estimated loss of fiduciary assets of approximately \$3.3 billion]
 - Invesco Trust Company, Houston, Texas, completed its acquisition merger of OFI Global Trust Company, New York, New York [estimated gain of fiduciary assets of approximately \$28 billion]
- Conferences, Conventions, and Committee Meetings – Since the last report to the Finance Commission, Corporate has not participated in such events



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

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To: Finance Commission Members

From: Russell Reese, Director of Special Audits *Russell Reese*

Date: June 5, 2019

Subject: Summary of the Special Audits Division Activities

Special Audits (SA)				FY 2019						
Entity	FY 2018		1 st		2 nd		3 rd		4 th	
Industry Profile (# / Assets (billions))										
Money Services Businesses (MSB)	161	\$131.5	160	\$135.4	167	\$137.7	*	*		
Prepaid Funeral Contract (PFC)	365	\$4.0	365	\$4.1	365	\$4.1	*	*		
Perpetual Care Cemeteries (PCC)	241	\$346.8	241	\$352.4	241	\$357.1	*	*		
Cemetery Brokers (CB)	14	n/a	14	n/a	14	n/a	*	*		
Private Child Support Enforcement Agencies (PCSEA)	10	n/a	10	n/a	10	n/a	*	*		
Check Verification Entities (CVE)	2	n/a	2	n/a	2	n/a	*	*		
Bullion Depository Agent (BDA)	0	n/a	0	n/a	0	n/a	*	*		
Examinations Performed										
MSB	97		22		24		*			
MSB Limited Scope	1		0		1		*			
MSB Accepted other State	14		5		4		*			
PFC	240		104		58		*			
PFC Limited Scope	8		3		0		*			
PCC	201		43		38		*			
PCC Limited Scope	4		1		0		*			
Ratings (# / %) Assigned to All Regulated Entities										
1	277	36.7%	268	35.5%	266	35.2%	*	*		
2	399	52.8%	412	54.5%	415	54.9%	*	*		
3	66	8.7%	64	8.5%	60	7.9%	*	*		
4 & 5	13	1.8%	11	1.5%	15	2%	*	*		
Noncompliance with Examination Priorities (Past Due)										
MSB	13		10		9		*			
PFC	13		5		2		*			
PCC	16		7		6		*			

NOTES:

PCC \$ amounts reflected in the millions.

Limited scope examinations do not receive a rating.

*Third quarter fiscal year 2019 data has not been finalized and will be provided in the next summary.

Division Activities

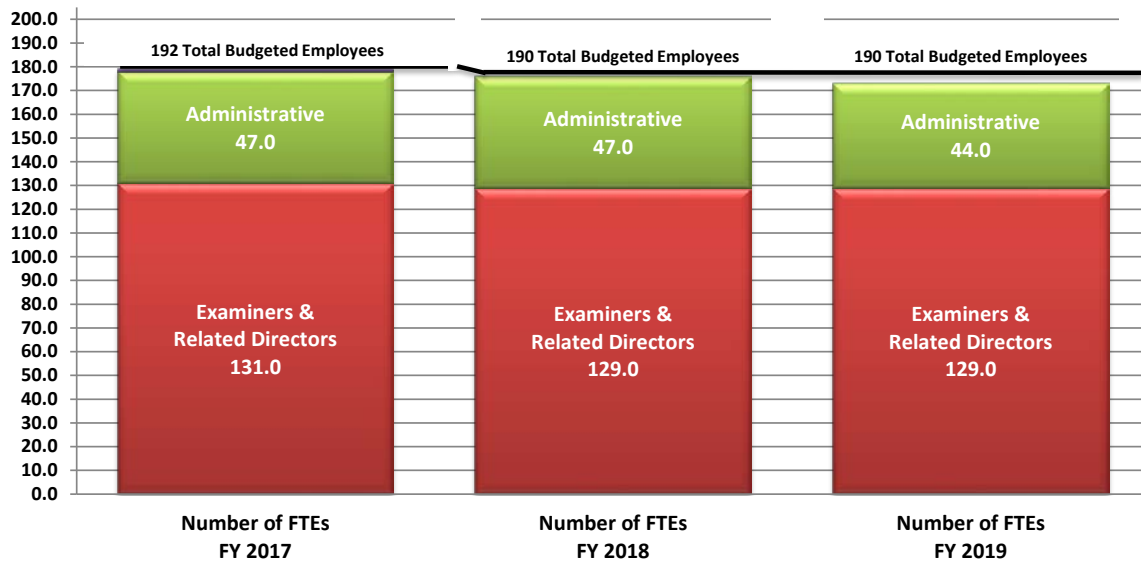
On May 6th, an MSB Financial Examiner was hired to fill a new entry level position and will be stationed in the Houston Region.

On May 9th, a Prepaid Funeral Guaranty Fund Advisory Council (Council) meeting was held at the Austin Headquarters. The Council ratified three Trust Guaranty Fund claims totaling \$8,365.60 related to Tom G. Walker Funeral Home, Coleman, Texas, and one claim totaling \$1,138.00 related to Community Funeral Home, Jacksonville, Texas.

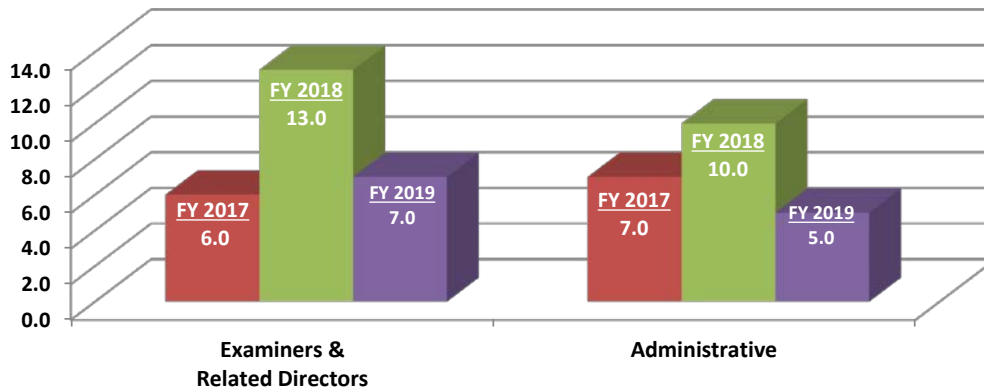
On May 20th, Director Reese gave a presentation on perpetual care regulations to the members of the Texas Cemeteries Association during their 2019 Annual Convention in San Antonio, Texas.

On May 21-23rd, Review Examiner Saucillo, along with other Departmental representatives, attended the 10th Annual CSBS State-Federal Supervisory Forum held in San Antonio, Texas. This annual forum is attended by various state/federal agencies and is used to discuss current and emerging policy and operational issues affecting state financial regulations.

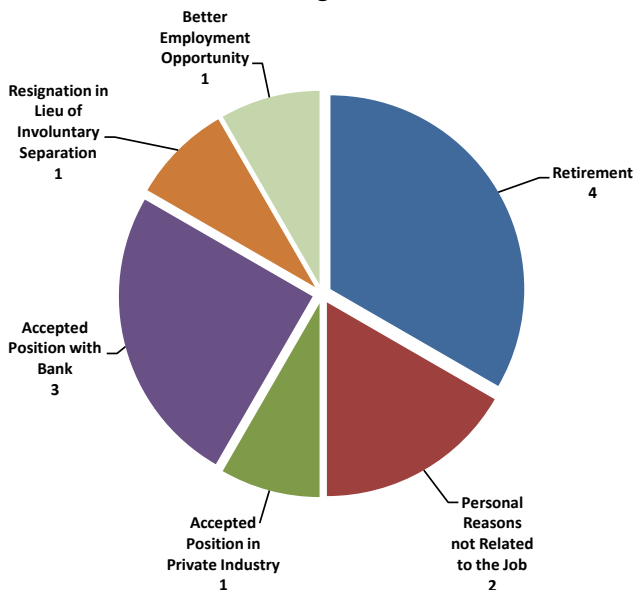
Texas Department of Banking
Employee Data for Fiscal Years 2017, 2018 and 2019 as of 5/31/19



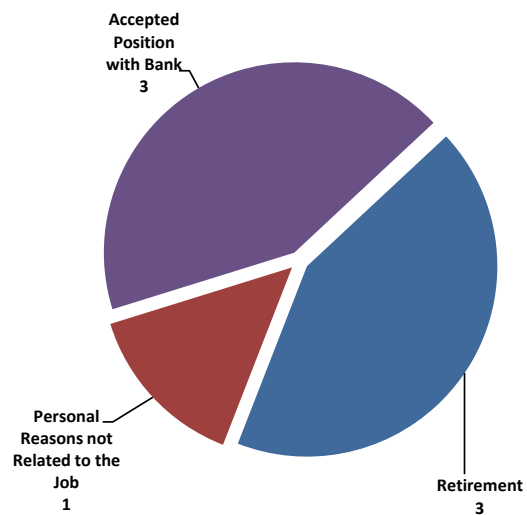
New Hire Data for Fiscal Years 2017, 2018 and 2019



All Employees
12 Resignations



Financial Examiners Only
7 Resignations



As of 5/31/19



Charles G. Cooper
Commissioner


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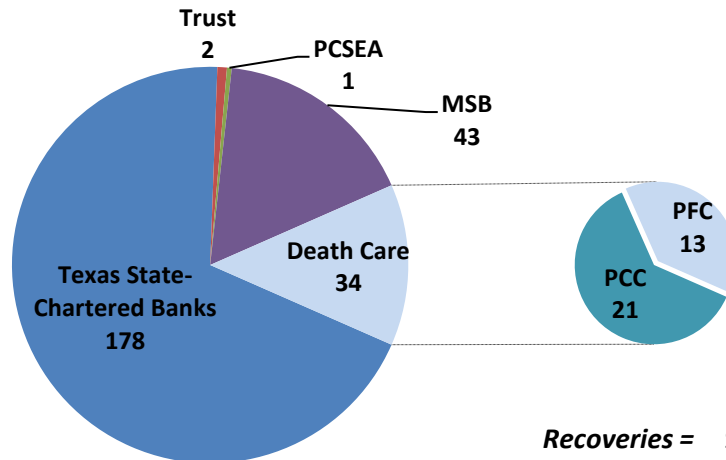
To: Finance Commission Members

From: Wendy Rodriguez, Director of Strategic Support 

Date: June 7, 2019

Subject: Summary of the Strategic Support Division Activities

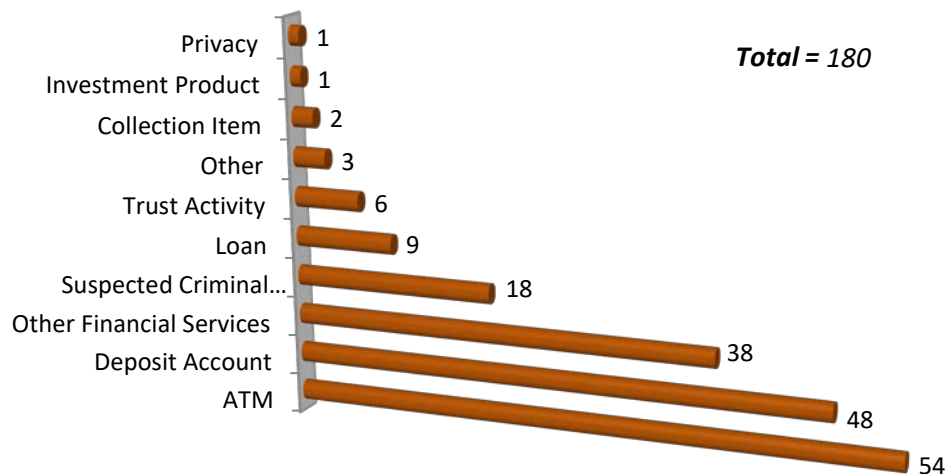
Jurisdictional Written Complaints September 2018 - April 2019



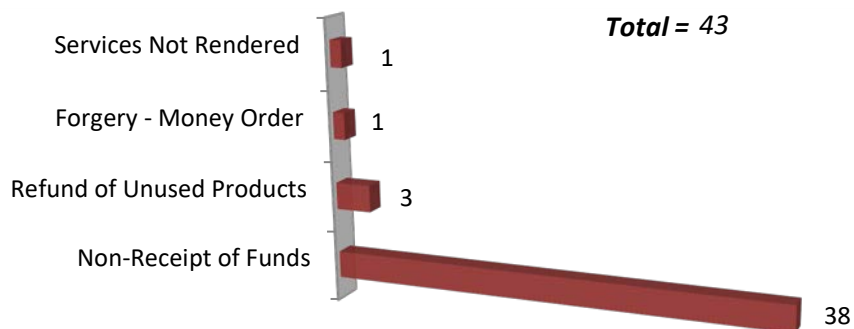
Recoveries = \$44,083.08

Total = 258

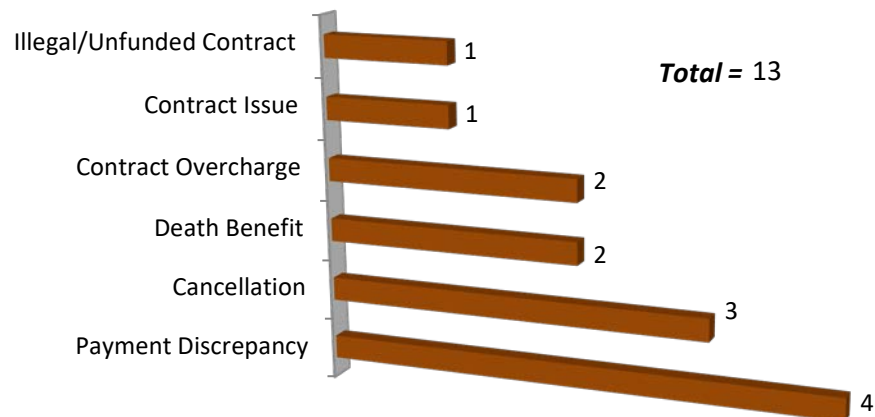
State-Chartered Banks and Trust Companies Written Complaints by Type September 2018 - April 2019



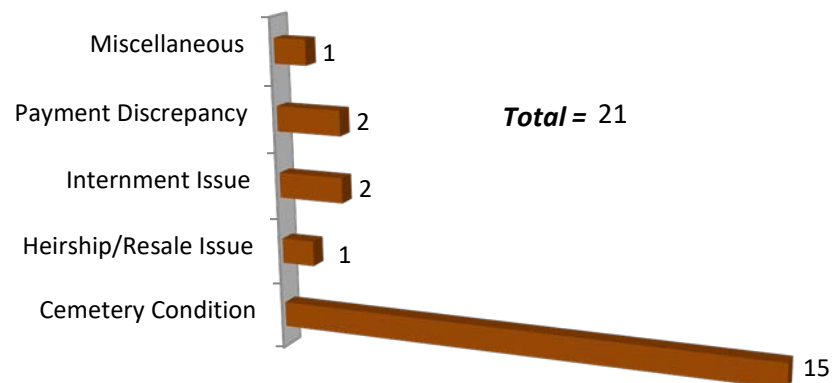
**Money Services Businesses
Written Complaints by Type
September 2018 - April 2019**



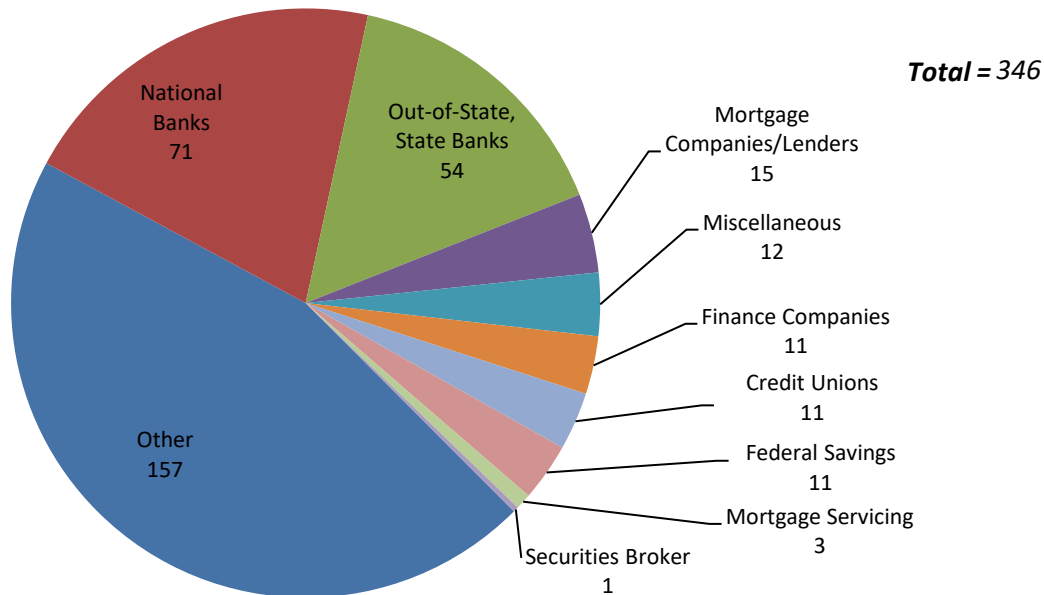
**Prepaid Funeral Contract Sellers
Written Complaints by Type
September 2018 - April 2019**



**Perpetual Care Cemeteries
Written Complaints by Type
September 2018 - April 2019**



Written Complaints Against Non-Jurisdictional Entities September 2018 - April 2019



Often, consumers do not provide the name of the entity they need assistance with. In these situations, the communication is categorized in the "Other" category.

Consumer Assistance Activities Performance Measures

	1st Qtr	2nd Qtr	3rd Qtr*	4th Qtr
State-Chartered Banks				
Avg. Number of Days to Close a Written Complaint	19	7		
Percentage of Written Complaints Resolved Within 90 days	100%	100%		
Number of Written Complaints Resolved	59	75		
Trust				
Avg. Number of Days to Close a Written Complaint	15	40		
Percentage of Written Complaints Resolved Within 90 days	100%	100%		
Number of Written Complaints Resolved	1	1		
PCSEA				
Avg. Number of Days to Close a Written Complaint	NA	NA		
Percentage of Written Complaints Resolved Within 90 days	NA	NA		
Number of Written Complaints Resolved	NA	NA		
PFC/PCC				
Avg. Number of Days to Close a Written Complaint	32	39		
Percentage of Written Complaints Resolved Within 90 days	100%	100%		
Number of Written Complaints Resolved	13	10		
MSB				
Avg. Number of Days to Close a Written Complaint	36	30		
Percentage of Written Complaints Resolved Within 90 days	100%	100%		
Number of Written Complaints Resolved	17	17		

* Third quarter performance measure numbers are not yet available.

CANS ACTIVITY

January 1, 2016 – May 31, 2019

Entity	Enrolled	Compromised Accounts Reported
Texas State-Chartered Banks	206	599
Texas State-Chartered Savings Banks	23	53
Federal Savings Banks	10	1
State Credit Unions	132	790
Federal Credit Unions	229	440
National Banks	170	184
Out-of-State State-Chartered Banks	12	137
Out-of-State National Banks	6	1
Total	789	2,205

Bank Examination Testing System (BETS) Activity

Number of Candidates Passing Each Phase

	FY 2016	FY 2017	FY 2018	FY 2019 As of 5/31/19
I. General Knowledge	9	8	6	3
II. Loan Analysis	4	3	3	2
III. Panel	3	2	2	2
IV. Test Bank	2	3	3	3
Total FE3	18	24	22	23

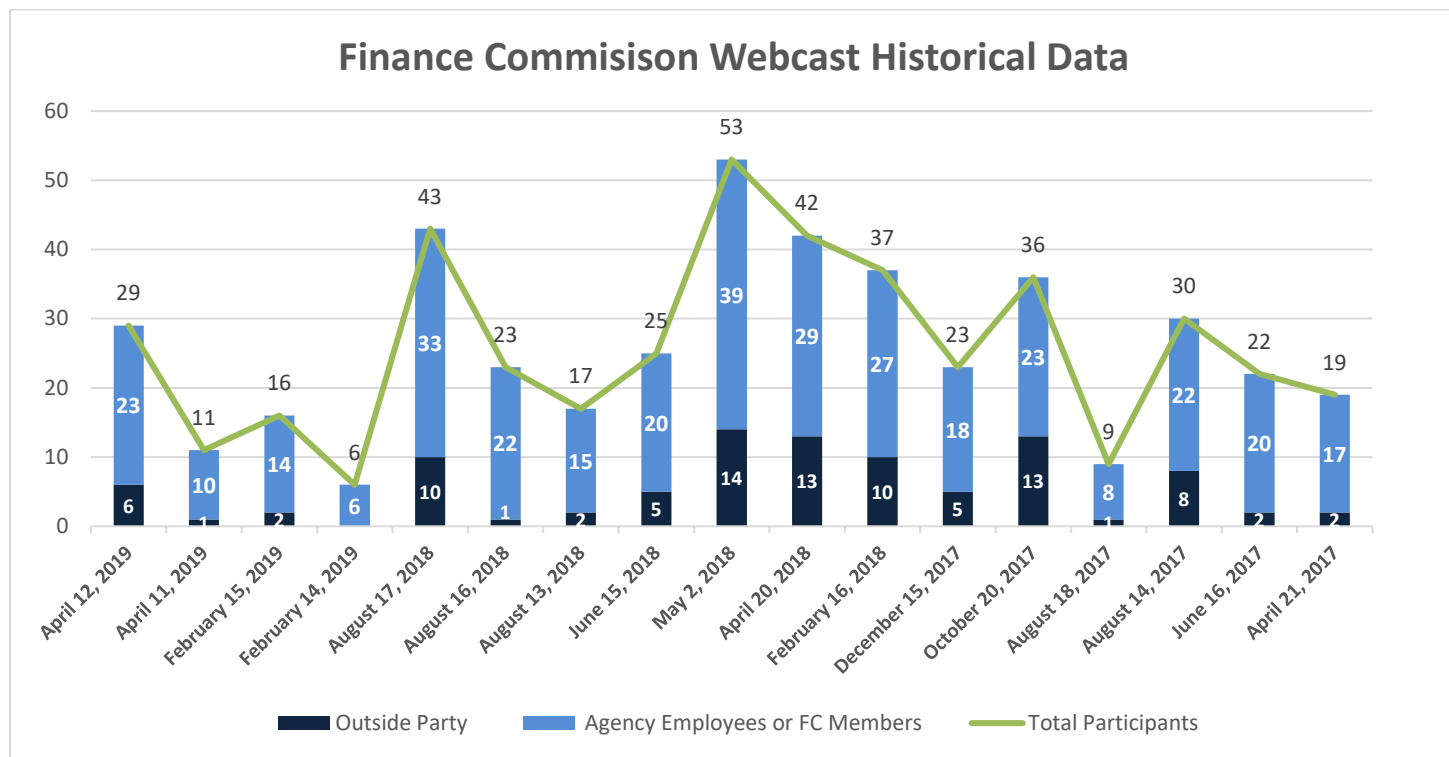
Promotions

From FE3 to FE4 (Commissioned Examiner)	2	3	2	2
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Other Divisional Items:

- *86th Legislative Session Monitoring*
 - Monday, May 27, 2019 was the last day of the regular session of the 86th Legislature. The House and Senate adjourned Sine Die passing 1,562, or 19%, of the 7,541 bills and joint resolutions filed. The Sunset bill which extends the Finance Commission and the Department's sunset dates to September 1, 2031 passed. The Governor has until June 16th to either sign or veto the bills. Department staff is evaluating all the bills that passed this session to see how they will affect the agency or our regulated entities.
- *Examiner Council*
 - Examiners' Council, which consists of one commercial examiner from each regional office, a trust examiner, and an IT Specialist, met in Austin June 10 -13, 2019 to review examination workpapers as required per Administrative Memorandum 2015.

