BUSINESS AND COMMERCE CODE
TITLE 1. UNIFORM COMMERCIAL CODE
CHAPTER 1. GENERAL PROVISIONS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1.101. SHORT TITLES. (a) This title may be cited as the Uniform Commercial Code.

(b) This chapter may be cited as Uniform Commercial Code--General Provisions.

Amended by Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003.

Sec. 1.102. SCOPE OF CHAPTER. This chapter applies to a transaction to the extent that it is governed by another chapter of this title.

Amended by Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003.

Sec. 1.103. CONSTRUCTION OF TITLE TO PROMOTE ITS PURPOSES AND POLICIES; APPLICABILITY OF SUPPLEMENTAL PRINCIPLES OF LAW. (a) This title must be liberally construed and applied to promote its underlying purposes and policies, which are:

(1) to simplify, clarify and modernize the law governing commercial transactions;

(2) to permit the continued expansion of commercial practices through custom, usage and agreement of the parties; and

(3) to make uniform the law among the various jurisdictions.

(b) Unless displaced by the particular provisions of this title, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions.

Amended by Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003.

Sec. 1.104. CONSTRUCTION AGAINST IMPLIED REPEAL. This title being a general act intended as a unified coverage of its subject

matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

Amended by Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003.

Sec. 1.105. SEVERABILITY. If any provision or clause of this title or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

Amended by Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003.

Sec. 1.106. USE OF SINGULAR AND PLURAL; GENDER. In this title, unless the statutory context otherwise requires:

(1) words in the singular number include the plural, and those in the plural include the singular; and

(2) words of any gender also refer to any other gender.

Amended by Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003.

Sec. 1.107. SECTION CAPTIONS. Section captions are parts of this title.

Amended by Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003.

Sec. 1.108. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This title modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of that Act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that Act (15 U.S.C. Section 7003(b)).

Amended by Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER B. GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 1077, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 1.201. GENERAL DEFINITIONS. (a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other chapters of this title that apply to particular chapters or parts thereof, have the meanings stated.

(b) Subject to definitions contained in other chapters of this title that apply to particular chapters or parts thereof:

(1) "Action," in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined.

(2) "Aggrieved party" means a party entitled to pursue a remedy.

(3) "Agreement," as distinguished from "contract," means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in Section 1.303.

(4) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) "Bearer" means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, a negotiable tangible document of title, or a certificated security that is payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale

violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Chapter 2 may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous," with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:

(A) a heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and

(B) language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(11) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.

(12) "Contract," as distinguished from "agreement," means the total legal obligation that results from the parties' agreement as determined by this title as supplemented by any other applicable laws.

(13) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of

an insolvent debtor's or assignor's estate.

(14) "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

(15) "Delivery," with respect to an electronic document of title, means voluntary transfer of control, and with respect to an instrument, a tangible document of title, or chattel paper, means voluntary transfer of possession.

(16) "Document of title" means a record that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers, and purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title is evidenced by a record consisting of information stored in an electronic medium. A tangible document of title is evidenced by a record consisting of information that is inscribed on a tangible medium.

(17) "Fault" means a default, breach, or wrongful act or omission.

(18) "Fungible goods" means:

(A) goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(B) goods that by agreement are treated as equivalent.

(19) "Genuine" means free of forgery or counterfeiting.

(20) "Good faith," except as otherwise provided in Chapter 5, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(21) "Holder" means:

(A) the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;

(B) the person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) a person in control of a negotiable electronic document of title.

(22) "Insolvency proceeding " includes an assignment for

the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

(23) "Insolvent" means:

(A) having generally ceased to pay debts in the ordinary course of business other than as a result of a bona fide dispute;

(B) being unable to pay debts as they become due; or

(C) being insolvent within the meaning of the federal bankruptcy law.

(24) "Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.

(25) "Organization" means a person other than an individual.

(26) "Party," as distinguished from "third party," means a person that has engaged in a transaction or made an agreement subject to this title.

(27) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(28) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(29) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(30) "Purchaser" means a person that takes by purchase.

(31) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(32) "Remedy" means any remedial right to which an

aggrieved party is entitled with or without resort to a tribunal.

(33) "Representative" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

(34) "Right" includes remedy.

(35) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Chapter 9. "Security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under Section 2.401, but a buyer may also acquire a "security interest" by complying with Chapter 9. Except as otherwise provided in Section 2.505, the right of a seller or lessor of goods under Chapter 2 or 2A to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with Chapter 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under Section 2.401 is limited in effect to a reservation of a "security interest." Whether a transaction in the form of a lease creates a security interest is determined pursuant to Section 1.203.

(36) "Send" in connection with a writing, record, or notice means:

(A) to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances; or

(B) in any other way cause to be received any record or notice within the time at which it would have arrived if properly sent.

(37) "Signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing.

(38) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(39) "Surety" includes a guarantor or other secondary obligor.

(40) "Term" means a portion of an agreement that relates to a particular matter.

(41) "Unauthorized signature" means a signature made without actual, implied, or apparent authority. The term includes a forgery.

(42) "Warehouse receipt" means a document of title issued by a person engaged in the business of storing goods for hire.

(43) "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1973, 63rd Leg., p. 997, ch. 400, Sec. 2, Jan. 1, 1974; Acts 1983, 68th Leg., p. 1535, ch. 290, Sec. 12, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 2575, ch. 442, Sec. 12, eff. Sept. 1, 1983; Acts 1989, 71st Leg., ch. 846, Sec. 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 921, Sec. 2, eff. Jan. 1, 1996; Acts 1999, 76th Leg., ch. 414, Sec. 2.12, 2.13, eff. July 1, 2001; Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 2, eff. September 1, 2005.

Sec. 1.202. NOTICE; KNOWLEDGE. (a) Subject to Subsection (f), a person has "notice" of a fact if the person:

(1) has actual knowledge of it;

(2) has received a notice or notification of it; or

(3) from all the facts and circumstances known to the person at the time in question, has reason to know that it exists.

(b) "Knowledge" means actual knowledge. "Knows" has a corresponding meaning.

(c) "Discover," "learn," or words of similar import refer to knowledge rather than to reason to know.

(d) A person "notifies" or "gives" a notice or notification to another person by taking such steps as may be reasonably required to inform the other person in ordinary course, whether or not the other person actually comes to know of it.

(e) Subject to Subsection (f), a person "receives" a notice or notification when:

(1) it comes to that person's attention; or

(2) it is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made or at another location held out by that person as the place for receipt of such communications.

(f) Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to the individual's attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and there is reasonable compliance with the routines. Due diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

Amended by Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003.

Sec. 1.203. LEASE DISTINGUISHED FROM SECURITY INTEREST. (a) Whether a transaction in the form of a lease creates a lease or security interest is determined by the facts of each case.

(b) A transaction in the form of a lease creates a security interest if the consideration that the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease and is not subject to termination by the lessee, and:

(1) the original term of the lease is equal to or greater than the remaining economic life of the goods;

(2) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(3) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration

or for nominal additional consideration upon compliance with the lease agreement; or

(4) the lessee has an option to become the owner of the goods for no additional consideration or for nominal additional consideration upon compliance with the lease agreement.

(c) A transaction in the form of a lease does not create a security interest merely because:

(1) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;

(2) the lessee assumes risk of loss of the goods;

(3) the lessee agrees to pay, with respect to the goods, taxes, insurance, filing, recording, or registration fees, or service or maintenance costs;

(4) the lessee has an option to renew the lease or to become the owner of the goods;

(5) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(6) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

(d) Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised. Additional consideration is not nominal if:

(1) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or

(2) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed.

(e) The "remaining economic life of the goods" and "reasonably predictable" fair market rent, fair market value, or cost of performing under the lease agreement must be determined with

reference to the facts and circumstances at the time the transaction is entered into.

Amended by Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003.

Sec. 1.204. VALUE. Except as otherwise provided in Chapters 3, 4, and 5, a person gives value for rights if the person acquires them:

(1) in return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

(2) as security for, or in total or partial satisfaction of, a preexisting claim;

(3) by accepting delivery under a preexisting contract for purchase; or

(4) in return for any consideration sufficient to support a simple contract.

Amended by Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003.

Sec. 1.205. REASONABLE TIME; SEASONABLENESS. (a) Whether a time for taking an action required by this title is reasonable depends on the nature, purpose, and circumstances of the action.

(b) An action is taken seasonably if it is taken at or within the time agreed or, if no time is agreed, at or within a reasonable time.

Amended by Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003.

Sec. 1.206. PRESUMPTIONS. Whenever this title creates a "presumption" with respect to a fact, or provides that a fact is "presumed," the trier of fact must find the existence of the fact unless and until evidence is introduced that supports a finding of its nonexistence.

Amended by Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER C. TERRITORIAL APPLICABILITY AND GENERAL RULES

Sec. 1.301. TERRITORIAL APPLICATION OF THE TITLE; PARTIES' POWER TO CHOOSE APPLICABLE LAW. (a) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this title applies to transactions bearing an appropriate relation to this state.

(b) Where one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. Section 2.402.

Applicability of the chapter on Leases. Sections 2A.105 and 2A.106.

Applicability of the chapter on Bank Deposits and Collections. Section 4.102.

Governing law in the chapter on Funds Transfers. Section 4A.507.

Letters of Credit. Section 5.116.

Applicability of the chapter on Investment Securities. Section 8.110.

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. Sections 9.301-9.307.

(c) If a transaction that is subject to this title is a "qualified transaction," as defined in Section 271.001, then except as provided in Subsection (b) of this section, Chapter 271 governs the effect of an agreement by the parties that the law of a particular jurisdiction governs an issue relating to the transaction or that the law of a particular jurisdiction governs the interpretation or construction of an agreement relating to the transaction or a provision of the agreement.

Added by Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.02, eff. April 1, 2009.

Sec. 1.302. VARIATION BY AGREEMENT. (a) Except as otherwise provided in Subsection (b) or elsewhere in this title, the effect of provisions of this title may be varied by agreement.

(b) The obligations of good faith, diligence, reasonableness, and care prescribed by this title may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever this title requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

(c) The presence in certain provisions of this title of the phrase "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement under this section.

Added by Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003.

Sec. 1.303. COURSE OF PERFORMANCE, COURSE OF DEALING, AND USAGE OF TRADE. (a) A "course of performance" is a sequence of conduct between the parties to a particular transaction that exists if:

(1) the agreement of the parties with respect to the transaction involves repeated occasions for performance by a party; and

(2) the other party, with knowledge of the nature of the performance and opportunity for objection to it, accepts the performance or acquiesces in it without objection.

(b) A course of dealing is a sequence of conduct concerning previous transactions between the parties to a particular transaction that is fairly to be regarded as establishing a common basis of understanding for interpreting their expressions and other conduct.

(c) A "usage of trade" is any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question. The existence and scope of such a usage must be proved as facts. If it is established that such a usage is embodied in a trade code or similar record, the interpretation of the record is a question of law.

(d) A course of performance or course of dealing between the parties or usage of trade in the vocation or trade in which they are

engaged or of which they are or should be aware is relevant in ascertaining the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement. A usage of trade applicable in the place in which part of the performance under the agreement is to occur may be so utilized as to that part of the performance.

(e) Except as otherwise provided in Subsection (f), the express terms of an agreement and any applicable course of performance, course of dealing, or usage of trade must be construed whenever reasonable as consistent with each other. If such a construction is unreasonable:

(1) express terms prevail over course of performance, course of dealing, and usage of trade;

(2) course of performance prevails over course of dealing and usage of trade; and

(3) course of dealing prevails over usage of trade.

(f) Subject to Section 2.209, a course of performance is relevant to show a waiver or modification of any term inconsistent with the course of performance.

(g) Evidence of a relevant usage of trade offered by one party is not admissible unless that party has given the other party notice that the court finds sufficient to prevent unfair surprise to the other party.

Added by Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003.

Sec. 1.304. OBLIGATION OF GOOD FAITH. Every contract or duty within this title imposes an obligation of good faith in its performance and enforcement.

Added by Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003.

Sec. 1.305. REMEDIES TO BE LIBERALLY ADMINISTERED. (a) The remedies provided by this title must be liberally administered to the end that the aggrieved party may be put in as good a position as if the other party had fully performed but neither consequential or special damages nor penal damages may be had except as specifically provided in this title or by other rule of law.

(b) Any right or obligation declared by this title is enforceable by action unless the provision declaring it specifies a different and limited effect.

Added by Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003.

Sec. 1.306. WAIVER OF RENUNCIATION OF CLAIM OR RIGHT AFTER BREACH. A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in an authenticated record.

Added by Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003.

Sec. 1.307. PRIMA FACIE EVIDENCE BY THIRD-PARTY DOCUMENTS. A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party is prima facie evidence of its own authenticity and genuineness and of the facts stated in the document by the third party.

Added by Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003.

Sec. 1.308. PERFORMANCE OR ACCEPTANCE UNDER RESERVATION OF RIGHTS. (a) A party that with explicit reservation of rights performs or promises performance or assents to performance in a manner demanded or offered by the other party does not thereby prejudice the rights reserved. Such words as "without prejudice," "under protest," or the like are sufficient.

(b) Subsection (a) does not apply to an accord and satisfaction.

Added by Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003.

Sec. 1.309. OPTION TO ACCELERATE AT WILL. A term providing that one party or that party's successor in interest may accelerate payment or performance or require collateral or additional collateral

"at will" or when the party "deems itself insecure," or words of similar import, means that the party has power to do so only if that party in good faith believes that the prospect of payment or performance is impaired. The burden of establishing lack of good faith is on the party against which the power has been exercised.

Added by Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003.

Sec. 1.310. SUBORDINATED OBLIGATIONS. An obligation may be issued as subordinated to performance of another obligation of the person obligated, or a creditor may subordinate its right to performance of an obligation by agreement with either the person obligated or another creditor of the person obligated. Subordination does not create a security interest as against either the common debtor or a subordinated creditor.

Added by Acts 2003, 78th Leg., ch. 542, Sec. 1, eff. Sept. 1, 2003.

CHAPTER 2. SALES

SUBCHAPTER A. SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

Sec. 2.101. SHORT TITLE. This chapter may be cited as Uniform Commercial Code--Sales.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.102. SCOPE; CERTAIN SECURITY AND OTHER TRANSACTIONS EXCLUDED FROM THIS CHAPTER. Unless the context otherwise requires, this chapter applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this chapter impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.103. DEFINITIONS AND INDEX OF DEFINITIONS. (a) In this

chapter unless the context otherwise requires

(1) "Buyer" means a person who buys or contracts to buy goods.

(2) Reserved.

(3) "Receipt" of goods means taking physical possession of them.

(4) "Seller" means a person who sells or contracts to sell goods.

(b) Other definitions applying to this chapter or to specified subchapters thereof, and the sections in which they appear are:

"Acceptance". Section 2.606.
"Banker's credit". Section 2.325.
"Between merchants". Section 2.104.
"Cancellation". Section 2.106(d).
"Commercial unit". Section 2.105.
"Confirmed credit". Section 2.325.
"Conforming to contract". Section 2.106.
"Contract for sale". Section 2.106.
"Cover". Section 2.712.
"Entrusting". Section 2.403.
"Financing agency". Section 2.104.
"Future goods". Section 2.105.
"Goods". Section 2.105.
"Identification". Section 2.501.
"Installment contract". Section 2.612.
"Letter of credit". Section 2.325.
"Lot". Section 2.105.
"Merchant". Section 2.104.
"Overseas". Section 2.323.
"Person in position of seller". Section 2.707.
"Present sale". Section 2.106.
"Sale". Section 2.106.
"Sale on approval". Section 2.326.
"Sale or return". Section 2.326.
"Termination". Section 2.106.

(c) The following definitions in other chapters apply to this chapter:

"Check". Section 3.104.
"Consignee". Section 7.102.
"Consignor". Section 7.102.

"Consumer goods". Section 9.102.
"Control". Section 7.106.
"Dishonor". Section 3.502.
"Draft". Section 3.104.

(d) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.14, eff. July 1, 2001; Acts 2003, 78th Leg., ch. 542, Sec. 2, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 3, eff. September 1, 2005.

Sec. 2.104. DEFINITIONS: "MERCHANT"; "BETWEEN MERCHANTS"; "FINANCING AGENCY". (a) "Merchant" means a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction or to whom such knowledge or skill may be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge or skill.

(b) "Financing agency" means a bank, finance company or other person who in the ordinary course of business makes advances against goods or documents of title or who by arrangement with either the seller or the buyer intervenes in ordinary course to make or collect payment due or claimed under the contract for sale, as by purchasing or paying the seller's draft or making advances against it or by merely taking it for collection whether or not documents of title accompany or are associated with the draft. "Financing agency" includes also a bank or other person who similarly intervenes between persons who are in the position of seller and buyer in respect to the goods (Section 2.707).

(c) "Between merchants" means in any transaction with respect to which both parties are chargeable with the knowledge or skill of merchants.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 4, eff. September 1, 2005.

Sec. 2.105. DEFINITIONS: TRANSFERABILITY; "GOODS"; "FUTURE" GOODS; "LOT"; "COMMERCIAL UNIT". (a) "Goods" means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (Chapter 8) and things in action. "Goods" also includes the unborn young of animals and growing crops and other identified things attached to realty as described in the section on goods to be severed from realty (Section 2.107).

(b) Goods must be both existing and identified before any interest in them can pass. Goods which are not both existing and identified are "future" goods. A purported present sale of future goods or of any interest therein operates as a contract to sell.

(c) There may be a sale of a part interest in existing identified goods.

(d) An undivided share in an identified bulk of fungible goods is sufficiently identified to be sold although the quantity of the bulk is not determined. Any agreed proportion of such a bulk or any quantity thereof agreed upon by number, weight or other measure may to the extent of the seller's interest in the bulk be sold to the buyer who then becomes an owner in common.

(e) "Lot" means a parcel or a single article which is the subject matter of a separate sale or delivery, whether or not it is sufficient to perform the contract.

(f) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of sale and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article (as a machine) or a set of articles (as a suite of furniture or an assortment of sizes) or a quantity (as a bale, gross, or carload) or any other unit treated in use or in the relevant market as a single whole.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.106. DEFINITIONS: "CONTRACT"; "AGREEMENT"; "CONTRACT

FOR SALE"; "SALE"; "PRESENT SALE"; "CONFORMING" TO CONTRACT; "TERMINATION"; "CANCELLATION". (a) In this chapter unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (Section 2.401). A "present sale" means a sale which is accomplished by the making of the contract.

(b) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(c) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(d) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the cancelling party also retains any remedy for breach of the whole contract or any unperformed balance.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.107. GOODS TO BE SEVERED FROM REALTY: RECORDING. (a) A contract for the sale of minerals or the like (including oil and gas) or a structure or its materials to be removed from realty is a contract for the sale of goods within this chapter if they are to be severed by the seller but until severance a purported present sale thereof which is not effective as a transfer of an interest in land is effective only as a contract to sell.

(b) A contract for the sale apart from the land of growing crops or other things attached to realty and capable of severance without material harm thereto but not described in Subsection (a) or of timber to be cut is a contract for the sale of goods within this chapter whether the subject matter is to be severed by the buyer or by the seller even though it forms part of the realty at the time of contracting, and the parties can by identification effect a present sale before severance.

(c) The provisions of this section are subject to any third party rights provided by the law relating to realty records, and the contract for sale may be executed and recorded as a document transferring an interest in land and shall then constitute notice to third parties of the buyer's rights under the contract for sale.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1973, 63rd Leg., p. 998, ch. 400, Sec. 3, eff. Jan. 1, 1974.

SUBCHAPTER B. FORM, FORMATION AND READJUSTMENT OF CONTRACT

Sec. 2.201. FORMAL REQUIREMENTS; STATUTE OF FRAUDS. (a) Except as otherwise provided in this section a contract for the sale of goods for the price of $500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(b) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of Subsection (a) against such party unless written notice of objection to its contents is given within ten days after it is received.

(c) A contract which does not satisfy the requirements of Subsection (a) but which is valid in other respects is enforceable

(1) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(2) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(3) with respect to goods for which payment has been made and accepted or which have been received and accepted (Section 2.606).

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.202. FINAL WRITTEN EXPRESSION: PAROL OR EXTRINSIC EVIDENCE. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(1) by course of performance, course of dealing, or usage of trade (Section 1.303); and

(2) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 2003, 78th Leg., ch. 542, Sec. 3, eff. Sept. 1, 2003.

Sec. 2.203. SEALS INOPERATIVE. The affixing of a seal to a writing evidencing a contract for sale or an offer to buy or sell goods does not constitute the writing a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.204. FORMATION IN GENERAL. (a) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(b) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

(c) Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to

make a contract and there is a reasonably certain basis for giving an appropriate remedy.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.205. FIRM OFFERS. An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.206. OFFER AND ACCEPTANCE IN FORMATION OF CONTRACT. (a) Unless otherwise unambiguously indicated by the language or circumstances

(1) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances;

(2) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or non-conforming goods, but such a shipment of non-conforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

(b) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.207. ADDITIONAL TERMS IN ACCEPTANCE OR CONFIRMATION. (a) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an

acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(b) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(1) the offer expressly limits acceptance to the terms of the offer;

(2) they materially alter it; or

(3) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(c) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this title.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.209. MODIFICATION, RESCISSION AND WAIVER. (a) An agreement modifying a contract within this chapter needs no consideration to be binding.

(b) A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(c) The requirements of the statute of frauds section of this chapter (Section 2.201) must be satisfied if the contract as modified is within its provisions.

(d) Although an attempt at modification or rescission does not satisfy the requirements of Subsection (b) or (c) it can operate as a waiver.

(e) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will

be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.210. DELEGATION OF PERFORMANCE; ASSIGNMENT OF RIGHTS. (a) A party may perform his duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having his original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(b) Unless otherwise agreed all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on him by his contract, or impair materially his chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of his entire obligation can be assigned despite agreement otherwise.

(c) The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of Subsection (b) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but (i) the seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer, and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

(d) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

(e) An assignment of "the contract" or of "all my rights under

the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by him to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

(f) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (Section 2.609).

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.15, eff. July 1, 2001.

SUBCHAPTER C. GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

Sec. 2.301. GENERAL OBLIGATIONS OF PARTIES. The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.302. UNCONSCIONABLE CONTRACT OR CLAUSE. (a) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(b) When it is claimed or appears to the court that the contract or any clause thereof may be unconscionable the parties shall be afforded a reasonable opportunity to present evidence as to its commercial setting, purpose and effect to aid the court in making the determination.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.303. ALLOCATION OR DIVISION OF RISKS. Where this chapter allocates a risk or a burden as between the parties "unless otherwise agreed", the agreement may not only shift the allocation but may also divide the risk or burden.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.304. PRICE PAYABLE IN MONEY, GOODS, REALTY, OR OTHERWISE. (a) The price can be made payable in money or otherwise. If it is payable in whole or in part in goods each party is a seller of the goods which he is to transfer.

(b) Even though all or part of the price is payable in an interest in realty the transfer of the goods and the seller's obligations with reference to them are subject to this chapter, but not the transfer of the interest in realty or the transferor's obligations in connection therewith.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.305. OPEN PRICE TERM. (a) The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if

(1) nothing is said as to price; or

(2) the price is left to be agreed by the parties and they fail to agree; or

(3) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

(b) A price to be fixed by the seller or by the buyer means a price for him to fix in good faith.

(c) When a price left to be fixed otherwise than by agreement of the parties fails to be fixed through fault of one party the other may at his option treat the contract as cancelled or himself fix a reasonable price.

(d) Where, however, the parties intend not to be bound unless the price be fixed or agreed and it is not fixed or agreed there is no contract. In such a case the buyer must return any goods already received or if unable so to do must pay their reasonable value at the

time of delivery and the seller must return any portion of the price paid on account.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.306. OUTPUT, REQUIREMENTS AND EXCLUSIVE DEALINGS. (a) A term which measures the quantity by the output of the seller or the requirements of the buyer means such actual output or requirements as may occur in good faith, except that no quantity unreasonably disproportionate to any stated estimate or in the absence of a stated estimate to any normal or otherwise comparable prior output or requirements may be tendered or demanded.

(b) A lawful agreement by either the seller or the buyer for exclusive dealing in the kind of goods concerned imposes unless otherwise agreed an obligation by the seller to use best efforts to supply the goods and by the buyer to use best efforts to promote their sale.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.307. DELIVERY IN SINGLE LOT OR SEVERAL LOTS. Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.308. ABSENCE OF SPECIFIED PLACE FOR DELIVERY. Unless otherwise agreed

(1) the place for delivery of goods is the seller's place of business or if he has none his residence; but

(2) in a contract for sale of identified goods which to the knowledge of the parties at the time of contracting are in some other place, that place is the place for their delivery; and

(3) documents of title may be delivered through customary banking channels.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.309. ABSENCE OF SPECIFIC TIME PROVISIONS; NOTICE OF TERMINATION. (a) The time for shipment or delivery or any other action under a contract if not provided in this chapter or agreed upon shall be a reasonable time.

(b) Where the contract provides for successive performances but is indefinite in duration it is valid for a reasonable time but unless otherwise agreed may be terminated at any time by either party.

(c) Termination of a contract by one party except on the happening of an agreed event requires that reasonable notification be received by the other party and an agreement dispensing with notification is invalid if its operation would be unconscionable.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.310. OPEN TIME FOR PAYMENT OR RUNNING OF CREDIT; AUTHORITY TO SHIP UNDER RESERVATION. Unless otherwise agreed

(1) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery; and

(2) if the seller is authorized to send the goods he may ship them under reservation, and may tender the documents of title, but the buyer may inspect the goods after their arrival before payment is due unless such inspection is inconsistent with the terms of the contract (Section 2.513); and

(3) if delivery is authorized and made by way of documents of title otherwise than by Subdivision (2) then payment is due regardless of where the goods are to be received:

(A) at the time and place at which the buyer is to receive delivery of the tangible documents; or

(B) at the time the buyer is to receive delivery of the electronic documents and at the seller's place of business or if none, the seller's residence; and

(4) where the seller is required or authorized to ship the goods on credit the credit period runs from the time of shipment but post-dating the invoice or delaying its dispatch will correspondingly

delay the starting of the credit period.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 5, eff. September 1, 2005.

Sec. 2.311. OPTIONS AND COOPERATION RESPECTING PERFORMANCE. (a) An agreement for sale which is otherwise sufficiently definite (Subsection (c) of Section 2.204) to be a contract is not made invalid by the fact that it leaves particulars of performance to be specified by one of the parties. Any such specification must be made in good faith and within limits set by commercial reasonableness.

(b) Unless otherwise agreed specifications relating to assortment of the goods are at the buyer's option and except as otherwise provided in Subsections (a)(3) and (c) of Section 2.319 specifications or arrangements relating to shipment are at the seller's option.

(c) Where such specification would materially affect the other party's performance but is not seasonably made or where one party's cooperation is necessary to the agreed performance of the other but is not seasonably forthcoming, the other party in addition to all other remedies

(1) is excused for any resulting delay in his own performance; and

(2) may also either proceed to perform in any reasonable manner or after the time for a material part of his own performance treat the failure to specify or to cooperate as a breach by failure to deliver or accept the goods.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.312. WARRANTY OF TITLE AND AGAINST INFRINGEMENT; BUYER'S OBLIGATION AGAINST INFRINGEMENT. (a) Subject to Subsection (b) there is in a contract for sale a warranty by the seller that

(1) the title conveyed shall be good, and its transfer rightful; and

(2) the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time

of contracting has no knowledge.

(b) A warranty under Subsection (a) will be excluded or modified only by specific language or by circumstances which give the buyer reason to know that the person selling does not claim title in himself or that he is purporting to sell only such right or title as he or a third person may have.

(c) Unless otherwise agreed a seller who is a merchant regularly dealing in goods of the kind warrants that the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like but a buyer who furnishes specifications to the seller must hold the seller harmless against any such claim which arises out of compliance with the specifications.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.313. EXPRESS WARRANTIES BY AFFIRMATION, PROMISE, DESCRIPTION, SAMPLE. (a) Express warranties by the seller are created as follows:

(1) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(2) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(3) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(b) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.314. IMPLIED WARRANTY: MERCHANTABILITY; USAGE OF TRADE. (a) Unless excluded or modified (Section 2.316), a warranty

that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. Under this section the serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.

(b) Goods to be merchantable must be at least such as

(1) pass without objection in the trade under the contract description; and

(2) in the case of fungible goods, are of fair average quality within the description; and

(3) are fit for the ordinary purposes for which such goods are used; and

(4) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and

(5) are adequately contained, packaged, and labeled as the agreement may require; and

(6) conform to the promises or affirmations of fact made on the container or label if any.

(c) Unless excluded or modified (Section 2.316) other implied warranties may arise from course of dealing or usage of trade.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.315. IMPLIED WARRANTY: FITNESS FOR PARTICULAR PURPOSE. Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.316. EXCLUSION OR MODIFICATION OF WARRANTIES. (a) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but subject to the provisions of this chapter on parol or extrinsic evidence (Section 2.202) negation or limitation is inoperative to the

extent that such construction is unreasonable.

(b) Subject to Subsection (c), to exclude or modify the implied warranty of merchantability or any part of it the language must mention merchantability and in case of a writing must be conspicuous, and to exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous. Language to exclude all implied warranties of fitness is sufficient if it states, for example, that "There are no warranties which extend beyond the description on the face hereof."

(c) Notwithstanding Subsection (b)

(1) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty; and

(2) when the buyer before entering into the contract has examined the goods or the sample or model as fully as he desired or has refused to examine the goods there is no implied warranty with regard to defects which an examination ought in the circumstances to have revealed to him; and

(3) an implied warranty can also be excluded or modified by course of dealing or course of performance or usage of trade.

(d) Remedies for breach of warranty can be limited in accordance with the provisions of this chapter on liquidation or limitation of damages and on contractual modification of remedy (Sections 2.718 and 2.719).

(e) The implied warranties of merchantability and fitness shall not be applicable to the furnishing of human blood, blood plasma, or other human tissue or organs from a blood bank or reservoir of such other tissues or organs. Such blood, blood plasma or tissue or organs shall not for the purpose of this Title be considered commodities subject to sale or barter, but shall be considered as medical services.

(f) The implied warranties of merchantability and fitness do not apply to the sale or barter of livestock or its unborn young.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1979, 66th Leg., p. 190, ch. 99, Sec. 1, eff. May 2, 1979.

Sec. 2.317. CUMULATION AND CONFLICT OF WARRANTIES EXPRESS OR IMPLIED. Warranties whether express or implied shall be construed as consistent with each other and as cumulative, but if such construction is unreasonable the intention of the parties shall determine which warranty is dominant. In ascertaining that intention the following rules apply:

(1) Exact or technical specifications displace an inconsistent sample or model or general language of description.

(2) A sample from an existing bulk displaces inconsistent general language of description.

(3) Express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.318. CHAPTER NEUTRAL ON QUESTION OF THIRD PARTY BENEFICIARIES OF WARRANTIES OF QUALITY AND ON NEED FOR PRIVITY OF CONTRACT. This chapter does not provide whether anyone other than a buyer may take advantage of an express or implied warranty of quality made to the buyer or whether the buyer or anyone entitled to take advantage of a warranty made to the buyer may sue a third party other than the immediate seller for deficiencies in the quality of the goods. These matters are left to the courts for their determination.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.319. F.O.B. AND F.A.S. TERMS. (a) Unless otherwise agreed the term F.O.B. (which means "free on board") at a named place, even though used only in connection with the stated price, is a delivery term under which

(1) when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this chapter (Section 2.504) and bear the expense and risk of putting them into the possession of the carrier; or

(2) when the term is F.O.B. the place of destination, the seller must at his own expense and risk transport the goods to that place and there tender delivery of them in the manner provided in this chapter (Section 2.503);

(3) when under either Subdivision (1) or (2) the term is also F.O.B. vessel, car or other vehicle, the seller must in addition at his own expense and risk load the goods on board. If the term is F.O.B. vessel the buyer must name the vessel and in an appropriate case the seller must comply with the provisions of this chapter on the form of bill of lading (Section 2.323).

(b) Unless otherwise agreed the term F.A.S. vessel (which means "free alongside") at a named port, even though used only in connection with the stated price, is a delivery term under which the seller must

(1) at his own expense and risk deliver the goods alongside the vessel in the manner usual in that port or on a dock designated and provided by the buyer; and

(2) obtain and tender a receipt for the goods in exchange for which the carrier is under a duty to issue a bill of lading.

(c) Unless otherwise agreed in any case falling within Subsection (a)(1) or (3) or Subsection (b) the buyer must seasonably give any needed instructions for making delivery, including when the term is F.A.S. or F.O.B. the loading berth of the vessel and in an appropriate case its name and sailing date. The seller may treat the failure of needed instructions as a failure of cooperation under this chapter (Section 2.311). He may also at his option move the goods in any reasonable manner preparatory to delivery or shipment.