- *Financial Education*
 - Mr. David Guillen attended the second quarter Alliance for Economic Inclusion meeting held in Austin, Texas on May 31, 2019.
 - The Financial Fitness Greater Austin (FFGA) 2019 \$mart Kid Essay Contest and Adult Financial Fitness Contest encourages youths and adults in the Greater Austin area to submit an essay on a specific topic selected by the FFGA. This year, Ms. Wendy Rodriguez participated as a judge on the \$mart Kid Essay scholarship contest in May. Interviews of the finalist were conducted on June 6-7, 2019. The top three essays in the high and middle school categories will receive a scholarship.
- *Personnel and Policies Manual Updates*
 - Personnel Manual
 - Section 10-02.04 relating to the use of contract airlines was modified to require staff to use one of two options to conserve state funds and obtain the lowest available airfare.
 - Revised Administrative Memorandums (AM)
 - AM 2022 – Institution Review Process for State-Chartered Banks
 - AM 2039 – Examination of Foreign Banking Organizations
 - AM 2045 – Institution Review Process for State-Chartered Trust Companies
 - Examiner Bulletin
 - XB 2019-01, issued May 15, 2019, relates to the Law, Policy Statement, and Asset Quality (LPAQ) Procedures. The Bulletin addresses certain non-CAMELS components that may be further risk-focused to address the LPAQ elements within the procedure. Eight commercial examination procedures have been modified to include the LPAQ approach.
- *Staff Training*
 - Ms. Wendy Rodriguez attended the following trainings and events:
 - Texas Bankers Association Convention in Austin, Texas May 1-3, 2019.
 - Conference of State Bank Supervisors Intermediate IT & Cybersecurity Training in Denver, Colorado May 6-9, 2019.
 - Mr. Gordon Anderson attended the FDIC Examination School for Non-Examiners in Arlington, Virginia, that was held April 29 - May 3, 2019.



* Webcast data is not available for the October 2018 and December 2018 meetings held at the capitol.



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705

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Memorandum

TO: Finance Commission Members

FROM: Catherine Reyer, General Counsel

DATE: June 1, 2019

RE: Legal Division Update

Pending Contested Cases

In the Matter of Clarence Lewis & Son Mortuary, Conroe, Texas, et al; Docket No. BF-1905-19-067. The Department received a complaint on December 27, 2018 regarding a prepaid funeral benefits contract issued by Respondents. Upon investigation, we determined that none of the respondents holds the required permit to sell prepaid funeral benefits. We attempted numerous times to contact Respondents to have them refund the complainant, but received no meaningful response. On April 3, 2019, Commissioner Charles Cooper issued an Emergency Order to Cease and Desist Activity and to Seize Prepaid Funeral Records. Upon receipt of service, Respondents claimed that they had no records of any prepaid funeral benefits contracts. After we were unsuccessful in obtaining restitution for the individual who complained to the Department, the matter was set for hearing. The hearing is scheduled for July 17, 2019.

In the Matter of Oliver W. Lomax and Lomax Funeral Home, Dallas, Texas; Docket No. BF-1903-19-060. Mr. Lomax is a funeral service provider authorized by Lifetime Services, Inc., which holds a permit to sell insurance-funded prepaid funeral benefits. During a regularly scheduled examination of Lifetime, the Department discovered that Respondents had failed to honor a prepaid funeral benefits contract on which Respondent had committed to as the funeral service provider, resulting in overcharges to the decedent's family. Respondent has refused to refund the overcharges, despite several requests by Lifetime and Department staff. A hearing in this matter has been set for June 19, 2019.

In the Matter of E. Mex. Financial Services, Inc., Laredo, Texas; Docket No. BM-1904-18-029. Respondent holds a license to conduct currency exchange. In June 2018, the Department commenced a regularly scheduled examination of Respondent. During the examination, the Department identified numerous violations of state and federal law, including: failure to cooperate with an examination; failure to prepare, maintain, and preserve several key reports indicating the safety and soundness of Respondent's operations, such as a general ledger posted in accordance with generally accepted accounting principles, records related to bank reconciliations, and customer identification records. Based on the serious nature of the allegations, the Department is seeking revocation of the currency exchange license. Hearing is set for August 8, 2019.

Gifts

The Department received expense reimbursement from the Conference of State Bank Supervisors for meeting room rental charges (\$6,945.48) for numerous Bank and Trust examiners to attend Intermediate IT Trainings held in San Antonio and Dallas in February, 2019.

Finance Commission member Molly Curl received complimentary registration (valued at \$1,390) to attend the Texas Bankers Association CFO Conference in Bastrop, Texas June 5-7, 2019.

Orders Issued 4/1/19 – 5/31/19

During this time period, the Commissioner issued six enforcement orders, all of which are final and non-appealable:

Bank and Trust

- Order to Cease and Desist Activity dated April 10, 2019; Lavish Bank and Trust, International and Crystal Shoemake, Fort Worth, TX
- Consent Order Prohibiting Further Participation dated May 6, 2019; Sarah Nicole Gordon, Athens, TX
- Consent Order Prohibiting Further Participation dated May 6, 2019; Kelley Ranae Jones, Llano, TX

Special Audits

- Emergency Order to Cease and Desist Activity and to Seize Prepaid Funeral Records dated April 3, 2019; Clarence Lewis & Son Mortuary and Creisha Lewis Cotton, Conroe, TX
- Emergency Order to Cease and Desist Activity and to Seize Prepaid Funeral Accounts and Records dated April 30, 2019; Hernandez Funeral Home, Rosenberg, TX
- Consent Order dated May 20, 2019; Eagle Smart Solutions, LLC, Laredo, TX

FY 2019 To Date Quarterly Order Activity

BANK				
Type of Action	1st	2nd	3rd	4th
Consent Order	1	0	1	
Cease & Desist	1	0	1	
Supervision	0	0	1	
Prohibition	0	3	3	
Total	2	3	6	
TRUST COMPANY				
Consent Order	0	0	0	
Cease & Desist	0	0	0	
Supervision	0	0	0	
Prohibition	0	0	0	
Total	0	0	0	
MONEY SERVICE BUSINESS				
Consent Order	8	1	2	
Cease & Desist	0	2*	0	
Total	8	3	2	
PERPETUAL CARE CEMETERY				
Consent Order	0	1	0	
Cease & Desist	0	0	0	
Refusal to Renew Cert/Auth	0	0	0	
Final Order after hearing	0	0	0	
Total	0	1	0	
PREPAID FUNERAL CONTRACT				
Consent Order	1	1	1	
Cease & Desist	0	0	3	
Conversion	0	0	0	
Total	1	1	4	

*The subjects of these Orders have requested hearings; therefore the Orders are not yet effective.

FUTURE RULEMAKING ACTIVITY		
Rule	Subject	Projected Date for Presentation
7 TAC Ch. 9	Procedures for Alternative Dispute Resolution (new)	August 16, 2019
7 TAC Ch. 24	Cemetery Brokers (repeal)	August 16, 2019
7 TAC Ch. 31	Private Child Support Enforcement Agencies (repeal)	August 16, 2019
7 TAC Ch. 33	Bullion Depository Agents (repeal)	August 16, 2019
7 TAC Ch. 33	Exemptions for certain Money Services Businesses (amendments)	August 16, 2019
7 TAC Ch. 9	Alternative Dispute Resolution; Appeals (new, amendments)	October 18, 2019

Legislation Influencing DOB Regulated Entities

86th Legislative Session, 2019

SB 1823 – Bank and Trust Regulation (effective 9/1/19 unless vetoed)

- Includes credit rating agencies in definition of third party service providers for banks and trust companies; authorizes the Department to examine, regulate, and assess examination fees against third party service providers.
- Provides that information related to the issuance of a subpoena in a bank investigation must be kept confidential.
- Narrows the approval exemption for bank holding company transactions that involve change of control.
- Deletes minimum “per day” amount of statutory penalty that may be ordered against banks and trust companies.

SB 1821 – Perpetual Care Cemetery Regulation (effective 9/1/19)

- Provides for recovery of reasonable costs of investigation.
- Authorizes the commissioner to conduct investigations necessary to administer and enforce the chapter, and to cancel or suspend a certificate of authority for serious violations.
- Provides that a cease and desist order may, in addition to requiring a person to stop engaging in a violation, require the person to take corrective measures to remedy the violation.

SB1822 – Regulation of Prepaid Funeral Benefits Sellers (effective 9/1/19)

- Aligns dates for returning abandoned funds and reporting requirements with Texas Comptroller requirements.
- Provides for recovery of reasonable costs of investigation if violation is found.

HB 2458 – Texas Bullion Depository (effective 5/24/19)

- Deletes all references to licensing of bullion depository agents.
- Implements other minor modifications to establishment of depository, as administered by Texas Comptroller of Public Accounts.

HB4390 – Data Privacy (effective 9/1/19 unless vetoed)

- Amends the Business & Commerce Code to require entities to disclose to the Office of the Attorney General any breach of system security that affects more than 250 Texas residents.
- Specifies what information must be included in the disclosure.

SB 207 – Money Laundering (effective 9/1/19 unless vetoed)

- Amends the Penal Code to include virtual currency in the definition of funds for purpose of determining whether the offense of money laundering has occurred.

SB 726 – Community Investments by Banks (effective 9/1/19)

- Increases from 10% to 15% of a bank's unimpaired capital and surplus the amount of aggregate community investments that may be made.
- Specifies that a single project for community investments may not exceed 25% of a bank's unimpaired capital and surplus.

Legislation of Interest to Finance Commission 86th Legislative Session, 2019

Sunset

SB 614 – DOB/SML Sunset Bill (effective 9/1/19)

- Continues DOB and SML until 9/1/31
- Requires annual distribution of training manuals to FC members
- Requires agencies to implement model guidelines regarding complaint handling
- Requires FC to develop policy to encourage alternative rulemaking and dispute resolution
- Deletes references to appeals to FC
- Repeals statutes regarding DOB registration of cemetery brokers and private child support enforcement agencies
- Requires FC to set (by rule) certificate of authority/permit term for perpetual care cemeteries and prepaid funeral benefit sellers

HB 1442 – OCCC Sunset Bill (effective 9/1/19 unless vetoed)

- Amends multiple Finance Code chapters concerning entities regulated by OCCC
- Continues OCCC until 9/1/31

SB 619 – Extending Review of Certain Agencies; Modifying Process (effective 9/1/19 unless vetoed)

- Extends Sunset date for numerous state agencies
- Establishes the Sunset Advisory Commission as a legislative agency, and states that a public member acts on behalf of the legislature
- Modifies term of public and legislative members
- Enhances confidentiality of communications between Sunset Commission and agency under review

Agency Owned Real Property

SB 646 – Governor’s Office Review of Agency Real Estate Projects (effective 9/1/19)

- Applies only to SDSI agencies
- Requires agency to obtain written authorization from Governor’s office prior to purchase or construction of building on real property
- Requires plan submission to Texas Facilities Commission (TFC), and analysis by TFC of whether an available state property satisfies the agency’s need
- Requires collaboration with TFC on construction or purchase

- Transition period for projects where funds have already been allocated

SB 4541 – Authority of Facilities Commission Over State Owned Real Property (effective 9/1/19 unless vetoed)

- Provides a process for sale of state property not located in the Capitol complex outside of regular legislative session

Open Meetings/Public Information

SB 494 – Open Meetings Requirements during Emergencies (effective 9/1/19)

- Temporarily suspends applicability of notice requirements under Open Meetings Act for agencies that are experiencing effects of emergency
- Requires agency to notify Office of the Attorney General if emergency suspension in effect

SB 943 –Public Information relating to Agency Contracts (effective 9/1/19 unless vetoed)

- Requires most information relating to contracts is subject to release
- Provides very specific exemptions relating to trade secrets
- Requires large-dollar contractors to provide information directly to requestor

SB 944 – Public Information Held on Privately Owned Devices; Duties of Public Information Officers (effective 9/1/19 unless vetoed)

- Requires owners of private devices where public information is stored to release the information to the agency from which it is being requested
- Clarifies duties of public information officers and methods of communication with requestors

2. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 1, Chapter 9, Concerning Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings, Resulting from Rule Review

PURPOSE: Texas Government Code §2001.039 requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon the agency's rule review and its determination as to whether the reasons for initially adopting the rules continue to exist.

Notice of the proposed review of 7 TAC, Chapter 9 was published in the *Texas Register* as required on April 19, 2019 (44 TexReg 2063). The Department received no comments regarding the review.

The Department believes the reasons for initially adopting the rules in Chapter 9 continue to exist and those rules should be readopted.

RECOMMENDED ACTION: The Department requests that the Commission find that the reasons for initially adopting the rules in 7 TAC, Chapter 9 continue to exist and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that we find that the reasons for initially adopting the rules in 7 TAC, Chapter 9 continue to exist, and that those rules be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed the review of Texas Administrative Code, Title 7, Chapter 9 (Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), comprised of Subchapter A (§§9.1 - 9.3); Subchapter B (§§9.11 - 9.23 and 9.25 - 9.39); Subchapter C (§§9.51, 9.52 and 9.54 - 9.57); Subchapter D (§9.71 and §9.72); and Subchapter E (§§9.81 - 9.84).

Notice of the review of Chapter 9 was published in the April 19, 2019, issue of the *Texas Register* (44 TexReg 2063). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 9 continue to exist. However, the commission has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 9 sections, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections in accordance with the requirements of the Government Code, §2001.039.

3. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 1, Chapter 10, Concerning Contract Procedures, Resulting from Rule Review

PURPOSE: Texas Government Code §2001.039 requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon the agency's rule review and its determination as to whether the reasons for initially adopting the rules continue to exist.

Notice of the proposed review of 7 TAC, Chapter 10 was published in the *Texas Register* as required on April 19, 2019 (44 TexReg 2063). The Department received no comments regarding the review.

The Department believes the reasons for initially adopting the rules in Chapter 10 continue to exist and those rules should be readopted.

RECOMMENDED ACTION: The Department requests that the Commission find that the reasons for initially adopting the rules in 7 TAC, Chapter 10 continue to exist and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that we find that the reasons for initially adopting the rules in 7 TAC, Chapter 10 continue to exist, and that those rules be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed the review of Texas Administrative Code, Title 7, Chapter 10 (Contract Procedures), comprised of Subchapter A (§§10.1 - 10.21); Subchapter B (§10.30); and Subchapter C (§10.40).

Notice of the review of Chapter 10 was published in the April 19, 2019, issue of the Texas Register (44 TexReg 2063). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 10 continue to exist. However, the commission has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 10 sections, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections in accordance with the requirements of the Government Code, §2001.039.

4. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 12, Concerning Loans and Investments, Resulting from Rule Review

PURPOSE: Texas Government Code §2001.039 requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon the agency's rule review and its determination as to whether the reasons for initially adopting the rules continue to exist.

Notice of the proposed review of 7 TAC, Chapter 12 was published in the *Texas Register* as required on April 19, 2019 (44 TexReg 2063). The Department received no comments regarding the review. However, the Department has determined that certain revisions and updates are appropriate and necessary. Proposed amendments to affected sections in Chapter 12, with discussion of the justification for the proposed changes, will be submitted to the Commission at a future meeting.

The Department believes the reasons for initially adopting the rules in Chapter 12 continue to exist and those rules should be readopted.

RECOMMENDED ACTION: The Department requests that the Commission find that the reasons for initially adopting the rules in 7 TAC, Chapter 12 continue to exist and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that we find that the reasons for initially adopting the rules in 7 TAC, Chapter 12 continue to exist, and that those rules be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed the review of Texas Administrative Code, Title 7, Chapter 12 (Loans and Investments), comprised of Subchapter A (§§12.1 - 12.12); Subchapter B (§§12.31 - 12.33); Subchapter C (§12.61 and §12.62); and Subchapter D (§12.91).

Notice of the review of Chapter 12 was published in the April 19, 2019, issue of the *Texas Register* (44 TexReg 2063). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 12 continue to exist. However, the department has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 12 sections, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts these sections in accordance with the requirements of the Government Code, §2001.039.

5. Discussion of and Possible Vote to Take Action on the Re-adoption of 7 TAC, Part 2, Chapter 25, Concerning Prepaid Funeral Contracts, Resulting from Rule Review

PURPOSE: Texas Government Code §2001.039 requires a state agency to review each of its rules every four years and readopt, readopt with amendments, or repeal a rule based upon the agency's rule review and its determination as to whether the reasons for initially adopting the rules continue to exist.

Notice of the proposed review of 7 TAC, Chapter 25 was published in the *Texas Register* as required on April 19, 2019 (44 TexReg 2064). The Department received no comments regarding the review.

The Department believes the reasons for initially adopting the rules in Chapter 25 continue to exist and those rules should be readopted.

RECOMMENDED ACTION: The Department requests that the Commission find that the reasons for initially adopting the rules in 7 TAC, Chapter 25 continue to exist and that the Commission readopt these rules.

RECOMMENDED MOTION: I move that we find that the reasons for initially adopting the rules in 7 TAC, Chapter 25 continue to exist, and that those rules be readopted.

Adopted Rule Review

On behalf of the Finance Commission of Texas (commission), the Texas Department of Banking has completed the review of Texas Administrative Code, Title 7, Part 2, Chapter 25 (Prepaid Funeral Contracts), §§25.1 - 25.41, in its entirety.

Notice of the review of Chapter 25 was published in the April 19, 2019, issue of the *Texas Register* (44 TexReg 2064). No comments were received in response to the notice.

The commission believes the reasons for initially adopting Chapter 25 continue to exist. However, the commission has determined that certain revisions and other changes are appropriate and necessary. Proposed amended Chapter 25 sections, with discussion of the justification for the proposed changes, will be published in the *Texas Register* at a later date.

The commission finds that the reasons for initially adopting these rules continue to exist and readopts Chapter 25 in accordance with the requirements of the Government Code, §2001.039.

6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, Part 2, Chapter 11, §§11.10, 11.11 and 11.12, Concerning Complaint Handling Procedures

PURPOSE: New §§11.10, 11.11 and 11.12 are proposed to provide consistent procedures for persons to complain about conduct of entities regulated by the department. The new rules are proposed in response to a recommendation of the Sunset Advisory Commission that the Department update its complaint processing provisions in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed new rules in the *Texas Register* for comment.

RECOMMENDED MOTION: I move that we publish the proposed new 7 TAC, §§11.10, 11.11 and 11.12 in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 11. Miscellaneous
7 TAC, §§11.10, 11.11, and 11.12

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes new §§11.10, 11.11, and 11.12, concerning complaints. The new rules are proposed to provide consistent procedures for persons to complain about conduct of persons regulated by the department. The new rules are proposed in response to a recommendation of the Sunset Advisory Commission that the department update its complaint processing provisions in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, and recordkeeping are topics covered in the Sunset Model. The proposed new rules implement the applicable recommendations contained in the Sunset Model.

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Ms. Newberg also has determined that, for each year of the first five years the rules

as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is that complainants will have a clear, consistent process to follow and an understanding of timeframes for complaint processing and resolution.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

For each year of the first five years that the rules will be in effect, the rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect this state's economy.

The rules create new regulations concerning complaint handling to conform to recommendations from the Sunset Advisory Commission.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

To be considered, comments on the proposed new sections must be submitted no later than 5:00 p.m. on August 5, 2019. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to *legal@dob.texas.gov*.

The new rules are proposed under Government Code, §2001.004, which provides the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

Other statutes affected by the proposed new rules include Finance Code, §§12.108 and 396.304, and Health and Safety Code, § 711.048.

§11.10. Definitions.

(a) “Complainant” means a person who files a complaint or inquiry.

(b) “Complaint” means a signed, written communication submitted to the department by a person that alleges misconduct by a person believed to be engaging in an activity that is regulated by the department. For purposes of this subchapter, complaints shall contain at least the following information:

- (1) The complainant’s name and contact information;
- (2) The name of the entity against whom the complaint is submitted;
- (3) The date and place of the alleged violation;
- (4) A description of the facts or conduct alleged to violate applicable statutes or rules; and

(5) Written documentation supporting the complaint.

(c) “Inquiry” means a communication made to the department about an entity believed to be engaging in an activity that is regulated by the department, but such communication does not include all of the required elements of a complaint.

§11.11. Complaint Processing.

(a) Complaints and inquiries filed with the department are generally considered public information, unless a specific statutory exception applies.

(b) Upon receipt of a complaint or inquiry, the department will make a good faith effort to protect complainants’ identity to the extent possible. The department will determine if the complaint or inquiry relates to an activity that the department regulates.

(c) If the department does not regulate the activity that is the subject of the complaint or inquiry, the department shall close the complaint or inquiry, notify the complainant and refer the complaint or inquiry to the appropriate regulatory entity within five business days of receiving the complaint or inquiry, if known.

(d) If the department regulates the activity that is the subject of a complaint, the department shall initiate an investigation into the merits of the complaint by sending, within 10 business days of receiving the complaint, a copy of the complaint and any supporting documentation to the entity that is the subject of the complaint.

(e) The department shall prioritize complaints for purposes of determining the order in which complaints are investigated, taking

into account the seriousness of the allegations made in a complaint and the length of time a complaint has been pending.

- (f) A regulated entity that receives a complaint forwarded by the department shall respond within 30 days from the date the request is mailed by the department.
- (g) The banking commissioner may appoint a hearings officer or other subject matter expert to investigate a complaint received by the department.
- (h) The department may, at the discretion of the commissioner, arrange for the services of a qualified mediator or subject matter expert to assist in resolving the complaint.
- (i) The department shall monitor how long each complaint is open, and shall make all reasonable efforts to resolve complaints within ninety (90) days of receipt. The department shall notify the complainant of their complaint status at least quarterly if more than forty-five (45) days has elapsed since the complaint was received.
- (j) If the department determines that the complaint is not supported by the evidence, or if the complaint is resolved to the satisfaction of the parties, the complaint will be dismissed.
- (k) The department shall notify all parties to the complaint within ten (10) business days of closing the complaint.
- (l) A complainant who disagrees with the disposition of a complaint may appeal by filing a petition against the department in a district court in Travis County.

§11.12. Complaint Review and Reporting.

- (a) The department shall maintain in accordance with its retention policy records of all complaints received. Such records shall include the information required in Finance Code, § 12.108.
- (b) A representative sample of complaints closed due to lack of jurisdiction or evidence shall be reviewed quarterly by the head of the division that received the complaint.
- (c) At least quarterly, the department shall submit to the Finance Commission a report of the sources, subjects, types, and dispositions of complaint activity during the preceding period.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, Part 1, Chapter 3, §3.24, Concerning Notification in Event of Cybersecurity Breach of State Banks

PURPOSE: New §3.24 will require a state bank to notify the banking commissioner promptly if it experiences a material cybersecurity incident in its information systems.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed new rule in the *Texas Register* for comment.

RECOMMENDED MOTION: I move that we publish the proposed new 7 TAC, §3.24 in the *Texas Register*.

Title 7. Banking and Securities
Part 1. Finance Commission of Texas
Chapter 3. State Bank Regulation
Subchapter B. General
7 TAC §3.24

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes new 7 TAC §3.24, concerning required notice of cybersecurity incidents. The new rule is proposed to require a state bank to notify the banking commissioner promptly if it experiences a material cybersecurity incident in its information systems.

Proposed subsection (a) provides definitions. "Cybersecurity incident" is defined in a manner consistent with current federal guidance as essentially an observed irregularity that must be investigated to determine if information has been damaged or stolen. Most cybersecurity incidents will not result in a notice to the commissioner. "Information system" is defined more broadly than current federal guidance, which is limited to systems that handle sensitive customer information. However, there are other types of sensitive data that can have a detrimental impact on a bank if breached, including confidential business information, trade secrets, organizational strategies and financial information. Further, a breach of specialized systems such as electronic banking systems, industrial/process controls systems, telephone switching and environmental control systems can have a material adverse effect on a bank's operations and financial performance.

Subsection (b) requires a state bank to notify the banking commissioner as soon as

practicable but no later than 15 days following a determination that a cybersecurity incident has occurred regarding the bank's information systems, whether maintained by the bank or by an affiliate or third party service provider at the direction of the bank, if the incident has a reasonable likelihood of (1) requiring notice to a regulatory agency other than the department, (2) a data breach notification to customers of the bank under applicable law, or (3) otherwise causing a material adverse effect on the financial performance of the bank or on customers of the bank.

Subsection (c) specifies the information required to be submitted in the notice, to the extent known at the time of submission. The purpose of the notice is not to provide comprehensive information regarding the incident, but rather to provide a confidential early warning to (1) ensure the commissioner is informed of the basic circumstances before receiving related consumer complaints and calls from elected officials, and (2) enable the department to monitor the bank's incident response and provide guidance if appropriate. While examiners with the department have sophisticated expertise and can assist if warranted, the proposed section is not intended to authorize the department to directly conduct or interfere with the bank's incident response.

Subsection (d) acknowledges that the filing of a suspicious activity report under federal law will trigger the notice requirement under the proposed section but cautions that the bank should not mention or discuss any related SAR filing in the submitted notice.

Catherine Reyer, General Counsel, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Ms. Reyer also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is enhanced regulatory oversight and resulting public confidence in the safety and soundness of state banks, particularly regarding the ability to protect sensitive customer information. Regulatory oversight of a state bank's remediation and compliance efforts in response to a material cybersecurity incident can better inform the examination process applicable to all state banks, resulting in stronger and more secure protection of sensitive customer information and other confidential information.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed. There will be no adverse economic effect on persons required to comply with the rule as proposed. A state bank will merely add the notice requirement to the written incident response plan the bank is already required to maintain under applicable federal law.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

Pursuant to Government Code §2001.0221, the department provides the following Government Growth Impact Statement for the proposed rule. During the first five years that the rule will be in effect, the rule will create a new regulation but will not create or eliminate a government program, require the creation of new employee positions or the elimination of existing employee positions, require an increase or decrease in future legislative appropriations to the department, require an increase or decrease in fees paid to the department, expand, limit or repeal an existing regulation; increase or decrease the number of individuals subject to the rule's applicability, or positively or adversely affect this state's economy.

To be considered, comments on the proposed new section must be submitted no later than 5:00 p.m. on August 5, 2019. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The new rule is proposed under Finance Code, §31.003(a)(2), which authorizes the commission to adopt rules necessary or reasonable to preserve or protect the safety and soundness of state banks. As required by Finance Code, §31.003(b), in proposing the new rule, the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive position of state banks with regard to national banks and other depository institutions in this state consistent with the

safety and soundness of state banks and the state bank system, and allow for economic development in this state.

No state statutes are affected by the proposed new section.

§3.24. Notice of Cybersecurity Incident.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Cybersecurity incident" means any observed occurrence in an information system that:

(A) jeopardizes the cybersecurity of the information system or the information the system processes, stores or transmits; or

(B) violates the security policies, security procedures or acceptable use policies of the information system owner to the extent such occurrence results from unauthorized or malicious activity.

(2) "Information system" means a set of applications, services, information technology assets or other information-handling components organized for the collection, processing, maintenance, use, sharing, dissemination or disposition of electronic information, including the operating environment as well as any specialized system such as electronic banking systems, industrial/process controls systems, telephone switching and private branch exchange systems, and environmental control systems.

(b) Notice required. A state bank shall notify the banking commissioner and submit the information required by subsection (c) of this section as soon as practicable but not later than 15 days following a determination that a cybersecurity incident has occurred regarding the bank's information system, whether maintained by the bank or by an affiliate or third party service provider at the direction of the bank, that will likely:

(1) require submission of a notice to a state or federal regulatory or law enforcement agency or to a self-regulatory body other than the notice required by this section;

(2) require sending a data breach notification to customers of the bank under applicable state or federal law, including Business and Commerce Code, §521.053, or a similar law of another state; or

(3) cause a material adverse effect on the financial performance of the bank or on customers of the bank.

(c) Content of notice. The notice required by subsection (b) must include, to the extent known at the time of submission:

(1) a brief description of the cybersecurity incident, including the approximate date of the incident, the date the incident was discovered, and the nature of any data that may have been illegally obtained or accessed;

(2) subject to subsection (d) of this section, a list of the state and federal regulatory agencies, self-regulatory bodies, and foreign regulatory agencies to whom notice has been or will be provided; and

(3) the name, address, telephone number, and email address of the employee or agent of the bank from whom additional information may be obtained regarding the incident.

(d) Omission of certain information. The filing of a suspicious activity report (SAR) related to the cybersecurity incident under applicable federal law constitutes a notice described by subsection (b)(1) of this section. However, the bank should not reference or mention the filing of a SAR in the notice filed with the commissioner.

8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, Part 2, Chapter 17, §17.5 Concerning Notification in Event of Cybersecurity Breach of State Trust Companies

PURPOSE: New §17.5 will require a state trust company, other than an exempt family trust company, to notify the banking commissioner promptly if it experiences a material cybersecurity incident in its information systems.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed new rule in the *Texas Register* for comment.

RECOMMENDED MOTION: I move that we publish the proposed new 7 TAC, §17.5 in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 17. Trust Company Regulation
Subchapter A. General
7 TAC §17.5

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes new 7 TAC §17.5, concerning required notice of cybersecurity incidents. The new rule is proposed to require a state trust company to notify the banking commissioner promptly if it experiences a material cybersecurity incident in its information systems.

Proposed subsection (a) provides definitions. "Cybersecurity incident" is defined in a manner consistent with current federal guidance as essentially an observed irregularity that must be investigated to determine if information has been damaged or stolen. Most cybersecurity incidents will not result in a notice to the commissioner. "Information system" is defined more broadly than current federal guidance, which is limited to systems that handle sensitive customer information. However, there are other types of sensitive data that can have a detrimental impact on a trust company if breached, including confidential business information, trade secrets, organizational strategies and financial information. Further, a breach of specialized systems such as telephone switching or exchange systems and environmental control systems can have a material adverse effect on a trust company's operations and financial performance.

Subsection (b) requires a state trust company to notify the banking commissioner as soon as practicable but no later than 15

days following a determination that a cybersecurity incident has occurred regarding the trust company's information systems, whether maintained by the trust company or by an affiliate or third party service provider at the direction of the trust company, if the incident has a reasonable likelihood of (1) requiring notice to a regulatory agency other than the department, (2) a data breach notification to clients of the trust company under applicable law, or (3) otherwise causing a material adverse effect on the financial performance of the trust company or on clients of or beneficiaries of trusts and custodial arrangements handled by the trust company.

Subsection (c) specifies the information required to be submitted in the notice, to the extent known at the time of submission. The purpose of the notice is not to provide comprehensive information regarding the incident, but rather to provide a confidential early warning to (1) ensure the commissioner is informed of the basic circumstances before receiving related consumer complaints and calls from elected officials, and (2) enable the department to monitor the trust company's incident response and provide guidance if appropriate. While examiners with the department have sophisticated expertise and can assist if warranted, the proposed section is not intended to authorize the department to directly conduct or interfere with the trust company's incident response.

Subsection (d) acknowledges that the filing of a suspicious activity report under federal law will trigger the notice requirement under the proposed section but cautions that the trust company should not mention or discuss any related SAR filing in the submitted notice.

Subsection (e) provides an exemption from the proposed rule for a family trust company that is exempt under Finance Code, §182.011.

Catherine Reyer, General Counsel, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Ms. Reyer also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is enhanced regulatory oversight and resulting public confidence in the safety and soundness of state trust companies, particularly regarding the ability to protect sensitive information of trust company clients and beneficiaries. Regulatory oversight of a state trust company's remediation and compliance efforts in response to a material cybersecurity incident can better inform the examination process applicable to all state trust companies, resulting in stronger and more secure protection of sensitive customer information and other confidential information.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed. There will be no adverse economic effect on persons required to comply with the rule as proposed. A state trust company will merely add the notice requirement to the written information security program and incident response plan maintained by the trust company.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

Pursuant to Government Code §2001.0221, the department provides the following Government Growth Impact Statement for the proposed rule. During the first five years that the rule will be in effect, the rule will create a new regulation but will not create or eliminate a government program, require the creation of new employee positions or the elimination of existing employee positions, require an increase or decrease in future legislative appropriations to the department, require an increase or decrease in fees paid to the department, expand, limit or repeal an existing regulation; increase or decrease the number of individuals subject to the rule's applicability, or positively or adversely affect this state's economy.

To be considered, comments on the proposed new section must be submitted no later than 5:00 p.m. on August 5, 2019. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The new rule is proposed under Finance Code, §181.003(a)(2), which authorizes the commission to adopt rules necessary or reasonable to preserve or protect the safety and soundness of state trust companies.

No state statutes are affected by the proposed new section.

§17.5. Notice of Cybersecurity Incident.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Cybersecurity incident" means any observed occurrence in an information system that:

(A) jeopardizes the cybersecurity of the information system or the information the system processes, stores or transmits; or

(B) violates the security policies, security procedures or acceptable use policies of the information system owner to the extent such occurrence results from unauthorized or malicious activity.

(2) "Information system" means a set of applications, services, information technology assets or other information-handling components organized for the collection, processing, maintenance, use, sharing, dissemination or disposition of electronic information, including the operating environment as well as any specialized system such as telephone switching or exchange systems and environmental control systems.

(b) Notice required. A state trust company shall notify the banking commissioner and submit the information required by subsection (c) of this section as soon as practicable but not later than 15 days following a determination that a cybersecurity incident has occurred regarding the trust company's information system, whether maintained by the trust company or by an affiliate or third party

service provider at the direction of the trust company, that will likely:

(1) require submission of a notice to another state or federal regulatory agency or to a self-regulatory body, other than the notice required by this section;

(2) requiring sending a data breach notification to clients of or beneficiaries of trusts and custodial arrangements handled by the trust company under applicable state or federal law, including Business and Commerce Code, §521.053, or a similar law of another state; or

(3) cause a material adverse effect on:

(A) the financial performance of the trust company; or

(B) clients of or beneficiaries of trusts and custodial arrangements handled by the trust company.

(c) Content of notice. The notice required by subsection (b) must include, to the extent known at the time of submission:

(1) a brief description of the cybersecurity incident, including the approximate date of the incident, the date the incident was discovered, and the nature of any data that may have been illegally obtained or accessed;

(2) subject to subsection (d) of this section, a list of the state and federal regulatory agencies, self-regulatory bodies, and foreign regulatory agencies to whom notice has been or will be provided; and

(3) the name, address, telephone number, and email address of the employee or agent of the trust company from whom additional information may be obtained regarding the incident.

(d) Omission of certain information. The filing of a suspicious activity report (SAR) related to the cybersecurity incident under applicable federal law constitutes a notice described by subsection (b)(1) of this section. However, the trust company should not reference or mention the filing of a SAR in the notice filed with the commissioner.

(e) Exemptions. This section does not apply to a state trust company that is exempt under Finance Code, §182.011.

9. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, Part 2, Chapter 33, §33.30 Concerning Notification in Event of Cybersecurity Breach of Money Services Businesses

PURPOSE: New §33.30 will require a money services business to notify the banking commissioner promptly if it experiences a material cybersecurity incident in its information systems.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed new rule in the *Texas Register* for comment.

RECOMMENDED MOTION: I move that we publish the proposed new 7 TAC, §33.30 in the *Texas Register*.

***Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 33. Money Services Businesses
7 TAC §33.30***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes new 7 TAC §33.30, concerning required notice of cybersecurity incidents. The new rule is proposed to require a money transmission licensee to notify the banking commissioner promptly if it experiences a material cybersecurity incident in its information systems.

Proposed subsection (a) provides definitions of "cybersecurity incident" and "information system." The term "you" is also defined to mean a holder of a license issued under Texas Finance Code, Chapter 151.

"Cybersecurity incident" is defined in a manner consistent with currently applicable federal guidance as essentially an observed irregularity that must be investigated to determine if information has been damaged or stolen. Most cybersecurity incidents will not result in a notice to the commissioner.

"Information system" is defined more broadly than current federal guidance, which is limited to systems that handle sensitive customer information. However, there are other types of sensitive data that can have a detrimental impact on a licensee if stolen or compromised, including confidential business information, trade secrets, organizational strategies and financial information. Further, a breach of specialized systems such as telephone switching or exchange systems and environmental control systems can have a material adverse effect on

a licensee's operations and financial performance.

Subsection (b) requires a licensee to notify the banking commissioner as soon as practicable following a determination that a cybersecurity incident has occurred regarding the licensee's information system, whether maintained by the licensee or by an affiliate or third party service provider at the direction of the licensee, if the incident has a reasonable likelihood of (1) requiring notice to a regulatory or law enforcement agency other than the department, (2) a data breach notification to customers of the licensee under applicable law, or (3) otherwise causing a material adverse effect on the financial performance of the licensee or on its customers.

Subsection (c) specifies the information required to be submitted in the notice, to the extent known at the time of submission. The purpose of the notice is not to provide comprehensive information regarding the incident, but rather to provide a confidential early warning to (1) ensure the commissioner is informed of the basic circumstances before receiving related consumer complaints and calls from elected officials, and (2) enable the department to monitor the licensee's incident response and provide guidance if appropriate. While examiners with the department have sophisticated expertise and can assist if warranted, the proposed section is not intended to authorize the department to directly conduct or interfere with the licensee's incident response.

Subsection (d) acknowledges that the filing of a suspicious activity report under federal law will trigger the notice requirement under the proposed section but

cautions that the licensee should not mention or discuss any related SAR filing in the submitted notice.

Some have questioned whether licensees in other states or foreign countries should have to comply with the notice requirement if a cybersecurity incident does not affect Texas customers. The commissioner believes that a serious data breach usually implicates systemic problems that can easily spread to other information systems of the licensee and has the potential to cause significant financial harm which, in some cases, may endanger a licensee as a going concern. Further, this simple notice requirement is not onerous in terms of the information required to be in the notice. A licensee will merely add the notice requirement to its written incident response plan maintained as part of the licensee's information security program.

Catherine Reyer, General Counsel, Texas Department of Banking, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Ms. Reyer also has determined that, for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule is enhanced regulatory oversight and resulting public confidence in the safety and soundness of Texas-licensed money services businesses, particularly regarding the ability to protect sensitive customer information. Regulatory oversight of a licensee's remediation and compliance efforts in response to a material cybersecurity incident can better inform the examination process applicable to all such

licensees, resulting in stronger and more secure protection of sensitive customer information and other confidential information.

For each year of the first five years that the rule will be in effect, there will be no economic costs to persons required to comply with the rule as proposed. There will be no adverse economic effect on persons required to comply with the rule as proposed.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

Pursuant to Government Code, §2001.0221, the department provides the following Government Growth Impact Statement for the proposed rule. During the first five years that the rule will be in effect, the rule will create a new regulation but will not create or eliminate a government program, require the creation of new employee positions or the elimination of existing employee positions, require an increase or decrease in future legislative appropriations to the department, require an increase or decrease in fees paid to the department, expand, limit or repeal an existing regulation; increase or decrease the number of individuals subject to the rule's applicability, or positively or adversely affect this state's economy.

To be considered, comments on the proposed new section must be submitted no later than 5:00 p.m. on August 5, 2019. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar

Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

The new rule is proposed under Finance Code, §151.102(a), which authorizes the commission to adopt rules necessary or appropriate to preserve and protect the safety and soundness of money services businesses and protect the interests of purchasers of money services and the public.

No state statutes are affected by the proposed new section.

§33.30. Notice of Cybersecurity Incident.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Cybersecurity incident" means any observed occurrence in an information system that:

(A) jeopardizes the cybersecurity of the information system or the information the system processes, stores or transmits; or

(B) violates the security policies, security procedures or acceptable use policies of the information system owner to the extent such occurrence results from unauthorized or malicious activity.

(2) "Information system" means a set of applications, services, information technology assets or other information-handling components organized for the collection, processing, maintenance, use, sharing, dissemination or disposition of electronic information, including the operating environment as well as any

specialized system such as electronic payment systems, industrial/process controls systems, telephone switching and private branch exchange systems and environmental control systems.

(3) "You" means a holder of a money transmission or currency exchange license issued under Finance Code, Chapter 151.

(b) Notice required. You must notify the banking commissioner and submit the information required by subsection (c) of this section within 15 days following a determination that a cybersecurity incident has occurred regarding your information system, whether maintained by you or by your affiliate or a third party service provider at your direction, that will likely:

(1) require you to submit a notice of the incident to another state or federal regulatory or law enforcement agency or to a self-regulatory body, other than the notice required by this section;

(2) require you to provide a data breach notification to any of your customers under applicable state or federal law, including Business and Commerce Code, §521.053, or a similar law of another state; or

(3) cause a material adverse effect on your financial performance or on any of your customers.

(c) The notice required by subsection (b) must include, to the extent known at the time of submission:

(1) a brief description of the cybersecurity incident, including the approximate date of the incident, the date the incident was discovered, and the nature of

any data that may have been illegally obtained or accessed;

(2) a list of the state and federal regulatory agencies, self-regulatory bodies, and foreign regulatory agencies to whom you have provided or will provide notice of the incident; and

(3) the name, address, telephone number, and email address of your employee or agent from whom additional information may be obtained regarding the incident.

(d) Omission of certain information. The filing of a suspicious activity report (SAR) related to the cybersecurity incident under applicable federal law constitutes a notice described by subsection (b)(1) of this section. However, the licensee should not reference or mention the filing of a SAR in the notice filed with the commissioner.

10. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 2, Chapter 25, §§25.13, 25.23 and 25.24 Concerning Assessments on Prepaid Funeral Contract Sellers

PURPOSE: Amendments to Chapter 25 are proposed to support the legislative directive that the commission by rule prescribe the term of a permit issued for the sale of prepaid funeral benefits. Section 25.13 as amended adds the definition of a valid permit to clarify that a permit issued by the department to sell prepaid funeral benefits remains in effect until it is revoked by the department or surrendered by the permit holder. Section 25.23 as amended eliminates the annual renewal fee, including the Renewal Fee Schedule. Section 25.24 as amended combines the current Renewal Fee Schedule in §25.23 and the current Annual Assessment Schedule in §25.24 into one new annual assessment schedule. Combining the two current schedules into one new assessment schedule preserves the revenue to the department with little or no impact to existing permit holders. As with the current annual assessment rates, the new annual assessment rates will be billed in quarterly or fewer installments to preserve the advantages of the assessment system over the annual fee system. To eliminate the need for large, one-time increases in annual assessments, §25.24 as amended also allows the department to escalate the new assessment rates based on the percentage change in the Gross Domestic Product Implicit Price Deflator (GDPIPD) inflation index beginning September 1, 2020.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed amended rules in the *Texas Register* for comment.

RECOMMENDED MOTION: I move that we publish the proposed amendments to 7 TAC, §§25.13, 25.23 and 25.24 in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 25. Prepaid Funeral Contracts
Subchapter B. Regulation of Licenses
7 TAC, §§25.13, 25.23 and 25.24

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend 7 TAC, §25.13 concerning the annual report filing, 7 TAC, §25.23 concerning the annual renewal fee and 7 TAC, §25.24 concerning the annual examination fee (annual assessment) for existing permits to sell prepaid funeral benefits. The commission proposes these amendments in response to a legislative directive that the commission by rule prescribe the term of a permit issued, which may be for more than one year. The proposed amendments provide that a permit to sell prepaid funeral benefits is effective until it is revoked by the department or surrendered by the permit holder, combine the annual renewal fee and annual assessment into one new annual assessment schedule, and allow the values in the new assessment schedule to be adjusted for inflation, not more than annually, beginning September 1, 2020.

Summary of Current Rules

The requirement that an annual report be filed, and the required content of that report, are set forth in §25.13. This section does not currently specify how long a permit issued by the department to sell prepaid funeral benefits remains in effect.

The fees for a permit to sell prepaid funeral benefits set forth in §25.23 include an annual renewal fee. The annual renewal fee is based on the number of outstanding prepaid

funeral benefit contracts and must be paid on or before March 1 of each year. Section 25.23(2) includes a Renewal Fee Schedule that specifies the rates for the annual renewal.

Under §25.24, the annual assessment for an existing permit to sell prepaid funeral benefits is also based on the number of outstanding prepaid funeral benefit contracts. The annual assessment may be billed in quarterly or fewer installments each fiscal year. Section 25.24(1) includes an Annual Assessment Schedule that specifies rates for the annual assessment. The annual assessment has advantages over the annual renewal fee for both permit holders and the department because it allows permit holders to calculate and accrue for amounts due to the department in support of the department's supervisory functions; provides for an equitable structure by which permit holders pay for the costs of supervision; allows the department to more accurately predict and manage its cash flows; and prevents the accumulation of excess funds.

Proposed Amendments

The proposed amendment to §25.13 adds the definition of a valid permit to clarify that a permit issued by the department to sell prepaid funeral benefits remains in effect until it is revoked by the department or surrendered by the permit holder.

The proposed amendment to §25.23 eliminates the annual renewal fee, including the Renewal Fee Schedule. The new definition of a valid permit makes existing permits perpetual rather than requiring that they be renewed each year. This supports the legislative directive that the commission by rule prescribe the term of a permit issued,

which may be for more than one year. Existing permits will still be subject to revocation due to violations of state law.

The proposed amendment to §25.24 combines the current Renewal Fee Schedule in §25.23(b)(2) and the current Annual Assessment Schedule in §25.24(b)(1) into one new annual assessment schedule based on the number of outstanding prepaid funeral benefit contracts. The new annual assessment rates will still be billed in quarterly or fewer installments to preserve the advantages of the assessment system over the annual fee system as described above. Combining the two current schedules into one new assessment schedule also preserves the revenue to the department with little or no impact to existing permit holders.

To eliminate the need for large, one-time increases in annual assessments, the proposed amendment to §25.24 would also allow the department to escalate the new assessment rates based on the percentage change in an inflation index beginning September 1, 2020. The proposed inflation index is the Gross Domestic Product Implicit Price Deflator (GDPIPD), published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. While the Consumer Price Index (CPI) published by the Bureau of Labor Statistics, United States Department of Labor, is the most well-known measure, it measures only the prices of goods and services typically purchased by urban consumers. These goods and services constitute only about 60 percent of the economy's total production. In contrast, the GDPIPD captures the overall level of inflation in everything that an economy produces and is typically used to calculate

inflation at the corporate or governmental level.

Each September 1, the assessment rates set forth in the proposed amendment to §25.24 will be reviewed by the department to determine if they should be revised upward (or downward) by an amount equal to the percentage change in the GDPIPD index values from the first quarter value of the previous calendar year (the previous March-to-March period). An increase in the GDPIPD can result in an increase in assessment rates if adopted by the department.

As provided by §25.24(c)(1), the department may periodically forgive a portion of assessments otherwise due in a year when the additional funds are not needed to fund the department's operations. Over the past five fiscal years, the department has discounted or forgiven a portion of the permit holders' annual assessments because the forgiven revenue was not needed to cover the department's regular operations. In fiscal years 2014, 2015, 2016, 2017 and 2018, the department reduced total billable annual assessments by 19%, 30%, 30%, 13% and 18%, respectively. Therefore, an increase in assessment rates will not necessarily result in a proportionate increase in assessments collected.

Impact Summary

For each year of the first five years the proposed amendments are in effect, the amendments will not:

- create or eliminate a government program;

- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;
- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rules' applicability; or
- positively or adversely affect this state's economy.

Analysis of Fiscal Impact and Public Benefits

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that, for the first five-year period the proposed amendments are in effect, there could be some fiscal implications for state government (but not for local government) as a result of enforcing or administering the amended rules. However, as discussed above, the department anticipates it will forgive a portion of the assessments otherwise due. Thus, it is anticipated that the proposed amendments will be revenue neutral for the first five-year period the amendments are in effect.

Assuming there are a stable number of permit holders and an annual inflation of 1.58% (based on the average percentage change in the GDPIPD index for the past five

years) applied annually after the first year, and in the event no assessments are forgiven, Ms. Newberg estimates that, for each year of the first five years the proposed amendments are in effect, the increased assessments could generate additional revenue of \$17,346 in year one, \$17,620 in year two, \$17,898 in year three, \$18,181 in year four and \$18,468 in year five. Although the five-year revenue estimate is required by Texas Government Code, §2001.024(a)(4), it is more understandable in the present context if presented by fiscal year (September through August). Assuming an effective date of September 1, 2019, Ms. Newberg estimates that the new assessment fees could generate additional revenue in fiscal years 2019 through 2023 as follows:

Fiscal Year	Additional Revenue
2019	\$17,255
2020	\$17,528
2021	\$17,805
2022	\$18,086
2023	\$18,372

Ms. Newberg has also determined that, for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of the amendments is better matching of the actual cost of regulation with the service provided while achieving economic self-sufficiency for the supervision of prepaid funeral benefit sellers.

Analysis of Economic Impact

For each year of the first five fiscal years the proposed amendments are in effect, there could be some minimal economic impact.

PROPOSED AMENDMENTS TO 7 TAC, §§25.13, 25.23 AND 25.24
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However, as discussed above, the department anticipates that it will forgive a portion of assessments otherwise due. Thus, it is anticipated that the amendments will have no actual economic impact. In the event no assessments are forgiven, the anticipated costs to all persons required to comply with the rules as proposed would be an average of \$47.98 per fiscal year, or 1.78%. This is well below the historical reductions in billable assessments as outlined above.

There will be no adverse economic effect on rural communities. There could be some minimal adverse economic effect on small businesses and micro-businesses. However, as discussed above, the department anticipates that it will forgive a portion of assessments otherwise due. Thus, it is anticipated that the proposed amendments will have no actual economic effect on either small businesses or micro-businesses. In the event no assessments are forgiven, the adverse economic effect on small businesses would be an average of \$47.18 per fiscal year, or 2.0%. The adverse economic effect on micro-businesses would be an average of \$17.20 per fiscal year, or 2.1%. The adverse economic effect on large businesses would be an average of \$79.13 per fiscal year, or 1.7%.

Comment Requested

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on August 5, 2019. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

Authority

The amendments are proposed under Texas Finance Code (Finance Code), §154.051(b) and §154.054, which authorize the commission to adopt rules necessary or reasonable to recover the cost of supervision and regulation by imposing and collecting reasonable fees.

Finance Code, §§154.108, 154.109(b) and 154.110 are affected by the proposed amendments.

§25.13 Annual Report Filing.

(a) Definitions.

(1) Valid permit—a permit issued by the department to sell prepaid funeral benefits, which remains in effect until it is revoked by the department or surrendered by the permit holder.

(b) [(a)] Date of filing. Each permit holder with outstanding prepaid funeral benefit contracts must file an annual report with the department [Department] by March 1 of each year for the preceding calendar year.

(c) [(b)] Contents of filing. The Annual Report filing must be sworn to by an authorized agent or corporate officer of the permit holder before a notary and must provide:

(1) – (7) (No change.)

§25.23 Application [and Renewal] Fees.

(a) Definitions.

(1) – (2) (No change.)

PROPOSED AMENDMENTS TO 7 TAC, §§25.13, 25.23 AND 25.24

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(b) Application fees. The application fees set forth in this subsection have been set in accordance with the Finance Code, Chapter 154, for the purpose of defraying the cost of administering the Finance Code, Chapter 154. Except as otherwise provided in this subsection, all fees are due at the time the application is filed and are nonrefundable. An application submitted without the appropriate filing fee will be deemed incomplete and will not be considered.

(1) (No change.)

[(2) Renewal fee. The renewal fee for an existing permit is based on the number of

~~outstanding contracts as reflected on the most recent annual report you have filed with the department, as specified in the Renewal Fee Schedule following this paragraph. You must pay the renewal fee by ACH debit on or before March 1 of each year, or by another method if directed to do so by the department. At least 15 days prior to the scheduled ACH transfer, the department will send you a notice specifying the amount of the renewal fee and the date the department will initiate payment of the fee by ACH debit, which will be March 1 of each year or, if March 1 is a holiday, the last business day immediately preceding March 1.]~~

[Renewal Fee Schedule

If your number of outstanding contracts is:		Then your renewal fee is:
<i>Over —</i>	<i>But not over —</i>	
—	25	\$100
25	1,925	\$75 plus \$1.00 per outstanding contract
1,925	20,000	\$2,000
20,000	—	\$3,000]

(2) [(3)] Conversion application fee. If you apply to convert a trust-funded prepaid funeral benefits operation to an insurance-funded prepaid funeral benefits operation, you must pay a \$1,000 fee per application. In the event additional processing time is required because the application is incomplete, you must pay the additional processing costs incurred in excess of the filing fee originally submitted, at the rate of \$600 per eight-hour employee day, provided that the total fee cannot exceed \$2,000. Until you have paid any such additional fee, the

application will be deemed incomplete and will not be considered.

§25.24 *What fees must I pay for an examination?*

(a) Definitions.

(1) – (3) (No change.)

(b) As a prepaid funeral benefits seller, what fees must I pay for department examinations?

PROPOSED AMENDMENTS TO 7 TAC, §§25.13, 25.23 AND 25.24
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(1) An annual assessment must be paid as an examination fee and as a renewal fee to the department to defray the cost of administering Chapter 154 [~~\$154.054~~] of the Finance Code. The amount of your annual

assessment is based on the number of outstanding contracts as reflected on your most recent annual report filed with the department. You must pay the annual assessment specified in the following table:

<u>Annual Assessment Schedule</u>		
<u>If your number of outstanding contracts is:</u>		<u>Then your annual assessment is:</u>
<u>Over</u>	<u>But not over</u>	
-----	99	<u>\$260 plus the number of outstanding contracts over 0 multiplied by a factor of \$4.00</u>
100	499	<u>\$700 plus the number of outstanding contracts over 100 multiplied by a factor of \$3.95</u>
500	999	<u>\$2,325 plus the number of outstanding contracts over 500 multiplied by a factor of \$3.80</u>
1,000	1,999	<u>\$4,275 plus the number of outstanding contracts over 1,000 multiplied by a factor of \$3.55</u>
2,000	2,999	<u>\$7,825 plus the number of outstanding contracts over 2,000 multiplied by a factor of \$1.90</u>
3,000	4,999	<u>\$9,825 plus the number of outstanding contracts over 3,000 multiplied by a factor of \$0.77</u>
5,000	9,999	<u>\$11,365 plus the number of outstanding contracts over 5,000 multiplied by a factor of \$0.26</u>
10,000	-----	<u>\$12,675 plus the number of outstanding contracts over 10,000 multiplied by a factor of \$0.20</u>

If calculation of the annual assessment produces an amount greater than \$18,450, then your annual assessment is \$18,450.

PROPOSED AMENDMENTS TO 7 TAC, §§25.13, 25.23 AND 25.24
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[Annual Assessment Schedule:

If your number of outstanding contracts is:		Then your annual assessment is:
Over —	But not over —	
_____	99	\$150 plus the amount of your number of outstanding contracts over 0 multiplied by a factor of \$3.50
100	499	\$500 plus the amount of your number of outstanding contracts over 100 multiplied by a factor of \$3.00
500	999	\$1,700 plus the amount of your number of outstanding contracts over 500 multiplied by a factor of \$2.70
1,000	1,999	\$3,100 plus the amount of your number of outstanding contracts over 1,000 multiplied by a factor of \$2.50
2,000	2,999	\$5,600 plus the amount of your number of outstanding contracts over 2,000 multiplied by a factor of \$2.00
3,000	4,999	\$7,600 plus the amount of your number of outstanding contracts over 3,000 multiplied by a factor of \$0.75
5,000	14,999	\$9,100 plus the amount of your number of outstanding contracts over 5,000 multiplied by a factor of \$0.25
15,000	_____	\$11,600 plus the amount of your number of outstanding contracts over 15,000 multiplied by a factor of \$0.15

If the annual assessment is greater than \$15,000, your annual assessment is \$15,000.]

(2) – (3) (No change.)

(c) How will the department bill me for the examination fees and when must I pay them?

(1) – (2) (No change.)

(d) Adjustments for inflation. In this section, “GDPIPD” means the Gross Domestic Product Implicit Price Deflator, published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. The “annual GDPIPD factor” is equal to the percentage

change in the GDPIPD index values published for the first quarter of the current year compared to the first quarter of the previous year (the March-to-March period immediately preceding the calculation date), rounded to a hundredth of a percent (two decimal places).

(1) Beginning September 1, 2020, and each September 1 thereafter, the table in subsection (b)(1) of this section, as most recently revised before such date pursuant to this subsection, may be revised as follows:

(A) the base assessment amount listed in column three of the table may be increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD factor, rounded to whole dollars; and

(B) each factor listed in column three of the table may be increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD factor, rounded to two decimal places.

(2) If the table in subsection (b)(1) of this section is revised for inflation (or deflation), then not later than August 1 of each year, the department shall calculate and prepare a revised table reflecting the inflation-adjusted values to be applied effective the following September 1 and will provide each permit holder with notice of and access to the revised table.

11. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 2, Chapter 26, §26.1 Concerning Assessments on Perpetual Care Cemeteries

PURPOSE: Amendment to §26.1 is proposed to support the legislative directive that the commission by rule prescribe the term of a certificate of authority (certificate) to operate a perpetual care cemetery. First, the proposed amendment adds the definition of a “certificate of authority” to clarify that a certificate issued by the department to operate a perpetual care cemetery remains in effect until it is revoked by a district court or the department, or surrendered by the certificate holder. It also eliminates the word “renewal” from all references to the report that must be filed with the department each year. Second, the proposed amendment eliminates the annual renewal fee, including the Annual Fee Schedule. The new definition of a “certificate of authority” makes existing certificates perpetual rather than requiring that they be renewed each year. Existing certificates will still be subject to revocation due to violations of state law. Third, the proposed amendment combines the current Annual Fee Schedule in §26.1(b)(2) and the current Annual Assessment Schedule in §26.1(b)(4) into one new annual assessment schedule based on the fund balance shown on the statement of funds in the most recent annual report. The new annual assessment rates will still be billed in quarterly or fewer installments to preserve the advantages of the assessment system over the annual fee system as described above. Combining the two current schedules into one new assessment schedule also preserves the revenue to the department with little or no impact to existing certificate holders. Finally, to eliminate the need for large, one-time increases in annual assessments, the proposed amendment would also allow the department to escalate the new assessment rates based on the percentage change in the Gross Domestic Product Implicit Price Deflator (GDPIPD) inflation index beginning September 1, 2020.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed amended rule in the *Texas Register* for comment.

RECOMMENDED MOTION: I move that we publish the proposed amendment to 7 TAC, §26.1 in the *Texas Register*.

***Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 26. Perpetual Care Cemeteries
7 TAC, §26.1***

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to amend 7 TAC, §26.1 concerning the fees for a certificate of authority (certificate) to operate a perpetual care cemetery. The commission proposes this amendment in response to a legislative directive that the commission by rule prescribe the term of a certificate issued, which may be for more than one year. The proposed amendment provides that a certificate to operate a perpetual care cemetery is effective until it is revoked by the department or surrendered by the certificate holder, combines the annual renewal fee and annual assessment into one new annual assessment schedule, and allows the values in the new assessment schedule to be adjusted for inflation, not more than annually, beginning September 1, 2020.

Summary of Current Rule

The fees for a certificate to operate a perpetual care cemetery set forth in §26.1 include an annual renewal fee. The annual renewal fee is based on the fund balance shown on the statement of funds in the most recent annual renewal report filed with the department, and must be paid on or before March 1 of each year. Section §26.1(b)(2) includes an Annual Fee Schedule that specifies the rates for the annual renewal.

The fees set forth in §26.1 also include an annual assessment for existing certificate holders. As with the annual renewal fee, the annual assessment is also based on the fund balance shown on the statement of funds in the most recent annual renewal report. The

annual assessment may be billed in quarterly or fewer installments each fiscal year. Section 26.1(b)(4) includes an Annual Assessment Schedule that specifies rates for the annual assessment. The annual assessment has advantages over the annual renewal fee for both certificate holders and the department because it allows certificate holders to calculate and accrue for amounts due to the department in support of the department's supervisory functions; provides for an equitable structure by which certificate holders pay for the costs of supervision; allows the department to more accurately predict and manage its cash flows; and prevents the accumulation of excess funds.

Proposed Amendment

First, the proposed amendment to §26.1 adds the definition of a "certificate of authority" to clarify that a certificate issued by the department to operate a perpetual care cemetery remains in effect until it is revoked by a district court or the department, or surrendered by the certificate holder. It also eliminates the word "renewal" from all references to the report that must be filed with the department each year.

Second, the proposed amendment to §26.1 eliminates the annual renewal fee, including the Annual Fee Schedule. The new definition of a "certificate of authority" makes existing certificates perpetual rather than requiring that they be renewed each year. This supports the legislative directive that the commission by rule prescribe the term of a certificate issued, which may be for more than one year. Existing certificates will still be subject to revocation due to violations of state law.

Third, the proposed amendment to §26.1 combines the current Annual Fee Schedule in §26.1(b)(2) and the current Annual

Assessment Schedule in §26.1(b)(4) into one new annual assessment schedule based on the fund balance shown on the statement of funds in the most recent annual report. The new annual assessment rates will still be billed in quarterly or fewer installments to preserve the advantages of the assessment system over the annual fee system as described above. Combining the two current schedules into one new assessment schedule also preserves the revenue to the department with little or no impact to existing certificate holders.

Finally, to eliminate the need for large, one-time increases in annual assessments, the proposed amendment to §26.1 would also allow the department to escalate the new assessment rates based on the percentage change in an inflation index beginning September 1, 2020. The proposed inflation index is the Gross Domestic Product Implicit Price Deflator (GDPIPD), published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. While the Consumer Price Index (CPI) published by the Bureau of Labor Statistics, United States Department of Labor, is the most well-known measure, it measures only the prices of goods and services typically purchased by urban consumers. These goods and services constitute only about 60 percent of the economy's total production. In contrast, the GDPIPD captures the overall level of inflation in everything that an economy produces and is typically used to calculate inflation at the corporate or governmental level.

Each September 1, the assessment rates set forth in the proposed amendment to §26.1 will be reviewed by the department to determine if they should be revised upward (or downward) by an amount equal to the percentage change in the GDPIPD index

values from the first quarter value of the previous calendar year (the previous March-to-March period). An increase in the GDPIPD can result in an increase in assessment rates if adopted by the department.

As provided by §26.1(c)(1), the department may periodically forgive a portion of assessments otherwise due in a year when the additional funds are not needed to fund the department's operations. Over the past five fiscal years, the department has discounted or forgiven a portion of the certificate holders' annual assessments because the forgiven revenue was not needed to cover the department's regular operations. In fiscal years 2014, 2015, 2016, 2017 and 2018, the department reduced total billable annual assessments by 22%, 30%, 30%, 13% and 18%, respectively. Therefore, an increase in assessment rates will not necessarily result in a proportionate increase in assessments collected.

Impact Summary

For each year of the first five years the proposed amendment is in effect, the amendment will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- create a new regulation;

- expand, limit or repeal an existing regulation;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect this state's economy.