(d) Under the term F.O.B. vessel or F.A.S. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.320. C.I.F. AND C. & F. TERMS. (a) The term C.I.F. means that the price includes in a lump sum the cost of the goods and the insurance and freight to the named destination. The term C. & F. or C.F. means that the price so includes cost and freight to the named destination.

(b) Unless otherwise agreed and even though used only in connection with the stated price and destination, the term C.I.F. destination or its equivalent requires the seller at his own expense and risk to

(1) put the goods into the possession of a carrier at the port for shipment and obtain a negotiable bill or bills of lading covering the entire transportation to the named destination; and

(2) load the goods and obtain a receipt from the carrier (which may be contained in the bill of lading) showing that the freight has been paid or provided for; and

(3) obtain a policy or certificate of insurance, including any war risk insurance, of a kind and on terms then current at the port of shipment in the usual amount, in the currency of the contract, shown to cover the same goods covered by the bill of lading and providing for payment of loss to the order of the buyer or for the account of whom it may concern; but the seller may add to the price the amount of the premium for any such war risk insurance; and

(4) prepare an invoice of the goods and procure any other documents required to effect shipment or to comply with the contract; and

(5) forward and tender with commercial promptness all the documents in due form and with any indorsement necessary to perfect the buyer's rights.

(c) Unless otherwise agreed the term C. & F. or its equivalent has the same effect and imposes upon the seller the same obligations and risks as a C.I.F. term except the obligation as to insurance.

(d) Under the term C.I.F. or C. & F. unless otherwise agreed the buyer must make payment against tender of the required documents and the seller may not tender nor the buyer demand delivery of the goods in substitution for the documents.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.321. C.I.F. OR C. & F.: "NET LANDED WEIGHTS"; "PAYMENT ON ARRIVAL"; WARRANTY OF CONDITION ON ARRIVAL. Under a contract containing a term C.I.F. or C. & F.

(a) Where the price is based on or is to be adjusted according to "net landed weights", "delivered weights", "out turn" quantity or quality or the like, unless otherwise agreed the seller must reasonably estimate the price. The payment due on tender of the documents called for by the contract is the amount so estimated, but after final adjustment of the price a settlement must be made with commercial promptness.

(b) An agreement described in Subsection (a) or any warranty of quality or condition of the goods on arrival places upon the seller the risk of ordinary deterioration, shrinkage and the like in transportation but has no effect on the place or time of identification to the contract for sale or delivery or on the passing of the risk of loss.

(c) Unless otherwise agreed where the contract provides for payment on or after arrival of the goods the seller must before payment allow such preliminary inspection as is feasible; but if the goods are lost delivery of the documents and payment are due when the goods should have arrived.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.322. DELIVERY "EX-SHIP". (a) Unless otherwise agreed a term for delivery of goods "ex-ship" (which means from the carrying vessel) or in equivalent language is not restricted to a particular ship and requires delivery from a ship which has reached a place at the named port of destination where goods of the kind are usually discharged.

(b) Under such a term unless otherwise agreed

(1) the seller must discharge all liens arising out of the carriage and furnish the buyer with a direction which puts the carrier under a duty to deliver the goods; and

(2) the risk of loss does not pass to the buyer until the goods leave the ship's tackle or are otherwise properly unloaded.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.323. FORM OF BILL OF LADING REQUIRED IN OVERSEAS SHIPMENT; "OVERSEAS". (a) Where the contract contemplates overseas shipment and contains a term C.I.F. or C. & F. or F.O.B. vessel, the seller unless otherwise agreed must obtain a negotiable bill of lading stating that the goods have been loaded on board or, in the case of a term C.I.F. or C. & F., received for shipment.

(b) Where in a case within Subsection (a) a bill of lading has been issued in a set of parts, unless otherwise agreed if the documents are not to be sent from abroad the buyer may demand tender of the full set; otherwise only one part of the bill of lading need

be tendered. Even if the agreement expressly requires a full set

(1) due tender of a single part is acceptable within the provisions of this chapter on cure of improper delivery (Subsection (a) of Section 2.508); and

(2) even though the full set is demanded, if the documents are sent from abroad the person tendering an incomplete set may nevertheless require payment upon furnishing an indemnity which the buyer in good faith deems adequate.

(c) A shipment by water or by air or a contract contemplating such shipment is "overseas" insofar as by usage of trade or agreement it is subject to the commercial, financing or shipping practices characteristic of international deep water commerce.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.324. "NO ARRIVAL, NO SALE" TERM. Under a term "no arrival, no sale" or terms of like meaning, unless otherwise agreed,

(1) the seller must properly ship conforming goods and if they arrive by any means he must tender them on arrival but he assumes no obligation that the goods will arrive unless he has caused the non-arrival; and

(2) where without fault of the seller the goods are in part lost or have so deteriorated as no longer to conform to the contract or arrive after the contract time, the buyer may proceed as if there had been casualty to identified goods (Section 2.613).

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.325. "LETTER OF CREDIT" TERM; "CONFIRMED CREDIT". (a) Failure of the buyer seasonably to furnish an agreed letter of credit is a breach of the contract for sale.

(b) The delivery to seller of a proper letter of credit suspends the buyer's obligation to pay. If the letter of credit is dishonored, the seller may on seasonable notification to the buyer require payment directly from him.

(c) Unless otherwise agreed the term "letter of credit" or "banker's credit" in a contract for sale means an irrevocable credit issued by a financing agency of good repute and, where the shipment is overseas, of good international repute. The term "confirmed

credit" means that the credit must also carry the direct obligation of such an agency which does business in the seller's financial market.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.326. SALE ON APPROVAL AND SALE OR RETURN; RIGHTS OF CREDITORS. (a) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is

(1) a "sale on approval" if the goods are delivered primarily for use, and

(2) a "sale or return" if the goods are delivered primarily for resale.

(b) Goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

(c) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this chapter (Section 2.201) and as contradicting the sale aspect of the contract within the provisions of this chapter on parol or extrinsic evidence (Section 2.202).

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1977, 65th Leg., p. 1530, ch. 623, Sec. 4, eff. Aug. 29, 1977; Acts 1999, 76th Leg., ch. 414, Sec. 2.16, eff. July 1, 2001.

Sec. 2.327. SPECIAL INCIDENTS OF SALE ON APPROVAL AND SALE OR RETURN. (a) Under a sale on approval unless otherwise agreed

(1) although the goods are identified to the contract the risk of loss and the title do not pass to the buyer until acceptance; and

(2) use of the goods consistent with the purpose of trial is not acceptance but failure seasonably to notify the seller of election to return the goods is acceptance, and if the goods conform to the contract acceptance of any part is acceptance of the whole; and

(3) after due notification of election to return, the

return is at the seller's risk and expense but a merchant buyer must follow any reasonable instructions.

(b) Under a sale or return unless otherwise agreed

(1) the option to return extends to the whole or any commercial unit of the goods while in substantially their original condition, but must be exercised seasonably; and

(2) the return is at the buyer's risk and expense.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.328. SALE BY AUCTION. (a) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

(b) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or in other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(c) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(d) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection shall not apply to any bid at a forced sale.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

SUBCHAPTER D. TITLE, CREDITORS AND GOOD FAITH PURCHASERS

Sec. 2.401. PASSING OF TITLE; RESERVATION FOR SECURITY; LIMITED APPLICATION OF THIS SECTION. Each provision of this chapter with regard to the rights, obligations and remedies of the seller,

the buyer, purchasers or other third parties applies irrespective of title to the goods except where the provision refers to such title. Insofar as situations are not covered by the other provisions of this chapter and matters concerning title become material the following rules apply:

(a) Title to goods cannot pass under a contract for sale prior to their identification to the contract (Section 2.501), and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this title. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of the chapter on Secured Transactions (Chapter 9), title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

(b) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading

(1) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but

(2) if the contract requires delivery at destination, title passes on tender there.

(c) Unless otherwise explicitly agreed where delivery is to be made without moving the goods,

(1) if the seller is to deliver a tangible document of title, title passes at the time when and the place where he delivers such documents and if the seller is to deliver an electronic document of title, title passes when the seller delivers the document; or

(2) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting.

(d) A rejection or other refusal by the buyer to receive or retain the goods, whether or not justified, or a justified revocation of acceptance revests title to the goods in the seller. Such

revesting occurs by operation of law and is not a "sale".

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.
Amended by:
Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 6, eff. September 1, 2005.

Sec. 2.402. RIGHTS OF SELLER'S CREDITORS AGAINST SOLD GOODS. (a) Except as provided in Subsections (b) and (c), rights of unsecured creditors of the seller with respect to goods which have been identified to a contract for sale are subject to the buyer's rights to recover the goods under this chapter (Sections 2.502 and 2.716).

(b) A creditor of the seller may treat a sale or an identification of goods to a contract for sale as void if as against him a retention of possession by the seller is fraudulent under any rule of law of the state where the goods are situated, except that retention of possession in good faith and current course of trade by a merchant-seller for a commercially reasonable time after a sale or identification is not fraudulent.

(c) Nothing in this chapter shall be deemed to impair the rights of creditors of the seller

(1) under the provisions of the chapter on Secured Transactions (Chapter 9); or

(2) where identification to the contract or delivery is made not in current course of trade but in satisfaction of or as security for a pre-existing claim for money, security or the like and is made under circumstances which under any rule of law of the state where the goods are situated would apart from this chapter constitute the transaction a fraudulent transfer or voidable preference.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.403. POWER TO TRANSFER; GOOD FAITH PURCHASE OF GOODS; "ENTRUSTING". (a) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been

delivered under a transaction of purchase the purchaser has such power even though

(1) the transferor was deceived as to the identity of the purchaser, or

(2) the delivery was in exchange for a check which is later dishonored, or

(3) it was agreed that the transaction was to be a "cash sale", or

(4) the delivery was procured through fraud punishable as larcenous under the criminal law.

(b) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(c) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(d) The rights of other purchasers of goods and of lien creditors are governed by the chapters on Secured Transactions (Chapter 9) and Documents of Title (Chapter 7).

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1993, 73rd Leg., ch. 570, Sec. 3, eff. Sept. 1, 1993.

SUBCHAPTER E. PERFORMANCE

Sec. 2.501. INSURABLE INTEREST IN GOODS; MANNER OF IDENTIFICATION OF GOODS. (a) The buyer obtains a special property and an insurable interest in goods by identification of existing goods as goods to which the contract refers even though the goods so identified are non-conforming and he has an option to return or reject them. Such identification can be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement identification occurs

(1) when the contract is made if it is for the sale of goods already existing and identified;

(2) if the contract is for the sale of future goods other than those described in Subdivision (3), when goods are shipped, marked or otherwise designated by the seller as goods to which the

contract refers;

(3) when the crops are planted or otherwise become growing crops or the young are conceived if the contract is for the sale of unborn young to be born within twelve months after contracting or for the sale of crops to be harvested within twelve months or the next normal harvest season after contracting whichever is longer.

(b) The seller retains an insurable interest in goods so long as title to or any security interest in the goods remains in him and where the identification is by the seller alone he may until default or insolvency or notification to the buyer that the identification is final substitute other goods for those identified.

(c) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.502. BUYER'S RIGHT TO GOODS ON SELLER'S REPUDIATION, FAILURE TO DELIVER, OR INSOLVENCY. (a) Subject to Subsections (b) and (c) and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which he has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if:

(1) in the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract; or

(2) in all cases, the seller becomes insolvent within ten days after receipt of the first installment on their price.

(b) The buyer's right to recover the goods under Subsection (a)(1) vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

(c) If the identification creating his special property has been made by the buyer he acquires the right to recover the goods only if they conform to the contract for sale.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.17, eff. July 1, 2001.

Sec. 2.503. MANNER OF SELLER'S TENDER OF DELIVERY. (a) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this chapter, and in particular

(1) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession; but

(2) unless otherwise agreed the buyer must furnish facilities reasonably suited to the receipt of the goods.

(b) Where the case is within the next section respecting shipment tender requires that the seller comply with its provisions.

(c) Where the seller is required to deliver at a particular destination tender requires that he comply with Subsection (a) and also in any appropriate case tender documents as described in Subsections (d) and (e) of this section.

(d) Where goods are in the possession of a bailee and are to be delivered without being moved

(1) tender requires that the seller either tender a negotiable document of title covering such goods or procure acknowledgment by the bailee of the buyer's right to possession of the goods; but

(2) tender to the buyer of a non-negotiable document of title or of a written direction to the bailee to deliver is sufficient tender unless the buyer seasonably objects, and receipt by the bailee of notification of the buyer's rights fixes those rights as against the bailee and all third persons; but risk of loss of the goods and of any failure by the bailee to honor the non-negotiable document of title or to obey the direction remains on the seller until the buyer has had a reasonable time to present the document or direction, and a refusal by the bailee to honor the document or to obey the direction defeats the tender.

(e) Where the contract requires the seller to deliver documents

(1) he must tender all such documents in correct form, except as provided in this chapter with respect to bills of lading in a set (Subsection (b) of Section 2.323); and

(2) tender through customary banking channels is sufficient and dishonor of a draft accompanying or associated with the documents constitutes non-acceptance or rejection.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1983, 68th Leg., p. 1530, ch. 290, Sec. 1, eff. Aug. 29, 1983.
Amended by:
Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 7, eff. September 1, 2005.

Sec. 2.504. SHIPMENT BY SELLER. Where the seller is required or authorized to send the goods to the buyer and the contract does not require him to deliver them at a particular destination, then unless otherwise agreed he must

(1) put the goods in the possession of such a carrier and make such a contract for their transportation as may be reasonable having regard to the nature of the goods and other circumstances of the case; and

(2) obtain and promptly deliver or tender in due form any document necessary to enable the buyer to obtain possession of the goods or otherwise required by the agreement or by usage of trade; and

(3) promptly notify the buyer of the shipment.

Failure to notify the buyer under Subdivision (3) or to make a proper contract under Subdivision (1) is a ground for rejection only if material delay or loss ensues.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.505. SELLER'S SHIPMENT UNDER RESERVATION. (a) Where the seller has identified goods to the contract by or before shipment:

(1) his procurement of a negotiable bill of lading to his own order or otherwise reserves in him a security interest in the goods. His procurement of the bill to the order of a financing agency or of the buyer indicates in addition only the seller's expectation of transferring that interest to the person named.

(2) a non-negotiable bill of lading to himself or his nominee reserves possession of the goods as security but except in a case of conditional delivery (Subsection (b) of Section 2.507) a non-negotiable bill of lading naming the buyer as consignee reserves no

security interest even though the seller retains possession or control of the bill of lading.

(b) When shipment by the seller with reservation of a security interest is in violation of the contract for sale it constitutes an improper contract for transportation within the preceding section but impairs neither the rights given to the buyer by shipment and identification of the goods to the contract nor the seller's powers as a holder of a negotiable document of title.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 8, eff. September 1, 2005.

Sec. 2.506. RIGHTS OF FINANCING AGENCY. (a) A financing agency by paying or purchasing for value a draft which relates to a shipment of goods acquires to the extent of the payment or purchase and in addition to its own rights under the draft and any document of title securing it any rights of the shipper in the goods including the right to stop delivery and the shipper's right to have the draft honored by the buyer.

(b) The right to reimbursement of a financing agency which has in good faith honored or purchased the draft under commitment to or authority from the buyer is not impaired by subsequent discovery of defects with reference to any relevant document which was apparently regular.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 9, eff. September 1, 2005.

Sec. 2.507. EFFECT OF SELLER'S TENDER; DELIVERY ON CONDITION. (a) Tender of delivery is a condition to the buyer's duty to accept the goods and, unless otherwise agreed, to his duty to pay for them. Tender entitles the seller to acceptance of the goods and to payment according to the contract.

(b) Where payment is due and demanded on the delivery to the buyer of goods or documents of title, his right as against the seller

to retain or dispose of them is conditional upon his making the payment due.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.508. CURE BY SELLER OF IMPROPER TENDER OR DELIVERY; REPLACEMENT. (a) Where any tender or delivery by the seller is rejected because non-conforming and the time for performance has not yet expired, the seller may seasonably notify the buyer of his intention to cure and may then within the contract time make a conforming delivery.

(b) Where the buyer rejects a non-conforming tender which the seller had reasonable grounds to believe would be acceptable with or without money allowance the seller may if he seasonably notifies the buyer have a further reasonable time to substitute a conforming tender.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.509. RISK OF LOSS IN THE ABSENCE OF BREACH. (a) Where the contract requires or authorizes the seller to ship the goods by carrier

(1) if it does not require him to deliver them at a particular destination, the risk of loss passes to the buyer when the goods are duly delivered to the carrier even though the shipment is under reservation (Section 2.505); but

(2) if it does require him to deliver them at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the buyer when the goods are there duly so tendered as to enable the buyer to take delivery.

(b) Where the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the buyer

(1) on the buyer's receipt of possession or control of a negotiable document of title covering the goods; or

(2) on acknowledgment by the bailee of the buyer's right to possession of the goods; or

(3) after the buyer's receipt of possession or control of a non-negotiable document of title or other written direction to

deliver, as provided in Subsection (d)(2) of Section 2.503.

(c) In any case not within Subsection (a) or (b), the risk of loss passes to the buyer on his receipt of the goods if the seller is a merchant; otherwise the risk passes to the buyer on tender of delivery.

(d) The provisions of this section are subject to contrary agreement of the parties and to the provisions of this chapter on sale on approval (Section 2.327) and on effect of breach on risk of loss (Section 2.510).

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1983, 68th Leg., p. 1531, ch. 290, Sec. 2, eff. Aug. 29, 1983.
Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 10, eff. September 1, 2005.

Sec. 2.510. EFFECT OF BREACH ON RISK OF LOSS. (a) Where a tender or delivery of goods so fails to conform to the contract as to give a right of rejection the risk of their loss remains on the seller until cure or acceptance.

(b) Where the buyer rightfully revokes acceptance he may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as having rested on the seller from the beginning.

(c) Where the buyer as to conforming goods already identified to the contract for sale repudiates or is otherwise in breach before risk of their loss has passed to him, the seller may to the extent of any deficiency in his effective insurance coverage treat the risk of loss as resting on the buyer for a commercially reasonable time.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.511. TENDER OF PAYMENT BY BUYER; PAYMENT BY CHECK. (a) Unless otherwise agreed tender of payment is a condition to the seller's duty to tender and complete any delivery.

(b) Tender of payment is sufficient when made by any means or in any manner current in the ordinary course of business unless the seller demands payment in legal tender and gives any extension of time reasonably necessary to procure it.

(c) Subject to the provisions of this title on the effect of an instrument on an obligation (Section 3.802), payment by check is conditional and is defeated as between the parties by dishonor of the check on due presentment.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.512. PAYMENT BY BUYER BEFORE INSPECTION. (a) Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless

(1) the non-conformity appears without inspection; or

(2) despite tender of the required documents circumstances would justify injunction against honor under this title (Section 5.109(b)).

(b) Payment pursuant to Subsection (a) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1999, 76th Leg., ch. 4, Sec. 3, eff. Sept. 1, 1999.

Sec. 2.513. BUYER'S RIGHT TO INSPECTION OF GOODS. (a) Unless otherwise agreed and subject to Subsection (c), where goods are tendered or delivered or identified to the contract for sale, the buyer has a right before payment or acceptance to inspect them at any reasonable place and time and in any reasonable manner. When the seller is required or authorized to send the goods to the buyer, the inspection may be after their arrival.

(b) Expenses of inspection must be borne by the buyer but may be recovered from the seller if the goods do not conform and are rejected.

(c) Unless otherwise agreed and subject to the provisions of this chapter on C.I.F. contracts (Subsection (c) of Section 2.321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides

(1) for delivery "C.O.D." or on other like terms; or

(2) for payment against documents of title, except where such payment is due only after the goods are to become available for inspection.

(d) A place or method of inspection fixed by the parties is presumed to be exclusive but unless otherwise expressly agreed it does not postpone identification or shift the place for delivery or for passing the risk of loss. If compliance becomes impossible, inspection shall be as provided in this section unless the place or method fixed was clearly intended as an indispensable condition failure of which avoids the contract.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.514. WHEN DOCUMENTS DELIVERABLE ON ACCEPTANCE; WHEN ON PAYMENT. Unless otherwise agreed documents against which a draft is drawn are to be delivered to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.515. PRESERVING EVIDENCE OF GOODS IN DISPUTE. In furtherance of the adjustment of any claim or dispute

(1) either party on reasonable notification to the other and for the purpose of ascertaining the facts and preserving evidence has the right to inspect, test and sample the goods including such of them as may be in the possession or control of the other; and

(2) the parties may agree to a third party inspection or survey to determine the conformity or condition of the goods and may agree that the findings shall be binding upon them in any subsequent litigation or adjustment.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

SUBCHAPTER F. BREACH, REPUDIATION AND EXCUSE

Sec. 2.601. BUYER'S RIGHTS ON IMPROPER DELIVERY. Subject to the provisions of this chapter on breach in installment contracts (Section 2.612) and unless otherwise agreed under the sections on contractual limitations of remedy (Sections 2.718 and 2.719), if the goods or the tender of delivery fail in any respect to conform to the contract, the buyer may

(1) reject the whole; or

(2) accept the whole; or

(3) accept any commercial unit or units and reject the rest.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.602. MANNER AND EFFECT OF RIGHTFUL REJECTION. (a) Rejection of goods must be within a reasonable time after their delivery or tender. It is ineffective unless the buyer seasonably notifies the seller.

(b) Subject to the provisions of the two following sections on rejected goods (Sections 2.603 and 2.604),

(1) after rejection any exercise of ownership by the buyer with respect to any commercial unit is wrongful as against the seller; and

(2) if the buyer has before rejection taken physical possession of goods in which he does not have a security interest under the provisions of this chapter (Subsection (c) of Section 2.711), he is under a duty after rejection to hold them with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them; but

(3) the buyer has no further obligations with regard to goods rightfully rejected.

(c) The seller's rights with respect to goods wrongfully rejected are governed by the provisions of this chapter on Seller's remedies in general (Section 2.703).

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.603. MERCHANT BUYER'S DUTIES AS TO RIGHTFULLY REJECTED GOODS. (a) Subject to any security interest in the buyer (Subsection (c) of Section 2.711), when the seller has no agent or place of business at the market of rejection a merchant buyer is under a duty after rejection of goods in his possession or control to follow any reasonable instructions received from the seller with respect to the goods and in the absence of such instructions to make reasonable efforts to sell them for the seller's account if they are perishable or threaten to decline in value speedily. Instructions

are not reasonable if on demand indemnity for expenses is not forthcoming.

(b) When the buyer sells goods under Subsection (a), he is entitled to reimbursement from the seller or out of the proceeds for reasonable expenses of caring for and selling them, and if the expenses include no selling commission then to such commission as is usual in the trade or if there is none to a reasonable sum not exceeding ten per cent on the gross proceeds.

(c) In complying with this section the buyer is held only to good faith and good faith conduct hereunder is neither acceptance nor conversion nor the basis of an action for damages.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.604. BUYER'S OPTIONS AS TO SALVAGE OF RIGHTFULLY REJECTED GOODS. Subject to the provisions of the immediately preceding section on perishables if the seller gives no instructions within a reasonable time after notification of rejection the buyer may store the rejected goods for the seller's account or reship them to him or resell them for the seller's account with reimbursement as provided in the preceding section. Such action is not acceptance or conversion.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.605. WAIVER OF BUYER'S OBJECTIONS BY FAILURE TO PARTICULARIZE. (a) The buyer's failure to state in connection with rejection a particular defect which is ascertainable by reasonable inspection precludes him from relying on the unstated defect to justify rejection or to establish breach

(1) where the seller could have cured it if stated seasonably; or

(2) between merchants when the seller has after rejection made a request in writing for a full and final written statement of all defects on which the buyer proposes to rely.

(b) Payment against documents made without reservation of rights precludes recovery of the payment for defects apparent in the documents.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 11, eff. September 1, 2005.

Sec. 2.606. WHAT CONSTITUTES ACCEPTANCE OF GOODS. (a) Acceptance of goods occurs when the buyer

(1) after a reasonable opportunity to inspect the goods signifies to the seller that the goods are conforming or that he will take or retain them in spite of their non-conformity; or

(2) fails to make an effective rejection (Subsection (a) of Section 2.602), but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or

(3) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.

(b) Acceptance of a part of any commercial unit is acceptance of that entire unit.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.607. EFFECT OF ACCEPTANCE; NOTICE OF BREACH; BURDEN OF ESTABLISHING BREACH AFTER ACCEPTANCE; NOTICE OF CLAIM OR LITIGATION TO PERSON ANSWERABLE OVER. (a) The buyer must pay at the contract rate for any goods accepted.

(b) Acceptance of goods by the buyer precludes rejection of the goods accepted and if made with knowledge of a non-conformity cannot be revoked because of it unless the acceptance was on the reasonable assumption that the non-conformity would be seasonably cured but acceptance does not of itself impair any other remedy provided by this chapter for non-conformity.

(c) Where a tender has been accepted

(1) the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy; and

(2) if the claim is one for infringement or the like (Subsection (c) of Section 2.312) and the buyer is sued as a result of such a breach he must so notify the seller within a reasonable

time after he receives notice of the litigation or be barred from any remedy over for liability established by the litigation.

(d) The burden is on the buyer to establish any breach with respect to the goods accepted.

(e) Where the buyer is sued for breach of a warranty or other obligation for which his seller is answerable over

(1) he may give his seller written notice of the litigation. If the notice states that the seller may come in and defend and that if the seller does not do so he will be bound in any action against him by his buyer by any determination of fact common to the two litigations, then unless the seller after seasonable receipt of the notice does come in and defend he is so bound.

(2) if the claim is one for infringement or the like (Subsection (c) of Section 2.312) the original seller may demand in writing that his buyer turn over to him control of the litigation including settlement or else be barred from any remedy over and if he also agrees to bear all expense and to satisfy any adverse judgment, then unless the buyer after seasonable receipt of the demand does turn over control the buyer is so barred.

(f) The provisions of Subsections (c), (d) and (e) apply to any obligation of a buyer to hold the seller harmless against infringement or the like (Subsection (c) of Section 2.312).

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.608. REVOCATION OF ACCEPTANCE IN WHOLE OR IN PART. (a) The buyer may revoke his acceptance of a lot or commercial unit whose non-conformity substantially impairs its value to him if he has accepted it

(1) on the reasonable assumption that its non-conformity would be cured and it has not been seasonably cured; or

(2) without discovery of such non-conformity if his acceptance was reasonably induced either by the difficulty of discovery before acceptance or by the seller's assurances.

(b) Revocation of acceptance must occur within a reasonable time after the buyer discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by their own defects. It is not effective until the buyer notifies the seller of it.

(c) A buyer who so revokes has the same rights and duties with regard to the goods involved as if he had rejected them.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.609. RIGHT TO ADEQUATE ASSURANCE OF PERFORMANCE. (a) A contract for sale imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party the other may in writing demand adequate assurance of due performance and until he receives such assurance may if commercially reasonable suspend any performance for which he has not already received the agreed return.

(b) Between merchants the reasonableness of grounds for insecurity and the adequacy of any assurance offered shall be determined according to commercial standards.

(c) Acceptance of any improper delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

(d) After receipt of a justified demand failure to provide within a reasonable time not exceeding thirty days such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of the contract.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.610. ANTICIPATORY REPUDIATION. When either party repudiates the contract with respect to a performance not yet due the loss of which will substantially impair the value of the contract to the other, the aggrieved party may

(1) for a commercially reasonable time await performance by the repudiating party; or

(2) resort to any remedy for breach (Section 2.703 or Section 2.711), even though he has notified the repudiating party that he would await the latter's performance and has urged retraction; and

(3) in either case suspend his own performance or proceed in accordance with the provisions of this chapter on the seller's right to identify goods to the contract notwithstanding breach or to

salvage unfinished goods (Section 2.704).

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.611. RETRACTION OF ANTICIPATORY REPUDIATION. (a) Until the repudiating party's next performance is due he can retract his repudiation unless the aggrieved party has since the repudiation cancelled or materially changed his position or otherwise indicated that he considers the repudiation final.

(b) Retraction may be by any method which clearly indicates to the aggrieved party that the repudiating party intends to perform, but must include any assurance justifiably demanded under the provisions of this chapter (Section 2.609).

(c) Retraction reinstates the repudiating party's rights under the contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.612. "INSTALLMENT CONTRACT"; BREACH. (a) An "installment contract" is one which requires or authorizes the delivery of goods in separate lots to be separately accepted, even though the contract contains a clause "each delivery is a separate contract" or its equivalent.

(b) The buyer may reject any installment which is non-conforming if the non-conformity substantially impairs the value of that installment and cannot be cured or if the non-conformity is a defect in the required documents; but if the non-conformity does not fall within Subsection (c) and the seller gives adequate assurance of its cure the buyer must accept that installment.

(c) Whenever non-conformity or default with respect to one or more installments substantially impairs the value of the whole contract there is a breach of the whole. But the aggrieved party reinstates the contract if he accepts a non-conforming installment without seasonably notifying of cancellation or if he brings an action with respect only to past installments or demands performance as to future installments.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.613. CASUALTY TO IDENTIFIED GOODS. Where the contract requires for its performance goods identified when the contract is made, and the goods suffer casualty without fault of either party before the risk of loss passes to the buyer, or in a proper case under a "no arrival, no sale" term (Section 2.324) then

(1) if the loss is total the contract is avoided; and

(2) if the loss is partial or the goods have so deteriorated as no longer to conform to the contract the buyer may nevertheless demand inspection and at his option either treat the contract as avoided or accept the goods with due allowance from the contract price for the deterioration or the deficiency in quantity but without further right against the seller.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.614. SUBSTITUTED PERFORMANCE. (a) Where without fault of either party the agreed berthing, loading, or unloading facilities fail or an agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable but a commercially reasonable substitute is available, such substitute performance must be tendered and accepted.

(b) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation, the seller may withhold or stop delivery unless the buyer provides a means or manner of payment which is commercially a substantial equivalent. If delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the buyer's obligation unless the regulation is discriminatory, oppressive or predatory.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.615. EXCUSE BY FAILURE OF PRESUPPOSED CONDITIONS. Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(1) Delay in delivery or non-delivery in whole or in part by a seller who complies with Subdivisions (2) and (3) is not a breach of his duty under a contract for sale if performance as agreed

has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(2) Where the causes mentioned in Subdivision (1) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(3) The seller must notify the buyer seasonably that there will be delay or non-delivery and, when allocation is required under Subdivision (2), of the estimated quota thus made available for the buyer.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.616. PROCEDURE ON NOTICE CLAIMING EXCUSE. (a) Where the buyer receives notification of a material or indefinite delay or an allocation justified under the preceding section he may by written notification to the seller as to any delivery concerned, and where the prospective deficiency substantially impairs the value of the whole contract under the provisions of this chapter relating to breach of installment contracts (Section 2.612), then also as to the whole,

(1) terminate and thereby discharge any unexecuted portion of the contract; or

(2) modify the contract by agreeing to take his available quota in substitution.

(b) If after receipt of such notification from the seller the buyer fails so to modify the contract within a reasonable time not exceeding thirty days the contract lapses with respect to any deliveries affected.

(c) The provisions of this section may not be negated by agreement except insofar as the seller has assumed a greater obligation under the preceding section.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

SUBCHAPTER G. REMEDIES

Sec. 2.701. REMEDIES FOR BREACH OF COLLATERAL CONTRACTS NOT IMPAIRED. Remedies for breach of any obligation or promise collateral or ancillary to a contract for sale are not impaired by the provisions of this chapter.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.702. SELLER'S REMEDIES ON DISCOVERY OF BUYER'S INSOLVENCY. (a) Where the seller discovers the buyer to be insolvent he may refuse delivery except for cash including payment for all goods theretofore delivered under the contract, and stop delivery under this chapter (Section 2.705).

(b) Where the seller discovers that the buyer has received goods on credit while insolvent he may reclaim the goods upon demand made within ten days after the receipt, but if misrepresentation of solvency has been made to the particular seller in writing within three months before delivery the ten day limitation does not apply. Except as provided in this subsection the seller may not base a right to reclaim goods on the buyer's fraudulent or innocent misrepresentation of solvency or of intent to pay.

(c) The seller's right to reclaim under Subsection (b) is subject to the rights of a buyer in ordinary course or other good faith purchaser or lien creditor under this chapter (Section 2.403). Successful reclamation of goods excludes all other remedies with respect to them.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.703. SELLER'S REMEDIES IN GENERAL. Where the buyer wrongfully rejects or revokes acceptance of goods or fails to make a payment due on or before delivery or repudiates with respect to a part or the whole, then with respect to any goods directly affected and, if the breach is of the whole contract (Section 2.612), then also with respect to the whole undelivered balance, the aggrieved seller may

(1) withhold delivery of such goods;

(2) stop delivery by any bailee as hereafter provided (Section 2.705);

(3) proceed under the next section respecting goods still unidentified to the contract;

(4) resell and recover damages as hereafter provided (Section 2.706);

(5) recover damages for non-acceptance (Section 2.708) or in a proper case the price (Section 2.709);

(6) cancel.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.704. SELLER'S RIGHT TO IDENTIFY GOODS TO THE CONTRACT NOTWITHSTANDING BREACH OR TO SALVAGE UNFINISHED GOODS. (a) An aggrieved seller under the preceding section may

(1) identify to the contract conforming goods not already identified if at the time he learned of the breach they are in his possession or control;

(2) treat as the subject of resale goods which have demonstrably been intended for the particular contract even though those goods are unfinished.