Analysis of Fiscal Impact and Public Benefits

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that, for the first five-year period the proposed amendment is in effect, there could be some fiscal implications for state government (but not for local government) as a result of enforcing or administering the amended rule. However, as discussed above, the department anticipates it will forgive a portion of the assessments otherwise due. Thus, it is anticipated that the proposed amendment will be revenue neutral for the first five-year period the amendment is in effect.

Assuming there are a stable number of certificate holders and an annual inflation of 1.58% (based on the average percentage change in the GDPIPD index for the past five years) applied annually after the first year, and in the event no assessments are forgiven, Ms. Newberg estimates that, for each year of the first five years the proposed amendment is in effect, the increased assessments could generate additional revenue of \$14,533 in year one, \$14,763 in year two, \$14,996 in year three, \$15,233 in year four and \$15,473 in year five. Although the five-year revenue estimate is required by Texas Government Code, §2001.024(a)(4), it is more understandable in the present context if presented by fiscal year (September through August). Assuming an effective date of September 1, 2019, Ms. Newberg estimates

that the new assessment fees could generate additional revenue in fiscal years 2019 through 2023 as follows:

Fiscal Year	Additional Revenue
2019	\$14,457
2020	\$14,685
2021	\$14,917
2022	\$15,153
2023	\$15,393

Ms. Newberg has also determined that, for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of the amendment is better matching of the actual cost of regulation with the service provided while achieving economic self-sufficiency for the supervision of perpetual care cemeteries.

Analysis of Economic Impact

For each year of the first five fiscal years the proposed amendment is in effect, there could be some minimal economic impact. However, as discussed above, the department anticipates that it will forgive a portion of assessments otherwise due. Thus, it is anticipated that the amendment will have no actual economic impact. In the event no assessments are forgiven, the anticipated costs to all persons required to comply with the rule as proposed would be an average of \$60.66 per fiscal year, or 1.71%. This is well below the historical reductions in billable assessments as outlined above.

There will be no adverse economic effect on rural communities. There could be some minimal adverse economic effect on small businesses and micro-businesses. However, as discussed above, the department anticipates that it will forgive a portion of

assessments otherwise due. Thus, it is anticipated that the proposed amendment will have no actual economic effect on either small businesses or micro-businesses. In the event no assessments are forgiven, the adverse economic effect on small businesses would be an average of \$79.99 per fiscal year, or 1.7%. The adverse economic effect on micro-businesses would be an average of \$18.77 per fiscal year, or 1.0%, The adverse economic effect on large businesses would be an average of \$101.04 per fiscal year, or 2.0%.

Comment Requested

To be considered, comments on the proposed amendments must be submitted no later than 5:00 p.m. on August 5, 2019. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

Authority

The amendments are proposed under Texas Finance Code (Finance Code), §712.008(a) which authorizes the commission to adopt rules necessary or reasonable to defray the cost of supervision and regulation by imposing and collecting reasonable fees.

Finance Code, §§712.0036 and 712.0037 are affected by the proposed amendments.

§26.1. What fees must I pay to operate a perpetual care cemetery?

(a) Definitions. The following words and terms, when used in this section, will have the following meanings, unless the text clearly indicates otherwise.

(1) – (5) (No change.)

(6) Certificate of authority—a certificate issued by the department to operate a perpetual care cemetery, which remains in effect until it is revoked by a district court or the department, or surrendered by the certificate holder.

(b) If I want to operate a perpetual care cemetery, what fees must I pay to the department?

(1) (No change.)

~~[(2) An annual renewal fee must be paid as required by Section 712.0037 of the Act. This annual renewal fee is based on your fund balance as reflected on the statement of funds in the most recent annual renewal report you have filed with the department. Your annual renewal fee will be calculated according to the following table:]~~

[Annual Fee Schedule

If your fund balance is:		Then your annual fee is:
Over--	But not over---	
_____	\$13,000	\$50
\$13,000	\$250,000	\$500
\$250,000	\$1,000,000	\$750
\$1,000,000	_____	\$1,000]

(2) [(3)] If the department does not receive your completed annual report [~~both your completed renewal annual report and renewal fee~~] by the due date, a late fee of \$100 per day for each business day after the due date that the department does not receive your completed annual report [~~renewal annual report and renewal fee~~] may be imposed. You must pay this fee immediately upon receipt of the department's written invoice.

(3) [(4)] An annual assessment will be imposed as an examination fee and as a renewal fee on a perpetual care cemetery corporation to defray the cost of administering the Act, as required by Sections 712.0037, 712.042 and 712.044(b) of the Act. The annual assessment will be collected pursuant to 7 TAC §26.1(c)(1). The amount of your annual assessment is based on your fund balance as reflected on the statement of funds in the most recent annual [~~renewal~~] report you have filed with the department. You must pay the annual assessment specified in the following table:

<u>Annual Assessment Schedule</u>		
<u>If your fund balance is:</u>		<u>Then your annual assessment is:</u>
<u>Over</u>	<u>But not over</u>	
<u>-----</u>	<u>\$12,999.99</u>	<u>\$250</u>
<u>\$13,000.00</u>	<u>\$24,999.99</u>	<u>\$700 plus the amount of your fund balance over \$13,000 multiplied by a factor of .0080</u>
<u>\$25,000.00</u>	<u>\$49,999.99</u>	<u>\$800 plus the amount of your fund balance over \$25,000 multiplied by a factor of .0053</u>
<u>\$50,000.00</u>	<u>\$99,999.99</u>	<u>\$950 plus the amount of your fund balance over \$50,000 multiplied by a factor of .0045</u>
<u>\$100,000.00</u>	<u>\$249,999.99</u>	<u>\$1,180 plus the amount of your fund over \$100,000 multiplied by a factor of .0033</u>
<u>\$250,000.00</u>	<u>\$499,999.99</u>	<u>\$1,900 plus the amount of your fund over \$250,000 multiplied by a factor of .0032</u>
<u>\$500,000.00</u>	<u>\$999,999.99</u>	<u>\$2,750 plus the amount of your fund over \$500,000 multiplied by a factor of .00315</u>
<u>\$1,000,000.00</u>	<u>-----</u>	<u>\$4,500 plus the amount of your fund over \$1 million multiplied by a factor of .00307</u>

If calculation of the annual assessment produces an amount greater than \$8,815, then your annual assessment is \$8,815.

[Annual Assessment Schedule:		
If your fund balance is:	-	Then your annual assessment is:
Over—	But not over—	-
_____	\$9,999.99	\$200
\$10,000.00	\$24,999.99	\$200 plus the amount of your fund balance over \$10,000 multiplied by a factor of .006
\$25,000.00	\$49,999.99	\$300 plus the amount of your fund balance over \$25,000 multiplied by a factor of .0045
\$50,000.00	\$99,999.99	\$450 plus the amount of your fund balance over \$50,000 multiplied by a factor of .004
\$100,000.00	\$199,999.99	\$650 plus the amount of your fund balance over \$100,000 multiplied by a factor of .0035
\$200,000.00	\$499,999.99	\$1,000 plus the amount of your fund balance over \$200,000 multiplied by a factor of .003
\$500,000.00	\$999,999.99	\$2,000 plus the amount of your fund balance over \$500,000 multiplied by a factor of .00295
\$1,000,000.00	_____	\$3,500 plus the amount of your fund balance over \$1 million multiplied by a factor of .0029

If the annual assessment is greater than \$7,600, your annual assessment is \$7,600.]

~~(4)~~ ~~[(5)]~~ If you are a new certificate holder and have not yet filed your first annual ~~[renewal]~~ report, which includes the statement of funds required by Section 712.041 of the Act, you must pay an examination fee of \$75.00 per hour for each examiner and all associated travel expenses. Your subsequent annual assessments will be calculated in accordance with paragraph ~~(3)~~ ~~[(4)]~~ of this subsection.

(c) How will the department bill me for the annual assessment ~~[and the annual fees]~~ and when must I pay it? ~~[them?]~~

(1) (No change.)

~~(2) Your annual fee must be paid with the filing of your annual statement of funds by ACH debit on or before March 1st of each year.~~

~~(2)~~ ~~[(3)]~~ The annual assessment [A fee] is considered paid as of the date the department receives payment.

(d) Adjustments for inflation. In this section, “GDPIPD” means the Gross Domestic Product Implicit Price Deflator, published quarterly by the Bureau of Economic Analysis, United States Department of Commerce. The “annual GDPIPD factor” is equal to the percentage change in the GDPIPD index values published for the first quarter of the current year compared to the first quarter of the previous year (the March-to-March period immediately preceding the calculation date), rounded to a hundredth of a percent (two decimal places).

(1) Beginning September 1, 2020, and each September 1 thereafter, the table in subsection (b) of this section, as most

recently revised before such date pursuant to this subsection, may be revised as follows:

(A) The base assessment amount listed in column three of the table may be increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD factor, rounded to whole dollars, and

(B) Each factor listed in column three of the table may be increased (or decreased) by an amount proportionate to the measure of inflation (or deflation) reflected in the annual GDPIPD factor, rounded to four decimal places for fund balances not over \$499,999.99 and five decimal places for fund balances of \$500,000.00 or more.

(2) If the table in subsection (b) of this section is revised for inflation (or deflation), then not later than August 1 of each year, the department shall calculate and prepare a revised table reflecting the inflation-adjusted values to be applied effective the following September 1 and will provide each certificate holder with notice of and access to the revised table.

~~(e)~~ ~~[(d)]~~ Must I pay for additional examinations and if so how much and when?

(1) – (2) (No change.)

~~(f)~~ ~~[(e)]~~ Are any fees refundable? Fees paid under this section are nonrefundable.

~~(g)~~ ~~[(f)]~~ What will happen if a fee is deemed unlawful or in excess of the department's authority? If a fee or reimbursement imposed or required by this section or the manner of its calculation is determined to be unlawful or to exceed the department's authority to adopt and impose, the remainder of the section is unaffected.

12. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Repeal of 7 TAC, Part 2, Chapter 24, §§24.1 – 24.4, Concerning Cemetery Brokers

PURPOSE: Repeal of Chapter 24, §§24.1 – 24.4 is in response to the legislative directives that persons are no longer required to be licensed or registered to sell a plot in a dedicated cemetery for another person, and Subchapter C-1, Chapter 711, Texas Health and Safety Code concerning cemetery broker registration is repealed in its entirety.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed repeal in the *Texas Register* for comment.

RECOMMENDED MOTION: I move that we publish the proposed repeal of 7 TAC, §§24.1 – 24.4 in the *Texas Register*.

Title 7. Banking and Securities
Part 2. Texas Department of Banking
Chapter 24. Cemetery Brokers
7 TAC, §§24.1 – 24.4

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), proposes to repeal 7 TAC, Chapter 24, concerning cemetery brokers, in its entirety. Chapter 24 consists of §§24.1 – 24.4.

The commission proposes the repeal of Chapter 24 in response to the legislative directives that persons are no longer required to be licensed or registered to sell a plot in a dedicated cemetery for another person, and Subchapter C-1, Chapter 711, Texas Health and Safety Code concerning cemetery broker registration is repealed in its entirety.

Impact Summary

For each year of the first five years after Chapter 24 is repealed, the elimination of the chapter will:

- decrease fees paid to the agency;
- repeal an existing regulation; and
- decrease the number of individuals subject to the chapter's applicability.

The repeal of Chapter 24 will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;

- require an increase or decrease in future legislative appropriations to the agency;
- create a new regulation; or
- positively or adversely affect this state's economy.

Analysis of Fiscal Impact and Public Benefits

Stephanie Newberg, Deputy Commissioner, Texas Department of Banking, has determined that for each of the first five years after Chapter 24 is repealed, there will be minimal fiscal implications for state government and no fiscal implications for local government. Prior to the implementation of the legislative directive, there were 17 cemetery brokers registered with the department. The annual registration fee was \$100 per year. Assuming a stable number of registered brokers, the department's revenue will drop by \$1,700 per year in each of the first five years after Chapter 24 is repealed.

Ms. Newberg has also determined that, for each year of the first five years after Chapter 24 is repealed, the public benefit anticipated as a result of the repeal is a reduction in unnecessary regulation and an increase in operational efficiency.

Analysis of Economic Impact

For each year of the first five years after Chapter 24 has been repealed, there will be a reduction in economic costs to persons previously required to comply with the chapter.

PROPOSED REPEAL OF 7 TAC, CHAPTER 24, §§24.1 – 24.4
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There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. Rather, there will be a \$100 per year reduction in the cost of compliance for entities that were formerly required to register as cemetery brokers.

Comment Requested

To be considered, comments on the proposed repeal of Chapter 24 must be submitted no later than 5:00 p.m. on August 5, 2019. Comments should be addressed to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294. Comments may also be submitted by email to legal@dob.texas.gov.

Authority

The repeal of Chapter 24 is proposed under Texas Health and Safety Code §711.012(a), which authorizes the commission to adopt rules for the regulation of perpetual care cemeteries.

Texas Health and Safety Code, Subchapter C-1 and §§711.001(6)(A), 711.038(e), 711.0381(a), 711.052(a), 711.056(a), 711.059(a) and 711.02(a) and (b) are affected by the proposed repeal of Chapter 24.

(Repealed) [§24.1 Registration.]

~~(a) To register as a cemetery broker, a person must file with the Texas Department of Banking (the department) a statement that complies with Texas Health and Safety Code §711.046, and pay a \$100 registration fee. The statement must be filed on a form promulgated by the department.~~

~~(b) The department shall notify each registrant within 15 days either that the statement is complete and accepted for registration, or that the statement is deficient. If the statement is deficient, the department shall specify the additional information that is required.~~

~~(c) On or before the 30th day after the date the department accepts the registration for filing, the banking commissioner will approve or deny the registration and advise the registrant in writing of the decision.~~

~~(d) Registration as a cemetery broker is not transferable.~~

~~§24.2 Responsibilities After Registration.~~

~~(a) No later than January 31 of every year, a registered cemetery broker must pay a \$100 administration fee.~~

~~(b) A registered cemetery broker must notify the department in writing not later than the 60th day after the date any of the information filed during registration changes.~~

~~(c) A new cemetery broker registration must be filed if:~~

~~—(1) 25 percent or more of the ownership of a cemetery broker changes; or~~

~~—(2) the power to directly or indirectly vote 25 percent or more of the outstanding voting interests of a cemetery broker changes.~~

~~(d) A registered cemetery broker must notify the department in writing at least 30 days before ceasing operations as a cemetery broker. The notice must include:~~

~~—(1) the effective date of the closing;
and~~

~~—(2) a signed declaration that no broker transactions remain pending, and that the cemetery broker has satisfied all outstanding customer obligations.~~

~~§24.3 Consumer Complaints.~~

~~(a) Definitions.~~

~~—(1) "Consumer" includes both the transferor and transferee of the exclusive right of sepulture in a plot.~~

~~(2) "Consumer complaint" means a written complaint received by a registered cemetery broker regarding the sale or transfer of the exclusive right of sepulture in a plot. The term includes a written complaint received either directly from a consumer or through the department. The term does not include an oral complaint.~~

~~(b) Information about filing a consumer complaint.~~

~~—(1) A registered cemetery broker must provide consumers with written notice about how to file a consumer complaint. The notice must be provided when the consumer enters into an agreement with the cemetery broker.~~

~~(2) The notice must state that consumer complaints concerning a cemetery broker transaction involving the exclusive right of sepulture in a plot should be directed to the Texas Department of Banking. The notice must include the department's physical address, toll free telephone number, and website address, and be in the language in which the transaction is conducted.~~

~~—(3) If a cemetery broker maintains a website, the consumer complaint notice must also be posted prominently on the website. The notice must state that consumer complaints concerning a cemetery broker transaction involving the exclusive right of sepulture in a plot should be directed to the Texas Department of Banking. The notice must include the department's physical address and toll free telephone number.~~

~~(c) Responding to a consumer complaint.~~

~~—(1) Unless directed otherwise by the department, within 30 days of receipt of a consumer complaint, a cemetery broker must respond to the complaint in writing, and send a copy of the written response to the department.~~

~~—(2) The written response to a consumer complaint must:~~

~~—(A) list all actions the cemetery broker has taken and plans to take, including a corresponding timeline, to resolve the consumer complaint; or~~

~~—(B) explain why no corrective action is required, and refer to any supporting legal authority.~~

~~—(3) The cemetery broker must document the steps taken to resolve the consumer complaint, and must retain this documentation with the records required to be kept under Health and Safety Code §711.0381(g).~~

PROPOSED REPEAL OF 7 TAC, CHAPTER 24, §§24.1 – 24.4
Page 4 of 4

~~§24.4 Appeal of Delay in Registration Processing Times.~~

~~(a) If the department does not process a registration within the time periods specified in §24.1 of this title, a registrant may file a written complaint with the banking commissioner. The complaint must set out the facts regarding the delay and the specific relief requested. The department must receive the complaint on or before the 30th day after the date the banking commissioner approves or denies the registration.~~

~~(b) The department division responsible for complying with the applicable time period must submit a written response to the banking commissioner regarding the complaint that includes any facts on which the division relies to show that good cause existed for exceeding the applicable time period.~~

~~(c) The banking commissioner will review the written complaint and the division's response. If the commissioner deems it necessary, a hearing may be held to take evidence on the matter.~~

~~(d) The banking commissioner will determine, based upon the complaint and the division's response, if the department exceeded the applicable time period and, if so, whether the responsible division established good cause for the delay.~~

~~(e) The banking commissioner will notify the complainant of the decision regarding the complaint on or before the 60th day after the date the commissioner receives the written complaint. The commissioner's decision is final and may not be appealed.~~

~~(f) If the banking commissioner decides that the department exceeded the applicable time period without good cause, the department will reimburse all of the complainant's registration fees.~~

~~(g) A decision in a complainant's favor under this section does not affect any decision by the banking commissioner to grant or deny a registration. The decision to grant or deny a registration is based upon applicable substantive law without regard to whether the department timely processed the registration.]~~

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D.

**Department of Savings and
Mortgage Lending**

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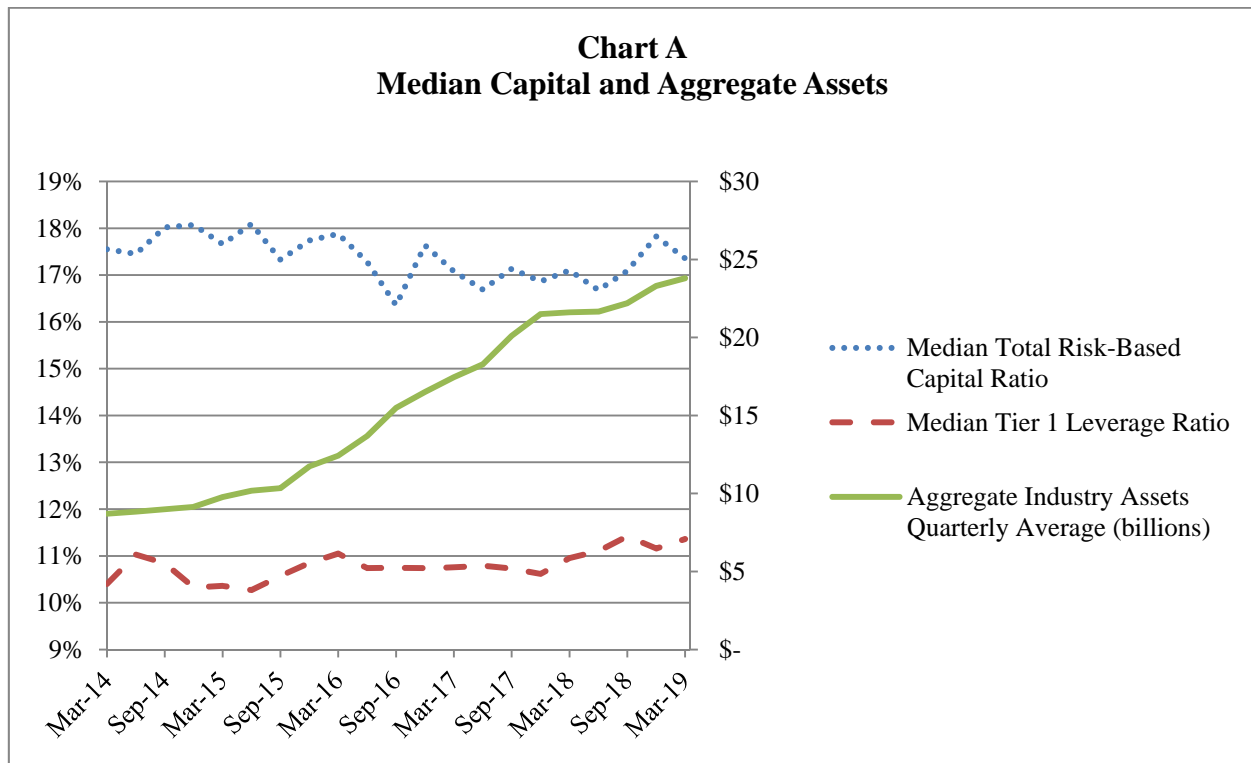
D. Texas Department of Savings and Mortgage Lending

1. Industry Status and Departmental Operations – State Savings Bank Activity:

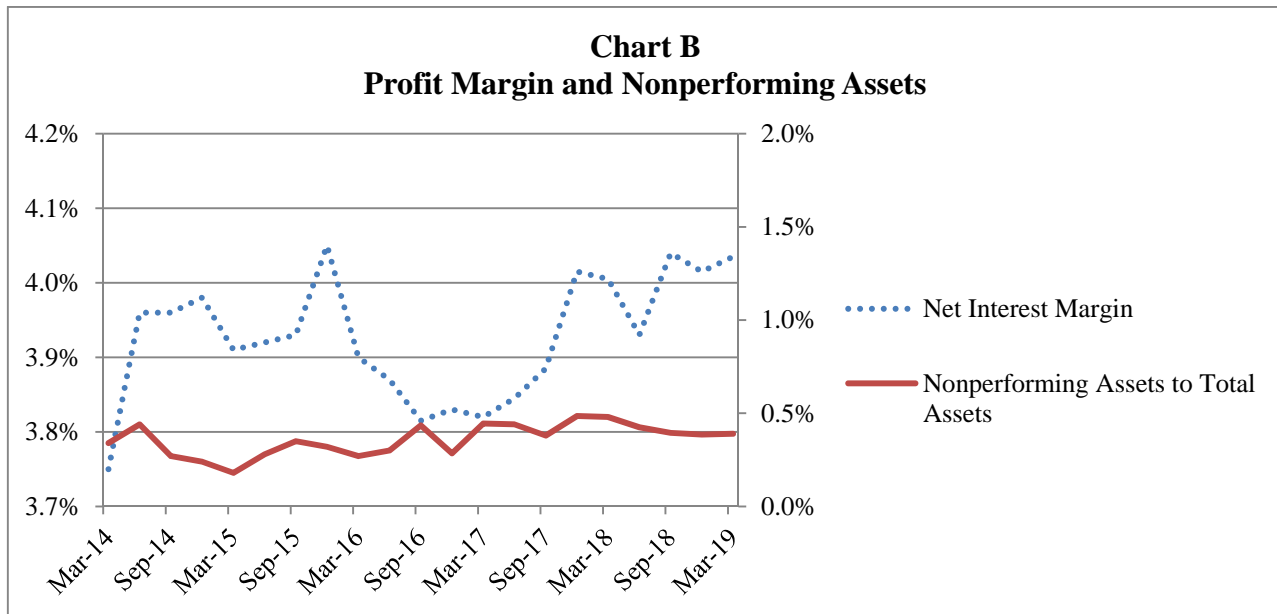
a. Industry Status

The Department continues to monitor various local, state, and national data sources to best understand the risks facing the industry and individual savings banks. Below is a state savings bank industry status to highlight specific areas that the Department monitors in relation to changes in the state and national economic environment.

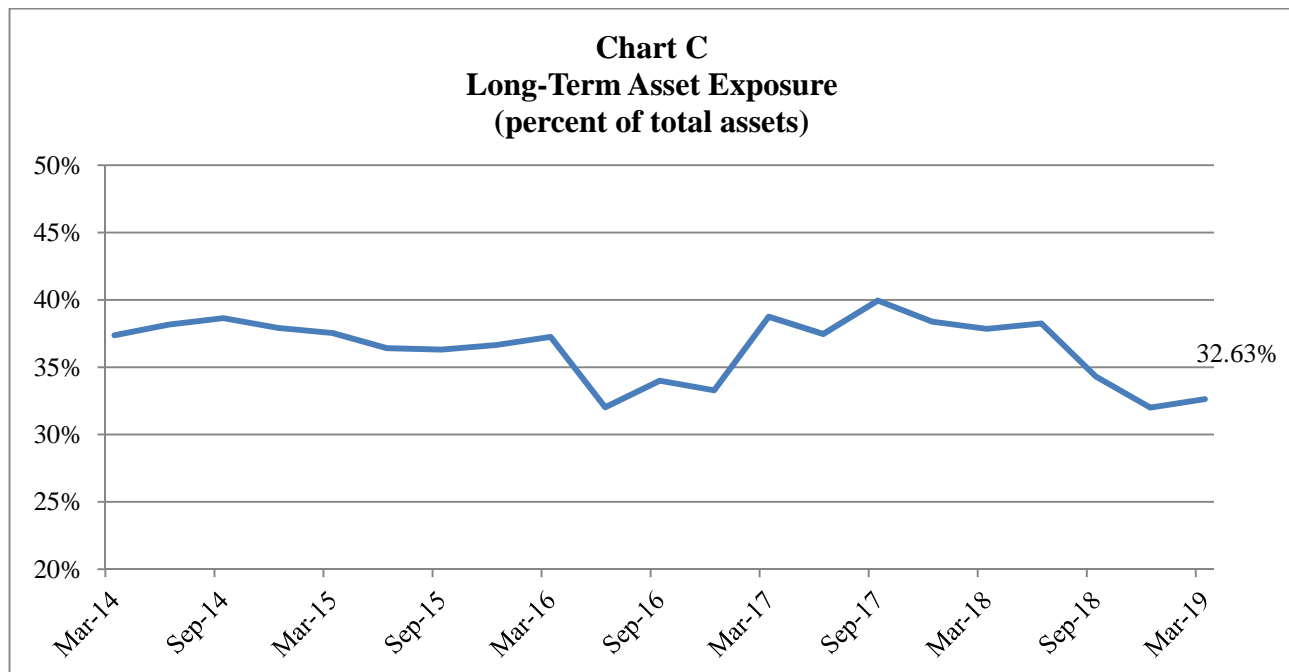
There were 24 state savings banks totaling \$24.6 billion in total assets, as of March 31, 2019. The average asset size of the median state savings bank (“SSB”) grew by 5.36% in the last four quarters to \$316.7 million. The median total risk-based capital ratio and median leverage capital protection have remained generally consistent and are now 17.36% and 11.36%, respectively (Chart A).



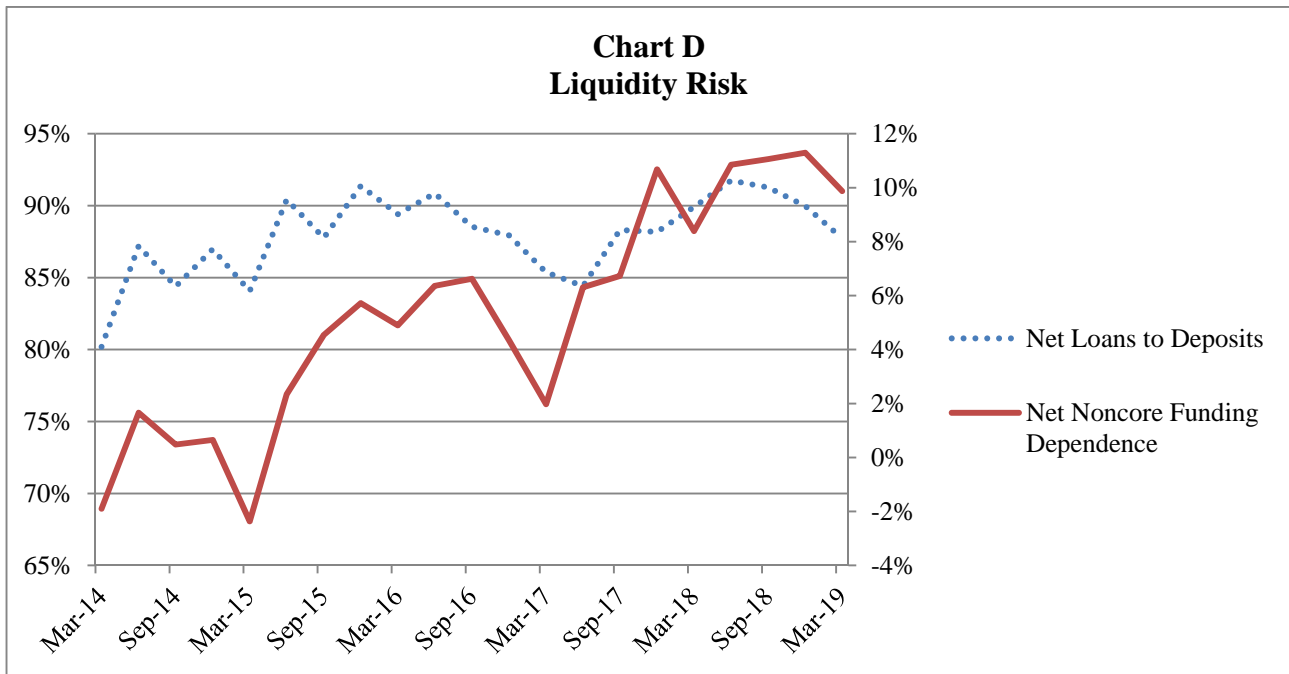
The net interest or profit margin (Chart B) remains consistent with the prior year at 4.04%. Nonperforming asset levels remain low at 0.39% of total assets, compared to the prior year at 0.48%.



Market risk, as evidenced by long-term asset exposure (Chart C), was noticeably elevated from late 2013 through early 2016. In early 2017, the exposure again began to rise, however levels continue to indicate a decreasing trend in long-term asset exposure. There remain a small number of outlier institutions with high long-term asset exposure; however, these are generally operating within historical norms of ten years or more.

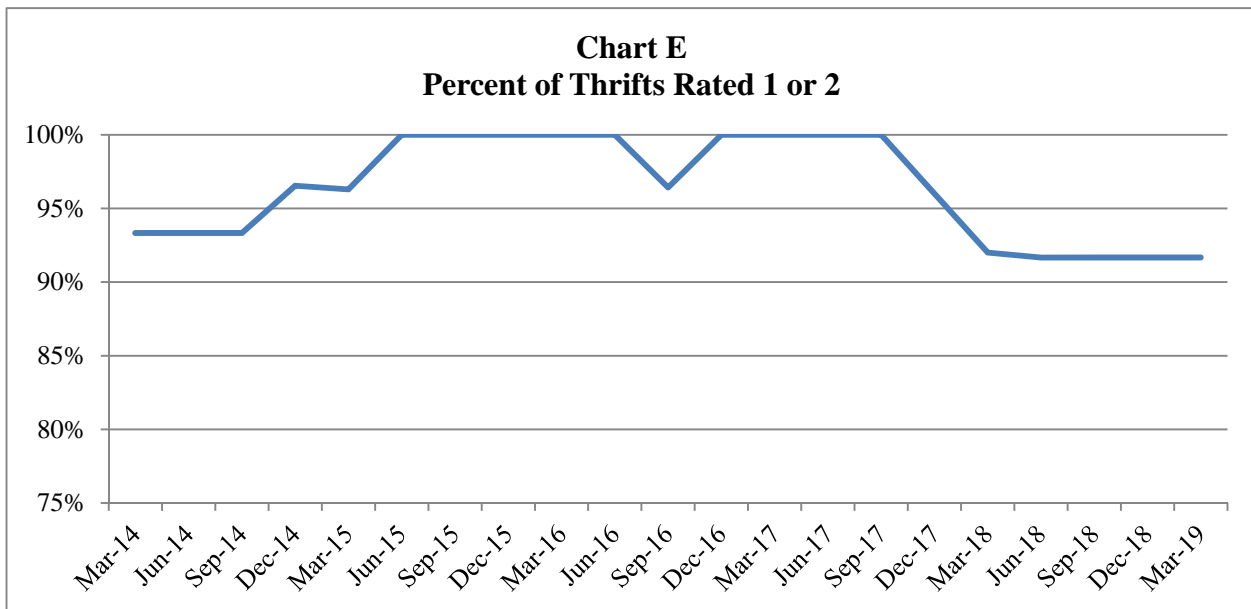


Liquidity risk remains elevated in Texas thrifts (Chart D), as indicated by the Net Noncore Funding Dependence (NNCFD) Ratio, a measure of the funding of long-term assets using short-term funding strategies. The median NNCFD Ratio has increased from 8.39% to 9.87% over the last year, but is considered manageable. The loan-to-deposit ratio; a measure of the use of deposits to fund lending activities also remains elevated at 87.73% with 17% of the industry over 100%.



All SSBs are subject to quarterly offsite reviews. Those with the highest risk profiles receive enhanced scrutiny, as warranted, with targeted visitations, accelerated examinations, and/or corrective actions.

Ninety-two percent of SSBs at March 31, 2019, were rated a Composite 1 or 2 (Chart E). There are two formal outstanding enforcement actions.



b. Savings Bank Charter and Merger Activity

On December 19, 2018, application was received from Spirit of Texas Bank, SSB, College Station, Texas, to acquire The First National Bank of Beeville, Beeville, Texas. The merger was effective on April 2, 2019.

The Department continues to receive and process various other applications.

Departmental Operations - Thrift

Commissioner Jones and Deputy Commissioner Trotti attended the Texas Bankers Association Annual Convention May 1 – 3, 2019. Commissioner Jones and Mr. John Snider, Shelby Savings Bank SSB, con-vened a Peer Group Roundtable Discussion for state savings banks at the convention.

Thrift staff attended the Conference of State Bank Supervisors' State–Federal Supervisory Forum May 21 – 23, 2019.

2. Industry Status and Departmental Operations – Mortgage Lending Activity:

a. Residential Mortgage Loan Originators

Current Licensing Population:

License Type As of 05/31/2019	Approved		
	Entity (MU1)	Branch (MU3)	MLO (MU4)
<i>Auxiliary</i>	3	n/a	
<i>CUSO</i>	4	2	
<i>FSC</i>	1	n/a	
<i>Independent Contractor</i>	139	n/a	
<i>Mortgage Company</i>	1,382	681	
<i>Mortgage Banker</i>	411	2,937	
<i>Mortgage Servicer</i>	193	n/a	
Totals	2,133	3,620	26,941

Through the 3rd quarter of FY19, the Department received 6,081 new license requests and 81,769 other filings (amendments, sponsorships, etc.). Additionally, for the fiscal year 6,282 applications have been processed.

b. Mortgage Examinations

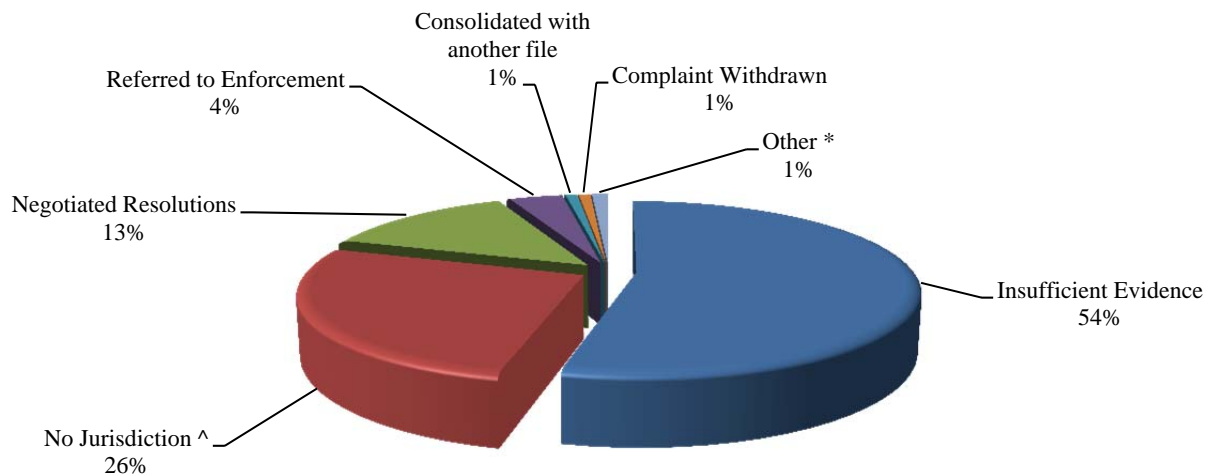
Through the 3rd quarter of FY19, a total of 381 examinations were conducted covering 4,400 individual licensees. The number of examinations is slightly higher when compared to the same period in FY18. The number of individual licensees covered decreased by 44%. The decrease in the number of individual licensees is a direct result of one large entity operation being examined during the 2nd quarter of FY18, which accounted for 47% of the FY18 total.

c. Consumer Complaints

During the first three quarters of FY19, a total of 727 consumer complaints were received. This represents an 18% decrease when compared to the same period in FY18. Loan servicing complaints accounting for 69% of the total number of complaints received. As of May 31, 2019, there were a total of 59 open consumer complaints with 98% of the complaints being aged less than 90 days.

The following charts reflect consumer complaint activity for the first three quarters of fiscal year 2018.

Disposition of Resolved Complaints - As Of 3rd Qtr FY19

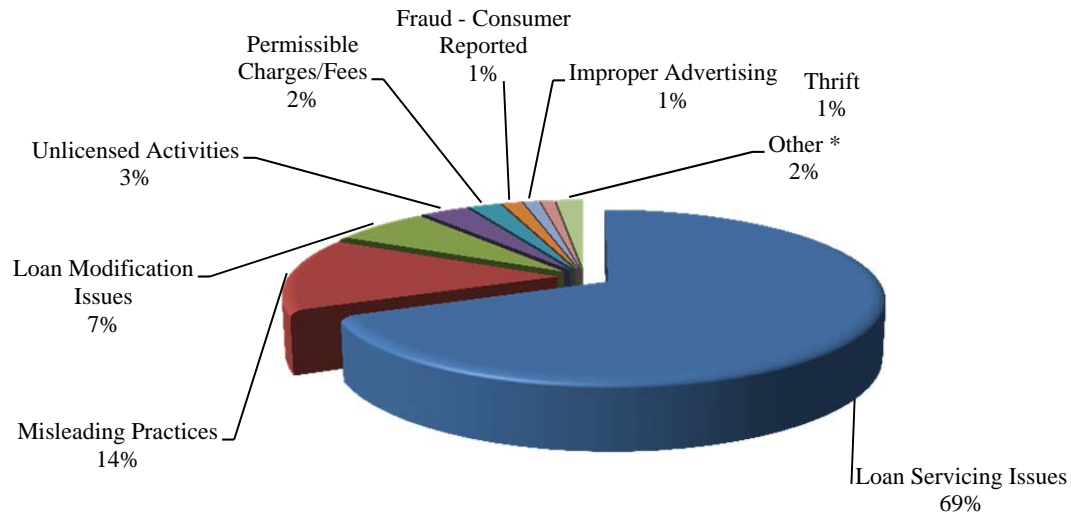


Total complaints resolved as of 3rd Qtr FY019 = 731

^ The "No Jurisdiction" category includes: complaint against exempt entities/individuals (No Jurisdiction-Exempt), complaints regarding issues outside the Department's authority (No Jurisdiction Over Issue), and complaints against entities/individuals

* The "Other" category includes: Advisory Letter, Information Only, Opened in Error, and No Investigation with expired licenses (No Jurisdiction-License Expired).

Nature of Complaints Received - As Of 3rd Qtr FY19



Total Complaints Received as of 3rd Qtr FY19 = 727

* The "Other" Category includes: Refunds and File Transfers, Inadequate Disclosures, Bait and Switch, Customer Relations Issues, Failure to Pay Appraisers/Vendors, and Thrift.

Departmental Operations – Mortgage

Commissioner Jones spoke to the Central Texas Association of Mortgage Professionals on April 16, 2019.

Commissioner Jones and Director O'Shields attended the Texas Mortgage Bankers Annual Convention April 28 – 30, 2019. Information was provided to stakeholders through personal meetings and at an exhibitor table.

3. Fiscal/Operations Activity:

a. Funding Status/Audits/Financial Reporting

Funding Status/Budget – Staff is in the process of closing out the third quarter of FY19.

Efficiency Study – Staff has responded to multiple information requests from McConnell Jones.

Legislative Activity – Staff members are reviewing bills that were passed in the 86th Legislative Session, evaluating the impact of each bill on the Agency, staff, and regulated industries. Policy and procedure updates are being prepared, as necessary.

b. Staffing

As of May 31, 2019, the Agency was staffed at 53 regular employees – 52 full-time and one part-time with 60 FTEs available.

During April, the Agency hired two employees – a License and Permit Specialist and a Financial Examiner IV – Thrift.

Below are the statuses of the Department's vacancies:

Vacancy Status	
Financial Examiner IV – Thrift	Open – Reviewing applications
Financial Examiner I/II – Thrift	Open – Conducting Interviews
Financial Examiner III – Thrift	Open – Conducting Interviews
Attorney II/III	Open – Conducting Interviews
Investigator II - Licensing	Open – Reviewing applications

Departmental Operations

For the FY19 GetFit Challenge, the Department came in third place for the Small Agency 51 – 200 FTE category. The challenge requires employees to perform 150 minutes of physical activity for six weeks.

4. Legal Activities:

a. Enforcement

SOAH Cases:

Case No. 450 17-3828 *Department of Savings and Mortgage Lending v. Peter David Wagner*

This contested SOAH hearing (regarding unlicensed residential loan modification activity) was scheduled to be held before an administrative law judge on April 29, 2019. On April 24, 2019, the parties entered into a non-appealable Agreed Final Order which provided restitution to damaged Texas consumers.

Case No. 450 17-5612 *Department of Savings and Mortgage Lending v. Jon Douglas Black*

This contested SOAH hearing (regarding the denial of a residential mortgage loan originator license) was scheduled to be held before an administrative law judge on June 10, 2019. On May 6, 2019, the Department filed a Motion for Summary Disposition in this matter. On June 4, 2019, the Administrative Law Judge issued an Order Granting the Department's Motion for Summary Disposition. A Proposal for Decision containing the ALJ's analysis, findings of fact and conclusions of law will follow.

b. Gift Reporting

None

c. **Legislative Activities**

Following is a summary of legislation passed by the 86th Texas Legislature and affecting either the Department or its regulated industries.

HB 3 – Relating to public school finance and public education; creating a criminal offense; authorizing the imposition of a fee. *(Sent to the Governor May 29, 2019)*

- To the extent that [this legislation] has the effect of reducing property taxes, a lender or home loan servicer of a home loan that maintains a property tax escrow account must take into account the effect of [this legislation] in establishing the borrower's annual property tax payments to be held in that account and immediately adjust the borrower's monthly payments accordingly.

HB 1254 – Relating to the eligibility of land secured by a home equity loan to be designated for agricultural use for ad valorem tax purposes. *(Signed by the Governor May 7, 2019; effective January 1, 2020)*

- Repealed Tex. Tax Code § 23.42(a-1), thereby removing the prohibition of agriculture use designation for property subject to a home equity loan. This is a follow up to the Constitutional amendments in 2017 permitting home equity loans for agricultural property.