(b) Where the goods are unfinished an aggrieved seller may in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.705. SELLER'S STOPPAGE OF DELIVERY IN TRANSIT OR OTHERWISE. (a) The seller may stop delivery of goods in the possession of a carrier or other bailee when he discovers the buyer to be insolvent (Section 2.702) and may stop delivery of carload, truckload, planeload or larger shipments of express or freight when the buyer repudiates or fails to make a payment due before delivery or if for any other reason the seller has a right to withhold or reclaim the goods.

(b) As against such buyer the seller may stop delivery until

(1) receipt of the goods by the buyer; or

(2) acknowledgment to the buyer by any bailee of the goods

except a carrier that the bailee holds the goods for the buyer; or

(3) such acknowledgment to the buyer by a carrier by reshipment or as a warehouse; or

(4) negotiation to the buyer of any negotiable document of title covering the goods.

(c)(1) To stop delivery the seller must so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(2) After such notification the bailee must hold and deliver the goods according to the directions of the seller but the seller is liable to the bailee for any ensuing charges or damages.

(3) If a negotiable document of title has been issued for goods the bailee is not obliged to obey a notification to stop until surrender of possession or control of the document.

(4) A carrier who has issued a non-negotiable bill of lading is not obliged to obey a notification to stop received from a person other than the consignor.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.
Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 12, eff. September 1, 2005.

Sec. 2.706. SELLER'S RESALE INCLUDING CONTRACT FOR RESALE. (a) Under the conditions stated in Section 2.703 on seller's remedies, the seller may resell the goods concerned or the undelivered balance thereof. Where the resale is made in good faith and in a commercially reasonable manner the seller may recover the difference between the resale price and the contract price together with any incidental damages allowed under the provisions of this chapter (Section 2.710), but less expenses saved in consequence of the buyer's breach.

(b) Except as otherwise provided in Subsection (c) or unless otherwise agreed resale may be at public or private sale including sale by way of one or more contracts to sell or of identification to an existing contract of the seller. Sale may be as a unit or in parcels and at any time and place and on any terms but every aspect of the sale including the method, manner, time, place and terms must be commercially reasonable. The resale must be reasonably identified as referring to the broken contract, but it is not necessary that the

goods be in existence or that any or all of them have been identified to the contract before the breach.

(c) Where the resale is at private sale the seller must give the buyer reasonable notification of his intention to resell.

(d) Where the resale is at public sale

(1) only identified goods can be sold except where there is a recognized market for a public sale of futures in goods of the kind; and

(2) it must be made at a usual place or market for public sale if one is reasonably available and except in the case of goods which are perishable or threaten to decline in value speedily the seller must give the buyer reasonable notice of the time and place of the resale; and

(3) if the goods are not to be within the view of those attending the sale the notification of sale must state the place where the goods are located and provide for their reasonable inspection by prospective bidders; and

(4) the seller may buy.

(e) A purchaser who buys in good faith at a resale takes the goods free of any rights of the original buyer even though the seller fails to comply with one or more of the requirements of this section.

(f) The seller is not accountable to the buyer for any profit made on any resale. A person in the position of a seller (Section 2.707) or a buyer who has rightfully rejected or justifiably revoked acceptance must account for any excess over the amount of his security interest, as hereinafter defined (Subsection (c) of Section 2.711).

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.707. "PERSON IN THE POSITION OF A SELLER". (a) A "person in the position of a seller" includes as against a principal an agent who has paid or become responsible for the price of goods on behalf of his principal or anyone who otherwise holds a security interest or other right in goods similar to that of a seller.

(b) A person in the position of a seller may as provided in this chapter withhold or stop delivery (Section 2.705) and resell (Section 2.706) and recover incidental damages (Section 2.710).

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.708. SELLER'S DAMAGES FOR NON-ACCEPTANCE OR REPUDIATION. (a) Subject to Subsection (b) and to the provisions of this chapter with respect to proof of market price (Section 2.723), the measure of damages for non-acceptance or repudiation by the buyer is the difference between the market price at the time and place for tender and the unpaid contract price together with any incidental damages provided in this chapter (Section 2.710), but less expenses saved in consequence of the buyer's breach.

(b) If the measure of damages provided in Subsection (a) is inadequate to put the seller in as good a position as performance would have done then the measure of damages is the profit (including reasonable overhead) which the seller would have made from full performance by the buyer, together with any incidental damages provided in this chapter (Section 2.710), due allowance for costs reasonably incurred and due credit for payments or proceeds of resale.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.709. ACTION FOR THE PRICE. (a) When the buyer fails to pay the price as it becomes due the seller may recover, together with any incidental damages under the next section, the price

(1) of goods accepted or of conforming goods lost or damaged within a commercially reasonable time after risk of their loss has passed to the buyer; and

(2) of goods identified to the contract if the seller is unable after reasonable effort to resell them at a reasonable price or the circumstances reasonably indicate that such effort will be unavailing.

(b) Where the seller sues for the price he must hold for the buyer any goods which have been identified to the contract and are still in his control except that if resale becomes possible he may resell them at any time prior to the collection of the judgment. The net proceeds of any such resale must be credited to the buyer and payment of the judgment entitles him to any goods not resold.

(c) After the buyer has wrongfully rejected or revoked acceptance of the goods or has failed to make a payment due or has

repudiated (Section 2.610), a seller who is held not entitled to the price under this section shall nevertheless be awarded damages for nonacceptance under the preceding section.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.710. SELLER'S INCIDENTAL DAMAGES. Incidental damages to an aggrieved seller include any commercially reasonable charges, expenses or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the buyer's breach, in connection with return or resale of the goods or otherwise resulting from the breach.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.711. BUYER'S REMEDIES IN GENERAL; BUYER'S SECURITY INTEREST IN REJECTED GOODS. (a) Where the seller fails to make delivery or repudiates or the buyer rightfully rejects or justifiably revokes acceptance then with respect to any goods involved, and with respect to the whole if the breach goes to the whole contract (Section 2.612), the buyer may cancel and whether or not he has done so may in addition to recovering so much of the price as has been paid

(1) "cover" and have damages under the next section as to all the goods affected whether or not they have been identified to the contract; or

(2) recover damages for non-delivery as provided in this chapter (Section 2.713).

(b) Where the seller fails to deliver or repudiates the buyer may also

(1) if the goods have been identified recover them as provided in this chapter (Section 2.502); or

(2) in a proper case obtain specific performance or replevy the goods as provided in this chapter (Section 2.716).

(c) On rightful rejection or justifiable revocation of acceptance a buyer has a security interest in goods in his possession or control for any payments made on their price and any expenses reasonably incurred in their inspection, receipt, transportation, care and custody and may hold such goods and resell them in like

manner as an aggrieved seller (Section 2.706).

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.712. "COVER"; BUYER'S PROCUREMENT OF SUBSTITUTE GOODS. (a) After a breach within the preceding section the buyer may "cover" by making in good faith and without unreasonable delay any reasonable purchase of or contract to purchase goods in substitution for those due from the seller.

(b) The buyer may recover from the seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages as hereinafter defined (Section 2.715), but less expenses saved in consequence of the seller's breach.

(c) Failure of the buyer to effect cover within this section does not bar him from any other remedy.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.713. BUYER'S DAMAGES FOR NON-DELIVERY OR REPUDIATION. (a) Subject to the provisions of this chapter with respect to proof of market price (Section 2.723), the measure of damages for non-delivery or repudiation by the seller is the difference between the market price at the time when the buyer learned of the breach and the contract price together with any incidental and consequential damages provided in this chapter (Section 2.715), but less expenses saved in consequence of the seller's breach.

(b) Market price is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.714. BUYER'S DAMAGES FOR BREACH IN REGARD TO ACCEPTED GOODS. (a) Where the buyer has accepted goods and given notification (Subsection (c) of Section 2.607) he may recover as damages for any non-conformity of tender the loss resulting in the ordinary course of events from the seller's breach as determined in

any manner which is reasonable.

(b) The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

(c) In a proper case any incidental and consequential damages under the next section may also be recovered.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.715. BUYER'S INCIDENTAL AND CONSEQUENTIAL DAMAGES. (a) Incidental damages resulting from the seller's breach include expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

(b) Consequential damages resulting from the seller's breach include

(1) any loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(2) injury to person or property proximately resulting from any breach of warranty.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.716. BUYER'S RIGHT TO SPECIFIC PERFORMANCE OR REPLEVIN. (a) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(b) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

(c) The buyer has a right of replevin for goods identified to the contract if after reasonable effort he is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under

reservation and satisfaction of the security interest in them has been made or tendered. In the case of goods bought for personal, family, or household purposes, the buyer's right of replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.18, eff. July 1, 2001.

Sec. 2.717. DEDUCTION OF DAMAGES FROM THE PRICE. The buyer on notifying the seller of his intention to do so may deduct all or any part of the damages resulting from any breach of the contract from any part of the price still due under the same contract.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.718. LIQUIDATION OR LIMITATION OF DAMAGES; DEPOSITS. (a) Damages for breach by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty.

(b) Where the seller justifiably withholds delivery of goods because of the buyer's breach, the buyer is entitled to restitution of any amount by which the sum of his payments exceeds

(1) the amount to which the seller is entitled by virtue of terms liquidating the seller's damages in accordance with Subsection (a), or

(2) in the absence of such terms, twenty percent of the value of the total performance for which the buyer is obligated under the contract or $500, whichever is smaller.

(c) The buyer's right to restitution under Subsection (b) is subject to offset to the extent that the seller establishes

(1) a right to recover damages under the provisions of this chapter other than Subsection (a), and

(2) the amount or value of any benefits received by the buyer directly or indirectly by reason of the contract.

(d) Where a seller has received payment in goods their reasonable value or the proceeds of their resale shall be treated as payments for the purposes of Subsection (b); but if the seller has notice of the buyer's breach before reselling goods received in part performance, his resale is subject to the conditions laid down in this chapter on resale by an aggrieved seller (Section 2.706).

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.719. CONTRACTUAL MODIFICATION OR LIMITATION OF REMEDY. (a) Subject to the provisions of Subsections (b) and (c) of this section and of the preceding section on liquidation and limitation of damages,

(1) the agreement may provide for remedies in addition to or in substitution for those provided in this chapter and may limit or alter the measure of damages recoverable under this chapter, as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair and replacement of non-conforming goods or parts; and

(2) resort to a remedy as provided is optional unless the remedy is expressly agreed to be exclusive, in which case it is the sole remedy.

(b) Where circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this title.

(c) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable but limitation of damages where the loss is commercial is not.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.720. EFFECT OF "CANCELLATION" OR "RESCISSION" ON CLAIMS FOR ANTECEDENT BREACH. Unless the contrary intention clearly appears, expressions of "cancellation" or "rescission" of the contract or the like shall not be construed as a renunciation or discharge of any claim in damages for an antecedent breach.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.721. REMEDIES FOR FRAUD. Remedies for material misrepresentation or fraud include all remedies available under this chapter for non-fraudulent breach. Neither rescission or a claim for rescission of the contract for sale nor rejection or return of the goods shall bar or be deemed inconsistent with a claim for damages or other remedy.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.722. WHO CAN SUE THIRD PARTIES FOR INJURY TO GOODS. Where a third party so deals with goods which have been identified to a contract for sale as to cause actionable injury to a party to that contract

(1) a right of action against the third party is in either party to the contract for sale who has title to or a security interest or a special property or an insurable interest in the goods; and if the goods have been destroyed or converted a right of action is also in the party who either bore the risk of loss under the contract for sale or has since the injury assumed that risk as against the other;

(2) if at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the contract for sale and there is no arrangement between them for disposition of the recovery, his suit or settlement is, subject to his own interest, as a fiduciary for the other party to the contract;

(3) either party may with the consent of the other sue for the benefit of whom it may concern.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.723. PROOF OF MARKET PRICE: TIME AND PLACE. (a) If an action based on anticipatory repudiation comes to trial before the time for performance with respect to some or all of the goods, any damages based on market price (Section 2.708 or Section 2.713) shall be determined according to the price of such goods prevailing at the time when the aggrieved party learned of the repudiation.

(b) If evidence of a price prevailing at the times or places described in this chapter is not readily available the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

(c) Evidence of a relevant price prevailing at a time or place other than the one described in this chapter offered by one party is not admissible unless and until he has given the other party such notice as the court finds sufficient to prevent unfair surprise.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.724. ADMISSIBILITY OF MARKET QUOTATIONS. Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 2.725. STATUTE OF LIMITATIONS IN CONTRACTS FOR SALE. (a) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued. By the original agreement the parties may reduce the period of limitation to not less than one year but may not extend it.

(b) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

(c) Where an action commenced within the time limited by Subsection (a) is so terminated as to leave available a remedy by another action for the same breach such other action may be commenced

after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(d) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action which have accrued before this title becomes effective.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

CHAPTER 2A. LEASES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2A.101. SHORT TITLE. This chapter shall be known and may be cited as the Uniform Commercial Code--Leases.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.102. SCOPE. This chapter applies to any transaction, regardless of form, that creates a lease of goods. This chapter does not apply to a transaction that creates an interest in or lease of real estate, except to the extent that provision is made for leases of fixtures by Section 2A.309.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.103. DEFINITIONS AND INDEX OF DEFINITIONS. (a) In this chapter unless the context otherwise requires:

(1) "Buyer in the ordinary course of business" means a person who in good faith and without knowledge that the sale to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in the ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(2) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(3) "Commercial unit" means a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(4) "Conforming" goods or performance under a lease contract means performance or goods that are in accordance with the obligations under the lease contract.

(5) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose, if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed $25,000.

(6) "Fault" means a wrongful act, omission, breach, or default.

(7) "Finance lease" means a lease with respect to which:

(A) the lessor does not select, manufacture, or supply the goods;

(B) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(C) one of the following occurs:

(i) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing the lease contract;

(ii) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(iii) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damages, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods;

or

(iv) if the lease is not a consumer lease, the lessor, before the lessee signs the lease contract, informs the lessee in writing (a) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goods from that person, (b) that the lessee is entitled under this chapter to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods, and (c) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(8) "Goods" means all things that are moveable at the time of identification to the lease contract, or are fixtures (Section 2A.309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(9) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains the clause "each delivery is a separate lease" or its equivalent.

(10) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(11) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided by this chapter. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(12) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this chapter and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(13) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(14) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(15) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him or her is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(16) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(17) "Lessor's residual interest" means the lessor's interest in the goods after the expiration, termination, or cancellation of the lease contract.

(18) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(19) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(20) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(21) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(22) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(23) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(24) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(25) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(26) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(b) Other definitions applying to this chapter and the sections in which they appear are:

"Accessions". Section 2A.310(a).

"Construction mortgage". Section 2A.309(a)(4).

"Encumbrance". Section 2A.309(a)(5).

"Fixtures". Section 2A.309(a)(1).

"Fixture filing". Section 2A.309(a)(2).

"Purchase money lease". Section 2A.309(a)(3).

(c) The following definitions in other chapters apply to this chapter:

"Account". Section 9.102(a)(2).

"Between merchants". Section 2.104(c).

"Buyer". Section 2.103(a)(1).

"Chattel paper". Section 9.102(a)(11).

"Consumer goods". Section 9.102(a)(23).

"Document". Section 9.102(a)(30).

"Entrusting". Section 2.403(c).

"General intangible". Section 9.102(a)(42).

"Instrument". Section 9.102(a)(47).

"Merchant". Section 2.104(a).

"Mortgage". Section 9.102(a)(55).

"Pursuant to commitment". Section 9.102(a)(69).

"Receipt". Section 2.103(a)(3).

"Sale". Section 2.106(a).

"Sale on approval". Section 2.326.

"Sale or return". Section 2.326.

"Seller". Section 2.103(a)(4).

(d) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.19, eff. July 1, 2001; Acts 2003, 78th Leg., ch. 542, Sec. 4, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 13, eff. September 1, 2005.

Sec. 2A.104. LEASES SUBJECT TO OTHER LAWS. (a) A lease, although subject to this chapter, is also subject to any applicable:

(1) certificate of title statute of this state, including Chapter 501, Transportation Code, Chapter 31, Parks and Wildlife Code, and Subchapter E, Chapter 1201, Occupations Code;

(2) certificate of title statute of another jurisdiction (Section 2A.105); or

(3) consumer law of this state, both decisional and statutory, including, to the extent that they apply to a lease transaction:

(A) Titles 6, 7, 8, 9, and 14;

(B) Subtitle A, Title 11;

(C) Chapters 17, 53, 54, 72, 92, 101, 103, 305, 323, 522, 523, 602, 603, 604, and 2001;

(D) Section 65.017, Civil Practice and Remedies Code;

(E) Chapter 1201, Occupations Code; and

(F) Chapter 25, Transportation Code.

(b) In case of conflict between this chapter, other than Sections 2A.105, 2A.304(c) and 2A.305(c), and any statute or law referred to in Subsection (a), the statute or law controls.

(c) Failure to comply with any applicable statute has only the effect specified therein.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 30.176, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.753, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.03, eff. April 1, 2009.

Sec. 2A.105. TERRITORIAL APPLICATION OF CHAPTER TO GOODS COVERED BY CERTIFICATE OF TITLE. Subject to the provisions of Sections 2A.304(c) and 2A.305(c), with respect to goods covered by a certificate of title issued under a statute of this state or of another jurisdiction, compliance and the effect of compliance or noncompliance with a certificate of title statute are governed by the law (including the conflict of laws rules) of the jurisdiction issuing the certificate until the earlier of:

(1) surrender of the certificate; or

(2) four months after the goods are removed from that jurisdiction and thereafter until a new certificate of title is issued by another jurisdiction.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.106. LIMITATION ON POWER OF PARTIES TO CONSUMER LEASE TO CHOOSE APPLICABLE LAW AND JUDICIAL FORUM. (a) If the law chosen by the parties to a consumer lease is that of a jurisdiction other than a jurisdiction in which the lessee resides at the time the lease agreement becomes enforceable or within 30 days thereafter or in which the goods are to be used, the choice is not enforceable.

(b) If the judicial forum chosen by the parties to a consumer lease is a forum located in a jurisdiction other than the jurisdiction in which the lessee in fact signed the lease agreement, resides at the commencement of the action, or resided at the time the lease contract became enforceable or in which the goods are in fact used by the lessee, the choice is not enforceable.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.107. WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER DEFAULT. A claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a written waiver or renunciation signed and delivered by the aggrieved party.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.108. UNCONSCIONABILITY. (a) If the court as a matter of law finds a lease contract or any clause of a lease contract to have been unconscionable at the time it was made, the court may refuse to enforce the lease contract, or it may enforce the remainder of the lease contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(b) With respect to a consumer lease, if the court as a matter of law finds that a lease contract or any clause of a lease contract has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a lease contract, the court may grant appropriate relief.

(c) Before making a finding of unconscionability under Subsection (a) or (b), the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose, and effect of the lease contract or clause thereof or of the conduct.

(d) In an action in which the lessee claims unconscionability with respect to a consumer lease:

(1) if the court finds unconscionability under Subsection (a) or (b), the court shall award reasonable attorney's fees to the lessee;

(2) if the court does not find unconscionability and the lessee claiming unconscionability has brought or maintained an action he or she knew to be groundless, the court shall award reasonable attorney's fees to the party against whom the claim is made; and

(3) in determining attorney's fees, the amount of the recovery on behalf of the claimant under Subsections (a) and (b) is not controlling.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.109. OPTION TO ACCELERATE AT WILL. (a) A term providing that one party or the party's successor in interest may accelerate payment or performance or require collateral or additional collateral "at will" or "when the party deems himself or herself insecure" or in words of similar import must be construed to mean that the party has power to do so only if the party in good faith believes that the prospect of payment or performance is impaired.

(b) With respect to a consumer lease, the burden of establishing good faith under Subsection (a) is on the party who exercises the power; otherwise the burden of establishing lack of good faith is on the party against whom the power has been exercised.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER B. FORMATION AND CONSTRUCTION OF LEASE CONTRACT

Sec. 2A.201. STATUTE OF FRAUDS. (a) A lease contract is not enforceable by way of action or defense unless:

(1) the total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than $1,000; or

(2) there is a writing, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(b) Any description of leased goods or of the lease term is sufficient and satisfies Subsection (a)(2), whether or not it is specific, if it reasonably identifies what is described.

(c) A writing is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under Subsection (a)(2) beyond the lease term and the quantity of goods shown in the writing.

(d) A lease contract that does not satisfy the requirements of Subsection (a), but which is valid in other respects, is enforceable:

(1) if the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

(2) if the party against whom enforcement is sought admits in that party's pleading, testimony or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted;

(3) with respect to goods that have been received and accepted by the lessee; or

(4) if the lease contract would otherwise be enforceable under general principles of equitable estoppel, detrimental reliance or unjust enrichment.

(e) The lease term under a lease contract referred to in Subsection (d) is:

(1) if there is a writing signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(2) if the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

(3) a reasonable lease term.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.202. FINAL WRITTEN EXPRESSION; PAROL OR EXTRINSIC EVIDENCE. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of a prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(1) by course of dealing or usage of trade or by course of performance; and

(2) by evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.203. SEALS INOPERATIVE. The affixing of a seal to a writing evidencing a lease contract or an offer to enter into a lease contract does not render the writing a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.204. FORMATION IN GENERAL. (a) A lease contract may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of a lease contract.

(b) An agreement sufficient to constitute a lease contract may be found although the moment of its making is undetermined.

(c) Although one or more terms are left open, a lease contract does not fail for indefiniteness if the parties have intended to make a lease contract and there is a reasonably certain basis for giving an appropriate remedy.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.205. FIRM OFFERS. An offer by a merchant to lease goods to or from another person in a signed writing that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed three months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.206. OFFER AND ACCEPTANCE IN FORMATION OF LEASE CONTRACT. (a) Unless otherwise unambiguously indicated by the language or circumstances, an offer to make a lease contract must be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances.

(b) If the beginning of a requested performance is a reasonable method of acceptance, an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.208. MODIFICATION, RESCISSION AND WAIVER. (a) An agreement modifying a lease contract needs no consideration to be binding.

(b) A signed lease agreement that excludes modification or

rescission except by a signed writing may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

(c) Although an attempt at modification or rescission does not satisfy the requirements of Subsection (b), it may operate as a waiver.

(d) A party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless a retraction would be unjust in view of a material change of position in reliance on the waiver.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.209. LESSEE UNDER FINANCE LEASE AS BENEFICIARY OF SUPPLY CONTRACT. (a) The benefit of a supplier's promises to the lessor under the supply contract and of all warranties, whether express or implied, including those of any third party provided in connection with or as part of the supply contract, extends to the lessee to the extent of the lessee's leasehold interest under a finance lease related to the supply contract, but is subject to the terms of the warranty and of the supply contract and all defenses or claims arising therefrom.

(b) The extension of the benefit of a supplier's promises and of warranties to the lessee (Section 2A.209(a)) does not:

(1) modify the rights and obligations of the parties to the supply contract, whether arising therefrom or otherwise; or

(2) impose any duty or liability under the supply contract on the lessee.

(c) Any modification or rescission of the supply contract by the supplier and the lessor is effective between the supplier and the lessee unless, before the modification or rescission, the supplier has received notice that the lessee has entered into a finance lease related to the supply contract. If the modification or rescission is effective between the supplier and the lessee, the lessor is deemed to have assumed, in addition to the obligations of the lessor to the lessee under the lease contract, promises of the supplier to the lessor and warranties that were so modified or rescinded as they

existed and were available to the lessee before modification or rescission.

(d) In addition to the extension of the benefit of the supplier's promises and of warranties to the lessee under Subsection (a), the lessee retains all rights that the lessee may have against the supplier which arise from an agreement between the lessee and the supplier or under other law.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.210. EXPRESS WARRANTIES. (a) Express warranties by the lessor are created as follows:

(1) Any affirmation of fact or promise made by the lessor to the lessee that relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods will conform to the affirmation or promise.

(2) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods will conform to the description.

(3) Any sample or model that is made part of the basis of the bargain creates an express warranty that the whole of the goods will conform to the sample or model.

(b) It is not necessary to the creation of an express warranty that the lessor use formal words, such as "warrant" or "guarantee," or that the lessor have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the lessor's opinion or commendation of the goods does not create a warranty.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.211. WARRANTIES AGAINST INTERFERENCE AND AGAINST INFRINGEMENT; LESSEE'S OBLIGATION AGAINST INFRINGEMENT. (a) There is in a lease contract a warranty that for the lease term no person holds a claim to or interest in the goods that arose from an act or omission of the lessor other than a claim by way of infringement or the like, which will interfere with the lessee's enjoyment of its leasehold interest.

(b) Except in a finance lease there is in a lease contract by a

lessor who is a merchant regularly dealing in goods of the kind a warranty that the goods are delivered free of the rightful claim of any person by way of infringement or the like.

(c) A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against a claim by way of infringement or the like that arises out of compliance with the specifications.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.212. IMPLIED WARRANTY OF MERCHANTABILITY. (a) Except in a finance lease, a warranty that the goods will be merchantable is implied in a lease contract if the lessor is a merchant with respect to goods of that kind.

(b) Goods to be merchantable must be at least such as:

(1) pass without objection in the trade under the description in the lease agreement;

(2) in the case of fungible goods, are of fair average quality within the description;

(3) are fit for the ordinary purposes for which goods of that type are used;

(4) run, within the variation permitted by the lease agreement, of even kind, quality, and quantity within each unit and among all units involved;

(5) are adequately contained, packaged, and labeled as the lease agreement may require; and

(6) conform to any promises or affirmations of fact made on the container or label.

(c) Other implied warranties may arise from course of dealing or usage of trade.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.213. IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE. Except in a finance lease, if the lessor at the time the lease contract is made has reason to know of any particular purpose for which the goods are required and that the lessee is relying on the lessor's skill or judgment to select or furnish suitable goods, there is in the lease contract an implied warranty that the goods

will be fit for that purpose.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.214. EXCLUSION OR MODIFICATION OF WARRANTIES. (a) Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed whenever reasonable, as consistent with each other; but, subject to the provisions of Section 2A.202 on parol or extrinsic evidence, negation or limitation is inoperative to the extent that the construction is unreasonable.

(b) Subject to Subsection (c), to exclude or modify the implied warranty of merchantability or any part of it the language must mention "merchantability," be by a writing, and be conspicuous. Subject to Subsection (c), to exclude or modify an implied warranty of fitness the exclusion must be by a writing and be conspicuous. Language to exclude all implied warranties of fitness is sufficient if it is in writing, is conspicuous and states, for example, "There is no warranty that the goods will be fit for a particular purpose."

(c) Notwithstanding Subsection (b), but subject to Subsection (d):

(1) unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," or "with all faults," or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;

(2) if the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and

(3) an implied warranty also may be excluded or modified by course of dealing, course of performance, or usage of trade.

(d) To exclude or modify a warranty against interference or against infringement (Section 2A.211) or any part of it, the language must be specific, be by a writing, and be conspicuous, unless the circumstances, including course of performance, course of dealing, or usage of trade, give the lessee reason to know that the goods are being leased subject to a claim or interest of any person.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.215. ACCUMULATION AND CONFLICT OF WARRANTIES EXPRESS OR IMPLIED. Warranties, whether express or implied, must be construed as consistent with each other and as cumulative, but if that construction is unreasonable, the intention of the parties determines which warranty is dominant. In ascertaining that intention the following rules apply:

(1) exact or technical specifications displace an inconsistent sample or model or general language of description;

(2) a sample from an existing bulk displaces inconsistent general language of description; and

(3) express warranties displace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.216. THIRD-PARTY BENEFICIARIES OF EXPRESS AND IMPLIED WARRANTIES. This chapter does not provide whether anyone other than a lessee may take advantage of an express or implied warranty of quality made to the lessee or whether the lessee or anyone entitled to take advantage of a warranty made to the lessee may sue a third party other than the immediate lessor, or the supplier in a finance lease, for deficiencies in the quality of the goods. These matters are left to the courts for their determination.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.217. IDENTIFICATION. Identification of goods as goods to which a lease contract refers may be made at any time and in any manner explicitly agreed to by the parties. In the absence of explicit agreement, identification occurs:

(1) when the lease contract is made if the lease contract is for a lease of goods that are existing and identified;

(2) when the goods are shipped, marked, or otherwise designated by the lessor as goods to which the lease contract refers, if the lease contract is for a lease of goods that are not existing

and identified; or

(3) when the young are conceived, if the lease contract is for a lease of the unborn young of animals.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.218. INSURANCE AND PROCEEDS. (a) A lessee obtains an insurable interest when existing goods are identified to the lease contract even though the goods identified are nonconforming and the lessee has an option to reject them.

(b) If a lessee has an insurable interest only by reason of the lessor's identification of the goods, the lessor, until default or insolvency or notification to the lessee that identification is final, may substitute other goods for those identified.

(c) Notwithstanding a lessee's insurable interest under Subsections (a) and (b), the lessor retains an insurable interest during the existence of the lease contract.

(d) Nothing in this section impairs any insurable interest recognized under any other statute or rule of law.

(e) The parties by agreement may determine that one or more parties have an obligation to obtain and pay for insurance covering the goods and by agreement may determine the beneficiary of the proceeds of the insurance.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.219. RISK OF LOSS. (a) Except in the case of a finance lease, risk of loss is retained by the lessor and does not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.

(b) Subject to the provisions of this chapter on the effect of default on risk of loss (Section 2A.220), if risk of loss is to pass to the lessee and the time of passage is not stated, the following rules apply:

(1) If the lease contract requires or authorizes the goods to be shipped by carrier:

(A) and it does not require delivery at a particular destination, the risk of loss passes to the lessee when the goods are duly delivered to the carrier; but

(B) if it does require delivery at a particular destination and the goods are there duly tendered while in the possession of the carrier, the risk of loss passes to the lessee when the goods are there duly so tendered as to enable the lessee to take delivery.

(2) If the goods are held by a bailee to be delivered without being moved, the risk of loss passes to the lessee on acknowledgement by the bailee of the lessee's right to possession of the goods.

(3) In any case not within Subdivision (1) or (2), the risk of loss passes to the lessee on tender of delivery if the lessee is a merchant; otherwise the risk of loss passes to the lessee on the lessee's receipt of the goods.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.220. EFFECT OF DEFAULT ON RISK OF LOSS. (a) Where risk of loss is to pass to the lessee and the time of passage is not stated:

(1) if a tender or delivery of goods so fails to conform to the lease contract as to give a right of rejection, the risk of their loss remains with the lessor, or, in the case of a finance lease, the supplier, until cure or acceptance; or

(2) if the lessee rightfully revokes acceptance, the lessee, to the extent of any deficiency in the lessee's effective insurance coverage, may treat the risk of loss as having remained with the lessor from the beginning.

(b) Whether or not risk of loss is to pass to the lessee, if the lessee as to conforming goods already identified to a lease contract repudiates or is otherwise in default under the lease contract, the lessor, or, in the case of a finance lease, the supplier, to the extent of any deficiency in the lessor's or the supplier's effective insurance coverage may treat the risk of loss as resting on the lessee for a commercially reasonable time.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.221. CASUALTY TO IDENTIFIED GOODS. If a lease contract requires goods identified when the lease contract is made, and the

goods suffer casualty without fault of the lessee, the lessor or the supplier before delivery, or the goods suffer casualty before risk of loss passes to the lessee under the lease agreement or Section 2A.219:

(1) if the loss is total, the lease contract is avoided; and

(2) if the loss is partial or the goods have so deteriorated as to no longer conform to the lease contract, the lessee may nevertheless demand inspection and at the lessee's option either treat the lease contract as avoided or, except in a finance lease that is not a consumer lease, accept the goods with due allowance from the rent payable for the balance of the lease term for the deterioration or the deficiency in quantity but without further right against the lessor.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. EFFECT OF LEASE CONTRACT

Sec. 2A.301. ENFORCEABILITY OF LEASE CONTRACT. Except as otherwise provided in this title, a lease contract is effective and enforceable according to its terms between the parties, against purchasers of the goods and against creditors of the parties.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1. 1993.

Sec. 2A.302. TITLE TO AND POSSESSION OF GOODS. Except as otherwise provided in this title, each provision of this chapter applies whether the lessor or a third party has title to the goods, and whether the lessor, the lessee, or a third party has possession of the goods, notwithstanding any statute or rule of law that possession or the absence of possession is fraudulent.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.303. ALIENABILITY OF PARTY'S INTEREST UNDER LEASE CONTRACT OR OF LESSOR'S RESIDUAL INTEREST IN GOODS; DELEGATION OF PERFORMANCE; TRANSFER OF RIGHTS. (a) As used in this section, "creation of a security interest" includes the sale of a lease

contract that is subject to Chapter 9 of this code, Secured Transactions, by reason of Section 9.109(a)(3).

(b) Except as provided in Section 9.407(c), a provision in a lease agreement which (1) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (2) makes such a transfer an event of default, gives rise to the rights and remedies provided in Subsection (d), but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

(c) A provision in a lease agreement which (1) prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation, or (2) makes such a transfer an event of default, is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on, the other party to the lease contract within the purview of Subsection (d).

(d) Subject to Section 9.407(c):

(1) if a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in Section 2A.501(b); and

(2) if Subdivision (1) is not applicable and if a transfer is made that (A) is prohibited under a lease agreement or (B) materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden of risk imposed on, the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract, (i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer and (ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

(e) A transfer of "the lease" or of "all my rights under the lease," or a transfer in similar general terms, is a transfer of rights and, unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. This promise is enforceable by either the transferor or the other party to the lease contract.

(f) Unless otherwise agreed by the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

(g) In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.20, eff. July 1, 2001.

Sec. 2A.304. SUBSEQUENT LEASE OF GOODS BY LESSOR. (a) Subject to Section 2A.303 of this chapter, a subsequent lessee from a lessor of goods under an existing lease contract obtains, to the extent of the leasehold interest transferred, the leasehold interest in the goods that the lessor had or had power to transfer, and except as provided by Subsection (b) or Section 2A.527(d) takes subject to the existing lease contract. A lessor with voidable title has power to transfer a good leasehold interest to a good faith subsequent lessee for value, but only to the extent set forth in the preceding sentence. If goods have been delivered under a transaction of purchase, the lessor has that power even though:

(1) the lessor's transferor was deceived as to the identity of the lessor;

(2) the delivery was in exchange for a check which is later dishonored;

(3) it was agreed that the transaction was to be a "cash sale"; or

(4) the delivery was procured through fraud punishable as

larcenous under the criminal law.

(b) A subsequent lessee in the ordinary course of business from a lessor who is a merchant dealing in goods of that kind to whom the goods were entrusted by the existing lessee of that lessor before the interest of the subsequent lessee became enforceable against that lessor obtains, to the extent of the leasehold interest transferred, all of that lessor's and the existing lessee's rights to the goods, and takes free of the existing lease contract.

(c) A subsequent lessee from the lessor of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.305. SALE OR SUBLEASE OF GOODS BY LESSEE. (a) Subject to the provisions of Section 2A.303, a buyer or sublessee from the lessee of goods under an existing lease contract obtains, to the extent of the interest transferred, the leasehold interest in the goods that the lessee had or had power to transfer, and except as provided by Subsection (b) and Section 2A.511, takes subject to the existing lease contract. A lessee with a voidable leasehold interest has power to transfer a good leasehold interest to a good faith buyer for value or a good faith sublessee for value, but only to the extent set forth in the preceding sentence. When goods have been delivered under a transaction of lease the lessee has that power even though:

(1) the lessor was deceived as to the identity of the lessee;

(2) the delivery was in exchange for a check which is later dishonored; or

(3) the delivery was procured through fraud punishable as larcenous under the criminal law.

(b) A buyer in the ordinary course of business or a sublessee in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind to whom the goods were entrusted by the lessor obtains, to the extent of the interest transferred, all of the lessor's and lessee's rights to the goods, and takes free of the existing lease contract.

(c) A buyer or sublessee from the lessee of goods that are subject to an existing lease contract and are covered by a certificate of title issued under a statute of this state or of another jurisdiction takes no greater rights than those provided both by this section and by the certificate of title statute.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.306. PRIORITY OF CERTAIN LIENS ARISING BY OPERATION OF LAW. If a person in the ordinary course of the person's business furnishes services or materials with respect to goods subject to a lease contract, a lien upon those goods in the possession of that person given by statute or rule of law for those materials or services takes priority over any interest of the lessor or lessee under the lease contract or this chapter unless the lien is created by statute and the statute provides otherwise or unless the lien is created by rule of law and the rule of law provides otherwise.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.307. PRIORITY OF LIENS ARISING BY ATTACHMENT OR LEVY ON, SECURITY INTERESTS IN, AND OTHER CLAIMS TO GOODS. (a) Except as otherwise provided in Section 2A.306, a creditor of a lessee takes subject to the lease contract.

(b) Except as otherwise provided in Subsection (c) and Sections 2A.306 and 2A.308, a creditor of a lessor takes subject to the lease contract unless the creditor holds a lien that attached to the goods before the lease contract became enforceable.

(c) Except as otherwise provided in Sections 9.317, 9.321, and 9.323, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.21, eff. July 1, 2001.

Sec. 2A.308. SPECIAL RIGHTS OF CREDITORS. (a) A creditor of a lessor in possession of goods subject to a lease contract may treat

the lease contract as void if as against the creditor retention of possession by the lessor is fraudulent or voids the lease contract under any statute or rule of law, but retention of possession in good faith and current course of trade by the lessor for a commercially reasonable time after the lease contract becomes enforceable is not fraudulent and does not void the lease contract.

(b) Nothing in this chapter impairs the rights of creditors of a lessor if the lease contract is made under circumstances which under any statute or rule of law apart from this chapter would constitute the transaction a fraudulent transfer or voidable preference.

(c) A creditor of a seller may treat a sale or an identification of goods to a contract for sale as void if as against the creditor retention of possession by the seller is fraudulent under any statute or rule of law, but retention of possession of the goods pursuant to a lease contract entered into by the seller as lessee and the buyer as lessor in connection with the sale or identification of the goods is not fraudulent if the buyer bought for value and in good faith.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.309. LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS BECOME FIXTURES. (a) In this section:

(1) goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(2) a "fixture filing" is the filing, in the office where a record of a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of Sections 9.502(a) and (b);

(3) a lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

(4) a mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and

(5) "encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(b) Under this chapter a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this chapter of ordinary building materials incorporated into an improvement on land.

(c) This chapter does not prevent the creation of a lease of fixtures pursuant to real estate law.

(d) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(1) the lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, a fixture filing covering the fixtures is filed or recorded before the goods become fixtures or within 10 days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

(2) the interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(e) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(1) the fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable; or

(2) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable; or

(3) the encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(4) the lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove

terminates, the priority of the interest of the lessor continues for a reasonable time.

(f) Notwithstanding Subsection (d)(1) but otherwise subject to Subsections (d) and (e), the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgage.

(g) In cases not within the preceding subsections, priority between the interest of a lessor of fixtures, including the lessor's residual interest, and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(h) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may (1) on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this chapter, or (2) if necessary to enforce other rights and remedies of the lessor or lessee under this chapter, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate, but the lessor or lessee must reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed for the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

(i) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of Chapter 9.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.22, eff. July 1, 2001.

Sec. 2A.310. LESSOR'S AND LESSEE'S RIGHTS WHEN GOODS BECOME ACCESSIONS. (a) Goods are "accessions" when they are installed in or affixed to other goods.

(b) The lessor's residual interest in the accessions and the interest of a lessor or a lessee under a lease contract entered into before the goods became accessions are superior to all interests in the whole except as stated in Subsection (d).

(c) The lessor's residual interest in the accessions and the interest of a lessor or a lessee under a lease contract entered into at the time or after the goods became accessions are superior to all subsequently acquired interests in the whole except as stated in Subsection (d) but are subordinate to interests in the whole existing at the time the lease contract was made unless the holders of such interests in the whole have in writing consented to the lease or disclaimed an interest in the goods as part of the whole.

(d) The lessor's residual interest in the accessions and the interest of a lessor or a lessee under a lease contract described by Subsection (b) or (c) are subordinate to the interest of:

(1) a buyer in the ordinary course of business or a lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions; or

(2) a creditor with a security interest in the whole perfected before the lease contract was made to the extent that the creditor makes subsequent advances without knowledge of the lease contract.

(e) When under Subsections (b) or (c) and (d) a lessor or a lessee of accessions holds an interest that is superior to all interests in the whole, the lessor or the lessee may (1) on default, expiration, termination, or cancellation of the lease contract by the other party but subject to the provisions of the lease contract and this chapter, or (2) if necessary to enforce the lessor's or lessee's other rights and remedies under this chapter, remove the goods from the whole, free and clear of all interests in the whole, but the party must reimburse any holder of an interest in the whole who is not the lessee and who has not otherwise agreed for the cost of

repair of any physical injury but not for any diminution in value of the whole caused by the absence of the goods removed or by any necessity for replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. PERFORMANCE OF LEASE CONTRACT: REPUDIATED, SUBSTITUTED AND EXCUSED

Sec. 2A.401. INSECURITY: ADEQUATE ASSURANCE OF PERFORMANCE. (a) A lease contract imposes an obligation on each party that the other's expectation of receiving due performance will not be impaired.

(b) If reasonable grounds for insecurity arise with respect to the performance of either party, the insecure party may demand in writing adequate assurance of due performance. Until the insecure party receives that assurance, if commercially reasonable, the insecure party may suspend any performance for which the party has not already received the agreed return.

(c) A repudiation of the lease contract occurs if assurance of due performance adequate under the circumstances of the particular case is not provided to the insecure party within a reasonable time, not to exceed 30 days after receipt of a demand by the other party.

(d) Between merchants, the reasonableness of grounds for insecurity and the adequacy of any assurance offered must be determined according to commercial standards.

(e) Acceptance of any nonconforming delivery or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.402. ANTICIPATORY REPUDIATION. If either party repudiates a lease contract with respect to a performance not yet due under the lease contract, the loss of which performance will substantially impair the value of the lease contract to the other, the aggrieved party may:

(1) for a commercially reasonable time, await retraction of

repudiation and performance by the repudiating party;

(2) make demand pursuant to Section 2A.401 and await assurance of future performance adequate under the circumstances of the particular case; or

(3) resort to any right or remedy on default under the lease contract or this chapter, even though the aggrieved party has notified the repudiating party that the aggrieved party would await the repudiating party's performance and assurance and has urged retraction. In addition, whether or not the aggrieved party is pursuing one of the foregoing remedies, the aggrieved party may suspend performance or, if the aggrieved party is the lessor, proceed in accordance with the provisions of this chapter on the lessor's right to identify goods to the lease contract notwithstanding default or to salvage unfinished goods (Section 2A.524).

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.403. RETRACTION OF ANTICIPATORY REPUDIATION. (a) Until the repudiating party's next performance is due, the repudiating party can retract the repudiation unless, since the repudiation, the aggrieved party has canceled the lease contract or materially changed the aggrieved party's position or otherwise indicated that the aggrieved party considers the repudiation final.

(b) Retraction may be by any method that clearly indicates to the aggrieved party that the repudiating party intends to perform under the lease contract and includes any assurance demanded under Section 2A.401.

(c) Retraction reinstates a repudiating party's rights under a lease contract with due excuse and allowance to the aggrieved party for any delay occasioned by the repudiation.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.404. SUBSTITUTED PERFORMANCE. (a) If without fault of the lessee, the lessor and the supplier, the agreed berthing, loading, or unloading facilities fail or the agreed type of carrier becomes unavailable or the agreed manner of delivery otherwise becomes commercially impracticable, but a commercially reasonable substitute is available, the substitute performance must be tendered

and accepted.

(b) If the agreed means or manner of payment fails because of domestic or foreign governmental regulation:

(1) the lessor may withhold or stop delivery or cause the supplier to withhold or stop delivery unless the lessee provides a means or manner of payment that is commercially a substantial equivalent; and

(2) if delivery has already been taken, payment by the means or in the manner provided by the regulation discharges the lessee's obligation unless the regulation is discriminatory, oppressive, or predatory.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.405. EXCUSED PERFORMANCE. Subject to Section 2A.404 on substituted performance, the following rules apply:

(1) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with Subdivisions (2) and (3) is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

(2) If the causes mentioned in Subdivision (1) affect only part of the lessor's or the supplier's capacity to perform, the lessor or supplier shall allocate production and deliveries among the lessor's or supplier's customers but at the lessor's or supplier's option may include regular customers not then under contract for sale or lease as well as the lessor's or supplier's own requirements for further manufacture. The lessor or supplier may so allocate in any manner that is fair and reasonable.

(3) The lessor seasonably shall notify the lessee and in the case of a finance lease the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under Subdivision (2), of the estimated quota made available for the lessee.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.406. PROCEDURE ON EXCUSED PERFORMANCE. (a) If the lessee receives notification of a material or indefinite delay or an allocation justified under Section 2A.405, the lessee may by written notification to the lessor as to any goods involved, and with respect to all of the goods if under an installment lease contract the value of the whole lease contract is substantially impaired (Section 2A.510):

(1) terminate the lease contract (Section 2A.505(b)); or

(2) except in a finance lease that is not a consumer lease, modify the lease contract by accepting the available quota in substitution, with due allowance from the rent payable for the balance of the lease term for the deficiency but without further right against the lessor.

(b) If, after receipt of a notification from the lessor under Section 2A.405, the lessee fails to modify the lease agreement within a reasonable time not exceeding 30 days, the lease contract lapses with respect to any deliveries affected.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.407. IRREVOCABLE PROMISES: FINANCE LEASES. (a) In the case of a finance lease that is not a consumer lease, a term in the lease agreement that provides that the lessee's promises under the lease contract become irrevocable and independent upon the lessee's acceptance of the goods is enforceable.

(b) A promise that has become irrevocable and independent under Subsection (a):

(1) is effective and enforceable between the parties, and by or against third parties including assignees of the parties; and

(2) is not subject to cancellation, termination, modification, repudiation, excuse, or substitution without the consent of the party to whom the promise runs.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. DEFAULT

Sec. 2A.501. DEFAULT: PROCEDURE. (a) Whether the lessor or the lessee is in default under a lease contract is determined by the lease agreement and this chapter.

(b) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement has rights and remedies as provided in this chapter and, except as limited by this chapter, as provided in the lease agreement.

(c) If the lessor or the lessee is in default under the lease contract, the party seeking enforcement may reduce the party's claim to judgment or otherwise enforce the lease contract by self-help or any available judicial procedure or nonjudicial procedure, including administrative proceeding, arbitration, or the like, in accordance with this chapter.

(d) Except as otherwise provided by Section 1.305(a) or this chapter or the lease agreement, the rights and remedies referred to in Subsections (b) and (c) are cumulative.

(e) If the lease agreement covers both real property and goods, the party seeking enforcement may proceed under this subchapter as to the goods, or under other applicable law as to both the real property and the goods in accordance with that party's rights and remedies in respect of the real property, in which case this subchapter does not apply.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 542, Sec. 5, eff. Sept. 1, 2003.

Sec. 2A.502. NOTICE AFTER DEFAULT. Except as provided by this chapter or the lease agreement, the lessor or lessee in default under the lease contract is not entitled to notice of default or notice of enforcement from the other party to the lease agreement.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.503. MODIFICATION OR IMPAIRMENT OF RIGHTS AND REMEDIES. (a) Except as otherwise provided in this chapter, the lease agreement may include rights and remedies for default in addition to or in substitution for those provided by this chapter and may limit or alter the measure of damages recoverable under this chapter.

(b) Resort to a remedy provided under this chapter or in the lease agreement is optional unless the remedy is expressly agreed to be exclusive. If circumstances cause an exclusive or limited remedy to fail its essential purpose, or provision for an exclusive remedy

is unconscionable, remedy may be had as provided by this chapter.

(c) Consequential damages may be liquidated under Section 2A.504 or otherwise be limited, altered, or excluded unless the limitation, alteration, or exclusion is unconscionable. Liquidation, limitation, alteration, or exclusion of consequential damages for injury to the person in the case of consumer goods is prima facie unconscionable, but liquidation, limitation, alteration, or exclusion of damages where the loss is commercial is not prima facie unconscionable.

(d) Rights and remedies on default by the lessor or the lessee with respect to an obligation or promise collateral or ancillary to the lease contract are not impaired by this chapter.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.504. LIQUIDATION OF DAMAGES. (a) Damages payable by either party for default or any other act or omission, including indemnity for loss or diminution of anticipated tax benefits or loss or damage to lessor's residual interest, may be liquidated in the lease agreement but only at an amount or by a formula that is reasonable in light of the then anticipated harm caused by the default or other act or omission. In a consumer lease, a term fixing liquidated damages that are unreasonably large in light of the actual harm is unenforceable as a penalty.

(b) If the lease agreement provides for liquidation of damages, and such provision does not comply with Subsection (a) or such provision is an exclusive or limited remedy that circumstances cause to fail of its essential purpose, remedy may be had as provided in this chapter.

(c) If the lessor justifiably withholds or stops delivery of goods because of the lessee's default or insolvency (Section 2A.525 or 2A.526), the lessee is entitled to restitution of any amount by which the sum of the lessee's payments exceeds:

(1) the amount to which the lessor is entitled by virtue of terms liquidating the lessor's damages in accordance with Subsection (a); or

(2) in the absence of those terms, 20 percent of the then present value of the total rent the lessee was obligated to pay for the balance of the lease term, or, in the case of a consumer lease,

the lesser of such amount or $500.

(d) A lessee's right to restitution under Subsection (c) is subject to offset to the extent the lessor establishes:

(1) a right to recover damages under the provisions of this chapter other than Subsection (a); and

(2) the amount of value of any benefits received by the lessee directly or indirectly by reason of the lease contract.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.505. CANCELLATION AND TERMINATION AND EFFECT OF CANCELLATION, TERMINATION, RESCISSION, OR FRAUD ON RIGHTS AND REMEDIES. (a) On cancellation of the lease contract, all obligations that are still executory on both sides are discharged, but any right based on prior default or performance survives, and the canceling party also retains any remedy for default of the whole lease contract or any unperformed balance.

(b) On termination of the lease contract, all obligations that are still executory on both sides are discharged but any right based on a prior default or performance survives.

(c) Unless the contrary intention clearly appears, expressions of "cancellation," "rescission," or the like of the lease contract may not be construed as a renunciation or discharge of any claim in damages for an antecedent default.

(d) Rights and remedies for material misrepresentation or fraud include all rights and remedies available under this chapter for default.

(e) Neither rescission nor a claim for rescission of the lease contract nor rejection or return of the goods may bar or be deemed inconsistent with a claim for damages or other right or remedy.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.506. STATUTE OF LIMITATIONS. (a) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within four years after the cause of action accrued. By the original lease contract the parties may not expand such period of limitation but, except in the case of a consumer lease, may reduce the period of limitation to not less than

one year.

(b) A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party. A cause of action for indemnity accrues:

(1) in the case of an indemnity against liability, when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party; or

(2) in the case of an indemnity against loss or damage, when the person indemnified makes payment thereof.

(c) If an action commenced within the time limited by Subsection (a) is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(d) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action that have accrued before this chapter becomes effective.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.507. PROOF OF MARKET RENT. (a) Damages based on market rent (Section 2A.519 or 2A.528) are determined according to the rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times specified in Sections 2A.519 and 2A.528.

(b) If evidence of rent for the use of the goods concerned for a lease term identical to the remaining lease term of the original lease agreement and prevailing at the times or places described in this chapter is not readily available, the rent prevailing within any reasonable time before or after the time described or at any other place or for a different lease term which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the difference, including the cost of transporting the goods to or from the other place.

(c) Evidence of a relevant rent prevailing at a time or place

or for a lease term other than the one described in this chapter offered by one party is not admissible unless and until the party has given the other party notice the court finds sufficient to prevent unfair surprise.

(d) If the prevailing rent or value of any goods regularly leased in any established market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of that market are admissible in evidence. The circumstances of the preparation of the report may be shown to affect its weight but not its admissibility.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.508. LESSEE'S REMEDIES. (a) If a lessor fails to deliver the goods in conformity to the lease contract (Section 2A.509) or repudiates the lease contract (Section 2A.402), or a lessee rightfully rejects the goods (Section 2A.509) or justifiably revokes acceptance of the goods (Section 2A.517), then with respect to any goods involved, and with respect to all of the goods if under an installment lease contract and the value of the whole lease contract is substantially impaired (Section 2A.510), the lessor is in default under the lease contract and the lessee may:

(1) cancel the lease contract (Section 2A.505(a));

(2) recover so much of the rent and security as has been paid and is just under the circumstances;

(3) cover and recover damages as to all goods affected whether or not they have been identified to the lease contract (Sections 2A.518 and 2A.520), or recover damages for nondelivery (Sections 2A.519 and 2A.520); or

(4) exercise any other rights or pursue any other remedies provided in the lease contract.

(b) If a lessor fails to deliver the goods in conformity to the lease contract or repudiates the lease contract, the lessee may also:

(1) if the goods have been identified, recover them (Section 2A.522); or

(2) in a proper case, obtain specific performance, replevin, detinue, sequestration, claim and delivery, or the like for the goods (Section 2A.521).

(c) If a lessor is otherwise in default under a lease contract,

the lessee may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease, and in Section 2A.519(c).

(d) If a lessor has breached a warranty, whether express or implied, the lessee may recover damages (Section 2A.519(d)).

(e) On rightful rejection or justifiable revocation or acceptance, a lessee has a security interest in goods in the lessee's possession or control for any rent and security that has been paid and any expenses reasonably incurred in their inspection, receipt, transportation, and care and custody and may hold those goods and dispose of them in good faith and in a commercially reasonable manner, subject to Section 2A.527(e).

(f) Subject to the provisions of Section 2A.407, a lessee, on notifying the lessor of the lessee's intention to do so, may deduct all or part of the damages resulting from any default under the lease contract from any part of the rent still due under the same lease contract.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.509. LESSEE'S RIGHTS ON IMPROPER DELIVERY; RIGHTFUL REJECTION. (a) Subject to the provisions of Section 2A.510 on default in installment lease contracts, if the goods or the tender or delivery fail in any respect to conform to the lease contract, the lessee may reject or accept the goods or accept any commercial unit or units and reject the rest of the goods.

(b) Rejection of goods is ineffective unless it is within a reasonable time after tender or delivery of the goods and the lessee seasonably notifies the lessor.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.510. INSTALLMENT LEASE CONTRACTS: REJECTION AND DEFAULT. (a) Under an installment lease contract a lessee may reject any delivery that is nonconforming if the nonconformity substantially impairs the value of that delivery and cannot be cured or the nonconformity is a defect in the required documents; but if the nonconformity does not fall within Subsection (b) and the lessor or the supplier gives adequate assurance of its cure, the lessee must

accept the delivery.

(b) Whenever nonconformity or default with respect to one or more deliveries substantially impairs the value of the installment lease contract as a whole there is a default with respect to the whole. But the aggrieved party reinstates the installment lease contract as a whole if the aggrieved party accepts a nonconforming delivery without seasonably notifying of cancellation or brings an action with respect only to past deliveries or demands performance as to future deliveries.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.511. MERCHANT LESSEE'S DUTIES AS TO RIGHTFULLY REJECTED GOODS. Subject to any security interest of a lessee (Section 2A.508(e)), if a lessor or a supplier has no agent or place of business at the market of rejection, a merchant lessee, after rejection of goods in the lessee's possession or control, shall follow any reasonable instructions received from the lessor or the supplier with respect to the goods. In the absence of those instructions, a merchant lessee shall make reasonable efforts to sell, lease, or otherwise dispose of the goods for the lessor's account if they threaten to decline in value speedily. Instructions are not reasonable if on demand indemnity for expenses is not forthcoming.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.512. LESSEE'S DUTIES AS TO RIGHTFULLY REJECTED GOODS. (a) Except as otherwise provided with respect to goods that threaten to decline in value speedily (Section 2A.511) and subject to any security interest of a lessee (Section 2A.508(e)):

(1) the lessee, after rejection of goods in the lessee's possession, shall hold them with reasonable care at the lessor's or the supplier's disposition for a reasonable time after the lessee's seasonable notification of rejection;

(2) if the lessor or the supplier gives no instructions within a reasonable time after notification of rejection, the lessee may store the rejected goods for the lessor's or the supplier's account or ship them to the lessor or the supplier or dispose of them

for the lessor's or the supplier's account with reimbursement in the manner provided by Subsection (d); but

(3) the lessee has no further obligations with regard to goods rightfully rejected.

(b) Action by the lessee pursuant to Subsection (a) is not acceptance or conversion.

(c) If a merchant lessee (Section 2A.511) or any other lessee disposes of goods, the lessee is entitled to reimbursement either from the lessor or the supplier or out of the proceeds for reasonable expenses of caring for and disposing of the goods and, if the expenses include no disposition commission, to such commission as is usual in the trade, or if there is none, to a reasonable sum not exceeding 10 percent of the gross proceeds.

(d) In complying with this section or Section 2A.511, the lessee is held only to good faith. Good faith conduct hereunder is neither acceptance or conversion nor the basis of an action for damages.

(e) A purchaser who purchases in good faith from a lessee pursuant to this section or Section 2A.511 takes the goods free of any rights of the lessor and the supplier even though the lessee fails to comply with one or more of the requirements of this chapter.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.513. CURE BY LESSOR OF IMPROPER TENDER OR DELIVERY; REPLACEMENT. (a) If any tender or delivery by the lessor or the supplier is rejected because nonconforming and the time for performance has not yet expired, the lessor or the supplier may seasonably notify the lessee of the lessor's or the supplier's intention to cure and may then make a conforming delivery within the time provided by the lease contract.

(b) If the lessee rejects a nonconforming tender that the lessor or the supplier had reasonable grounds to believe would be acceptable with or without money allowance, the lessor or the supplier may have a further reasonable time to substitute a conforming tender if the lessor or supplier seasonably notifies the lessee.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.514. WAIVER OF LESSEE'S OBJECTIONS. (a) In rejecting goods, a lessee's failure to state a particular defect that is ascertainable by reasonable inspection precludes the lessee from relying on the defect to justify rejection or to establish default:

(1) if, stated seasonably, the lessor or the supplier could have cured it (Section 2A.513); or

(2) between merchants if the lessor or the supplier after rejection has made a request in writing for a full and final written statement of all defects on which the lessee proposes to rely.

(b) A lessee's failure to reserve rights when paying rent or other consideration against documents precludes recovery of the payment for defects apparent in the documents.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 14, eff. September 1, 2005.

Sec. 2A.515. ACCEPTANCE OF GOODS. (a) Acceptance of goods occurs after the lessee has had a reasonable opportunity to inspect the goods and:

(1) the lessee signifies or acts with respect to the goods in a manner that signifies to the lessor or the supplier that the goods are conforming or that the lessee will take or retain them in spite of their nonconformity; or

(2) the lessee fails to make an effective rejection of the goods (Section 2A.509(b)).

(b) Acceptance of a part of any commercial unit is acceptance of that entire unit.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.516. EFFECT OF ACCEPTANCE OF GOODS; NOTICE OF DEFAULT; BURDEN OF ESTABLISHING DEFAULT AFTER ACCEPTANCE; NOTICE OF CLAIM OR LITIGATION TO PERSON ANSWERABLE OVER. (a) A lessee must pay rent for any goods accepted in accordance with the lease contract, with due allowance for goods rightfully rejected or not delivered.

(b) A lessee's acceptance of goods precludes rejection of the goods accepted. In the case of a finance lease that is not a

consumer lease, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it. In any other case, if made with knowledge of a nonconformity, acceptance cannot be revoked because of it unless the acceptance was on the reasonable assumption that the nonconformity would be seasonably cured. Acceptance does not of itself impair any other remedy provided by this chapter or the lease agreement for nonconformity.

(c) If a tender has been accepted:

(1) within a reasonable time after the lessee discovers or should have discovered any default, the lessee shall notify the lessor and supplier, if any, or be barred from any remedy against the party not notified;

(2) within a reasonable time after the lessee receives notice of litigation for infringement or the like (Section 2A.211) the lessee shall notify the lessor or be barred from any remedy over for liability established by the litigation; and

(3) the burden is on the lessee to establish any default.

(d) If a lessee is sued for breach of a warranty or other obligation for which a lessor or a supplier is answerable over, the following apply:

(1) The lessee may give the lessor or the supplier, or both, written notice of the litigation. If the notice states that the person notified may come in and defend and that if the person notified does not do so that person will be bound in any action against that person by the lessee by any determination of fact common to both litigations, then unless the person notified after seasonable receipt of the notice does come in and defend that person is so bound.

(2) The lessor or the supplier may demand in writing that the lessee turn over control of the litigation including settlement if the claim is one for infringement or the like (Section 2A.211) or else be barred from any remedy over. If the demand states that the lessor or the supplier agrees to bear all expense and to satisfy any adverse judgment, then unless the lessee after seasonable receipt of the demand does turn over control the lessee is so barred.

(e) Subsections (c) and (d) apply to any obligation of a lessee to hold the lessor or the supplier harmless against infringement or the like (Section 2A.211).

(f) Subsection (c) shall not apply to a consumer lease.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.517. REVOCATION OF ACCEPTANCE OF GOODS. (a) A lessee may revoke acceptance of a lot or commercial unit whose nonconformity substantially impairs its value to the lessee if the lessee has accepted it:

(1) except in the case of a finance lease that is not a consumer lease, on the reasonable assumption that its nonconformity would be cured and it has not been seasonably cured; or

(2) without discovery of the nonconformity if the lessee's acceptance was reasonably induced either by the lessor's assurances or, except in the case of a finance lease that is not a consumer lease, by the difficulty of discovery before acceptance.

(b) A lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of that lot or commercial unit to the lessee.

(c) If the lease agreement so provides, the lessee may revoke acceptance of a lot or commercial unit because of other defaults by the lessor.

(d) Revocation of acceptance must occur within a reasonable time after the lessee discovers or should have discovered the ground for it and before any substantial change in condition of the goods which is not caused by the nonconformity. Revocation is not effective until the lessee notifies the lessor.

(e) A lessee who so revokes has the same rights and duties with regard to the goods involved as if the lessee had rejected them.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.518. COVER; SUBSTITUTE GOODS. (a) After default by a lessor under the lease contract of the type described by Section 2A.508(a), or, if agreed, after other default by the lessor, the lessee may cover by making any purchase or lease of or contract to purchase or lease goods in substitution for those due from the lessor.

(b) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 2A.504) or otherwise

determined pursuant to agreement of the parties (Sections 1.302 and 2A.503), if a lessee's cover is by a lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessee may recover from the lessor as damages (1) the present value, as of the date of the commencement of the term of the new lease agreement, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement minus the present value as of the same date of the total rent for the then remaining lease term of the original lease agreement, and (2) any incidental or consequential damages, less expenses saved as a consequence of the lessor's default.

(c) If the lessee's cover is by lease agreement that for any reason does not qualify for treatment under Subsection (b) or is by purchase or otherwise, the lessee may recover from the lessor as if the lessee had elected not to cover and Section 2A.519 governs.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 542, Sec. 6, eff. Sept. 1, 2003.

Sec. 2A.519. LESSEE'S DAMAGES FOR NONDELIVERY, REPUDIATION, DEFAULT, AND BREACH OF WARRANTY IN REGARD TO ACCEPTED GOODS. (a) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 2A.504) or otherwise determined pursuant to agreement of the parties (Sections 1.302 and 2A.503), if a lessee elects not to cover or a lessee elects to cover and the cover is by lease agreement that for any reason does not qualify for treatment under Section 2A.518(b) or is by purchase or otherwise, the measure of damages for nondelivery or repudiation by the lessor or for rejection or revocation of acceptance by the lessee is the present value, as of the date of the default, of the then market rent minus the present value as of the same date of the original rent, computed for the remaining lease term of the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(b) Market rent is to be determined as of the place for tender or, in cases of rejection after arrival or revocation of acceptance, as of the place of arrival.

(c) Except as otherwise agreed, if the lessee has accepted goods and given notification (Section 2A.516(c)), the measure of damages for nonconforming tender or delivery or other default by a lessor is the loss resulting in the ordinary course of events from the lessor's default as determined in any manner that is reasonable together with incidental and consequential damages, less expenses saved in consequence of the lessor's default.

(d) Except as otherwise agreed, the measure of damages for breach of warranty is the present value at the time and place of acceptance of the difference between the value of the use of the goods accepted and the value if they had been as warranted for the lease term, unless special circumstances show proximate damages of a different amount, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default or breach of warranty.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 542, Sec. 7, eff. Sept. 1, 2003.

Sec. 2A.520. LESSEE'S INCIDENTAL AND CONSEQUENTIAL DAMAGES. (a) Incidental damages resulting from a lessor's default include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected or goods the acceptance of which is justifiably revoked, any commercially reasonable charges, expenses or commissions in connection with effecting cover, and any other reasonable expense incident to the default.