HB 1992 – Relating to prohibiting telemarketers from transmitting misleading caller identification information or otherwise misrepresenting the origin of a telemarketing call. *(Sent to the Governor May 26, 2019)*

HB 2624 – Relating to the prosecution of certain criminal offenses involving fraud. *(Signed by the Governor May 29, 2019; effective September 1, 2019)*

HB 2625 – Relating to creating a criminal offense of fraudulent use or possession of credit card or debit card information. *(Sent to the Governor May 26, 2019)*

HB 2945 – Relating to payment card skimmers on motor fuel dispensers and to creating a payment fraud fusion center; imposing civil penalties; creating criminal offenses. *(Sent to the Governor May 26, 2019)*

- Allows an interested person [financial institutions] to submit a report of the discovery of a skimmer on an unattended payment terminal of a motor fuel dispenser at a merchant's place of business to the Department of Agriculture.

HB 3834 - Relating to the requirement that certain state and local government employees and state contractors complete a cybersecurity training program certified by the Department of Information Resources. *(Sent to the Governor May 29, 2019)*

- Requires state employees to take cybersecurity training using a program certified by Department of Information Resources.
- Requires contractors with access to a state computer system or database to complete same training.

HB 3875 - Relating to cloud compatibility of certain state agency information technology purchases. *(Sent to the Governor May 29, 2019)*

- Requires all purchases of automated information systems and major information resource projects to be capable of being run on cloud computing services and, if unable to do so, to report all such purchases to Legislative Budget Board.

SB 37 – Relating to a prohibition on the use of student loan default or breach of a student loan repayment or scholarship contract as a ground for refusal to grant or renew an occupational license or other disciplinary action in relation to an occupational license.

(Signed by the Governor June 7, 2019; effective immediately)

- Provides that student loan default or breach or repayment, may not be the only basis for refusal to grant or renew an occupational license.

SB 64 – Relating to cybersecurity for information resources. *(Signed by the Governor June 7, 2019; effective September 1, 2019)*

- Allows state agencies to reimburse state agency employees who serve in an information technology, cybersecurity, or other cyber-related position for fees associated with industry-recognized certification examinations;
- Requires state agencies to coordinate with DIR for replacement/modernization of legacy systems and cybersecurity projects;
- Adds additional requirements of reporting breach or exposure of sensitive data.

SB 614 – Relating to the continuation and functions of the Finance Commission of Texas, the Texas Department of Banking, and the Department of Savings and Mortgage Lending, to the training requirements applicable to the agencies overseen by the Finance Commission of Texas, and to the regulation of certain financial institutions and businesses. *(Signed by the Governor May 7, 2019; effective September 1, 2019)*

- Provides for the continuation of the Finance Commission, the Texas Department of Banking and the Department of Savings and Mortgage Lending until September 1, 2031.

SB 646 – Relating to approval for purchases of property or construction projects by a state agency with self-directed semi-independent status. *(Signed by the Governor May 31, 2019; and effective September 1, 2019)*

- Provides for the Governor to approve purchases of property or construction projects by a state agency with SDSI status

SB 2128 – Relating to the recording by a county clerk of certain documents concerning real or personal property. *(Sent to the Governor May 26, 2019)*

SB 2330 – Relating to the temporary authority of certain individuals to engage in business as a residential mortgage loan originator. *(Sent to the Governor May 25, 2019)*

- Provides temporary authority for certain individuals, who comply with certain criteria, to act as residential mortgage loan originators without a state license for a period of up to 120 days.

5. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of New 7 TAC, Part 4, Chapter 52 as Found in the Following Sections: §52.10 Definitions, §52.11 Complaint Processing, §52.12 Complaint Resolution and Disposition, §52.13 Complaint Review and Reporting.

PURPOSE: New Chapter 52 is proposed in response to a recommendation of the Sunset Advisory Commission that the Department update its complaint processing provisions to be in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, recordkeeping, appeals, and hearings are topics covered in the Sunset Model. The proposed new rules implement the applicable recommendations contained in the Sunset Model, and provide consistent procedures for persons to complain about conduct of entities and individuals regulated by the Department.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed new 7 TAC, §§52.10, 52.11, 52.12, and 52.13 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we publish proposed new 7 TAC, §§52.10, 52.11, 52.12, and 52.13 in the *Texas Register* for comment.

**Title 7. Banking and Securities
Part 4. Department of Savings and
Mortgage Lending
Chapter 52. Department Administration
Subchapter A. Complaints
7 TAC §§ 52.10, 52.11, 52.12, 52.13**

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes a new Chapter 52, new Subchapter A, Complaints and Appeals, new 52.10, 52.11, 52.12, and 52.13, concerning complaints. The new rules are proposed to provide consistent procedures for persons to complain about conduct of entities and individuals regulated by the department. The new rules are proposed in response to a recommendation of the Sunset Advisory Commission that the department update its complaint processing provisions in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, and recordkeeping are topics covered in the Sunset Model. The proposed new rules implement the applicable recommendations contained in the Sunset Model.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are

in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Commissioner Jones also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is that complainants will have a clear, consistent process to follow and an understanding of timeframes for complaint processing and resolution.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

For each year of the first five years that the rules will be in effect, the rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect this state's economy.

The rules create new regulations concerning complaint handling to conform to

recommendations from the Sunset Advisory Commission.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

To be considered, comments on the proposed new sections must be submitted in writing to Devyn F. Wills, Associate General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register*.

The new rules are proposed under Government Code § 2001.004, which provides the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, Finance Code § 11.307, which provides that the finance commission shall adopt rules applicable to each entity regulated by the department relating to consumer complaints, Finance Code § 13.011, which provides that the savings and mortgage lending commissioner shall prepare information concerning the department's regulatory functions and consumer complaint procedures, Finance Code § 96.002, which provides that the finance commission may adopt rules necessary to supervise and regulate savings banks and to protect public investment in savings banks, Finance Code § 156.102, which provides that the finance commission may adopt and enforce rules necessary for

the intent of or to ensure compliance with Chapter 156, Finance Code § 157.0023, which provides that the finance commission may adopt and enforce rules necessary for the intent of or to ensure compliance with Chapter 157, Finance Code § 158.003, which provides that the finance commission may adopt rules necessary to ensure that residential mortgage loan servicers comply with federal and state laws, rules, and regulations, and Finance Code § 180.004, which provides that the finance commission may implement rules necessary to comply with Chapter 180.

Other statutes affected by the proposed new rules are found in Finance Code Title 3, Subtitles B and C, and also Finance Code Chapters 13, 156, 157, 158, and 180.

7 TAC Subchapter A. Complaints

§52.10. Definitions.

(a) “Complainant” means a person who files a complaint.

(b) “Complaint” means a signed, written communication submitted to the department by a person expressing a grievance against an entity or individual believed to be engaging in an activity that is regulated by the department. For purposes of this subchapter, complaints shall contain at least the following information:

(1) The complainant's name and contact information;

(2) The name of the entity or individual against whom the complaint is submitted;

(3) The date and place of the alleged violation;

(4) A description of the facts or conduct alleged to violate applicable statutes or rules; and

(5) Written documentation supporting the complaint.

(c) “Inquirer” means a person who files an inquiry.

(d) “Inquiry” means a communication made to the department about an individual or entity believed to be engaging in an activity that is regulated by the department, but such communication does not include all of the required elements of a complaint.

§52.11. Complaint Processing.

(a) Complaints and inquiries filed with the department are generally considered public information, unless a specific statutory exception applies.

(b) Upon receipt of an inquiry, the department will refer the inquirer to the department’s website, or otherwise facilitate the filing of a complaint.

(c) Upon the receipt of a complaint, the department will determine if the complaint relates to an activity that the department regulates.

(1) If the department does not regulate the activity that is the subject of the complaint, the department shall close the complaint, notify the complainant and refer the complainant to the appropriate regulatory authority, if known, within 10 business days of determining that the department does not have jurisdiction.

(2) If the department regulates the activity that is the subject of a complaint, the department shall initiate an investigation into the merits of the complaint by sending, within ten (10) business days of receiving the complaint, a copy of the complaint and any supporting documentation to the entity or individual that is the subject of the complaint.

(d) The department will make a good faith effort to protect complainants’ identity to the extent possible.

(e) The department shall prioritize complaints for purposes of determining the order in which complaints are investigated, taking into account the seriousness of the allegations made in a complaint and the length of time a complaint has been pending.

(f) A regulated entity or individual that receives a complaint forwarded by the department shall respond within fourteen (14) days from the date the request is mailed by the department.

(g) The commissioner may appoint an investigator, enforcement staff, or other

subject matter expert, to investigate a complaint received by the department.

(h) The department shall monitor how long each complaint is open, and shall make all reasonable efforts to resolve complaints within ninety (90) days of receipt. The department shall notify the complainant of their complaint status if more than forty-five (45) days has elapsed since the complaint was received, and shall continue to notify the complainant of the status at least quarterly until final disposition, unless such notice would jeopardize an investigation.

§52.12. Complaint Resolution and Disposition.

(a) If the department determines that the complaint is not supported by the evidence, or if the complaint is resolved to the satisfaction of the parties, the complaint will be closed.

(b) The department shall notify all parties to the complaint within ten (10) business days of closing the complaint.

(c) If the department determines that the complaint is sufficiently supported by the evidence, the complaint shall be referred to enforcement for adjudication.

(d) A complainant who disagrees with the disposition of a complaint by the department may appeal by requesting to have their file reviewed by another qualified employee of the department. Unless such review results in a new determination by the

department, this review shall be considered final and, with the exception of 7 Tex. Admin. Code § 52.12(f), may not be further appealed.

(e) An entity or individual who is the subject of a complaint that has been referred to enforcement, and receives an order, may appeal by requesting a hearing. Such request shall be done in writing, which includes email. Such hearing shall be held in accordance with Chapter 9 of this title and with Government Code, Chapter 2001.

(f) A complainant, entity, or individual who disagrees with the disposition of a complaint by the department may appeal by filing a petition against the department in a district court in Travis County.

§52.13. Complaint Review and Reporting.

(a) The department shall maintain in accordance with its retention policy records of all complaints received. Such records shall include the information required in Finance Code § 13.011.

(b) A representative sample of all complaints closed due to lack of jurisdiction or evidence shall be reviewed quarterly by the head of the division that received the complaint.

(c) The department shall submit to the Finance Commission a report of the sources, subjects, types, and dispositions of complaint activity for each fiscal year quarter.

(d) The department shall make available on its website information describing procedures for complaint investigation and disposition.

Certification

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Devyn F. Wills
Associate General Counsel
Department of Savings and Mortgage Lending

6. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 4, Chapter 61, §61.1, Concerning Hearings Officers.

PURPOSE: Amendments to §61.1 are proposed in response to a recommendation of the Sunset Advisory Commission that the Department update its complaint processing provisions to be in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, recordkeeping, appeals, and hearings are topics covered in the Sunset Model. The proposed new rules implement the applicable recommendations contained in the Sunset Model, and provide consistent procedures for persons to complain about conduct of entities and individuals regulated by the Department.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed amendments to 7 TAC, §61.1 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we publish proposed amendments to 7 TAC, §61.1 in the *Texas Register* for comment.

**Title 7. Banking and Securities
Part 4. Department of Savings and
Mortgage Lending
Chapter 61. Hearings
7 TAC § 61.1**

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes an amendment to 7 TAC § 61.1 concerning hearings. The amendment is proposed to provide consistent procedures for persons to complain about conduct of entities regulated by the department. The amendment is proposed in response to a recommendation of the Sunset Advisory Commission that the department update its complaint processing provisions in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, and recordkeeping are topics covered in the Sunset Model. The proposed amendments implement the applicable recommendations contained in the Sunset Model.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Commissioner Jones also has determined that, for each year of the first five years the rules as proposed are in effect, the public

benefit anticipated as a result of enforcing the rules is that complainants will have a clear, consistent process to follow and an understanding of timeframes for complaint processing and resolution.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

For each year of the first five years that the rules will be in effect, the rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect this state's economy.

The rules create new regulations concerning complaint handling to conform to recommendations from the Sunset Advisory Commission.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

To be considered, comments on the proposed amendments must be submitted in writing to Devyn F. Wills, Associate General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705

or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register*.

The amendments are proposed under Government Code § 2001.004, which provides the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, Finance Code § 11.307, which provides that the finance commission shall adopt rules applicable to each entity regulated by the department relating to consumer complaints, and Finance Code §§ 13.007 and 13.011, which provide that the savings and mortgage lending commissioner shall supervise and regulate the organization, operation, and liquidations of state savings associations and prepare information concerning the department's regulatory functions and consumer complaint procedures.

Other statutes affected by the proposed amendments are found in Finance Code Title 3, Subtitle B, and also Finance Code Chapter 13.

§ 61.1. Hearings Officer

Chapter 11 of the Texas Finance Code, provides that the Finance Commission may employ a hearings officer, who for purposes of Texas Government Code, § 2003.021, is an employee of the Department of Savings and Mortgage Lending, Texas Department of Banking and the Office of the Consumer Credit Commissioner. As determined by the Commissioner, the [The] Finance Commission hearings officer or an Administrative Law Judge at the State Office of Administrative Hearings (SOAH) may conduct hearings under provisions of the Act.

Certification

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Devyn F. Wills
Associate General Counsel
Department of Savings and Mortgage
Lending

7. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 4, Chapter 64, §64.10, Concerning Savings and Loan Association Complaint Notices.

PURPOSE: Amendments to §64.10 are proposed in response to a recommendation of the Sunset Advisory Commission that the Department update its complaint processing provisions to be in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, recordkeeping, appeals, and hearings are topics covered in the Sunset Model. The proposed new rules implement the applicable recommendations contained in the Sunset Model, and provide consistent procedures for persons to complain about conduct of entities and individuals regulated by the Department.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed amendments to 7 TAC, §64.10 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we publish proposed amendments to 7 TAC, §64.10 in the *Texas Register* for comment.

**Title 7. Banking and Securities
Part 4. Department of Savings and Mortgage Lending
Chapter 64 Books, Records, Accounting Practices, Financial Statements, Reserves, Net Worth, Examinations, [Consumer] Complaints
7 TAC § 64.10**

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes an amendment to the name of Chapter 64, and an amendment to the name of § 64.10 concerning complaints. The amendments are proposed to provide clarification concerning consistent procedures for persons to complain about conduct of entities regulated by the department. The amendments are proposed in response to a recommendation of the Sunset Advisory Commission that the department update its complaint processing provisions in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, and recordkeeping are topics covered in the Sunset Model. The proposed amendments implement the applicable recommendations contained in the Sunset Model.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications for state government or for local government

as a result of enforcing or administering the rule.

Commissioner Jones also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is that complainants will have a clear, consistent process to follow and an understanding of timeframes for complaint processing and resolution.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

For each year of the first five years that the rules will be in effect, the rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect this state's economy.

The rules create new regulations concerning complaint handling to conform to recommendations from the Sunset Advisory Commission.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

To be considered, comments on the proposed amendments must be submitted in writing to Devyn F. Wills, Associate General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register*.

The amendments are proposed under Government Code § 2001.004, which provides the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, Finance Code § 11.307, which provides that the finance commission shall adopt rules applicable to each entity regulated by the department relating to consumer complaints, and Finance Code §§ 13.007 and 13.011, which provide that the savings and mortgage lending commissioner shall supervise and regulate the organization, operation, and liquidations of state savings associations and prepare information concerning the department's regulatory functions and consumer complaint procedures.

Other statutes affected by the proposed amendments are found in Finance Code Title 3, Subtitle B, and also Finance Code Chapter 13.

§64.10. Savings and Loan Association
[Consumer] Complaint Notices
[Procedures]

(a) Definitions

(1) "Privacy notice" means any notice which a savings and loan association provides to consumers regarding the association's privacy practices, regardless of whether it is required by a specific state or

federal law to provide such notice or provided to consumers voluntarily.

(2) "Required notice" means a notice in a form set forth or provided for in subsection (b)(1) of this section.

(b) Notice of how to file complaints

(1) In order to let its consumers know how to file complaints, savings and loan associations must use the following notice: The (name of savings and loan association) is chartered under the laws of the State of Texas and by state law is subject to regulatory oversight by the Department of Savings and Mortgage Lending. Any consumer wishing to file a complaint against the (name of savings and loan association) should contact the Department of Savings and Mortgage Lending through one of the means indicated below: In person or by U.S. Mail at 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, Telephone No: (877) 276-5550, Fax No: (512) 936-2003, or via electronic submission on the Department's website at http://www.sml.texas.gov/consumerinformation/tdsml_consumer_complaints.html.

(2) A required notice must be included in each privacy notice provided to consumers.

(3) A savings and loan association must provide consumers with the required notice in compliance with paragraph (1) of this section whether or not the savings and loan association is required by any state or federal law to provide privacy notices to its consumers.

(4) The following measures are deemed to be appropriate steps to give the required notice:

(A) In each area where a savings and loan association conducts business with consumers in person, the required notice, in the form specified in paragraph (1) of this section, must be conspicuously posted. A notice is deemed to be conspicuously posted if a customer with 20/20 vision can read it from the place where he or she would typically conduct business at that location or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.) are posted.

(B) At a minimum, the savings and loan association must provide the required notice when the customer relationship is established.

(C) If a savings and loan association maintains a web site, the required notice must be included in a screen which the consumer must view whenever the site is accessed.

Certification

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Devyn F. Wills
Associate General Counsel
Department of Savings and Mortgage
Lending

8. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 4, Chapter 76, §76.122 Concerning Hearings Officer and §76.71, Concerning Savings Bank Complaint Notices.

PURPOSE: Amendments to §76.122 and §76.71 are proposed in response to a recommendation of the Sunset Advisory Commission that the Department update its complaint processing provisions to be in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, recordkeeping, appeals, and hearings are topics covered in the Sunset Model. The proposed new rules implement the applicable recommendations contained in the Sunset Model, and provide consistent procedures for persons to complain about conduct of entities and individuals regulated by the Department.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed amendments to 7 TAC, §76.122 and §76.71 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we publish proposed amendments to 7 TAC, §76.122 and §76.71 in the *Texas Register* for comment.

**Title 7. Banking and Securities
Part 4. Department of Savings and
Mortgage Lending
Chapter 76 Miscellaneous
Subchapter E. Hearings
Subchapter H. [Consumer] Complaint
Procedures
7 TAC §§ 76.122, 76.71**

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes an amendment to § 76.71 concerning hearings, an amendment to the name of Subchapter H of Chapter 76, and an amendment to the name of § 76.122, concerning complaints. The amendments are proposed to provide consistent procedures for persons to complain about conduct of entities regulated by the department. The amendments are proposed in response to a recommendation of the Sunset Advisory Commission that the department update its complaint processing provisions in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, and recordkeeping are topics covered in the Sunset Model. The proposed amendments implement the applicable recommendations contained in the Sunset Model.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are

in effect, there will be no fiscal implications for state government or for local government as a result of enforcing or administering the rule.

Commissioner Jones also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is that complainants will have a clear, consistent process to follow and an understanding of timeframes for complaint processing and resolution.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

For each year of the first five years that the rules will be in effect, the rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect this state's economy.

The rules create new regulations concerning complaint handling to conform to recommendations from the Sunset Advisory Commission.

There will be no adverse economic effect on small businesses, micro-businesses, or rural

communities. There will be no difference in the cost of compliance for these entities.

To be considered, comments on the proposed amendments must be submitted to Devyn F. Wills, Associate General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294 or by email to smlinfo@sml.texas.gov.

The amendments are proposed under Government Code § 2001.004, which provides the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, Finance Code § 11.307, which provides that the finance commission shall adopt rules applicable to each entity regulated by the department relating to consumer complaints, Finance Code §§ 13.007 and 13.011, which provide that the savings and mortgage lending commissioner shall supervise and regulate the organization, operation, and liquidations of state savings banks and prepare information concerning the department's regulatory functions and consumer complaint procedures, and Finance Code § 96.002, which provides that the finance commission may adopt rules necessary to supervise and regulate savings banks and to protect public investment in savings banks.

Other statutes affected by the proposed amendments are found in Finance Code Title 3, Subtitle C, and also Finance Code Chapter 13.

§76.71. Hearings Officer

Chapter 11 of the Texas Finance Code [The Texas Banking Act, § 1.011(b), House Bill

1543, Acts, 74th Legislature], provides that the Finance Commission may employ a hearings officer, who for purposes of Government Code, § 2003.21, is an employee of the Department of Savings and Mortgage Lending, Texas Department of Banking and the Office of the Consumer Credit Commissioner. As determined by the Commissioner, the [The] Finance Commission hearings officer or an Administrative Law Judge at the State Office of Administrative Hearings (SOAH) may conduct hearings under provisions of the Act.

Subchapter H. [Consumer] Complaint Procedures

§76.122. Savings Bank [Consumer] Complaint Notices [Procedures]

(a) Definitions.

(1) "Privacy notice" means any notice which a state savings bank gives regarding a consumer's right to privacy, regardless of whether it is required by a specific state or federal law or given voluntarily.

(2) "Required notice" means a notice in a form set forth or provided for in subsection (b)(1) of this section.

(b) Notice of how to file complaints.

(1) In order to let its consumers know how to file complaints, state savings banks must use the following notice: The (name of state savings bank) is chartered under the laws of the State of Texas and by

state law is subject to regulatory oversight by the Department of Savings and Mortgage Lending. Any consumer wishing to file a complaint against the (name of state savings bank) should contact the Department of Savings and Mortgage Lending through one of the means indicated below: In Person or by U.S. Mail: 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, Telephone No.: (877) 276-5550, Fax No.: (512) 936-2003, or via electronic submission on the Department's website at http://www.sml.texas.gov/consumerinformation/tdsml_consumer_complaints.html.