(b) Consequential damages resulting from a lessor's default include:

(1) any loss resulting from general or particular requirements and needs of which the lessor at the time of contracting had reason to know and which could not reasonably be prevented by cover or otherwise; and

(2) injury to person or property proximately resulting from any breach of warranty.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.521. LESSEE'S RIGHT TO SPECIFIC PERFORMANCE, REPLEVIN,

AND OTHER REMEDIES. (a) Specific performance may be decreed if the goods are unique or in other proper circumstances.

(b) A decree for specific performance may include the terms and conditions as to payment of the rent, damages, or other relief that the court deems just.

(c) A lessee has a right of replevin, detinue, sequestration, claim and delivery, or the like for goods identified to the lease contract if after reasonable effort the lessee is unable to effect cover for those goods or the circumstances reasonably indicate that the effort will be unavailing.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.522. LESSEE'S RIGHT TO GOODS ON LESSOR'S INSOLVENCY. (a) Subject to Subsection (b) and even though the goods have not been shipped, a lessee who has paid a part or all of the rent and security for goods identified to a lease contract (Section 2A.217) on making and keeping good a tender of any unpaid portion of the rent and security due under the lease contract may recover the goods identified from the lessor if the lessor becomes insolvent within 10 days after receipt of the first installment of rent and security.

(b) A lessee acquires the right to recover goods identified to a lease contract only if they conform to the lease contract.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.523. LESSOR'S REMEDIES. (a) If a lessee wrongfully rejects or revokes acceptance of goods or fails to make a payment when due or repudiates with respect to a part or the whole, then, with respect to any goods involved, and with respect to all of the goods if under an installment lease contract, the value of the whole lease contract is substantially impaired (Section 2A.510), the lessee is in default under the lease contract and the lessor may:

(1) cancel the lease contract (Section 2A.505(a));

(2) proceed respecting goods not identified to the lease contract (Section 2A.524);

(3) withhold delivery of the goods and take possession of goods previously delivered (Section 2A.525);

(4) stop delivery of the goods by any bailee (Section

2A.526);

(5) dispose of the goods and recover damages (Section 2A.527), or retain the goods and recover damages (Section 2A.528), or in a proper case recover rent (Section 2A.529); or

(6) exercise any other rights or pursue any other remedies provided in the lease contract.

(b) If a lessor does not fully exercise a right or obtain a remedy to which the lessor is entitled under Subsection (a), the lessor may recover the loss resulting in the ordinary course of events from the lessee's default as determined in any reasonable manner, together with incidental damages, less expenses saved in consequence of the lessee's default.

(c) If a lessee is otherwise in default under a lease contract, the lessor may exercise the rights and pursue the remedies provided in the lease contract, which may include a right to cancel the lease. In addition, unless otherwise provided in the lease contract:

(1) if the default substantially impairs the value of the lease contract to the lessor, the lessor may exercise the rights and pursue the remedies provided by Subsection (a) or (b); or

(2) if the default does not substantially impair the value of the lease contract to the lessor, the lessor may recover as provided by Subsection (b).

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.524. LESSOR'S RIGHT TO IDENTIFY GOODS TO LEASE CONTRACT. (a) A lessor aggrieved under Section 2A.523(a) may:

(1) identify to the lease contract conforming goods not already identified, if at the time the lessor learned of the default they were in the lessor's or the supplier's possession or control; and

(2) dispose of goods (Section 2A.527(a)) that demonstrably have been intended for the particular lease contract even though those goods are unfinished.

(b) If the goods are unfinished, in the exercise of reasonable commercial judgment for the purposes of avoiding loss and of effective realization, an aggrieved lessor or the supplier may either complete manufacture and wholly identify the goods to the lease contract or cease manufacture and lease, sell, or otherwise dispose

of the goods for scrap or salvage value or proceed in any other reasonable manner.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.525. LESSOR'S RIGHT TO POSSESSION OF GOODS. (a) If a lessor discovers the lessee to be insolvent, the lessor may refuse to deliver the goods.

(b) After a default by the lessee under the lease contract of the type described by Section 2A.523(a) or (c)(1) or, if agreed, after other default by the lessee, the lessor has the right to take possession of the goods. If the lease contract so provides, the lessor may require the lessee to assemble the goods and make them available to the lessor at a place to be designated by the lessor which is reasonably convenient to both parties. Without removal, the lessor may render unusable any goods employed in trade or business, and may dispose of goods on the lessee's premises (Section 2A.527).

(c) The lessor may proceed under Subsection (b) without judicial process if that can be done without breach of the peace or the lessor may proceed by action.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.526. LESSOR'S STOPPAGE OF DELIVERY IN TRANSIT OR OTHERWISE. (a) A lessor may stop delivery of goods in the possession of a carrier or other bailee if the lessor discovers the lessee to be insolvent and may stop delivery of carload, truckload, planeload, or larger shipments of express or freight if the lessee repudiates or fails to make a payment due before delivery, whether for rent, security or otherwise under the lease contract, or for any other reason the lessor has a right to withhold or take possession of the goods.

(b) In pursuing its remedies under Subsection (a), the lessor may stop delivery until:

(1) receipt of the goods by the lessee;

(2) acknowledgement to the lessee by any bailee of the goods, except a carrier, that the bailee holds the goods for the lessee; or

(3) such an acknowledgement to the lessee by a carrier via

reshipment or as a warehouse.

(c)(1) To stop delivery, a lessor shall so notify as to enable the bailee by reasonable diligence to prevent delivery of the goods.

(2) After notification, the bailee shall hold and deliver the goods according to the directions of the lessor, but the lessor is liable to the bailee for any ensuing charges or damages.

(3) A carrier who has issued a nonnegotiable bill of lading is not obligated to obey a notification to stop received from a person other than the consignor.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 15, eff. September 1, 2005.

Sec. 2A.527. LESSOR'S RIGHTS TO DISPOSE OF GOODS. (a) After a default by a lessee under the lease contract of the type described in Section 2A.523(a) or (c)(1) or after the lessor refuses to deliver or takes possession of goods (Section 2A.525 or 2A.526), or, if agreed, after other default by a lessee, the lessor may dispose of the goods concerned or the undelivered balance thereof by lease, sale or otherwise.

(b) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 2A.504) or otherwise determined pursuant to agreement of the parties (Sections 1.302 and 2A.503), if the disposition is by lease agreement substantially similar to the original lease agreement and the new lease agreement is made in good faith and in a commercially reasonable manner, the lessor may recover from the lessee as damages (1) accrued and unpaid rent as of the date of the commencement of the term of the new lease agreement, (2) the present value, as of the same date, of the total rent for the then remaining lease term of the original lease agreement minus the present value, as of the same date, of the rent under the new lease agreement applicable to that period of the new lease term which is comparable to the then remaining term of the original lease agreement, and (3) any incidental damages allowed under Section 2A.530, less expenses saved in consequence of the lessee's default.

(c) If the lessor's disposition is by lease agreement that for

any reason does not qualify for treatment under Subsection (b), or is by sale or otherwise, the lessor may recover from the lessee as if the lessor had elected not to dispose of the goods and Section 2A.528 governs.

(d) A subsequent buyer or lessee who buys or leases from the lessor in good faith for value as a result of a disposition under this section takes the goods free of the original lease contract and any rights of the original lessee even though the lessor fails to comply with one or more of the requirements of this chapter.

(e) The lessor is not accountable to the lessee for any profit made on any disposition. A lessee who has rightfully rejected or justifiably revoked acceptance shall account to the lessor for any excess over the amount of the lessee's security interest (Section 2A.508(e)).

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 542, Sec. 8, eff. Sept. 1, 2003.

Sec. 2A.528. LESSOR'S DAMAGES FOR NONACCEPTANCE, FAILURE TO PAY, REPUDIATION, OR OTHER DEFAULT. (a) Except as otherwise provided with respect to damages liquidated in the lease agreement (Section 2A.504) or otherwise determined pursuant to agreement of the parties (Sections 1.302 and 2A.503), if a lessor elects to retain the goods or a lessor elects to dispose of the goods and the disposition is by lease agreement that for any reason does not qualify for treatment under Section 2A.527(b) or is by sale or otherwise, the lessor may recover from the lessee as damages for a default of the type described in Section 2A.523(a) or (c)(1), or, if agreed, for other default of the lessee, (i) accrued and unpaid rent as of the date of default if the lessee has never taken possession of the goods, or, if the lessee has taken possession of the goods, as of the date the lessor repossesses the goods or an earlier date on which the lessee makes a tender of the goods to the lessor, (ii) the present value as of the date determined under clause (i) of the total rent for the then remaining lease term of the original lease agreement minus the present value as of the same date of the market rent at the place where the goods are located computed for the same lease term, and (iii) any incidental damages allowed under Section 2A.530, less expenses saved in consequence of the lessee's default.

(b) If the measure of damages provided in Subsection (a) is inadequate to put a lessor in as good a position as performance would have, the measure of damages is the present value of the profit, including reasonable overhead, the lessor would have made from full performance by the lessee, together with any incidental damages allowed under Section 2A.530, due allowance for costs reasonably incurred and due credit for payments or proceeds of disposition.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 542, Sec. 9, eff. Sept. 1, 2003.

Sec. 2A.529. LESSOR'S ACTION FOR THE RENT. (a) After default by the lessee under the lease contract of the type described in Section 2A.523(a) or (c)(1), or, if agreed, after other default by the lessee, if the lessor complies with Subsection (b), the lessor may recover from the lessee as damages:

(1) for goods accepted by the lessee and not repossessed by or tendered to the lessor, and for conforming goods lost or damaged within a commercially reasonable time after risk of loss passes to the lessee (Section 2A.219), (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under Section 2A.530, less expenses saved in consequence of the lessee's default; and

(2) for goods identified to the lease contract if the lessor is unable after reasonable effort to dispose of them at a reasonable price or the circumstances reasonably indicate that effort will be unavailing, (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor, (ii) the present value as of the same date of the rent for the then remaining lease term of the lease agreement, and (iii) any incidental damages allowed under Section 2A.530, less expenses saved in consequence of the lessee's default.

(b) Except as provided by Subsection (c) of this section, the lessor shall hold for the lessee for the remaining lease term of the lease agreement any goods that have been identified to the lease contract and are in the lessor's control.

(c) The lessor may dispose of the goods at any time before

collection of the judgment for damages obtained pursuant to Subsection (a). If the disposition is before the end of the remaining lease term of the lease agreement, the lessor's recovery against the lessee for damages is governed by Section 2A.527 or 2A.528, and the lessor will cause an appropriate credit to be provided against any judgment for damages to the extent that the amount of the judgment exceeds the recovery available pursuant to Section 2A.527 or 2A.528.

(d) Payment of the judgment for damages obtained pursuant to Subsection (a) entitles the lessee to the use and possession of the goods not then disposed of for the remaining lease term of and in accordance with the lease agreement.

(e) After a lessee has wrongfully rejected or revoked acceptance of goods, has failed to pay rent then due, or has repudiated (Section 2A.402), a lessor who is held not entitled to rent under this section must nevertheless be awarded damages for nonacceptance under Section 2A.527 or 2A.528.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.530. LESSOR'S INCIDENTAL DAMAGES. Incidental damages to an aggrieved lessor include any commercially reasonable charges, expenses, or commissions incurred in stopping delivery, in the transportation, care and custody of goods after the lessee's default, in connection with return or disposition of the goods, or otherwise resulting from the default.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.531. STANDING TO SUE THIRD PARTIES FOR INJURY TO GOODS. (a) If a third party so deals with goods that have been identified to a lease contract as to cause actionable injury to a party to the lease contract:

(1) the lessor has a right of action against the third party; and

(2) the lessee also has a right of action against the third party if the lessee:

(A) has a security interest in the goods;

(B) has an insurable interest in the goods;

(C) bears the risk of loss under the lease contract or has since the injury assumed that risk as against the lessor and the goods have been converted or destroyed.

(b) If at the time of the injury the party plaintiff did not bear the risk of loss as against the other party to the lease contract and there is no arrangement between them for disposition of the recovery, the party's suit or settlement, subject to the party's own interest, is as a fiduciary for the other party to the lease contract.

(c) Either party with the consent of the other may sue for the benefit of whom it may concern.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

Sec. 2A.532. LESSOR'S RIGHTS TO RESIDUAL INTEREST. In addition to any other recovery permitted by this chapter or other law, the lessor may recover from the lessee an amount that will fully compensate the lessor for any loss of or damage to the lessor's residual interest in the goods caused by the default of the lessee.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 1, eff. Sept. 1, 1993.

CHAPTER 3. NEGOTIABLE INSTRUMENTS

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

Sec. 3.101. SHORT TITLE. This chapter may be cited as Uniform Commercial Code-Negotiable Instruments.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.102. SUBJECT MATTER. (a) This chapter applies to negotiable instruments. It does not apply to money, to payment orders governed by Chapter 4A, or to securities governed by Chapter 8.

(b) If there is conflict between this chapter and Chapter 4 or 9, Chapters 4 and 9 govern.

(c) Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this chapter to the extent of

the inconsistency.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.103. DEFINITIONS. (a) In this chapter:

(1) "Acceptor" means a drawee who has accepted a draft.

(2) Reserved.

(3) "Consumer transaction" means a transaction in which an individual incurs an obligation primarily for personal, family, or household purposes.

(4) "Drawee" means a person ordered in a draft to make payment.

(5) "Drawer" means a person who signs or is identified in a draft as a person ordering payment.

(6) Reserved.

(7) "Maker" means a person who signs or is identified in a note as a person undertaking to pay.

(8) "Order" means a written instruction to pay money signed by the person giving the instruction. The instruction may be addressed to any person, including the person giving the instruction, or to one or more persons jointly or in the alternative but not in succession. An authorization to pay is not an order unless the person authorized to pay is also instructed to pay.

(9) "Ordinary care" in the case of a person engaged in business means observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by this chapter or Chapter 4.

(10) "Party" means a party to an instrument.

(11) "Principal obligor," with respect to an instrument, means the accommodated party or any other party to the instrument against whom a secondary obligor has recourse under this chapter.

(12) "Promise" means a written undertaking to pay money signed by the person undertaking to pay. An acknowledgment of an

obligation by the obligor is not a promise unless the obligor also undertakes to pay the obligation.

(13) "Prove" with respect to a fact means to meet the burden of establishing the fact (Section 1.201(b)(8)).

(14) Reserved.

(15) "Remitter" means a person who purchases an instrument from its issuer if the instrument is payable to an identified person other than the purchaser.

(16) "Remotely-created item" means an item that is created by a third party, other than the payor bank, under the purported authority of the drawer of the item for the purpose of charging the drawer's account with a bank and that does not bear a handwritten signature purporting to be the signature of the drawer.

(17) "Secondary obligor," with respect to an instrument, means (A) an indorser or an accommodation party, (B) a drawer having the obligation described in Section 3.414(d), or (C) any other party to the instrument that has recourse against another party to the instrument pursuant to Section 3.116(b).

(b) Other definitions applying to this chapter and the sections in which they appear are:

"Acceptance"	Section 3.409.
"Accommodated party"	Section 3.419.
"Accommodation party"	Section 3.419.
"Account"	Section 4.104.
"Alteration"	Section 3.407.
"Anomalous indorsement"	Section 3.205.
"Blank indorsement"	Section 3.205.
"Cashier's check"	Section 3.104.
"Certificate of deposit"	Section 3.104.
"Certified check"	Section 3.409.
"Check"	Section 3.104.
"Consideration"	Section 3.303.
"Draft"	Section 3.104.
"Holder in due course"	Section 3.302.
"Incomplete instrument"	Section 3.115.
"Indorsement"	Section 3.204.
"Indorser"	Section 3.204.
"Instrument"	Section 3.104.
"Issue"	Section 3.105.
"Issuer"	Section 3.105.

"Negotiable instrument"	Section 3.104.
"Negotiation"	Section 3.201.
"Note"	Section 3.104.
"Payable at a definite time"	Section 3.108.
"Payable on demand"	Section 3.108.
"Payable to bearer"	Section 3.109.
"Payable to order"	Section 3.109.
"Payment"	Section 3.602.
"Person entitled to enforce"	Section 3.301.
"Presentment"	Section 3.501.
"Reacquisition"	Section 3.207.
"Special indorsement"	Section 3.205.
"Teller's check"	Section 3.104.
"Transfer of instrument"	Section 3.203.
"Traveler's check"	Section 3.104.
"Value"	Section 3.303.

(c) The following definitions in other chapters apply to this chapter:

"Banking day"	Section 4.104.
"Clearing house"	Section 4.104.
"Collecting bank"	Section 4.105.
"Depositary bank"	Section 4.105.
"Documentary draft"	Section 4.104.
"Intermediary bank"	Section 4.105.
"Item"	Section 4.104.
"Payor bank"	Section 4.105.
"Suspends payments"	Section 4.104.

(d) In addition, Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 131, Sec. 1, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 542, Sec. 10, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 95 (S.B. 1563), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 95 (S.B. 1563), Sec. 2, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 427 (S.B. 1541), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 427 (S.B. 1541), Sec. 2, eff. September 1, 2007.

Sec. 3.104. NEGOTIABLE INSTRUMENT. (a) Except as provided in Subsections (c) and (d), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) is payable on demand or at a definite time; and

(3) does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain:

(A) an undertaking or power to give, maintain, or protect collateral to secure payment;

(B) an authorization or power to the holder to confess judgment or realize on or dispose of collateral; or

(C) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) "Instrument" means a negotiable instrument.

(c) An order that meets all of the requirements of Subsection (a), except Subdivision (1), and otherwise falls within the definition of "check" in Subsection (f) is a negotiable instrument and a check.

(d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this chapter.

(e) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either.

(f) "Check" means (i) a draft, other than a documentary draft,

payable on demand and drawn on a bank or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order."

(g) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(h) "Teller's check" means a draft drawn by a bank:

(1) on another bank; or

(2) payable at or through a bank.

(i) "Traveler's check" means an instrument that:

(1) is payable on demand;

(2) is drawn on or payable at or through a bank;

(3) is designated by the term "traveler's check" or by a substantially similar term; and

(4) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(j) "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

(k) Repealed by Acts 2007, 80th Leg., R.S., Ch. 427, Sec. 4, eff. September 1, 2007.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 131, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 427 (S.B. 1541), Sec. 4, eff. September 1, 2007.

Sec. 3.105. ISSUE OF INSTRUMENT. (a) "Issue" means the first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person.

(b) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(c) "Issuer" applies to issued and unissued instruments and

means a maker or drawer of an instrument.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.106. UNCONDITIONAL PROMISE OR ORDER. (a) Except as provided in this section, for the purposes of Section 3.104(a), a promise or order is unconditional unless it states (i) an express condition to payment, (ii) that the promise or order is subject to or governed by another record, or (iii) that rights or obligations with respect to the promise or order are stated in another record. A reference to another record does not of itself make the promise or order conditional.

(b) A promise or order is not made conditional (i) by a reference to another record for a statement of rights with respect to collateral, prepayment, or acceleration, or (ii) because payment is limited to resort to a particular fund or source.

(c) If a promise or order requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the promise or order, the condition does not make the promise or order conditional for the purposes of Section 3.104(a). If the person whose specimen signature appears on an instrument fails to countersign the instrument, the failure to countersign is a defense to the obligation of the issuer, but the failure does not prevent a transferee of the instrument from becoming a holder of the instrument.

(d) If a promise or order at the time it is issued or first comes into possession of a holder contains a statement, required by applicable statutory or administrative law, to the effect that the rights of a holder or transferee are subject to claims or defenses that the issuer could assert against the original payee, the promise or order is not thereby made conditional for the purposes of Section 3.104(a); but if the promise or order is an instrument, there cannot be a holder in due course of the instrument.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.
Amended by:

Acts 2005, 79th Leg., Ch. 95 (S.B. 1563), Sec. 3, eff. September 1, 2005.

Sec. 3.107. INSTRUMENT PAYABLE IN FOREIGN MONEY. Unless the instrument otherwise provides, an instrument that states the amount payable in foreign money may be paid in the foreign money or in an equivalent amount in dollars calculated by using the current bank-offered spot rate at the place of payment for the purchase of dollars on the day on which the instrument is paid.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.108. PAYABLE ON DEMAND OR AT DEFINITE TIME. (a) A promise or order is "payable on demand" if it:

(1) states that it is payable on demand or at sight, or otherwise indicates that it is payable at the will of the holder; or

(2) does not state any time of payment.

(b) A promise or order is "payable at a definite time" if it is payable on elapse of a definite period of time after sight or acceptance or at a fixed date or dates or at a time or times readily ascertainable at the time the promise or order is issued, subject to rights of:

(1) prepayment;

(2) acceleration;

(3) extension at the option of the holder; or

(4) extension to a further definite time at the option of the maker or acceptor or automatically on or after a specified act or event.

(c) If an instrument, payable at a fixed date, is also payable on demand made before the fixed date, the instrument is payable on demand until the fixed date and, if demand for payment is not made before that date, becomes payable at a definite time on the fixed date.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.109. PAYABLE TO BEARER OR TO ORDER. (a) A promise or order is payable to bearer if it:

(1) states that it is payable to bearer or to the order of bearer or otherwise indicates that the person in possession of the promise or order is entitled to payment;

(2) does not state a payee; or

(3) states that it is payable to or to the order of cash or otherwise indicates that it is not payable to an identified person.

(b) A promise or order that is not payable to bearer is payable to order if it is payable (i) to the order of an identified person, or (ii) to an identified person or order. A promise or order that is payable to order is payable to the identified person.

(c) An instrument payable to bearer may become payable to an identified person if it is specially indorsed pursuant to Section 3.205(a). An instrument payable to an identified person may become payable to bearer if it is indorsed in blank pursuant to Section 3.205(b).

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.110. IDENTIFICATION OF PERSON TO WHOM INSTRUMENT IS PAYABLE. (a) The person to whom an instrument is initially payable is determined by the intent of the person, whether or not authorized, signing as, or in the name or behalf of, the issuer of the instrument. The instrument is payable to the person intended by the signer even if that person is identified in the instrument by a name or other identification that is not that of the intended person. If more than one person signs in the name or behalf of the issuer of an instrument and all the signers do not intend the same person as payee, the instrument is payable to any person intended by one or more of the signers.

(b) If the signature of the issuer of an instrument is made by automated means, such as a check-writing machine, the payee of the instrument is determined by the intent of the person who supplied the name or identification of the payee, whether or not authorized to do so.

(c) A person to whom an instrument is payable may be identified in any way, including by name, identifying number, office, or account number. For the purpose of determining the holder of an instrument, the following rules apply:

(1) If an instrument is payable to an account and the account is identified only by number, the instrument is payable to the person to whom the account is payable. If an instrument is payable to an account identified by number and by the name of a person, the instrument is payable to the named person, whether or not

that person is the owner of the account identified by number.

(2) If an instrument is payable to:

(A) a trust, an estate, or a person described as trustee or representative of a trust or estate, the instrument is payable to the trustee, the representative, or a successor of either, whether or not the beneficiary or estate is also named;

(B) a person described as agent or similar representative of a named or identified person, the instrument is payable to the represented person, the representative, or a successor of the representative;

(C) a fund or organization that is not a legal entity, the instrument is payable to a representative of the members of the fund or organization; or

(D) an office or to a person described as holding an office, the instrument is payable to the named person, the incumbent of the office, or a successor to the incumbent.

(d) If an instrument is payable to two or more persons alternatively, it is payable to any of them and may be negotiated, discharged, or enforced by any or all of them in possession of the instrument. If an instrument is payable to two or more persons not alternatively, it is payable to all of them and may be negotiated, discharged, or enforced only by all of them. If an instrument payable to two or more persons is ambiguous as to whether it is payable to the persons alternatively, the instrument is payable to the persons alternatively.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.111. PLACE OF PAYMENT. Except as otherwise provided for items in Chapter 4, an instrument is payable at the place of payment stated in the instrument. If no place of payment is stated, an instrument is payable at the address of the drawee or maker stated in the instrument. If no address is stated, the place of payment is the place of business of the drawee or maker. If a drawee or maker has more than one place of business, the place of payment is any place of business of the drawee or maker chosen by the person entitled to enforce the instrument. If the drawee or maker has no place of business, the place of payment is the residence of the drawee or maker.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.112. INTEREST. (a) Unless otherwise provided in the instrument:

(1) an instrument is not payable with interest; and

(2) interest on an interest-bearing instrument is payable from the date of the instrument.

(b) Interest may be stated in an instrument as a fixed or variable amount of money or it may be expressed as a fixed or variable rate or rates. The amount or rate of interest may be stated or described in the instrument in any manner and may require reference to information not contained in the instrument. If an instrument provides for interest, but the amount of interest payable cannot be ascertained from the description, interest is payable at the judgment rate in effect at the place of payment of the instrument and at the time interest first accrues, and the instrument shall not by virtue of this sentence be considered to violate the provisions of Title 4, Finance Code.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996; Acts 1999, 76th Leg., ch. 62, Sec. 7.45, eff. Sept. 1, 1999.

Sec. 3.113. DATE OF INSTRUMENT. (a) An instrument may be antedated or postdated. The date stated determines the time of payment if the instrument is payable at a fixed period after date. Except as provided in Section 4.401(c), an instrument payable on demand is not payable before the date of the instrument.

(b) If an instrument is undated, its date is the date of its issue or, in the case of an unissued instrument, the date it first comes into possession of a holder.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.114. CONTRADICTORY TERMS OF INSTRUMENT. If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both, and words prevail over numbers.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.115. INCOMPLETE INSTRUMENT. (a) "Incomplete instrument" means a signed writing, whether or not issued by the signer, the contents of which show at the time of signing that it is incomplete but that the signer intended it to be completed by the addition of words or numbers.

(b) Subject to Subsection (c), if an incomplete instrument is an instrument under Section 3.104, it may be enforced according to its terms if it is not completed, or according to its terms as augmented by completion. If an incomplete instrument is not an instrument under Section 3.104, but, after completion, the requirements of Section 3.104 are met, the instrument may be enforced according to its terms as augmented by completion.

(c) If words or numbers are added to an incomplete instrument without authority of the signer, there is an alteration of the incomplete instrument under Section 3.407.

(d) The burden of establishing that words or numbers were added to an incomplete instrument without authority of the signer is on the person asserting the lack of authority.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.116. JOINT AND SEVERAL LIABILITY; CONTRIBUTION. (a) Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers, drawers, acceptors, indorsers who indorse as joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.

(b) Except as provided in Section 3.419(e) or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.

(c) Repealed by Acts 2005, 79th Leg., Ch. 95, Sec. 21, eff. September 1, 2005.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.
Amended by:

Acts 2005, 79th Leg., Ch. 95 (S.B. 1563), Sec. 21, eff. September 1, 2005.

Sec. 3.117. OTHER AGREEMENTS AFFECTING INSTRUMENT. Subject to applicable law regarding exclusion of proof of contemporaneous or previous agreements, the obligation of a party to an instrument to pay the instrument may be modified, supplemented, or nullified by a separate agreement of the obligor and a person entitled to enforce the instrument, if the instrument is issued or the obligation is incurred in reliance on the agreement or as part of the same transaction giving rise to the agreement. To the extent an obligation is modified, supplemented, or nullified by an agreement under this section, the agreement is a defense to the obligation.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.118. STATUTE OF LIMITATIONS. (a) Except as provided in Subsection (e), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date.

(b) Except as provided in Subsection (d) or (e), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of 10 years.

(c) Except as provided in Subsection (d), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within three years after dishonor of the draft or 10 years after the date of the draft, whichever period expires first.

(d) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within three years after demand for payment is made to the acceptor or issuer, as the case may be.

(e) An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within

six years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the six-year period begins when a demand for payment is in effect and the due date has passed.

(f) An action to enforce the obligation of a party to pay an accepted draft, other than a certified check, must be commenced:

(1) within six years after the due date or dates stated in the draft or acceptance if the obligation of the acceptor is payable at a definite time; or

(2) within six years after the date of the acceptance if the obligation of the acceptor is payable on demand.

(g) Unless governed by other law regarding claims for indemnity or contribution, the following actions must be commenced within three years after the cause of action accrues:

(1) an action for conversion of an instrument, an action for money had and received, or like action based on conversion;

(2) an action for breach of warranty; or

(3) an action to enforce an obligation, duty, or right arising under this chapter and not governed by this section.

(h) This section does not apply to an action involving a real property lien covered by Section 16.035 or 16.036, Civil Practice and Remedies Code.

(i) A right of action of a public institution of higher education or the Texas Higher Education Coordinating Board is not barred by this section.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 219, Sec. 4, eff. May 23, 1997; Acts 2001, 77th Leg., ch. 279, Sec. 1, eff. May 22, 2001.

Sec. 3.119. NOTICE OF RIGHT TO DEFEND ACTION. In an action for breach of an obligation for which a third person is answerable over pursuant to this chapter or Chapter 4, the defendant may give the third person notice of the litigation in a record, and the person notified may then give similar notice to any other person who is answerable over. If the notice states (i) that the person notified may come in and defend, and (ii) that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations,

the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.
Amended by:
Acts 2005, 79th Leg., Ch. 95 (S.B. 1563), Sec. 4, eff. September 1, 2005.

SUBCHAPTER B. NEGOTIATION, TRANSFER, AND INDORSEMENT

Sec. 3.201. NEGOTIATION. (a) "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

(b) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.202. NEGOTIATION SUBJECT TO RESCISSION. (a) Negotiation is effective even if obtained:

(1) from an infant, a corporation exceeding its powers, or a person without capacity;

(2) by fraud, duress, or mistake; or

(3) in breach of duty or as part of an illegal transaction.

(b) To the extent permitted by other law, negotiation may be rescinded or may be subject to other remedies, but those remedies may not be asserted against a subsequent holder in due course or a person paying the instrument in good faith and without knowledge of facts that are a basis for rescission or other remedy.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.203. TRANSFER OF INSTRUMENT; RIGHTS ACQUIRED BY TRANSFER. (a) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the

person receiving delivery the right to enforce the instrument.

(b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course. The transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

(c) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.

(d) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no rights under this chapter and has only the rights of a partial assignee.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.204. INDORSEMENT. (a) "Indorsement" means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring indorser's liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(b) "Indorser" means a person who makes an indorsement.

(c) For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.

(d) If an instrument is payable to a holder under a name that

is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.205. SPECIAL INDORSEMENT; BLANK INDORSEMENT; ANOMALOUS INDORSEMENT. (a) If an indorsement is made by the holder of an instrument, whether payable to an identified person or payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a "special indorsement." When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only by the indorsement of that person. The principles stated in Section 3.110 apply to special indorsements.

(b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement." When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

(c) The holder may convert a blank indorsement that consists only of a signature into a special indorsement by writing, above the signature of the indorser, words identifying the person to whom the instrument is made payable.

(d) "Anomalous indorsement" means an indorsement made by a person who is not the holder of the instrument. An anomalous indorsement does not affect the manner in which the instrument may be negotiated.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.206. RESTRICTIVE INDORSEMENT. (a) An indorsement limiting payment to a particular person or otherwise prohibiting further transfer or negotiation of the instrument is not effective to prevent further transfer or negotiation of the instrument.

(b) An indorsement stating a condition to the right of the indorsee to receive payment does not affect the right of the indorsee to enforce the instrument. A person paying the instrument or taking it for value or collection may disregard the condition, and the

rights and liabilities of that person are not affected by whether the condition has been fulfilled.

(c) If an instrument bears an indorsement (i) described in Section 4.201(b), or (ii) in blank or to a particular bank using the words "for deposit" or "for collection," or other words indicating a purpose of having the instrument collected by a bank for the indorser or for a particular account, the following rules apply:

(1) a person, other than a bank, who purchases the instrument when so indorsed converts the instrument unless the amount paid for the instrument is received by the indorser or applied consistently with the indorsement;

(2) a depositary bank that purchases the instrument or takes it for collection when so indorsed converts the instrument unless the amount paid by the bank with respect to the instrument is received by the indorser or applied consistently with the indorsement;

(3) a payor bank that is also the depositary bank or that takes the instrument for immediate payment over the counter from a person other than a collecting bank converts the instrument unless the proceeds of the instrument are received by the indorser or applied consistently with the indorsement; and

(4) except as otherwise provided in Subdivision (3), a payor bank or intermediary bank may disregard the indorsement and is not liable if the proceeds of the instrument are not received by the indorser or applied consistently with the indorsement.

(d) Except for an indorsement covered by Subsection (c), if an instrument bears an indorsement using words to the effect that payment is to be made to the indorsee as agent, trustee, or other fiduciary for the benefit of the indorser or another person, the following rules apply:

(1) unless there is notice of breach of fiduciary duty as provided in Section 3.307, a person who purchases the instrument from the indorsee or takes the instrument from the indorsee for collection or payment may pay the proceeds of payment or the value given for the instrument to the indorsee without regard to whether the indorsee violates a fiduciary duty to the indorser; and

(2) a subsequent transferee of the instrument or person who pays the instrument is neither given notice nor otherwise affected by the restriction in the indorsement unless the transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in

breach of fiduciary duty.

(e) The presence on an instrument of an indorsement to which this section applies does not prevent a purchaser of the instrument from becoming a holder in due course of the instrument unless the purchaser is a converter under Subsection (c) or has notice or knowledge of breach of fiduciary duty as stated in Subsection (d).

(f) In an action to enforce the obligation of a party to pay the instrument, the obligor has a defense if payment would violate an indorsement to which this section applies and the payment is not permitted by this section.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.207. REACQUISITION. Reacquisition of an instrument occurs if it is transferred to a former holder, by negotiation or otherwise. A former holder who reacquires the instrument may cancel indorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An indorser whose indorsement is canceled is discharged, and the discharge is effective against any subsequent holder.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

SUBCHAPTER C. ENFORCEMENT OF INSTRUMENTS

Sec. 3.301. PERSON ENTITLED TO ENFORCE INSTRUMENT. "Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 3.309 or 3.418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.302. HOLDER IN DUE COURSE. (a) Subject to Subsection (c) and Section 3.106(d), "holder in due course" means the holder of

an instrument if:

(1) the instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

(2) the holder took the instrument:

(A) for value;

(B) in good faith;

(C) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series;

(D) without notice that the instrument contains an unauthorized signature or has been altered;

(E) without notice of any claim to the instrument described in Section 3.306; and

(F) without notice that any party has a defense or claim in recoupment described in Section 3.305(a).

(b) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under Subsection (a), but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

(c) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken:

(1) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding;

(2) by purchase as part of a bulk transaction not in ordinary course of business of the transferor; or

(3) as the successor in interest to an estate or other organization.

(d) If, under Section 3.303(a)(1), the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

(e) If (i) the person entitled to enforce an instrument has only a security interest in the instrument, and (ii) the person

obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument that, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

(f) To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

(g) This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.303. VALUE AND CONSIDERATION. (a) An instrument is issued or transferred for value if:

(1) the instrument is issued or transferred for a promise of performance, to the extent the promise has been performed;

(2) the transferee acquires a security interest or other lien in the instrument other than a lien obtained by judicial proceeding;

(3) the instrument is issued or transferred as payment of, or as security for, an antecedent claim against any person, whether or not the claim is due;

(4) the instrument is issued or transferred in exchange for a negotiable instrument; or

(5) the instrument is issued or transferred in exchange for the incurring of an irrevocable obligation to a third party by the person taking the instrument.

(b) "Consideration" means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed. If an instrument is issued for value as stated in Subsection (a), the instrument is also issued for consideration.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.304. OVERDUE INSTRUMENT. (a) An instrument payable on demand becomes overdue at the earliest of the following times:

(1) on the day after the day demand for payment is duly made;

(2) if the instrument is a check, 90 days after its date; or

(3) if the instrument is not a check, when the instrument has been outstanding for a period of time after its date that is unreasonably long under the circumstances of the particular case in light of the nature of the instrument and usage of the trade.

(b) With respect to an instrument payable at a definite time the following rules apply:

(1) if the principal is payable in installments and a due date has not been accelerated, the instrument becomes overdue on default under the instrument for nonpayment of an installment, and the instrument remains overdue until the default is cured;

(2) if the principal is not payable in installments and the due date has not been accelerated, the instrument becomes overdue on the day after the due date; and

(3) if a due date with respect to principal has been accelerated, the instrument becomes overdue on the day after the accelerated due date.

(c) Unless the due date of principal has been accelerated, an instrument does not become overdue if there is default in payment of interest but no default in payment of principal.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.305. DEFENSES AND CLAIMS IN RECOUPMENT. (a) Except as otherwise provided in this section, the right to enforce the obligation of a party to pay an instrument is subject to the following:

(1) a defense of the obligor based on:

(A) infancy of the obligor to the extent it is a defense to a simple contract;

(B) duress, lack of legal capacity, or illegality of the transaction that, under other law, nullifies the obligation of the obligor;

(C) fraud that induced the obligor to sign the

instrument with neither knowledge nor reasonable opportunity to learn of its character or its essential terms; or

(D) discharge of the obligor in insolvency proceedings;

(2) a defense of the obligor stated in another section of this chapter or a defense of the obligor that would be available if the person entitled to enforce the instrument were enforcing a right to payment under a simple contract; and

(3) a claim in recoupment of the obligor against the original payee of the instrument if the claim arose from the transaction that gave rise to the instrument; but the claim of the obligor may be asserted against a transferee of the instrument only to reduce the amount owing on the instrument at the time the action is brought.

(b) The right of a holder in due course to enforce the obligation of a party to pay the instrument is subject to defenses of the obligor stated in Subsection (a)(1), but is not subject to defenses of the obligor stated in Subsection (a)(2) or claims in recoupment stated in Subsection (a)(3) against a person other than the holder.

(c) Except as provided in Subsection (d), in an action to enforce the obligation of a party to pay the instrument, the obligor may not assert against the person entitled to enforce the instrument a defense, claim in recoupment, or claim to the instrument (Section 3.306) of another person, but the other person's claim to the instrument may be asserted by the obligor if the other person is joined in the action and personally asserts the claim against the person entitled to enforce the instrument. An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument.

(d) In an action to enforce the obligation of an accommodation party to pay an instrument, the accommodation party may assert against the person entitled to enforce the instrument any defense or claim in recoupment under Subsection (a) that the accommodated party could assert against the person entitled to enforce the instrument, except the defenses of discharge in insolvency proceedings, infancy, and lack of legal capacity.

(e) In a consumer transaction, if law other than this chapter requires that an instrument include a statement to the effect that the rights of a holder or transferee are subject to a claim or

defense that the issuer could assert against the original payee, and the instrument does not include such a statement:

(1) the instrument has the same effect as if the instrument included such a statement;

(2) the issuer may assert against the holder or transferee all claims and defenses that would have been available if the instrument included such a statement; and

(3) the extent to which claims may be asserted against the holder or transferee is determined as if the instrument included such a statement.

If an instrument includes or is deemed to include a statement under this subsection, a holder or transferee who is liable under the statement to the issuer, but who is not the seller of the goods or services, shall be entitled to full indemnity from the seller for any liability under the statement incurred by the holder or transferee that results from the issuer's claims or defenses against the seller, plus reasonable attorney's fees. The provision in this section for express indemnity does not affect any right of indemnity, subrogation, or recovery to which a holder or transferee may be entitled under any rule, written contract, judicial decision, or other statute. This section is not intended to provide a holder or transferee indemnity from the seller with respect to the holder or transferee's direct liability to the issuer for the holder or transferee's own actionable misconduct unrelated to derivative liability under the statement.

(f) This section is subject to law other than this chapter that establishes a different rule for consumer transactions.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.
Amended by:

Acts 2005, 79th Leg., Ch. 95 (S.B. 1563), Sec. 5, eff. September 1, 2005.

Sec. 3.306. CLAIMS TO AN INSTRUMENT. A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to

the instrument.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.307. NOTICE OF BREACH OF FIDUCIARY DUTY. (a) In this section:

(1) "Fiduciary" means an agent, trustee, partner, corporate officer or director, or other representative owing a fiduciary duty with respect to an instrument.

(2) "Represented person" means the principal, beneficiary, partnership, corporation, or other person to whom the duty stated in Subdivision (1) is owed.

(b) If (i) an instrument is taken from a fiduciary for payment or collection or for value, (ii) the taker has knowledge of the fiduciary status of the fiduciary, and (iii) the represented person makes a claim to the instrument or its proceeds on the basis that the transaction of the fiduciary is a breach of fiduciary duty, the following rules apply:

(1) notice of breach of fiduciary duty by the fiduciary is notice of the claim of the represented person;

(2) in the case of an instrument payable to the represented person or the fiduciary as such, the taker has notice of the breach of fiduciary duty if the instrument is:

(A) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary;

(B) taken in a transaction known by the taker to be for the personal benefit of the fiduciary; or

(C) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person;

(3) if an instrument is issued by the represented person or the fiduciary as such, and made payable to the fiduciary personally, the taker does not have notice of the breach of fiduciary duty unless the taker knows of the breach of fiduciary duty; and

(4) if an instrument is issued by the represented person or the fiduciary as such, to the taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is:

(A) taken in payment of or as security for a debt known by the taker to be the personal debt of the fiduciary;

(B) taken in a transaction known by the taker to be for

the personal benefit of the fiduciary; or

(C) deposited to an account other than an account of the fiduciary, as such, or an account of the represented person.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.308. PROOF OF SIGNATURES AND STATUS AS HOLDER IN DUE COURSE. (a) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument are admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under Section 3.402(a).

(b) If the validity of signatures is admitted or proved and there is compliance with Subsection (a), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under Section 3.301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course that are not subject to the defense or claim.

Added by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.309. ENFORCEMENT OF LOST, DESTROYED, OR STOLEN INSTRUMENT. (a) A person who is not in possession of an instrument is entitled to enforce the instrument if:

(1) the person seeking to enforce the instrument:

(A) was entitled to enforce the instrument when loss of possession occurred; or

(B) has directly or indirectly acquired ownership of

the instrument from a person who was entitled to enforce the instrument when loss of possession occurred;

(2) the loss of possession was not the result of a transfer by the person or a lawful seizure; and

(3) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(b) A person seeking enforcement of an instrument under Subsection (a) must prove the terms of the instrument and the person's right to enforce the instrument. If that proof is made, Section 3.308 applies to the case as if the person seeking enforcement had produced the instrument. The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument. Adequate protection may be provided by any reasonable means.

Added by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.
Amended by:

Acts 2005, 79th Leg., Ch. 95 (S.B. 1563), Sec. 6, eff. September 1, 2005.

Sec. 3.310. EFFECT OF INSTRUMENT ON OBLIGATION FOR WHICH TAKEN. (a) Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an indorser of the instrument.

(b) Unless otherwise agreed and except as provided in Subsection (a), if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:

(1) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid

or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

(2) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.

(3) Except as provided in Subdivision (4), if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person that is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.

(4) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.

(c) If an instrument other than one described in Subsection (a) or (b) is taken for an obligation, the effect is:

(1) that stated in Subsection (a) if the instrument is one for which a bank is liable as maker or acceptor; or

(2) that stated in Subsection (b) in any other case.

Added by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.311. ACCORD AND SATISFACTION BY USE OF INSTRUMENT. (a) Subsections (b)-(d) apply if a person against whom a claim is asserted proves that:

(1) that person in good faith tendered an instrument to the claimant as full satisfaction of the claim;

(2) the amount of the claim was unliquidated or subject to a bona fide dispute; and

(3) the claimant obtained payment of the instrument.

(b) Unless Subsection (c) applies, the claim is discharged if

the person against whom the claim is asserted proves that the instrument or an accompanying written communication contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.

(c) Subject to Subsection (d), a claim is not discharged under Subsection (b) if either of the following applies:

(1) The claimant, if an organization, proves that:

(A) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place; and

(B) the instrument or accompanying communication was not received by that designated person, office, or place.

(2) The claimant, whether or not an organization, proves that within 90 days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This subdivision does not apply if the claimant is an organization that sent a statement complying with Subdivision (1)(A).

(d) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.

Added by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.312. LOST, DESTROYED, OR STOLEN CASHIER'S CHECK, TELLER'S CHECK, OR CERTIFIED CHECK. (a) In this section:

(1) "Check" means a cashier's check, teller's check, or certified check.

(2) "Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen.

(3) "Declaration of loss" means a statement, made in a record under penalty of perjury, to the effect that:

(A) the declarer lost possession of a check;

(B) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check;

(C) the loss of possession was not the result of a transfer by the declarer or a lawful seizure; and

(D) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(4) "Obligated bank" means the issuer of a cashier's check or teller's check or the acceptor of a certified check.

(b) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check, (ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check, (iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid, and (iv) the claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

(1) The claim becomes enforceable at the later of (i) the time the claim is asserted, or (ii) the 90th day following the date of the check, in the case of a cashier's check or teller's check, or the 90th day following the date of the acceptance, in the case of a certified check.

(2) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

(3) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.

(4) When the claim becomes enforceable, the obligated bank

becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to Section 4.302(a)(1), payment to the claimant discharges all liability of the obligated bank with respect to the check.

(c) If the obligated bank pays the amount of a check to a claimant under Subsection (b)(4) and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to:

(1) refund the payment to the obligated bank if the check is paid; or

(2) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(d) If a claimant has the right to assert a claim under Subsection (b) and is also a person who is entitled to enforce a cashier's check, teller's check, or certified check that is lost, destroyed, or stolen, the claimant may assert rights with respect to the check under either this section or Section 3.309.

Added by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.
Amended by:

Acts 2005, 79th Leg., Ch. 95 (S.B. 1563), Sec. 7, eff. September 1, 2005.

SUBCHAPTER D. LIABILITY OF PARTIES

Sec. 3.401. SIGNATURE. (a) A person is not liable on an instrument unless the person:

(1) signed the instrument; or

(2) is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under Section 3.402.

(b) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.402. SIGNATURE BY REPRESENTATIVE. (a) If a person

acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract. If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.

(b) If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, the following rules apply:

(1) If the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.

(2) Subject to Subsection (c), the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument if (i) the form of the signature does not show unambiguously that the signature is made in a representative capacity, or (ii) the represented person is not identified in the instrument. With respect to any other person, the representative is liable on the instrument unless the representative proves that the original parties did not intend the representative to be liable on the instrument.

(c) If a representative signs the name of the representative as drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.403. UNAUTHORIZED SIGNATURE. (a) Unless otherwise provided in this chapter or Chapter 4, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this chapter.

(b) If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking.

(c) The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of this chapter that makes the unauthorized signature effective for the purposes of this chapter.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.404. IMPOSTORS; FICTITIOUS PAYEES. (a) If an impostor, by use of the mails or otherwise, induces the issuer of an instrument to issue the instrument to the impostor, or to a person acting in concert with the impostor, by impersonating the payee of the instrument or a person authorized to act for the payee, an indorsement of the instrument by any person in the name of the payee is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) If (i) a person whose intent determines to whom an instrument is payable (Section 3.110(a) or (b)) does not intend the person identified as payee to have any interest in the instrument, or (ii) the person identified as payee of an instrument is a fictitious person, the following rules apply until the instrument is negotiated by special indorsement:

(1) Any person in possession of the instrument is its holder.

(2) An indorsement by any person in the name of the payee stated in the instrument is effective as the indorsement of the payee in favor of a person who, in good faith, pays the instrument or takes it for value or for collection.

(c) Under Subsection (a) or (b), an indorsement is made in the name of a payee if:

(1) it is made in a name substantially similar to that of the payee; or

(2) the instrument, whether or not indorsed, is deposited in a depositary bank to an account in a name substantially similar to that of the payee.

(d) With respect to an instrument to which Subsection (a) or (b) applies, if a person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure contributes to loss resulting from payment of the instrument, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.405. EMPLOYER'S RESPONSIBILITY FOR FRAUDULENT INDORSEMENT BY EMPLOYEE. (a) In this section:

(1) "Employee" includes an independent contractor and employee of an independent contractor retained by the employer.

(2) "Fraudulent indorsement" means:

(A) in the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer; or

(B) in the case of an instrument with respect to which the employer is the issuer, a forged indorsement purporting to be that of the person identified as payee.

(3) "Responsibility" with respect to instruments means authority (i) to sign or indorse instruments on behalf of the employer, (ii) to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition, (iii) to prepare or process instruments for issue in the name of the employer, (iv) to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer, (v) to control the disposition of instruments to be issued in the name of the employer, or (vi) to act otherwise with respect to instruments in a responsible capacity. "Responsibility" does not include authority that merely allows an employee to have access to instruments or blank or incomplete instrument forms that are being stored or transported or are part of incoming or outgoing mail, or similar access.

(b) For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a

person acting in concert with the employee makes a fraudulent indorsement of the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of that person. If the person paying the instrument or taking it for value or for collection fails to exercise ordinary care in paying or taking the instrument and that failure contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss.

(c) Under Subsection (b), an indorsement is made in the name of the person to whom an instrument is payable if:

(1) it is made in a name substantially similar to the name of that person; or

(2) the instrument, whether or not indorsed, is deposited in a depositary bank to an account in a name substantially similar to the name of that person.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.406. NEGLIGENCE CONTRIBUTING TO FORGED SIGNATURE OR ALTERATION OF INSTRUMENT. (a) A person whose failure to exercise ordinary care substantially contributes to an alteration of an instrument or to the making of a forged signature on an instrument is precluded from asserting the alteration or the forgery against a person who, in good faith, pays the instrument or takes it for value or for collection.

(b) Under Subsection (a), if the person asserting the preclusion fails to exercise ordinary care in paying or taking the instrument and that failure contributes to loss, the loss is allocated between the person precluded and the person asserting the preclusion according to the extent to which the failure of each to exercise ordinary care contributed to the loss.

(c) Under Subsection (a), the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under Subsection (b), the burden of proving failure to exercise ordinary care is on the person precluded.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.407. ALTERATION. (a) "Alteration" means:

(1) an unauthorized change in an instrument that purports to modify in any respect the obligation of a party; or

(2) an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.

(b) Except as provided in Subsection (c), an alteration fraudulently made discharges a party whose obligation is affected by the alteration unless that party assents or is precluded from asserting the alteration. No other alteration discharges a party, and the instrument may be enforced according to its original terms.

(c) A payor bank or drawee paying a fraudulently altered instrument or a person taking it for value, in good faith and without notice of the alteration, may enforce rights with respect to the instrument:

(1) according to its original terms; or

(2) in the case of an incomplete instrument altered by unauthorized completion, according to its terms as completed.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.408. DRAWEE NOT LIABLE ON UNACCEPTED DRAFT. A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.409. ACCEPTANCE OF DRAFT; CERTIFIED CHECK. (a) "Acceptance" means the drawee's signed agreement to pay a draft as presented. It must be written on the draft and may consist of the drawee's signature alone. Acceptance may be made at any time and becomes effective when notification pursuant to instructions is given or the accepted draft is delivered for the purpose of giving rights on the acceptance to any person.

(b) A draft may be accepted although it has not been signed by the drawer, is otherwise incomplete, is overdue, or has been dishonored.

(c) If a draft is payable at a fixed period after sight and the

acceptor fails to date the acceptance, the holder may complete the acceptance by supplying a date in good faith.

(d) "Certified check" means a check accepted by the bank on which it is drawn. Acceptance may be made as stated in Subsection (a) or by a writing on the check that indicates that the check is certified. The drawee of a check has no obligation to certify the check, and refusal to certify is not dishonor of the check.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.410. ACCEPTANCE VARYING DRAFT. (a) If the terms of a drawee's acceptance vary from the terms of the draft as presented, the holder may refuse the acceptance and treat the draft as dishonored. In that case, the drawee may cancel the acceptance.

(b) The terms of a draft are not varied by an acceptance to pay at a particular bank or place in the United States, unless the acceptance states that the draft is to be paid only at that bank or place.

(c) If the holder assents to an acceptance varying the terms of a draft, the obligation of each drawer and indorser that does not expressly assent to the acceptance is discharged.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.411. REFUSAL TO PAY CASHIER'S CHECKS, TELLER'S CHECKS, AND CERTIFIED CHECKS. (a) In this section, "obligated bank" means the acceptor of a certified check or the issuer of a cashier's check or teller's check bought from the issuer.

(b) If the obligated bank wrongfully (i) refuses to pay a cashier's check or certified check, (ii) stops payment of a teller's check, or (iii) refuses to pay a dishonored teller's check, the person asserting the right to enforce the check is entitled to compensation for expenses and loss of interest resulting from the nonpayment and may recover consequential damages if the obligated bank refuses to pay after receiving notice of particular circumstances giving rise to the damages.

(c) Expenses or consequential damages under Subsection (b) are not recoverable if the refusal of the obligated bank to pay occurs because:

(1) the obligated bank suspends payments;

(2) the obligated bank asserts a claim or defense of the bank that it has reasonable grounds to believe is available against the person entitled to enforce the instrument;

(3) the obligated bank has a reasonable doubt whether the person demanding payment is the person entitled to enforce the instrument; or

(4) payment is prohibited by law.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.412. OBLIGATION OF ISSUER OF NOTE OR CASHIER'S CHECK. The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the issuer signed an incomplete instrument, according to its terms when completed, to the extent stated in Sections 3.115 and 3.407. The obligation is owed to a person entitled to enforce the instrument or to an indorser who paid the instrument under Section 3.415.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.413. OBLIGATION OF ACCEPTOR. (a) The acceptor of a draft is obliged to pay the draft (i) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms, (ii) if the acceptance varies the terms of the draft, according to the terms of the draft as varied, or (iii) if the acceptance is of a draft that is an incomplete instrument, according to its terms when completed, to the extent stated in Sections 3.115 and 3.407. The obligation is owed to a person entitled to enforce the draft or to the drawer or an indorser who paid the draft under Section 3.414 or 3.415.

(b) If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. The obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course if:

(1) the certification or acceptance does not state an

amount;

(2) the amount of the instrument is subsequently raised; and

(3) the instrument is then negotiated to a holder in due course.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.414. OBLIGATION OF DRAWER. (a) This section does not apply to cashier's checks or other drafts drawn on the drawer.

(b) If an unaccepted draft is dishonored, the drawer is obliged to pay the draft (i) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder, or (ii) if the drawer signed an incomplete instrument, according to its terms when completed, to the extent stated in Sections 3.115 and 3.407. The obligation is owed to a person entitled to enforce the draft or to an indorser who paid the draft under Section 3.415.

(c) If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom acceptance was obtained.

(d) If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an indorser under Sections 3.415(a) and (c).

(e) If a draft states that it is drawn "without recourse" or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable under Subsection (b) to pay the draft if the draft is not a check. A disclaimer of the liability stated in Subsection (b) is not effective if the draft is a check.

(f) If (i) a check is not presented for payment or given to a depositary bank for collection within 30 days after its date, (ii) the drawee suspends payments after expiration of the 30-day period without paying the check, and (iii) because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check, the drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the drawee with respect to the funds.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.415. OBLIGATION OF INDORSER. (a) Subject to Subsections (b), (c), (d), and (e) and to Section 3.419(d), if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument (i) according to the terms of the instrument at the time it was indorsed, or (ii) if the indorser indorsed an incomplete instrument, according to its terms when completed, to the extent stated in Sections 3.115 and 3.407. The obligation of the indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser who paid the instrument under this section.

(b) If an indorsement states that it is made "without recourse" or otherwise disclaims liability of the indorser, the indorser is not liable under Subsection (a) to pay the instrument.

(c) If notice of dishonor of an instrument is required by Section 3.503 and notice of dishonor complying with that section is not given to an indorser, the liability of the indorser under Subsection (a) is discharged.

(d) If a draft is accepted by a bank after an indorsement is made, the liability of the indorser under Subsection (a) is discharged.

(e) If an indorser of a check is liable under Subsection (a) and the check is not presented for payment, or given to a depositary bank for collection, within 30 days after the day the indorsement was made, the liability of the indorser under Subsection (a) is discharged.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.416. TRANSFER WARRANTIES. (a) A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that:

(1) the warrantor is a person entitled to enforce the instrument;

(2) all signatures on the instrument are authentic and authorized;

(3) the instrument has not been altered;

(4) the instrument is not subject to a defense or claim in recoupment of any party that can be asserted against the warrantor;

(5) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; and

(6) with respect to a remotely-created item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(b) A person to whom the warranties under Subsection (a) are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.

(c) The warranties stated in Subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under Subsection (b) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(d) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(e) If as to a particular item (1) a transferee (including a collecting bank) asserts a claim for breach of the warranty in Subsection (a)(6), but (2) under applicable law (including the applicable choice-of-law principles) that transferee would not make a warranty substantially similar to the warranty in Subsection (a)(6) if such transferee were a transferor, then that transferee would not receive the warranty in Subsection (a)(6) from any transferor.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 131, Sec. 3, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 95 (S.B. 1563), Sec. 8, eff. September 1, 2005.

Sec. 3.417. PRESENTMENT WARRANTIES. (a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous

transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that:

(1) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) the draft has not been altered;

(3) the warrantor has no knowledge that the signature of the drawer of the draft is unauthorized; and

(4) with respect to a remotely-created item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(b) A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under Subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under Section 3.404 or 3.405 or the drawer is precluded under Section 3.406 or 4.406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the drawer or an indorser, or (ii) any other instrument is presented for payment to a party obliged to pay the instrument, and (iii) payment is received, the following rules apply:

(1) The person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.

(2) The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in Subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor under Subsection (b) or (d) is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(g) If as to a particular item (1) a transferee (including a collecting bank) asserts a claim for breach of the warranty in Subsection (a)(4), but (2) under applicable law (including the applicable choice-of-law principles) that transferee would not make a warranty substantially similar to the warranty in Subsection (a)(4) if such transferee were a transferor, then that transferee would not receive the warranty in Subsection (a)(4) from any transferor.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 131, Sec. 4, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 95 (S.B. 1563), Sec. 9, eff. September 1, 2005.

Sec. 3.418. PAYMENT OR ACCEPTANCE BY MISTAKE. (a) Except as provided in Subsection (c), if the drawee of a draft pays or accepts the draft and the drawee acted on the mistaken belief that (i) payment of the draft had not been stopped pursuant to Section 4.403, or (ii) the signature of the drawer of the draft was authorized, the drawee may recover the amount of the draft from the person to whom or for whose benefit payment was made or, in the case of acceptance, may revoke the acceptance. Rights of the drawee under this subsection are not affected by failure of the drawee to exercise ordinary care in paying or accepting the draft.

(b) Except as provided in Subsection (c), if an instrument has been paid or accepted by mistake and the case is not covered by Subsection (a), the person paying or accepting may, to the extent

permitted by the law governing mistake and restitution:

(1) recover the payment from the person to whom or for whose benefit payment was made; or

(2) in the case of acceptance, revoke the acceptance.

(c) The remedies provided by Subsection (a) or (b) may not be asserted against a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance. This subsection does not limit remedies provided by Section 3.417 or 4.407.

(d) Notwithstanding Section 4.215, if an instrument is paid or accepted by mistake and the payor or acceptor recovers payment or revokes acceptance under Subsection (a) or (b), the instrument is deemed not to have been paid or accepted and is treated as dishonored, and the person from whom payment is recovered has rights as a person entitled to enforce the dishonored instrument.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.419. INSTRUMENTS SIGNED FOR ACCOMMODATION. (a) If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation."

(b) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser. Subject to Subsection (d), the accommodation party is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and whether or not the accommodation party receives consideration for the accommodation.

(c) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in Section 3.605, the obligation of an accommodation party to pay the instrument is not affected by the

fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(d) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if:

(1) execution of judgment against the other party has been returned unsatisfied;

(2) the other party is insolvent or in an insolvency proceeding;

(3) the other party cannot be served with process; or

(4) it is otherwise apparent that payment cannot be obtained from the other party.

(e) If the signature of a party to an instrument is accompanied by words indicating that the party guarantees payment or the signer signs the instrument as an accommodation party in some other manner that does not unambiguously indicate an intention to guarantee collection rather than payment, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument in the same circumstances as the accommodated party would be obliged, without prior resort to the accommodated party by the person entitled to enforce the instrument.

(f) An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. In proper circumstances, an accommodation party may obtain relief that requires the accommodated party to perform its obligations on the instrument. An accommodated party that pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.
Amended by:

Acts 2005, 79th Leg., Ch. 95 (S.B. 1563), Sec. 10, eff. September 1, 2005.

Sec. 3.420. CONVERSION OF INSTRUMENT. (a) The law applicable

to conversion of personal property applies to instruments. An instrument is also converted if it is taken by transfer, other than a negotiation, from a person not entitled to enforce the instrument or a bank makes or obtains payment with respect to the instrument for a person not entitled to enforce the instrument or receive payment. An action for conversion of an instrument may not be brought by:

(1) the issuer or acceptor of the instrument; or

(2) a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a co-payee.

(b) In an action under Subsection (a), the measure of liability is presumed to be the amount payable on the instrument, but recovery may not exceed the amount of the plaintiff's interest in the instrument.

(c) A representative, other than a depositary bank, who has in good faith dealt with an instrument or its proceeds on behalf of one who was not the person entitled to enforce the instrument is not liable in conversion to that person beyond the amount of any proceeds that it has not paid out.

Added by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

SUBCHAPTER E. DISHONOR

Sec. 3.501. PRESENTMENT. (a) "Presentment" means a demand made by or on behalf of a person entitled to enforce an instrument to:

(1) pay the instrument made to the drawee or a party obliged to pay the instrument or, in the case of a note or accepted draft payable at a bank, to the bank; or

(2) accept a draft made to the drawee.

(b) The following rules are subject to Chapter 4, agreement of the parties, and clearing-house rules and the like:

(1) Presentment may be made at the place of payment of the instrument and must be made at the place of payment if the instrument is payable at a bank in the United States. Presentment may be made by any commercially reasonable means, including an oral, written, or electronic communication. Presentment is effective:

(A) when the demand for payment or acceptance is received by the person to whom presentment is made; and

(B) if made to any one of two or more makers, acceptors, drawees, or other payors.

(2) On demand of the person to whom presentment is made, the person making presentment must:

(A) exhibit the instrument;

(B) give reasonable identification and, if presentment is made on behalf of another person, reasonable evidence of authority to do so; and

(C) sign a receipt on the instrument for any payment made or surrender the instrument if full payment is made.

(3) Without dishonoring the instrument, the party to whom presentment is made may:

(A) return the instrument for lack of a necessary indorsement; or

(B) refuse payment or acceptance for failure of the presentment to comply with the terms of the instrument, an agreement of the parties, or other applicable law or rule.

(4) The party to whom presentment is made may treat presentment as occurring on the next business day after the day of presentment if the party to whom presentment is made has established a cutoff hour not earlier than 2 p.m. for the receipt and processing of instruments presented for payment or acceptance and presentment is made after the cutoff hour.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.502. DISHONOR. (a) Dishonor of a note is governed by the following rules:

(1) If the note is payable on demand, the note is dishonored if presentment is duly made to the maker and the note is not paid on the day of presentment.

(2) If the note is not payable on demand and is payable at or through a bank or the terms of the note require presentment, the note is dishonored if presentment is duly made and the note is not paid on the day it becomes payable or the day of presentment, whichever is later.

(3) If the note is not payable on demand and Subdivision (2) does not apply, the note is dishonored if it is not paid on the day it becomes payable.

(b) Dishonor of an unaccepted draft other than a documentary draft is governed by the following rules:

(1) If a check is duly presented for payment to the payor bank otherwise than for immediate payment over the counter, the check is dishonored if the payor bank makes timely return of the check or sends timely notice of dishonor or nonpayment under Section 4.301 or 4.302, or becomes accountable for the amount of the check under Section 4.302.

(2) If a draft is payable on demand and Subdivision (1) does not apply, the draft is dishonored if presentment for payment is duly made to the drawee and the draft is not paid on the day of presentment.

(3) If a draft is payable on a date stated in the draft, the draft is dishonored if:

(A) presentment for payment is duly made to the drawee and payment is not made on the day the draft becomes payable or the day of presentment, whichever is later; or

(B) presentment for acceptance is duly made before the day the draft becomes payable and the draft is not accepted on the day of presentment.

(4) If a draft is payable on elapse of a period of time after sight or acceptance, the draft is dishonored if presentment for acceptance is duly made and the draft is not accepted on the day of presentment.

(c) Dishonor of an unaccepted documentary draft occurs according to the rules stated in Subsections (b)(2), (3), and (4), except that payment or acceptance may be delayed without dishonor until not later than the close of the third business day of the drawee following the day on which payment or acceptance is required by those subdivisions.

(d) Dishonor of an accepted draft is governed by the following rules:

(1) If the draft is payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and the draft is not paid on the day of presentment.

(2) If the draft is not payable on demand, the draft is dishonored if presentment for payment is duly made to the acceptor and payment is not made on the day it becomes payable or the day of presentment, whichever is later.

(e) In any case in which presentment is otherwise required for

dishonor under this section and presentment is excused under Section 3.504, dishonor occurs without presentment if the instrument is not duly accepted or paid.

(f) If a draft is dishonored because timely acceptance of the draft was not made and the person entitled to demand acceptance consents to a late acceptance, from the time of acceptance the draft is treated as never having been dishonored.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.503. NOTICE OF DISHONOR. (a) The obligation of an indorser stated in Section 3.415(a) and the obligation of a drawer stated in Section 3.414(d) may not be enforced unless:

(1) the indorser or drawer is given notice of dishonor of the instrument complying with this section; or

(2) notice of dishonor is excused under Section 3.504(b).

(b) Notice of dishonor may be given by any person; may be given by any commercially reasonable means, including an oral, written, or electronic communication; and is sufficient if it reasonably identifies the instrument and indicates that the instrument has been dishonored or has not been paid or accepted. Return of an instrument given to a bank for collection is sufficient notice of dishonor.