(2) A required notice must be included in each privacy notice that a state savings bank sends out.

(3) Regardless of whether a state savings bank is required by any state or federal law to give privacy notices, each state savings bank must take appropriate steps to let its consumers know how to file complaints by giving them the required notice in compliance with paragraph (1) of this subsection.

(4) The following measures are deemed to be appropriate steps to give the required notice:

(A) In each area where a state savings bank conducts business on a face-to-face basis, the required notice, in the form specified in paragraph (1) of this subsection, must be conspicuously posted. A notice is deemed to be conspicuously posted if a customer with 20/20 vision can read it from

the place where he or she would typically conduct business or if it is included on a bulletin board, in plain view, on which all required notices to the general public (such as equal housing posters, licenses, Community Reinvestment Act notices, etc.) are posted.

(B) For customers who are not given privacy notices, the state savings bank must give the required notice when the customer relationship is established.

(C) If a state savings bank maintains a website, the required notice must be included in a screen which the consumer must view whenever the site is accessed.

Certification

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Devyn F. Wills
Associate General Counsel
Department of Savings and Mortgage
Lending

9. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 4, Chapter 79, §79.20 Concerning Investigations and §79.30, Concerning Hearings and Appeals.

PURPOSE: Amendments to §79.20 and §79.30 are proposed in response to a recommendation of the Sunset Advisory Commission that the Department update its complaint processing provisions to be in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, recordkeeping, appeals, and hearings are topics covered in the Sunset Model. The proposed new rules implement the applicable recommendations contained in the Sunset Model, and provide consistent procedures for persons to complain about conduct of entities and individuals regulated by the Department.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed amendments to 7 TAC, §79.20 and §79.30 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we publish proposed amendments to 7 TAC, §79.20 and §79.30 in the *Texas Register* for comment.

**Title 7. Banking and Securities
Part 4. Department of Savings and
Mortgage Lending
Chapter 79 Residential Mortgage Loan
Servicers
Subchapter B. Complaints and
Investigations
Subchapter C. Hearings and Appeals
7 TAC §§ 79.20, 79.30**

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes an amendment to the name of § 79.20, concerning complaints, and an amendment to 7 TAC § 79.30 concerning hearings. The amendments are proposed to provide consistent procedures for persons to complain about conduct of entities regulated by the department. The new rules are proposed in response to a recommendation of the Sunset Advisory Commission that the department update its complaint processing provisions in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, and recordkeeping are topics covered in the Sunset Model. The proposed amendments implement the applicable recommendations contained in the Sunset Model.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications

for state government or for local government as a result of enforcing or administering the rule.

Commissioner Jones also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is that complainants will have a clear, consistent process to follow and an understanding of timeframes for complaint processing and resolution.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

For each year of the first five years that the rules will be in effect, the rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect this state's economy.

The rules create new regulations concerning complaint handling to conform to recommendations from the Sunset Advisory Commission.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

To be considered, comments on the proposed amendments must be submitted in writing to Devyn F. Wills, Associate General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register*.

The amendments are proposed under Government Code § 2001.004, which provides the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, Finance Code § 11.307, which provides that the finance commission shall adopt rules applicable to each entity regulated by the department relating to consumer complaints, Finance Code § 13.011, which provides that the savings and mortgage lending commissioner shall prepare information concerning the department's regulatory functions and consumer complaint procedures, and Finance Code § 158.003, which provides that the finance commission may adopt rules necessary to ensure that residential mortgage loan servicers comply with federal and state laws, rules, and regulations.

Other statutes affected by the proposed amendments are found in Finance Code Chapter 158.

§79.20. [~~Complaints and~~] Investigations

(a) Investigations [~~Upon receipt of a signed, written complaint from a person setting forth known, suspected, or asserted facts relating to acts or omissions of a person required to be registered under the~~

~~Act, the Commissioner or the Commissioner's designee will:~~

~~(1) make an initial determination whether the complaint sets forth reasonable cause to warrant an investigation;~~

~~(2) if it has been determined that the complaint warrants an investigation, advise the residential mortgage loan servicer who is the subject of the complaint by written notice to the authorized office specified on that person's registration that a complaint has been filed;~~

~~(3) if it is determined that a complaint does not warrant investigation, so advise the complainant and close the file, advising the complainant of the right to bring forth additional facts or information to have the initiation of an investigation reconsidered;~~

~~(4) if an investigation is to be conducted, advise the party who is the subject of the complaint that an investigation] will be conducted [and conduct such investigation] as [is] deemed appropriate in light of all the relevant facts and circumstances then known. Such investigation may include any or all of the following:~~

~~(1) [(A)] review of documentary evidence;~~

~~(2) [(B)] interviews with complainants, registrants, and third parties;~~

~~(3) [(C)] obtaining reports, advice, and other comments and assistance of other state and/or federal regulatory, enforcement, or oversight bodies; and~~

(4) ~~[(D)]~~ ~~[such—]~~other lawful investigative techniques as the Commissioner reasonably deems necessary and/or appropriate, including, but not limited to, requesting that complainants and/or other parties made the subject of complaints provide explanatory, clarifying, or supplemental information.

(5) ~~[(E)]~~ If the Department requests reports or other information of registrant and registrant does not respond as required a \$150 penalty may be assessed against the registrant.

(b) A complaint investigation fee may be assessed against a person required to be registered under this Act ~~[after—the Department opens a fifth complaint or expends 12 hours of investigative work on an annual basis from September 1st to August 31st]~~. The amount of the complaint investigation fee assessed is limited to costs incurred, will be at the discretion of the Commissioner, and may ~~[be set at an amount]~~ not ~~[to]~~ exceed \$ 975 per complaint.

(c) The Commissioner may conduct a Departmental investigation if the Commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of the Act.

§79.30 Hearings and Appeals [and Hearings]

As determined by the Commissioner, the [The] Hearings Officer for the Finance Commission or an Administrative Law Judge at the State Office of Administrative

Hearings (SOAH) may be [is] designated as the hearings officer for hearings under this chapter. All such hearings are to be conducted in accordance with Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings), including, but not limited to motions for rehearing, notices of appeal, and applications for review and shall be a contested case governed by Chapter 2001, Government Code. All such hearings, unless specifically authorized by the Commissioner, shall be conducted in Austin, Travis County, Texas. Such rules, as set forth in Chapter 9 of this title, are incorporated herein by reference for all purposes.

Certification

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Devyn F. Wills
Associate General Counsel
Department of Savings and Mortgage
Lending

10. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 4, Chapter 80, §80.301 Concerning Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions and §80.302 Concerning Hearings and Appeals.

PURPOSE: Amendments to §80.301 and §80.302 are proposed in response to a recommendation of the Sunset Advisory Commission that the Department update its complaint processing provisions to be in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, recordkeeping, appeals, and hearings are topics covered in the Sunset Model. The proposed new rules implement the applicable recommendations contained in the Sunset Model, and provide consistent procedures for persons to complain about conduct of entities and individuals regulated by the Department.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed amendments to 7 TAC, §80.301 and §80.302 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we publish proposed amendments to 7 TAC, §80.301 and §80.302 in the *Texas Register* for comment.

**Title 7. Banking and Securities
Part 4. Department of Savings and
Mortgage Lending
Chapter 80 Texas Residential Mortgage
Loan Companies
Subchapter D. Compliance and
Enforcement
7 TAC §§ 80.301, 80.302**

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes amendments to § 80.301 concerning complaints and investigations, and to 7 TAC § 80.302 concerning hearings. The amendments are proposed to provide consistent procedures for persons to complain about conduct of entities and individuals regulated by the department. The amendments are proposed in response to a recommendation of the Sunset Advisory Commission that the department update its complaint processing provisions in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, and recordkeeping are topics covered in the Sunset Model. The proposed changes and additions implement the applicable recommendations contained in the Sunset Model.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications

for state government or for local government as a result of enforcing or administering the rule.

Commissioner Jones also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is that complainants will have a clear, consistent process to follow and an understanding of timeframes for complaint processing and resolution.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

For each year of the first five years that the rules will be in effect, the rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect this state's economy.

The rules create new regulations concerning complaint handling to conform to recommendations from the Sunset Advisory Commission.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in the cost of compliance for these entities.

To be considered, comments on the amendments must be submitted in writing to Devyn F. Wills, Associate General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294 or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register*.

The amendments are proposed under Government Code § 2001.004, which provides the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, Finance Code § 11.307, which provides that the finance commission shall adopt rules applicable to each entity regulated by the department relating to consumer complaints, Finance Code § 13.011, which provides that the savings and mortgage lending commissioner shall prepare information concerning the department's regulatory functions and consumer complaint procedures, and Finance Code § 156.102, which provides that the finance commission may adopt and enforce rules necessary for the intent of or to ensure compliance with Chapter 156.

Other statutes affected by the proposed amendments are found in Finance Code Chapter 156, 157, and 180.

§ 80.301. ~~[Complaints]~~Investigations, Administrative Penalties, and Disciplinary and/or Enforcement Actions

(a) Investigations ~~[Upon receipt of a written complaint alleging acts or omissions of a person, as defined in Finance Code, § 180.002(14), required to be licensed under Finance Code, Chapter 156, the~~

~~Commissioner or the Commissioner's designee will make an initial determination whether the complaint sets forth reasonable cause to warrant an investigation:~~

~~(1) if it has been determined that the complaint warrants an investigation, advise all parties who are subject of the complaint by written notice that a complaint has been filed and an investigation will be conducted. The investigation]~~ will be conducted as [is] deemed appropriate in light of all the relevant facts and circumstance then known. Such investigation may include any or all of the following:

(1) ~~[(A)]~~ review of documentary evidence;

(2) ~~[(B)]~~ interviews with complainants, licensees, and third parties;

(3) ~~[(C)]~~ obtaining reports, advice, and other comments and assistance of other state and/or federal regulatory, enforcement, or oversight bodies; and

(4) ~~[(D)]~~ other lawful investigative techniques as the Commissioner reasonably deems necessary and/or appropriate, including, but not limited to, requesting that complainants and/or other parties made the subject of complaints provide explanatory, clarifying, or supplemental information.

~~[(2) if determined that a complaint does not warrant investigation, advise the complainant of the right to bring forth additional facts or information to have the~~

~~initiation of an investigation reconsidered,
and close the file.]~~

(b) The Commissioner may, upon a finding of reasonable cause, investigate a licensee or registrant to determine whether they are complying with Finance Code, Chapter 156 and this chapter.

(c) The Commissioner may conduct an undercover or covert investigation only if the Commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of Finance Code, Chapter 156.

(d) Reasonable cause will be deemed to exist if the Commissioner has received information from a source he or she has no reason to believe to be other than reliable, including documentary or other evidence or information, indicating facts which a prudent person would deem worthy of investigation as a violation of Finance Code, Chapter 156.

(e) A complaint which names a company or sponsored originator as the subject of the complaint is also a complaint against the qualifying individual at the time of any alleged violation. The qualifying individual of a company is responsible for all acts and conduct performed by or through the company and is required to fulfill his or her professional responsibility to the Commissioner and members of the public.

(f) If the Commissioner determines that a person has violated the requirements of Finance Code, Chapter 156, this chapter, or any order pursuant to Finance Code, Chapter 156 or this chapter, the Commissioner, after notice and opportunity for hearing, may impose an administrative penalty on that person. Such penalties shall not exceed \$ 25,000 per violation. The amount of the violation is at the Commissioner's discretion. In determining the amount of any administrative penalty(ies) for any violation(s) of Finance Code, Chapter 156 or this chapter, the Commissioner shall consider such factors as required by Finance Code, § 156.302.

(g) If the Commissioner has reasonable cause to believe that a licensee has violated or is about to violate Finance Code, Chapter 156, this chapter, or an order issued pursuant to this chapter, the Commissioner may, without notice and hearing, issue an order to cease and desist a particular action or an order to take affirmative action, or both, to enforce compliance with Finance Code, Chapter 156 and this chapter. Any such order must contain a reasonably detailed statement of the facts on which the order is made. If a person against whom an order is made requests a hearing, the Commissioner shall set and give notice of a hearing to be held in accordance with this chapter and Government Code, Chapter 2001. Based on the findings of fact and conclusions of law, the Commissioner may find by order that a violation has or has not occurred.

(h) The Commissioner may, after giving

notice and an opportunity for hearing, impose against any person who violates a cease and desist order, an administrative penalty in an amount not to exceed \$ 1,000 for each day on which the violation is continuing. In addition to any other remedy provided for by law, the Commissioner may institute in District Court for Travis County an action for injunctive relief and/or to collect the administrative penalty. A bond is not required of the Commissioner with respect to any request for injunctive relief under this subsection.

(i) The Commissioner may order disciplinary action after notice and opportunity for hearing against a company or an originator if the Commissioner becomes aware during the term of the license of any fact that would have been grounds for denial of an original license if the fact had been known by the Commissioner on the date the license was issued.

§80.302. Hearings and Appeals

(a) As determined by the Commissioner, hearings may ~~[Hearings are to]~~ be conducted in accordance with Chapter 9 of this title including, but not limited to motions for rehearing, notices of appeal, and applications for review. All ~~[such]~~ hearings shall, unless specifically authorized by the Commissioner, be conducted in Austin, Travis County, Texas. All appeals of decisions of the Commissioner shall be made to the State District Court in Travis County, Texas. Such rules, as set forth in

Chapter 9 of this title are incorporated herein by reference for all purposes.

(b) If a person against whom an order is made requires a hearing, the Commissioner shall set and give notice of a hearing before the Commissioner or a hearings officer. The hearing shall be governed by Government Code, Chapter 2001. Based on the findings of fact, conclusions of law, and any recommendations of the hearings officer, the Commissioner shall, by order, find that a violation has or has not occurred.

(c) Appeals of an order denying an application or the renewal of a license must be properly requested within ten calendar days of the date on which the initial order is received. All other appeals must be properly requested within thirty days of the date on which the initial order is issued. Any order not properly appealed by the applicable deadline becomes final without further action by the commissioner and cannot be appealed ~~[with no further action by the Commissioner]~~.

Certification

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Devyn F. Wills
Associate General Counsel
Department of Savings and Mortgage
Lending

11. Discussion of and Possible Vote to Take Action on the Proposal and Publication for Comment of Amendments to 7 TAC, Part 4, Chapter 81, §81.301 Concerning Investigations and §81.302 Concerning Hearings and Appeals.

PURPOSE: Amendments to §81.301 and §81.302 are proposed in response to a recommendation of the Sunset Advisory Commission that the Department update its complaint processing provisions to be in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, recordkeeping, appeals, and hearings are topics covered in the Sunset Model. The proposed new rules implement the applicable recommendations contained in the Sunset Model, and provide consistent procedures for persons to complain about conduct of entities and individuals regulated by the Department.

RECOMMENDED ACTION: The Department recommends that the Commission approve publication of the proposed amendments to 7 TAC, §81.301 and §81.302 for publication in the *Texas Register*.

RECOMMENDED MOTION: I move that we publish proposed amendments to 7 TAC, §81.301 and §81.302 in the *Texas Register* for comment.

**Title 7. Banking and Securities
Part 4. Department of Savings and
Mortgage Lending
Chapter 81 Mortgage Bankers and
Residential Mortgage Loan Originators
Subchapter D. Compliance and
Enforcement
7 TAC §§ 81.301, 81.302**

The Finance Commission of Texas (the commission), on behalf of the Department of Savings and Mortgage Lending (the department), proposes an amendment to § 81.301, concerning complaints and investigations, and to 7 TAC § 81.302 concerning hearings. The amendments are proposed to provide consistent procedures for persons to complain about conduct of entities and individuals regulated by the department. The amendments are proposed in response to a recommendation of the Sunset Advisory Commission that the department update its complaint processing provisions in line with the Sunset Advisory Commission's Licensing and Regulation Model guidelines (Sunset Model).

The Sunset Model is intended as a guide to assist in evaluating occupational licensing and regulatory agencies to see if they are efficient, effective, fair, and accountable in their mission to protect the public. Complaint filing, processing, and recordkeeping are topics covered in the Sunset Model. The proposed amendments implement the applicable recommendations contained in the Sunset Model.

Caroline C. Jones, the Department of Savings and Mortgage Lending Commissioner, has determined that for the first five-year period the proposed rules are in effect, there will be no fiscal implications

for state government or for local government as a result of enforcing or administering the rule.

Commissioner Jones also has determined that, for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing the rules is that complainants will have a clear, consistent process to follow and an understanding of timeframes for complaint processing and resolution.

For each year of the first five years that the rules will be in effect, there will be no economic costs to persons required to comply with the rule as proposed.

For each year of the first five years that the rules will be in effect, the rules will not:

- create or eliminate a government program;
- require the creation of new employee positions or the elimination of existing employee positions;
- require an increase or decrease in future legislative appropriations to the agency;
- require an increase or decrease in fees paid to the agency;
- increase or decrease the number of individuals subject to the rule's applicability; or
- positively or adversely affect this state's economy.

The rules create new regulations concerning complaint handling to conform to recommendations from the Sunset Advisory Commission.

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities. There will be no difference in

the cost of compliance for these entities.

To be considered, comments on the proposed amendments must be submitted in writing to Devyn F. Wills, Associate General Counsel, Department of Savings and Mortgage Lending, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294, or by email to smlinfo@sml.texas.gov within 30 days of publication in the *Texas Register*.

The amendments are proposed under Government Code § 2001.004, which provides the authority to adopt rules of practice stating the nature and requirements of all available formal and informal procedures, Finance Code § 11.307, which provides that the finance commission shall adopt rules applicable to each entity regulated by the department relating to consumer complaints, Texas Finance Code § 13.011, which provides that the savings and mortgage lending commissioner shall prepare information concerning the department's regulatory functions and consumer complaint procedures, Texas Finance Code § 157.0023, which provides that the finance commission may adopt and enforce rules necessary for the intent of or to ensure compliance with Chapter 157, and Texas Finance Code § 180.004, which provides that the finance commission may implement rules necessary to comply with Chapter 180.

Other statutes affected by the proposed amendments are found in Finance Code Chapter 156, 157, and 180.

§ 81.301. [~~Complaints and~~] Investigations

(a) Investigations [~~Upon receipt of a~~

~~written complaint alleging acts or omissions of a person as defined under Finance Code, § 180.002(14) required to be licensed or a mortgage banker required to be registered under Finance Code, Chapter 157, the Commissioner or the Commissioner's designee will make an initial determination whether the complaint sets forth reasonable cause to warrant an investigation:~~

~~(1) If it has been determined that the complaint warrants an investigation, advise all parties who are subject of the complaint by written notice that a complaint has been filed and an investigation will be conducted. The investigation]~~ will be conducted as [is] deemed appropriate in light of all the relevant facts and circumstances then known. Such investigation may include any or all of the following:

(A) review of documentary evidence;

(B) interviews with complainants, licensees, and third parties;

(C) obtaining reports, advice, and other comments and assistance of other state and/or federal regulatory, enforcement, or oversight bodies;

(D) other lawful investigative techniques as the Commissioner reasonably deems necessary and/or appropriate, including, but not limited to, requesting that complainants and/or other parties made the subject of complaints provide explanatory, clarifying, or supplemental information.

~~[(2) if determined that a complaint does not warrant investigation, advise the complainant of the right to bring forth additional facts or information to have the initiation of an investigation reconsidered, and close the file.]~~

(b) The Commissioner may, upon a finding of reasonable cause, investigate a licensee or registrant to determine whether they are complying with Finance Code, Chapter 157 and this chapter.

(c) The Commissioner may conduct an undercover or covert investigation only if the Commissioner, after due consideration of the circumstances, determines that the investigation is necessary to prevent immediate harm and to carry out the purposes of Finance Code, Chapter 157.

(d) Reasonable cause will be deemed to exist if the Commissioner has received information from a source he or she has no reason to believe to be other than reliable, including documentary or other evidence or information, indicating facts which a prudent person would deem worthy of investigation as a violation of Finance Code, Chapter 157.

§ 81.302. Hearings and Appeals

(a) As determined by the Commissioner, hearings may ~~[Hearings are to]~~ be conducted in accordance with Chapter 9 of this title including, but not limited to motions for rehearing, notices of appeal, and applications for review. All ~~[such]~~ hearings

shall, unless specifically authorized by the Commissioner, be conducted in Austin, Travis County, Texas. All appeals of decisions of the Commissioner shall be made to the State District Court in Travis County, Texas. Such rules, as set forth in Chapter 9 of this title are incorporated herein by reference for all purposes.

(b) If a person against whom an order is made requires a hearing, the Commissioner shall set and give notice of a hearing before the Commissioner or a hearings officer. The hearing shall be governed by Government Code, Chapter 2001. Based on the findings of fact, conclusions of law, and any recommendations of the hearings officer, the Commissioner shall, by order, find that a violation has or has not occurred.

(c) Appeals of an order denying an application or the renewal of a license must be properly requested within ten calendar days of the date on which the initial order is received. All other appeals must be properly requested within thirty days of the date on which the initial order is issued. Any order not properly appealed by the applicable deadline becomes final without further action and cannot be appealed ~~[with no further action by the Commissioner]~~.

Certification

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Devyn F. Wills

Associate General Counsel
Department of Savings and Mortgage
Lending

SML Future Rule Activity		
Rule	Short Title/Purpose	Projected Date for Presentation
7TAC, Part 8, Ch. 155	Payoff Statements To conduct standard rule review under Tex. Gov't. Code, §2001.039 Joint rule review action between the Finance Commission agencies.	October, 2019
7TAC, Part 4, Ch. 52	Hearings, Appeals, and Informal Settlement Conferences New §52.20 will provide for traditional and alternative dispute resolution mechanisms. This rule will be proposed in response to a recommendation of the Sunset Advisory Commission	October, 2019

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