(c) Subject to Section 3.504(c), with respect to an instrument taken for collection by a collecting bank, notice of dishonor must be given (i) by the bank before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument, or (ii) by any other person within 30 days following the day on which the person receives notice of dishonor. With respect to any other instrument, notice of dishonor must be given within 30 days following the day on which dishonor occurs.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.504. EXCUSED PRESENTMENT AND NOTICE OF DISHONOR. (a) Presentment for payment or acceptance of an instrument is excused if:

(1) the person entitled to present the instrument cannot with reasonable diligence make presentment;

(2) the maker or acceptor has repudiated an obligation to pay the instrument or is dead or in insolvency proceedings;

(3) by the terms of the instrument presentment is not necessary to enforce the obligation of indorsers or the drawer;

(4) the drawer or indorser whose obligation is being enforced has waived presentment or otherwise has no reason to expect or right to require that the instrument be paid or accepted; or

(5) the drawer instructed the drawee not to pay or accept the draft or the drawee was not obligated to the drawer to pay the draft.

(b) Notice of dishonor is excused if (i) by the terms of the instrument notice of dishonor is not necessary to enforce the obligation of a party to pay the instrument, or (ii) the party whose obligation is being enforced waived notice of dishonor. A waiver of presentment is also a waiver of notice of dishonor.

(c) Delay in giving notice of dishonor is excused if the delay was caused by circumstances beyond the control of the person giving the notice and the person giving the notice exercised reasonable diligence after the cause of the delay ceased to operate.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.505. EVIDENCE OF DISHONOR. (a) The following are admissible as evidence and create a presumption of dishonor and of any notice of dishonor stated:

(1) a document regular in form as provided in Subsection (b) that purports to be a protest;

(2) a purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor;

(3) a book or record of the drawee, payor bank, or collecting bank that is kept in the usual course of business and that shows dishonor, even if there is no evidence of who made the entry.

(b) A protest is a certificate of dishonor made by a United States consul or vice consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made on information satisfactory to that person. The protest must identify the instrument and certify either that

presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

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

(b) On return of a payment device to the holder following dishonor of the payment device by a payor, the holder, the holder's assignee, agent, or representative, or any other person retained by the holder to seek collection of the face value of the dishonored payment device may charge the drawer or indorser a maximum processing fee of $30.

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

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

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

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 2.001(a), eff. Sept. 1, 2001; Amended by Acts 2003, 78th Leg., ch. 413, Sec. 1, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 95 (S.B. 1563), Sec. 11, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 333 (H.B. 2793), Sec. 1, eff. September 1, 2011.

Sec. 3.507. DELIVERY NOTIFICATION FEE BY HOLDER OF CHECK OR SIMILAR SIGHT ORDER. (a) On return of a check or similar sight order, as defined by Section 1.07, Penal Code, to the holder following dishonor of the check or sight order by a payor and prior to the check or sight order being referred for prosecution, the holder, the holder's assignee, agent, or representative, or any other person retained by the holder to seek collection of the dishonored check or sight order may charge the drawer or indorser of the check or sight order the cost of delivery notification by registered or certified mail with return receipt requested under Section 31.06 or Section 32.41, Penal Code, as applicable.

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

(c) This section does not affect any right or remedy to which the holder of a check or similar sight order may be entitled under any rule, written contract, judicial decision, or other statute, including Section 3.506.

Added by Acts 2007, 80th Leg., R.S., Ch. 976 (S.B. 548), Sec. 4, eff. September 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 128 (S.B. 821), Sec. 6, eff. September 1, 2013.

SUBCHAPTER F. DISCHARGE AND PAYMENT

Sec. 3.601. DISCHARGE AND EFFECT OF DISCHARGE. (a) The obligation of a party to pay the instrument is discharged as stated in this chapter or by an act or agreement with the party that would

discharge an obligation to pay money under a simple contract.

(b) Discharge of the obligation of a party is not effective against a person acquiring rights of a holder in due course of the instrument without notice of the discharge.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.602. PAYMENT. (a) Subject to Subsection (e), an instrument is paid to the extent payment is made by or on behalf of a party obliged to pay the instrument, and to a person entitled to enforce the instrument.

(b) Subject to Subsection (e), a note is paid to the extent payment is made by or on behalf of a party obliged to pay the note to a person that formerly was entitled to enforce the note only if at the time of the payment the party obliged to pay has not received adequate notification that the note has been transferred and that payment is to be made to the transferee. A notification is adequate only if it is signed by the transferor or the transferee, reasonably identifies the transferred note, and provides an address at which payments subsequently are to be made. Upon request, a transferee shall seasonably furnish reasonable proof that the note has been transferred. Unless the transferee complies with the request, a payment to the person that formerly was entitled to enforce the note is effective for purposes of Subsection (c) even if the party obliged to pay the note has received a notification under this subsection.

(c) Subject to Subsection (e), to the extent of a payment under Subsections (a) and (b), the obligation of the party obliged to pay the instrument is discharged even though payment is made with knowledge of a claim to the instrument under Section 3.306 by another person.

(d) Subject to Subsection (e), a transferee, or any party that has acquired rights in the instrument directly or indirectly from a transferee, including any such party that has rights as a holder in due course, is deemed to have notice of any payment that is made under Subsection (b) after the date that the note is transferred to the transferee but before the party obliged to pay the note receives adequate notification of the transfer.

(e) The obligation of a party to pay the instrument is not discharged under Subsections (a) through (d) if:

(1) a claim to the instrument under Section 3.306 is enforceable against the party receiving payment and:

(A) payment is made with knowledge by the payor that payment is prohibited by injunction or similar process of a court of competent jurisdiction; or

(B) in the case of an instrument other than a cashier's check, teller's check, or certified check, the party making payment accepted, from the person having a claim to the instrument, indemnity against loss resulting from refusal to pay the person entitled to enforce the instrument; or

(2) the person making payment knows that the instrument is a stolen instrument and pays a person it knows is in wrongful possession of the instrument.

(f) As used in this section, "signed," with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.
Amended by:

Acts 2005, 79th Leg., Ch. 95 (S.B. 1563), Sec. 12, eff. September 1, 2005.

Sec. 3.603. TENDER OF PAYMENT. (a) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument, the effect of tender is governed by principles of law applicable to tender of payment under a simple contract.

(b) If tender of payment of an obligation to pay an instrument is made to a person entitled to enforce the instrument and the tender is refused, there is discharge, to the extent of the amount of the tender, of the obligation of an indorser or accommodation party having a right of recourse with respect to the obligation to which the tender relates.

(c) If tender of payment of an amount due on an instrument is made to a person entitled to enforce the instrument, the obligation of the obligor to pay interest after the due date on the amount tendered is discharged. If presentment is required with respect to an instrument and the obligor is able and ready to pay on the due

date at every place of payment stated in the instrument, the obligor is deemed to have made tender of payment on the due date to the person entitled to enforce the instrument.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.

Sec. 3.604. DISCHARGE BY CANCELLATION OR RENUNCIATION. (a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument:

(1) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge; or

(2) by agreeing not to sue or otherwise renouncing rights against the party by a signed record.

(b) Cancellation or striking out of an indorsement pursuant to Subsection (a) does not affect the status and rights of a party derived from the indorsement.

(c) In this section, "signed," with respect to a record that is not a writing, includes the attachment to or logical association with the record of an electronic symbol, sound, or process with the present intent to adopt or accept the record.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.
Amended by:

Acts 2005, 79th Leg., Ch. 95 (S.B. 1563), Sec. 13, eff. September 1, 2005.

Sec. 3.605. DISCHARGE OF SECONDARY OBLIGORS. (a) If a person entitled to enforce an instrument releases the obligation of a principal obligor in whole or in part, and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the release preserve the secondary obligor's recourse, the principal obligor is

discharged, to the extent of the release, from any other duties to the secondary obligor under this chapter.

(2) Unless the terms of the release provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor, the secondary obligor is discharged to the same extent as the principal obligor from any unperformed portion of its obligation on the instrument. If the instrument is a check and the obligation of the secondary obligor is based on an indorsement of the check, the secondary obligor is discharged without regard to the language or circumstances of the discharge or other release.

(3) If the secondary obligor is not discharged under Subdivision (2), the secondary obligor is discharged to the extent of the value of the consideration for the release, and to the extent that the release would otherwise cause the secondary obligor a loss.

(b) If a person entitled to enforce an instrument grants a principal obligor an extension of the time at which one or more payments are due on the instrument and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. Unless the terms of the extension preserve the secondary obligor's recourse, the extension correspondingly extends the time for performance of any other duties owed to the secondary obligor by the principal obligor under this chapter.

(2) The secondary obligor is discharged to the extent that the extension would otherwise cause the secondary obligor a loss.

(3) To the extent that the secondary obligor is not discharged under Subdivision (2), the secondary obligor may perform its obligations to a person entitled to enforce the instrument as if the time for payment had not been extended or, unless the terms of the extension provide that the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor as if the time for payment had not been extended, treat the time for performance of its obligations as having been extended correspondingly.

(c) If a person entitled to enforce an instrument agrees, with or without consideration, to a modification of the obligation of a

principal obligor other than a complete or partial release or an extension of the due date and another party to the instrument is a secondary obligor with respect to the obligation of that principal obligor, the following rules apply:

(1) Any obligations of the principal obligor to the secondary obligor with respect to any previous payment by the secondary obligor are not affected. The modification correspondingly modifies any other duties owed to the secondary obligor by the principal obligor under this chapter.

(2) The secondary obligor is discharged from any unperformed portion of its obligation to the extent that the modification would otherwise cause the secondary obligor a loss.

(3) To the extent that the secondary obligor is not discharged under Subdivision (2), the secondary obligor may satisfy its obligation on the instrument as if the modification had not occurred, or treat its obligation on the instrument as having been modified correspondingly.

(d) If the obligation of a principal obligor is secured by an interest in collateral, another party to the instrument is a secondary obligor with respect to that obligation, and a person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of the secondary obligor is discharged to the extent of the impairment. The value of an interest in collateral is impaired to the extent the value of the interest is reduced to an amount less than the amount of the recourse of the secondary obligor, or the reduction in value of the interest causes an increase in the amount by which the amount of the recourse exceeds the value of the interest. For purposes of this subsection, impairing the value of an interest in collateral includes failure to obtain or maintain perfection or recordation of the interest in collateral, release of collateral without substitution of collateral of equal value or equivalent reduction of the underlying obligation, failure to perform a duty to preserve the value of collateral owed, under Chapter 9 or other law, to a debtor or other person secondarily liable, and failure to comply with applicable law in disposing of or otherwise enforcing the interest in collateral.

(e) A secondary obligor is not discharged under Subsection (a)(3), (b), (c), or (d) unless the person entitled to enforce the instrument knows that the person is a secondary obligor or has notice under Section 3.419(c) that the instrument was signed for

accommodation.

(f) A secondary obligor is not discharged under this section if the secondary obligor consents to the event or conduct that is the basis of the discharge, or the instrument or a separate agreement of the party provides for waiver of discharge under this section specifically or by general language indicating that parties waive defenses based on suretyship or impairment of collateral. Unless the circumstances indicate otherwise, consent by the principal obligor to an act that would lead to a discharge under this section constitutes consent to that act by the secondary obligor if the secondary obligor controls the principal obligor or deals with the person entitled to enforce the instrument on behalf of the principal obligor.

(g) A release or extension preserves a secondary obligor's recourse if the terms of the release or extension provide that:

(1) the person entitled to enforce the instrument retains the right to enforce the instrument against the secondary obligor; and

(2) the recourse of the secondary obligor continues as if the release or extension had not been granted.

(h) Except as otherwise provided in Subsection (i), a secondary obligor asserting discharge under this section has the burden of persuasion both with respect to the occurrence of the acts alleged to harm the secondary obligor and loss or prejudice caused by those acts.

(i) If the secondary obligor demonstrates prejudice caused by an impairment of its recourse, and the circumstances of the case indicate that the amount of loss is not reasonably susceptible of calculation or requires proof of facts that are not ascertainable, it is presumed that the act impairing recourse caused a loss or impairment equal to the liability of the secondary obligor on the instrument. In that event, the burden of persuasion as to any lesser amount of the loss is on the person entitled to enforce the instrument.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 1, eff. Jan. 1, 1996.
Amended by:

Acts 2005, 79th Leg., Ch. 95 (S.B. 1563), Sec. 14, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 427 (S.B. 1541), Sec. 3, eff. September 1, 2007.

CHAPTER 4. BANK DEPOSITS AND COLLECTIONS
SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

Sec. 4.101. SHORT TITLE. This chapter may be cited as Uniform Commercial Code--Bank Deposits and Collections.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.102. APPLICABILITY. (a) To the extent that items within this chapter are also within Chapters 3 and 8, they are subject to those chapters. If there is conflict, this chapter governs Chapter 3, but Chapter 8 governs this chapter.

(b) The liability of a bank for action or non-action with respect to an item handled by it for purposes of presentment, payment, or collection is governed by the law of the place where the bank is located. In the case of action or non-action by or at a branch or separate office of a bank, its liability is governed by the law of the place where the branch or separate office is located.

(c) Notwithstanding Section 1.301, the laws of this state govern a deposit contract between a bank and a consumer account holder if the branch or separate office of the bank that accepts the deposit contract is located in this state. For purposes of this subsection, "consumer account holder" means a natural person who holds a deposit account primarily for personal, family, or household purposes but does not include a natural person who holds an account for another in a professional capacity.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996; Acts 1999, 76th Leg., ch. 344, Sec. 5.001, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 542, Sec. 11, eff. Sept. 1, 2003.

Sec. 4.103. VARIATION BY AGREEMENT; MEASURE OF DAMAGES; ACTION CONSTITUTING ORDINARY CARE. (a) The effect of the provisions of this chapter may be varied by agreement, but the parties to the agreement cannot disclaim a bank's responsibility for its lack of good faith or failure to exercise ordinary care or limit the measure

of damages for the lack or failure. However, the parties may determine by agreement the standards by which the bank's responsibility is to be measured if those standards are not manifestly unreasonable.

(b) Federal Reserve regulations and operating circulars, clearing-house rules, and the like have the effect of agreements under Subsection (a), whether or not specifically assented to by all parties interested in items handled.

(c) Action or non-action approved by this chapter or pursuant to Federal Reserve regulations or operating circulars is the exercise of ordinary care and, in the absence of special instructions, action or non-action consistent with clearing-house rules and the like or with a general banking usage not disapproved by this chapter, is prima facie the exercise of ordinary care.

(d) The specification or approval of certain procedures by this chapter is not disapproval of other procedures that may be reasonable under the circumstances.

(e) The measure of damages for failure to exercise ordinary care in handling an item is the amount of the item reduced by an amount that could not have been realized by the exercise of ordinary care. If there is also bad faith, it includes any other damages the party suffered as a proximate consequence.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.104. DEFINITIONS AND INDEX OF DEFINITIONS. (a) In this chapter, unless the context otherwise requires:

(1) "Account" means any deposit or credit account with a bank, including a demand, time, savings, passbook, share draft, or like account, other than an account evidenced by a certificate of deposit.

(2) "Afternoon" means the period of a day between noon and midnight.

(3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions.

(4) "Clearing house" means an association of banks or other payors regularly clearing items.

(5) "Customer" means a person having an account with a bank or for whom a bank has agreed to collect items, including a bank that maintains an account at another bank.

(6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (Section 8.102) or instructions for uncertificated securities (Section 8.102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft.

(7) "Draft" means a draft as defined in Section 3.104 or an item, other than an instrument, that is an order.

(8) "Drawee" means a person ordered in a draft to make payment.

(9) "Item" means an instrument or a promise or order to pay money handled by a bank for collection or payment. The term does not include a payment order governed by Chapter 4A or a credit or debit card slip.

(10) "Midnight deadline" with respect to a bank is midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later.

(11) "Settle" means to pay in cash, by clearing-house settlement, in a charge or credit or by remittance, or otherwise as agreed. A settlement may be either provisional or final.

(12) "Suspends payments" with respect to a bank means that it has been closed by order of the supervisory authorities, that a public officer has been appointed to take it over, or that it ceases or refuses to make payments in the ordinary course of business.

(b) Other definitions applying to this chapter and the sections in which they appear are:

"Agreement for electronic presentment"	Section 4.110.
"Collecting bank"	Section 4.105.
"Depositary bank"	Section 4.105.
"Intermediary bank"	Section 4.105.
"Payor bank"	Section 4.105.
"Presenting bank"	Section 4.105.
"Presentment notice"	Section 4.110.

(c) The following definitions in other chapters apply to this chapter:

"Acceptance"	Section 3.409.
"Alteration"	Section 3.407.
"Cashier's check"	Section 3.104.
"Certificate of deposit"	Section 3.104.
"Certified check"	Section 3.409.
"Check"	Section 3.104.
"Control"	Section 7.106.
"Holder in due course"	Section 3.302.
"Instrument"	Section 3.104.
"Notice of dishonor"	Section 3.503.
"Order"	Section 3.103.
"Ordinary care"	Section 3.103.
"Person entitled to enforce"	Section 3.301.
"Presentment"	Section 3.501.
"Promise"	Section 3.103.
"Prove"	Section 3.103.
"Record"	Section 1.201.
"Remotely-created item"	Section 3.103.
"Teller's check"	Section 3.104.
"Unauthorized signature"	Section 3.403.

(d) In addition, Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996; Acts 1995, 74th Leg., ch. 962, Sec. 18, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 542, Sec. 12, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 95 (S.B. 1563), Sec. 15, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 16, eff. September 1, 2005.

Sec. 4.105. "BANK"; "DEPOSITARY BANK"; "INTERMEDIARY BANK"; "COLLECTING BANK"; "PAYOR BANK"; "PRESENTING BANK". In this

chapter:

(1) "Bank" means a person engaged in the business of banking, including a savings bank, savings and loan association, credit union, or trust company.

(2) "Depositary bank" means the first bank to take an item even though it is also the payor bank, unless the item is presented for immediate payment over the counter.

(3) "Payor bank" means a bank that is the drawee of a draft.

(4) "Intermediary bank" means a bank to which an item is transferred in course of collection except the depositary or payor bank.

(5) "Collecting bank" means a bank handling an item for collection except the payor bank.

(6) "Presenting bank" means a bank presenting an item except a payor bank.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.106. PAYABLE THROUGH OR PAYABLE AT BANK; COLLECTING BANK. (a) If an item states that it is "payable through" a bank identified in the item, the item:

(1) designates the bank as a collecting bank and does not by itself authorize the bank to pay the item; and

(2) may be presented for payment only by or through the bank.

(b) If an item states that it is "payable at" a bank identified in the item, the item is equivalent to a draft drawn on the bank.

(c) If a draft names a nonbank drawee and it is unclear whether a bank named in the draft is a co-drawee or a collecting bank, the bank is a collecting bank.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.107. SEPARATE OFFICE OF A BANK. A branch or separate office of a bank is a separate bank for the purpose of computing the time within which and determining the place at or to which action may be taken or notices or orders must be given under this chapter and

under Chapter 3.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Renumbered from Sec. 4.106 and amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.108. TIME OF RECEIPT OF ITEMS. (a) For the purpose of allowing time to process items, prove balances, and make the necessary entries on its books to determine its position for the day, a bank may fix an afternoon hour of two P.M. or later as a cutoff hour for the handling of money and items and the making of entries on its books.

(b) An item or deposit of money received on any day after a cutoff hour so fixed or after the close of the banking day may be treated as being received at the opening of the next banking day.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Renumbered from Sec. 4.107 and amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.109. DELAYS. (a) Unless otherwise instructed, a collecting bank in a good faith effort to secure payment of a specific item drawn on a payor other than a bank, and with or without the approval of any person involved, may waive, modify, or extend time limits imposed or permitted by this title for a period not exceeding two additional banking days without discharge of drawers or indorsers or liability to its transferor or a prior party.

(b) Delay by a collecting bank or payor bank beyond time limits prescribed or permitted by this title or by instructions is excused if:

(1) the delay is caused by interruption of communication or computer facilities, suspension of payments by another bank, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the bank; and

(2) the bank exercises such diligence as the circumstances require.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Renumbered from Sec. 4.108 and amended by Acts 1995, 74th Leg., ch.

921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.110. ELECTRONIC PRESENTMENT. (a) "Agreement for electronic presentment" means an agreement, clearing-house rule, or Federal Reserve regulation or operating circular providing that presentment of an item may be made by transmission of an image of an item or information describing the item ("presentment notice") rather than delivery of the item itself. The agreement may provide for procedures governing retention, presentment, payment, dishonor, and other matters concerning items subject to the agreement.

(b) Presentment of an item under an agreement for presentment is made when the presentment notice is received.

(c) If presentment is made by presentment notice, a reference to "item" or "check" in this chapter means the presentment notice unless the context otherwise indicates.

Added by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.111. STATUTE OF LIMITATIONS. An action to enforce an obligation, duty, or right arising under this chapter must be commenced within three years after the cause of action accrues.

Added by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.112. PAYMENT OF CHECK AT PAR. (a) Except as otherwise provided by Chapter 3 or this chapter, a payor bank shall pay a check drawn on it against an account with a sufficient balance at par without regard to whether the payee holds an account at the bank.

(b) This section does not prohibit a bank from requiring commercially reasonable verification of the payee's identity before settlement of the check.

(c) In addition to any remedy provided by law, the banking commissioner, in coordination with the Finance Commission of Texas, shall ensure that payor banks comply with the requirements of this section.

Added by Acts 2001, 77th Leg., ch. 699, Sec. 20, eff. Sept. 1, 2001.

SUBCHAPTER B. COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

Sec. 4.201. STATUS OF COLLECTING BANK AS AGENT AND PROVISIONAL STATUS OF CREDITS; APPLICABILITY OF CHAPTER; ITEM INDORSED "PAY ANY BANK". (a) Unless a contrary intent clearly appears and before the time that a settlement given by a collecting bank for an item is or becomes final, the bank, with respect to the item, is an agent or sub-agent of the owner of the item and any settlement given for the item is provisional. This provision applies regardless of the form of indorsement or lack of indorsement and even though credit given for the item is subject to immediate withdrawal as of right or is in fact withdrawn; but the continuance of ownership of an item by its owner and any rights of the owner to proceeds of the item are subject to rights of a collecting bank, such as those resulting from outstanding advances on the item and rights of recoupment or setoff. If an item is handled by banks for purposes of presentment, payment, collection, or return, the relevant provisions of this chapter apply even though action of the parties clearly establishes that a particular bank has purchased the item and is the owner of it.

(b) After an item has been indorsed with the words "pay any bank" or the like, only a bank may acquire the rights of a holder until the item has been:

(1) returned to the customer initiating collection; or

(2) specially indorsed by a bank to a person who is not a bank.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.202. RESPONSIBILITY FOR COLLECTION OR RETURN; WHEN ACTION TIMELY. (a) A collecting bank must exercise ordinary care in:

(1) presenting an item or sending it for presentment;

(2) sending notice of dishonor or non-payment or returning an item other than a documentary draft to the bank's transferor after learning that the item has not been paid or accepted, as the case may be;

(3) settling for an item when the bank receives final settlement; and

(4) notifying its transferor of any loss or delay in

transit within a reasonable time after discovery thereof.

(b) A collecting bank exercises ordinary care under Subsection (a) by taking proper action before its midnight deadline following receipt of an item, notice, or settlement. Taking proper action within a reasonably longer time may constitute the exercise of ordinary care, but the bank has the burden of establishing timeliness.

(c) Subject to Subsection (a)(1), a bank is not liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person or for loss or destruction of an item in the possession of others or in transit.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.203. EFFECT OF INSTRUCTIONS. Subject to Chapter 3 concerning conversion of instruments (Section 3.420) and restrictive indorsements (Section 3.206), only a collecting bank's transferor can give instructions that affect the bank or constitute notice to it, and a collecting bank is not liable to prior parties for any action taken pursuant to the instructions or in accordance with any agreement with its transferor.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.204. METHODS OF SENDING AND PRESENTING; SENDING DIRECTLY TO PAYOR BANK. (a) A collecting bank shall send items by a reasonably prompt method, taking into consideration relevant instructions, the nature of the item, the number of those items on hand, the cost of collection involved, and the method generally used by it or others to present those items.

(b) A collecting bank may send:

(1) an item directly to the payor bank;

(2) an item to a non-bank payor if authorized by its transferor; and

(3) an item other than a documentary draft to a non-bank payor, if authorized by Federal Reserve regulation or operating circular, clearing-house rule, or the like.

(c) Presentment may be made by a presenting bank at a place where the payor bank or other payor has requested that presentment be made.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.205. DEPOSITORY BANK HOLDER OF UNINDORSED ITEM. If a customer delivers an item to a depositary bank for collection, the depositary bank:

(1) becomes a holder of the item at the time it receives the item for collection if the customer at the time of delivery was a holder of the item, whether or not the customer indorses the item, and, if the bank satisfies the other requirements of Section 3.302, the bank is a holder in due course; and

(2) warrants to collecting banks, the payor bank or other payor, and the drawer that the amount of the item was paid to the customer or deposited to the customer's account.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.206. TRANSFER BETWEEN BANKS. Any agreed method that identifies the transferor bank is sufficient for the item's further transfer to another bank.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.207. TRANSFER WARRANTIES. (a) A customer or collecting bank that transfers an item and receives a settlement or other consideration warrants to the transferee and to any subsequent collecting bank that:

(1) the warrantor is a person entitled to enforce the item;

(2) all signatures on the item are authentic and authorized;

(3) the item has not been altered;

(4) the item is not subject to a defense or claim in

recoupment (Section 3.305(a)) of any party that can be asserted against the warrantor;

(5) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer; and

(6) with respect to a remotely-created item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(b) If an item is dishonored, a customer or collecting bank transferring the item and receiving settlement or other consideration is obliged to pay the amount due on the item (i) according to the terms of the item at the time it was transferred, or (ii) if the transfer was of an incomplete item, according to its terms when completed as stated in Sections 3.115 and 3.407. The obligation of a transferor is owed to the transferee and to any subsequent collecting bank that takes the item in good faith. A transferor cannot disclaim its obligation under this subsection by an indorsement stating that it is made "without recourse" or otherwise disclaiming liability.

(c) A person to whom the warranties under Subsection (a) are made and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the item plus expenses and loss of interest incurred as a result of the breach.

(d) The warranties stated in Subsection (a) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(e) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(f) If the warranty under Subsection (a)(6) is not given by a transferor or collecting bank under applicable conflict of law rules, the warranty is not given to that transferor when that transferor is a transferee or to any prior collecting bank of that transferee.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 131, Sec. 5, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 95 (S.B. 1563), Sec. 16, eff. September 1, 2005.

Sec. 4.208. PRESENTMENT WARRANTIES. (a) If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee pays or accepts the draft, (i) the person obtaining payment or acceptance, at the time of presentment, and (ii) a previous transferor of the draft, at the time of transfer, warrant to the drawee that pays or accepts the draft in good faith that:

(1) the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft;

(2) the draft has not been altered;

(3) the warrantor has no knowledge that the signature of the purported drawer of the draft is unauthorized; and

(4) with respect to any remotely-created item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.

(b) A drawee making payment may recover from a warrantor damages for breach of warranty equal to the amount paid by the drawee less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach. The right of the drawee to recover damages under this subsection is not affected by any failure of the drawee to exercise ordinary care in making payment. If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from a warrantor for breach of warranty the amounts stated in this subsection.

(c) If a drawee asserts a claim for breach of warranty under Subsection (a) based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under Section 3.404 or 3.405 or the drawer is precluded under Section 3.406 or 4.406 from asserting against the drawee the unauthorized indorsement or alteration.

(d) If (i) a dishonored draft is presented for payment to the

drawer or an indorser, or (ii) any other item is presented for payment to a party obliged to pay the item, and the item is paid, the person obtaining payment and a prior transferor of the item warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the item, a person entitled to enforce the item or authorized to obtain payment on behalf of a person entitled to enforce the item. The person making payment may recover from any warrantor for breach of warranty an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.

(e) The warranties stated in Subsections (a) and (d) cannot be disclaimed with respect to checks. Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.

(f) A cause of action for breach of warranty under this section accrues when the claimant has reason to know of the breach.

(g) If as to a particular item (1) a transferee (including a collecting bank) asserts a claim for breach of the warranty under Subsection (a)(4), but (2) under applicable law (including the applicable choice-of-law principles) that transferee would not make a warranty substantially similar to the warranty in Subsection (a)(4) if such transferee were a transferor, then that transferee would not receive the warranty in Subsection (a)(4) from any transferor.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 131, Sec. 6, eff. Sept. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 95 (S.B. 1563), Sec. 17, eff. September 1, 2005.

Sec. 4.209. ENCODING AND RETENTION WARRANTIES. (a) A person who encodes information on or with respect to an item after issue warrants to any subsequent collecting bank and to the payor bank or other payor that the information is correctly encoded. If the customer of a depositary bank encodes, that bank also makes the warranty.

(b) A person who undertakes to retain an item pursuant to an

agreement for electronic presentment warrants to any subsequent collecting bank and to the payor bank or other payor that retention and presentment of the item comply with the agreement. If a customer of a depositary bank undertakes to retain an item, that bank also makes this warranty.

(c) A person to whom warranties are made under this section and who took the item in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, plus expenses and loss of interest incurred as a result of the breach.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.210. SECURITY INTEREST OF COLLECTING BANK IN ITEMS, ACCOMPANYING DOCUMENTS AND PROCEEDS. (a) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(1) in case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(2) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

(3) if it makes an advance on or against the item.

(b) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents, or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or possession or control of the accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Chapter 9, but:

(1) no security agreement is necessary to make the security interest enforceable (Section 9.203(b)(3)(A));

(2) no filing is required to perfect the security interest; and

(3) the security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Renumbered from Sec. 4.208 and amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996; Acts 1999, 76th Leg., ch. 414, Sec. 2.23, eff. July 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 17, eff. September 1, 2005.

Sec. 4.211. WHEN BANK GIVES VALUE FOR PURPOSES OF HOLDER IN DUE COURSE. For purposes of determining its status as a holder in due course, a bank has given value to the extent it has a security interest in an item, if the bank otherwise complies with the requirements of Section 3.302 on what constitutes a holder in due course.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Renumbered from Sec. 4.209 and amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.212. PRESENTMENT BY NOTICE OF ITEM NOT PAYABLE BY, THROUGH OR AT A BANK; LIABILITY OF DRAWER OR INDORSER. (a) Unless otherwise instructed, a collecting bank may present an item not payable by, through, or at a bank by sending to the party to accept or pay a record providing notice that the bank holds the item for acceptance or payment. The notice must be sent in time to be received on or before the day when presentment is due, and the bank must meet any requirement of the party to accept or pay under Section 3.501 by the close of the bank's next banking day after it knows of the requirement.

(b) If presentment is made by notice and payment, acceptance, or request for compliance with a requirement under Section 3.501 is not received by the close of business on the day after maturity or, in the case of demand items, by the close of business on the third

banking day after notice was sent, the presenting bank may treat the item as dishonored and charge any drawer or indorser by sending it notice of the facts.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Renumbered from Sec. 4.210 and amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.
Amended by:
Acts 2005, 79th Leg., Ch. 95 (S.B. 1563), Sec. 18, eff. September 1, 2005.

Sec. 4.213. MEDIUM AND TIME OF SETTLEMENT BY BANK. (a) With respect to settlement by a bank, the medium and time of settlement may be prescribed by Federal Reserve regulations or circulars, clearing-house rules, and the like or by agreement. In the absence of such a prescription:

(1) the medium of settlement is cash or credit to an account in a Federal Reserve bank of or specified by the person to receive settlement; and

(2) the time of settlement is:

(A) with respect to tender of settlement by cash, a cashier's check, or a teller's check, when the cash or check is sent or delivered;

(B) with respect to tender of settlement by credit to an account in a Federal Reserve bank, when the credit is made;

(C) with respect to tender of settlement by a credit or debit to an account in a bank, when the credit or debit is made or, in the case of tender of settlement by authority to charge an account, when the authority is sent or delivered; or

(D) with respect to tender of settlement by a funds transfer, when payment is made pursuant to Section 4A.406(a) to the person receiving settlement.

(b) If the tender of settlement is not by a medium authorized by Subsection (a) or the time of settlement is not fixed by Subsection (a), a settlement does not occur until the tender of settlement is accepted by the person receiving settlement.

(c) If settlement for an item is made by cashier's check or teller's check and the person receiving settlement, before its midnight deadline:

(1) presents or forwards the check for collection, settlement is final when the check is finally paid; or

(2) fails to present or forward the check for collection, settlement is final at the midnight deadline of the person receiving settlement.

(d) If settlement for an item is made by giving authority to charge the account of the bank giving settlement in the bank receiving settlement, settlement is final when the charge is made by the bank receiving settlement if there are funds available in the account for the amount of the item.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1983, 68th Leg., p. 1531, ch. 290, Sec. 4, eff. Aug. 29, 1983. Renumbered from Sec. 4.211 and amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.214. RIGHT OF CHARGE-BACK OR REFUND; LIABILITY OF COLLECTING BANK; RETURN OF ITEM. (a) If a collecting bank has made provisional settlement with its customer for an item and fails by reason of dishonor, suspension of payments by a bank, or otherwise to receive settlement for the item that is or becomes final, the bank may revoke the settlement given by it, charge back the amount of any credit given for the item to its customer's account, or obtain refund from its customer, whether or not it is able to return the item, if by its midnight deadline or within a longer reasonable time after it learns the facts it returns the item or sends notification of the facts. If the return or notice is delayed beyond the bank's midnight deadline or a longer reasonable time after it learns the facts, the bank may revoke the settlement, charge back the credit, or obtain refund from its customers, but it is liable for any loss resulting from the delay. These rights to revoke, charge-back, and obtain refund terminate if and when a settlement for the item received by the bank is or becomes final.

(b) A collecting bank returns an item when it is sent or delivered to the bank's customer or transferor or pursuant to its instructions.

(c) A depositary bank that is also the payor may charge-back the amount of an item to its customer's account or obtain refund in accordance with the section governing return of an item received by a

payor bank for credit on its books (Section 4.301).

(d) The right to charge-back is not affected by:

(1) previous use of a credit given for the item; or

(2) failure by any bank to exercise ordinary care with respect to the item, but a bank so failing remains liable.

(e) A failure to charge-back or claim refund does not affect other rights of the bank against the customer or any other party.

(f) If credit is given in dollars as the equivalent of the value of an item payable in foreign money, the dollar amount of any charge-back or refund must be calculated on the basis of the bank-offered spot rate for the foreign money prevailing on the day when the person entitled to the charge-back or refund learns that it will not receive payment in ordinary course.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Renumbered from Sec. 4.212 and amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.215. FINAL PAYMENT OF ITEM BY PAYOR BANK; WHEN PROVISIONAL DEBITS AND CREDITS BECOME FINAL; WHEN CERTAIN CREDITS BECOME AVAILABLE FOR WITHDRAWAL. (a) An item is finally paid by a payor bank when the bank has first done any of the following:

(1) paid the item in cash;

(2) settled for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement; or

(3) made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing-house rule, or agreement.

(b) If provisional settlement for an item does not become final, the item is not finally paid.

(c) If provisional settlement for an item between the presenting and payor banks is made through a clearing house or by debits or credits in an account between them, then to the extent that provisional debits or credits for the item are entered in accounts between the presenting and payor banks or between the presenting and successive prior collecting banks seriatim, they become final upon final payment of the item by the payor bank.

(d) If a collecting bank receives a settlement for an item that is or becomes final, the bank is accountable to its customer for the

amount of the item, and any provisional credit given for the item in an account with its customer becomes final.

(e) Subject to (i) applicable law stating a time for availability of funds, and (ii) any right of the bank to apply the credit to an obligation of the customer, credit given by a bank for an item in a customer's account becomes available for withdrawal as of right if the bank:

(1) has received a provisional settlement for the item,--when the settlement becomes final and the bank has had a reasonable time to receive return of the item and the item has not been received within that time; or

(2) is both the depositary bank and the payor bank, and the item is finally paid,--at the opening of the bank's second banking day following receipt of the item.

(f) Subject to applicable law stating a time for availability of funds and any right of a bank to apply a deposit to an obligation of the depositor, a deposit of money becomes available for withdrawal as of right at the opening of the bank's next banking day after receipt of the deposit.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1985, 69th Leg., ch. 621, Sec. 1, eff. June 14, 1985. Renumbered from Sec. 4.213 and amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.216. INSOLVENCY AND PREFERENCE. (a) If an item is in or comes into the possession of a payor or collecting bank that suspends payment and the item has not been finally paid, the item must be returned by the receiver, trustee, or agent in charge of the closed bank to the presenting bank or the closed bank's customer.

(b) If a payor bank finally pays an item and suspends payments without making a settlement for the item with its customer or the presenting bank, which settlement is or becomes final, the owner of the item has a preferred claim against the payor bank.

(c) If a payor bank gives or a collecting bank gives or receives a provisional settlement for an item and thereafter suspends payments, the suspension does not prevent or interfere with the settlement's becoming final if the finality occurs automatically upon the lapse of certain time or the happening of certain events.

(d) If a collecting bank receives from subsequent parties settlement for an item, which settlement is or becomes final, and the bank suspends payments without making a settlement for the item with its customer, which settlement is or becomes final, the owner of the item has a preferred claim against the collecting bank.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Renumbered from Sec. 4.214 and amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

SUBCHAPTER C. COLLECTION OF ITEMS: PAYOR BANKS

Sec. 4.301. DEFERRED POSTING; RECOVERY OF PAYMENT BY RETURN OF ITEMS; TIME OF DISHONOR; RETURN OF ITEMS BY PAYOR BANK. (a) If a payor bank settles for a demand item other than a documentary draft presented otherwise than for immediate payment over the counter before midnight of the banking day of receipt, the payor bank may revoke the settlement and recover the settlement if, before it has made final payment and before its midnight deadline, it:

(1) returns the item;

(2) returns an image of the item, if the party to which the return is made has entered into an agreement to accept an image as a return of the item, and the image is returned in accordance with that agreement; or

(3) sends a record providing notice of dishonor or nonpayment if the item is unavailable for return.

(b) If a demand item is received by a payor bank for credit on its books, it may return the item or send notice of dishonor and may revoke any credit given or recover the amount thereof withdrawn by its customer, if it acts within the time limit and in the manner specified in Subsection (a).

(c) Unless previous notice of dishonor has been sent, an item is dishonored at the time when for purposes of dishonor it is returned or notice sent in accordance with this section.

(d) An item is returned:

(1) as to an item presented through a clearing house, when it is delivered to the presenting or last collecting bank or to the clearing house or is sent or delivered in accordance with clearing-house rules; or

(2) in all other cases, when it is sent or delivered to the

bank's customer or transferor or pursuant to instructions.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996. Amended by:

Acts 2005, 79th Leg., Ch. 95 (S.B. 1563), Sec. 19, eff. September 1, 2005.

Sec. 4.302. PAYOR BANK'S RESPONSIBILITY FOR LATE RETURN OF ITEM. (a) If an item is presented to and received by a payor bank, the bank is accountable for the amount of:

(1) a demand item, other than a documentary draft, whether properly payable or not, if the bank, in any case in which it is not also the depositary bank, retains the item beyond midnight of the banking day of receipt without settling for it or, whether or not it is also the depositary bank, does not pay or return the item or send notice of dishonor until after its midnight deadline; or

(2) any other properly payable item unless, within the time allowed for acceptance or payment of that item, the bank either accepts or pays the item or returns it and accompanying documents.

(b) The liability of a payor bank to pay an item pursuant to Subsection (a) is subject to defenses based on breach of a presentment warranty (Section 4.208) or proof that the person seeking enforcement of the liability presented or transferred the item for the purpose of defrauding the payor bank.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.303. WHEN ITEMS SUBJECT TO NOTICE, STOP-PAYMENT ORDER, LEGAL PROCESS, OR SETOFF; ORDER IN WHICH ITEMS MAY BE CHARGED OR CERTIFIED. (a) Any knowledge, notice, or stop-payment order received by, legal process served upon, or setoff exercised by a payor bank comes too late to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item if the knowledge, notice, stop-payment order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the earliest of the following:

(1) the bank accepts or certifies the item;

(2) the bank pays the item in cash;

(3) the bank settles for the item without having a right to revoke the settlement under statute, clearing-house rule, or agreement;

(4) the bank becomes accountable for the amount of the item under Section 4.302 dealing with the payor bank's responsibility for late return of items; or

(5) with respect to checks, a cutoff hour not earlier than one hour after the opening of the next banking day after the banking day on which the bank received the check and not later than the close of that next banking day or, if no cutoff hour is fixed, the close of the next banking day after the banking day on which the bank received the check.

(b) Subject to Subsection (a), items may be accepted, paid, certified, or charged to the indicated account of a bank's customer in any order and before or after the bank's regular banking hours. A bank is under no obligation to determine the time of day an item is received and without liability may withhold the amount thereof pending a determination of the effect, consequence or priority of any knowledge, notice, stop-payment order, or legal process concerning the same, or interplead such amount and the claimants thereto.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1985, 69th Leg., ch. 621, Sec. 2, eff. June 14, 1985; Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

SUBCHAPTER D. RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

Sec. 4.401. WHEN BANK MAY CHARGE CUSTOMER'S ACCOUNT. (a) A bank may charge against the account of a customer an item that is properly payable from that account even though the charge creates an overdraft. An item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and the bank.

(b) A customer is not liable for the amount of an overdraft if the customer neither signed the item nor benefited from the proceeds of the item.

(c) A bank may charge against the account of a customer a check that is otherwise properly payable from the account, even though

payment was made before the date of the check, unless the customer has given notice to the bank of the postdating describing the check with reasonable certainty. The notice is effective for the period stated in Section 4.403(b) for stop-payment orders and must be received at such time and in such manner as to afford the bank a reasonable opportunity to act on it before the bank takes any action with respect to the check described in Section 4.303. If a bank charges against the account of a customer a check before the date stated in the notice of postdating, the bank is liable for damages for the loss resulting from its act. The loss may include damages for dishonor of subsequent items under Section 4.402.

(d) A bank that in good faith makes payment to a holder may charge the indicated account of its customer according to:

(1) the original terms of the altered item; or

(2) the terms of the completed item, even though the bank knows the item has been completed, unless the bank has notice that the completion was improper.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.402. BANK'S LIABILITY TO CUSTOMER FOR WRONGFUL DISHONOR. (a) Except as otherwise provided by this chapter, a payor bank wrongfully dishonors an item if it dishonors an item that is properly payable, but a bank may dishonor an item that would create an overdraft unless it has agreed to pay the overdraft.

(b) A payor bank is liable to its customer for damages proximately caused by the wrongful dishonor of an item. Liability is limited to actual damages proved and may include damages for an arrest or prosecution of the customer or other consequential damages. Whether any consequential damages are proximately caused by the wrongful dishonor is a question of fact to be determined in each case.

(c) A payor bank's determination of the customer's account balance on which a decision to dishonor for insufficiency of available funds is based may be made at any time between the time the item is received by the payor bank and the time that the payor bank returns the item or gives notice in lieu of return, and no more than one determination need be made. If, at the election of the payor

bank, a subsequent balance determination is made for the purpose of reevaluating the bank's decision to dishonor the item, the account balance at that time is determinative of whether a dishonor for insufficiency of available funds is wrongful.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.403. CUSTOMER'S RIGHT TO STOP PAYMENT; BURDEN OF PROOF OF LOSS. (a) A customer or any person authorized to draw on the account if there is more than one person may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item described in Section 4.303. If the signature of more than one person is required to draw on an account, any of those persons may stop payment or close the account.

(b) A stop-payment order is effective for six months and is binding on the bank only if it is in a dated, authenticated record that describes the item with certainty. A stop-payment order may be renewed for additional six-month periods by an authenticated record given to the bank within a period during which the stop-payment order is effective.

(c) The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a stop-payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items under Section 4.402.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996. Amended by:

Acts 2005, 79th Leg., Ch. 95 (S.B. 1563), Sec. 20, eff. September 1, 2005.

Sec. 4.404. BANK NOT OBLIGATED TO PAY CHECK MORE THAN SIX MONTHS OLD. A bank is under no obligation to a customer having a checking account to pay a check, other than a certified check, that

is presented more than six months after its date, but it may charge its customer's account for a payment made thereafter in good faith.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.405. DEATH OR INCOMPETENCE OF CUSTOMER. (a) A payor or collecting bank's authority to accept, pay, or collect an item or to account for proceeds of its collection, if otherwise effective, is not rendered ineffective by the incompetence of a customer of either bank existing at the time the item is issued or its collection is undertaken if the bank does not know of an adjudication of incompetence. Neither death nor incompetence of a customer revokes the authority to accept, pay, collect, or account until the bank knows of the fact of death or of an adjudication of incompetence and has reasonable opportunity to act on it.

(b) Even with knowledge, a bank may for 10 days after the date of death pay or certify checks drawn on or before that date unless ordered to stop payment by a person claiming an interest in the account.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.406. CUSTOMER'S DUTY TO DISCOVER AND REPORT UNAUTHORIZED SIGNATURE OR ALTERATION. (a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer reasonably to identify the items paid. The statement of account provides sufficient information if the item is described by item number, amount, and date of payment. If the bank does not return the items, it shall provide in the statement of account the telephone number that the customer may call to request an item or a legible copy of the items pursuant to Subsection (b).

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the

items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank must provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item. A bank shall provide, on request and without charge to the customer, at least two items or a legible copy of the items with respect to each statement of account sent to the customer.

(c) If a bank sends or makes available a statement of account or items pursuant to Subsection (a), the customer must exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer must promptly notify the bank of the relevant facts.

(d) If the bank proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by Subsection (c), the customer is precluded from asserting against the bank:

(1) the customer's unauthorized signature or any alteration on the item, if the bank also proves that it suffered a loss by reason of the failure; and

(2) the customer's unauthorized signature or alteration by the same wrongdoer on any other item paid in good faith by the bank if the payment was made before the bank received notice from the customer of the unauthorized signature or alteration and after the customer had been afforded a reasonable period of time, not exceeding 30 days, in which to examine the item or statement of account and notify the bank.

(e) If Subsection (d) applies and the customer proves that the bank failed to exercise ordinary care in paying the item and that the failure contributed to loss, the loss is allocated between the customer precluded and the bank asserting the preclusion according to the extent to which the failure of the customer to comply with Subsection (c) and the failure of the bank to exercise ordinary care contributed to the loss. If the customer proves that the bank did not pay the item in good faith, the preclusion under Subsection (d) does not apply.

(f) Without regard to care or lack of care of either the

customer or the bank, a customer who does not within one year after the statement or items are made available to the customer (Subsection (a)) discover and report the customer's unauthorized signature on or any alteration on the item is precluded from asserting against the bank the unauthorized signature or alteration. If there is a preclusion under this subsection, the payor bank may not recover for breach of warranty under Section 4.208 with respect to the unauthorized signature or alteration to which the preclusion applies.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.407. PAYOR BANK'S RIGHT TO SUBROGATION ON IMPROPER PAYMENT. If a payor bank has paid an item over the order of the drawer or maker to stop payment, or after an account has been closed, or otherwise under circumstances giving a basis for objection by the drawer or maker, to prevent unjust enrichment and only to the extent necessary to prevent loss to the bank by reason of its payment of the item, the payor bank is subrogated to the rights:

(1) of any holder in due course on the item against the drawer or maker;

(2) of the payee or any other holder of the item against the drawer or maker either on the item or under the transaction out of which the item arose; and

(3) of the drawer or maker against the payee or any other holder of the item with respect to the transaction out of which the item arose.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

SUBCHAPTER E. COLLECTION OF DOCUMENTARY DRAFTS

Sec. 4.501. HANDLING OF DOCUMENTARY DRAFTS; DUTY TO SEND FOR PRESENTMENT AND TO NOTIFY CUSTOMER OF DISHONOR. A bank that takes a documentary draft for collection shall present or send the draft and accompanying documents for presentment and, upon learning that the draft has not been paid or accepted in due course, shall seasonably notify its customer of the fact even though it may have discounted or bought the draft or extended credit available for withdrawal as of

right.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.502. PRESENTMENT OF "ON ARRIVAL" DRAFTS. If a draft or the relevant instructions require presentment "on arrival", "when goods arrive", or the like, the collecting bank need not present until in its judgment a reasonable time for arrival of the goods has expired. Refusal to pay or accept because the goods have not arrived is not dishonor; the bank must notify its transferor of the refusal but need not present the draft again until it is instructed to do so or learns of the arrival of the goods.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.503. RESPONSIBILITY OF PRESENTING BANK FOR DOCUMENTS AND GOODS; REPORT OF REASONS FOR DISHONOR; REFEREE IN CASE OF NEED. Unless otherwise instructed and except as provided in Chapter 5, a bank presenting a documentary draft:

(1) must deliver the documents to the drawee on acceptance of the draft if it is payable more than three days after presentment; otherwise, only on payment; and

(2) upon dishonor, either in the case of presentment for acceptance or presentment for payment, may seek and follow instructions from any referee in case of need designated in the draft or, if the presenting bank does not choose to utilize the referee's services, it must use diligence and good faith to ascertain the reason for dishonor, must notify its transferor of the dishonor and of the results of its effort to ascertain the reasons therefor, and must request instructions.

However, the presenting bank is under no obligation with respect to goods represented by the documents except to follow any reasonable instructions seasonably received; it has a right to reimbursement for any expense incurred in following instructions and to prepayment of or indemnity for those expenses.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

Sec. 4.504. PRIVILEGE OF PRESENTING BANK TO DEAL WITH GOODS; SECURITY INTEREST FOR EXPENSES. (a) A presenting bank that, following the dishonor of a documentary draft, has seasonably requested instructions but does not receive them within a reasonable time may store, sell, or otherwise deal with the goods in any reasonable manner.

(b) For its reasonable expenses incurred by action under Subsection (a) the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1995, 74th Leg., ch. 921, Sec. 4, eff. Jan. 1, 1996.

CHAPTER 4A. FUNDS TRANSFERS

SUBCHAPTER A. SUBJECT MATTER AND DEFINITIONS

Sec. 4A.101. SHORT TITLE. This chapter may be cited as Uniform Commercial Code--Funds Transfers.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.102. SUBJECT MATTER. Except as otherwise provided in Section 4A.108, this chapter applies to funds transfers defined in Section 4A.104.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.103. PAYMENT ORDER--DEFINITIONS. (a) In this chapter:

(1) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(A) the instruction does not state a condition of payment to the beneficiary other than the time of payment;

(B) the receiving bank is to be reimbursed by debiting

an account of, or otherwise receiving payment from, the sender; and

(C) the instruction is transmitted by the sender directly to the receiving bank or to an agent, funds transfer system, or communication system for transmittal to the receiving bank.

(2) "Beneficiary" means the person to be paid by the beneficiary's bank.

(3) "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(4) "Receiving bank" means the bank to which the sender's instruction is addressed.

(5) "Sender" means the person giving the instruction to the receiving bank.

(b) If an instruction complying with Subsection (a)(1) is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(c) A payment order is issued when it is sent to the receiving bank.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.104. FUNDS TRANSFER--DEFINITIONS. In this chapter:

(1) "Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order.

(2) "Intermediary bank" means a receiving bank other than the originator's bank or the beneficiary's bank.

(3) "Originator" means the sender of the first payment order in a funds transfer.

(4) "Originator's bank" means:

(A) the receiving bank to which the payment order of the originator is issued if the originator is not a bank; or

(B) the originator if the originator is a bank.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.105. OTHER DEFINITIONS. (a) In this chapter:

(1) "Authorized account" means a deposit account of a customer in a bank designated by the customer as a source of payment of payment orders issued by the customer to the bank. If a customer does not so designate an account, any account of the customer is an authorized account if payment of a payment order from that account is not inconsistent with a restriction on the use of that account.

(2) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company. A branch or separate office of a bank is a separate bank for purposes of this chapter.

(3) "Customer" means a person, including a bank, having an account with a bank or from whom a bank has agreed to receive payment orders.

(4) "Funds transfer business day" of a receiving bank means the part of a day during which the receiving bank is open for the receipt, processing, and transmittal of payment orders and cancellations and amendments of payment orders.

(5) "Funds transfer system" means a wire transfer network, automated clearinghouse, or other communication system of a clearinghouse or other association of banks through which a payment order by a bank may be transmitted to the bank to which the order is addressed.

(6) Reserved.

(7) "Prove" with respect to a fact means to meet the burden of establishing the fact (Section 1.201(b)(8)).

(b) Other definitions applying to this chapter and the sections in which they appear are:

(1) "Acceptance." Section 4A.209.

(2) "Beneficiary." Section 4A.103.

(3) "Beneficiary's bank." Section 4A.103.

(4) "Executed." Section 4A.301.

(5) "Execution date." Section 4A.301.

(6) "Funds transfer." Section 4A.104.

(7) "Funds transfer system rule." Section 4A.501.

(8) "Intermediary bank." Section 4A.104.

(9) "Originator." Section 4A.104.

(10) "Originator's bank." Section 4A.104.

(11) "Payment by beneficiary's bank to beneficiary." Section 4A.405.

(12) "Payment by originator to beneficiary." Section 4A.406.

(13) "Payment by sender to receiving bank." Section 4A.403.

(14) "Payment date." Section 4A.401.

(15) "Payment order." Section 4A.103.

(16) "Receiving bank." Section 4A.103.

(17) "Security procedure." Section 4A.201.

(18) "Sender." Section 4A.103.

(c) The following definitions in Chapter 4 apply to this chapter:

(1) "Clearinghouse." Section 4.104.

(2) "Item." Section 4.104.

(3) "Suspends payments." Section 4.104.

(d) In addition, Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 542, Sec. 13, eff. Sept. 1, 2003.

Sec. 4A.106. TIME PAYMENT ORDER IS RECEIVED. (a) The time of receipt of a payment order or communication cancelling or amending a payment order is determined by the rules applicable to receipt of a notice stated in Section 1.202. A receiving bank may fix a cutoff time or times on a funds transfer business day for the receipt and processing of payment orders and communications cancelling or amending payment orders. Different cutoff times may apply to payment orders, cancellations, or amendments, or to different categories of payment orders, cancellations, or amendments. A cutoff time may apply to senders generally or different cutoff times may apply to different senders or categories of payment orders. If a payment order or communication cancelling or amending a payment order is

received after the close of a funds transfer business day or after the appropriate cutoff time on a funds transfer business day, the receiving bank may treat the payment order or communication as received at the opening of the next funds transfer business day.

(b) If this chapter refers to an execution date or payment date or states a day on which a receiving bank is required to take action, and the date or day does not fall on a funds transfer business day, the next day that is a funds transfer business day is treated as the date or day stated, unless the contrary is stated in this chapter.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 542, Sec. 14, eff. Sept. 1, 2003.

Sec. 4A.107. FEDERAL RESERVE REGULATIONS AND OPERATING CIRCULARS. Regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve Banks supersede any inconsistent provision of this chapter to the extent of the inconsistency.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.108. RELATIONSHIP TO ELECTRONIC FUND TRANSFER ACT. (a) Except as provided in Subsection (b), this chapter does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act, 15 U.S.C. Sec. 1693 et seq., as amended from time to time.

(b) This chapter applies to a funds transfer that is a remittance transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. Sec. 1693o-1), as amended from time to time, unless the remittance transfer is also an electronic fund transfer as defined in the Electronic Fund Transfer Act (15 U.S.C. Sec. 1693a), as amended from time to time.

(c) In a funds transfer to which this chapter applies, in the event of an inconsistency between the applicable provision of this chapter and an applicable provision of the Electronic Fund Transfer Act, the applicable provision of the Electronic Fund Transfer Act governs to the extent of the inconsistency.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 18 (S.B. 230), Sec. 1, eff. September 1, 2013.

SUBCHAPTER B. ISSUE AND ACCEPTANCE OF PAYMENT ORDER

Sec. 4A.201. SECURITY PROCEDURE. "Security procedure" means a procedure established by an agreement between a customer and a receiving bank for the purpose of (i) verifying that a payment order or communication amending or cancelling a payment order is that of the customer, or (ii) detecting error in the transmission or the content of the payment order or communication. A security procedure may require the use of algorithms or other codes, identifying words or numbers, encryption, callback procedures, or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer is not by itself a security procedure.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.202. AUTHORIZED AND VERIFIED PAYMENT ORDERS. (a) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment order in good faith and in compliance with the security procedure and any written agreement or instruction of the customer restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates a written agreement with the customer or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is

accepted.

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type, and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer, and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if:

(1) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for the customer; and

(2) the customer expressly agreed in writing to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the security procedure chosen by the customer.

(d) The term "sender" in this chapter includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under Subsection (a) or it is effective as the order of the customer under Subsection (b).

(e) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(f) Except as provided in this section and in Section 4A.203(a)(1), the rights and obligations arising under this section or Section 4A.203 may not be varied by agreement.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.203. UNENFORCEABILITY OF CERTAIN VERIFIED PAYMENT ORDERS. (a) If an accepted payment order is not, under Section 4A.202(a), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to Section 4A.202(b), the following rules apply:

(1) By express written agreement, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(2) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person:

(A) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedure; or

(B) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software, or the like.

(b) This section applies to amendments of payment orders to the same extent it applies to payment orders.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.204. REFUND OF PAYMENT AND DUTY OF CUSTOMER TO REPORT WITH RESPECT TO UNAUTHORIZED PAYMENT ORDER. (a) If a receiving bank accepts a payment order issued in the name of its customer as sender which is (i) not authorized and not effective as the order of the customer under Section 4A.202, or (ii) not enforceable, in whole or in part, against the customer under Section 4A.203, the bank shall refund any payment of the payment order received from the customer to the extent the bank is not entitled to enforce payment and shall pay interest on the refundable amount calculated from the date the bank received payment to the date of the refund. However, the customer is not entitled to interest from the bank on the amount to be refunded if the customer fails to exercise ordinary care to determine that the order was not authorized by the customer and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the date the customer received notification from the bank that the order was accepted or that the customer's account was debited with respect to the order. The bank is not entitled to any recovery from the customer on account of a failure by the customer to give notification as stated in this section.

(b) Reasonable time under Subsection (a) may be fixed by agreement as stated in Section 1.302(b), but the obligation of a receiving bank to refund payment as stated in Subsection (a) may not otherwise be varied by agreement.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Amended by Acts 2003, 78th Leg., ch. 542, Sec. 15, eff. Sept. 1, 2003.

Sec. 4A.205. ERRONEOUS PAYMENT ORDERS. (a) If an accepted payment order was transmitted pursuant to a security procedure for the detection of error and the payment order (i) erroneously instructed payment to a beneficiary not intended by the sender, (ii) erroneously instructed payment in an amount greater than the amount intended by the sender, or (iii) was an erroneously transmitted duplicate of a payment order previously sent by the sender, the following rules apply:

(1) If the sender proves that the sender or a person acting on behalf of the sender pursuant to Section 4A.206 complied with the security procedure and that the error would have been detected if the receiving bank had also complied, the sender is not obliged to pay the order to the extent stated in Subdivisions (2) and (3).

(2) If the funds transfer is completed on the basis of an erroneous payment order described in clause (i) or (iii) of Subsection (a), the sender is not obliged to pay the order and the receiving bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(3) If the funds transfer is completed on the basis of a payment order described in clause (ii) of Subsection (a), the sender is not obliged to pay the order to the extent the amount received by the beneficiary is greater than the amount intended by the sender. In that case, the receiving bank is entitled to recover from the beneficiary the excess amount received to the extent allowed by the law governing mistake and restitution.

(b) If (i) the sender of an erroneous payment order described in Subsection (a) is not obliged to pay all or part of the order, and (ii) the sender receives notification from the receiving bank that the order was accepted by the bank or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care, on the basis of information available to the sender, to discover the error with respect to the order and to advise the bank of the relevant facts within a reasonable time, not exceeding 90 days, after the bank's notification was received by the sender. If the bank proves that the sender failed to perform that duty, the

sender is liable to the bank for the loss the bank proves it incurred as a result of the failure, but the liability of the sender may not exceed the amount of the sender's order.

(c) This section applies to amendments to payment orders to the same extent it applies to payment orders.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.206. TRANSMISSION OF PAYMENT ORDER THROUGH FUNDS TRANSFER OR OTHER COMMUNICATION SYSTEM. (a) If a payment order addressed to a receiving bank is transmitted to a funds transfer system or other third-party communication system for transmittal to the bank, the system is deemed to be an agent of the sender for the purpose of transmitting the payment order to the bank. If there is a discrepancy between the terms of the payment order transmitted to the system and the terms of the payment order transmitted by the system to the bank, the terms of the payment order of the sender are those transmitted by the system. This section does not apply to a funds transfer system of the Federal Reserve Banks.

(b) This section applies to cancellations and amendments of payment orders to the same extent it applies to payment orders.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.207. MISDESCRIPTION OF BENEFICIARY. (a) Subject to Subsection (b), if, in a payment order received by the beneficiary's bank, the name, bank account number, or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(b) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(1) Except as provided in Subsection (c), if the beneficiary's bank does not know that the name and number refer to different persons or if the funds transfer is processed by the beneficiary bank in a fully automated manner, it may rely on the number as the proper identification of the beneficiary of the order.

The beneficiary's bank need not determine whether the name and number refer to the same person.

(2) If the beneficiary's bank pays the person identified by name or any individual processing the funds transfer on behalf of the beneficiary bank knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(c) If (i) a payment order described in Subsection (b) is accepted, (ii) the originator's payment order described the beneficiary inconsistently by name and number, and (iii) the beneficiary's bank pays the person identified by number as permitted by Subsection (b)(1), the following rules apply:

(1) If the originator is a bank, the originator is obliged to pay its order.

(2) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(d) In a case governed by Subsection (b)(1), if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(1) If the originator is obliged to pay its payment order as stated in Subsection (c), the originator has the right to recover.

(2) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.208. MISDESCRIPTION OF INTERMEDIARY BANK OR BENEFICIARY'S BANK. (a) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.

(1) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and does not need to determine whether the number identifies a bank.

(2) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

(1) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by Subsection (b)(1), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a writing stating the information to which the notice relates.

(3) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of

the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(4) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in Section 4A.302(a)(1).

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.209. ACCEPTANCE OF PAYMENT ORDER. (a) Subject to Subsection (d), a receiving bank other than the beneficiary's bank accepts a payment order when it executes the order.

(b) Subject to Subsections (c) and (d), a beneficiary's bank accepts a payment order at the earliest of the following times:

(1) when the bank (i) pays the beneficiary as stated in Section 4A.405(a) or (b), or (ii) notifies the beneficiary of receipt of the order or that the account of the beneficiary has been credited with respect to the order unless the notice indicates that the bank is rejecting the order or that funds with respect to the order may not be withdrawn or used until receipt of payment from the sender of the order;

(2) when the bank receives payment of the entire amount of the sender's order pursuant to Section 4A.403(a)(1) or (2); or

(3) the opening of the next funds transfer business day of the bank following the payment date of the order if, at that time, the amount of the sender's order is fully covered by a withdrawable credit balance in an authorized account of the sender or the bank has otherwise received full payment from the sender, unless the order was rejected before that time or is rejected within (i) one hour after that time, or (ii) one hour after the opening of the next business day of the sender following the payment date if that time is later. If notice of rejection is received by the sender after the payment date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the payment date to the day the sender receives notice or learns that the order was not accepted, counting that day as an elapsed day. If the withdrawable

credit balance during that period falls below the amount of the order, the amount of interest payable is reduced accordingly.

(c) Acceptance of a payment order cannot occur before the order is received by the receiving bank. Acceptance does not occur under Subsection (b)(2) or (3) if the beneficiary of the payment order does not have an account with the receiving bank, the account has been closed, or the receiving bank is not permitted by law to receive credits for the beneficiary's account.

(d) A payment order issued to the originator's bank cannot be accepted until the payment date if the bank is the beneficiary's bank, or the execution date if the bank is not the beneficiary's bank. If the originator's bank executes the originator's payment order before the execution date or pays the beneficiary of the originator's payment order before the payment date and the payment order is subsequently canceled pursuant to Section 4A.211(b), the bank may recover from the beneficiary any payment received to the extent allowed by the law governing mistake and restitution.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.210. REJECTION OF PAYMENT ORDER. (a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally, electronically, or in writing. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable under the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order:

(1) any means complying with the agreement is reasonable; and

(2) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(b) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in

an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to Section 4A.211(d) or the day the sender receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(c) If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.

(d) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.211. CANCELLATION AND AMENDMENT OF PAYMENT ORDER. (a) A communication of the sender of a payment order cancelling or amending the order may be transmitted to the receiving bank orally, electronically, or in writing. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(b) Subject to Subsection (a), a communication by the sender cancelling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(c) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds transfer system rule allows cancellation or amendment without agreement of the bank.

(1) With respect to a payment order accepted by a receiving

bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(2) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order (i) that is a duplicate of a payment order previously issued by the sender, (ii) that orders payment to a beneficiary not entitled to receive payment from the originator, or (iii) that orders payment in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(d) An unaccepted payment order is canceled by operation of law at the close of the fifth funds transfer business day of the receiving bank after the execution date or payment date of the order.

(e) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(f) Unless otherwise provided in an agreement of the parties or in a funds transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a funds transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney's fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(g) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(h) A funds transfer system rule is not effective to the extent

it conflicts with Subsection (c)(2).

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.212. LIABILITY AND DUTY OF RECEIVING BANK REGARDING UNACCEPTED PAYMENT ORDER. If a receiving bank fails to accept a payment order that it is obliged by express agreement to accept, the bank is liable for breach of the agreement to the extent provided in the agreement or in this chapter, but does not otherwise have any duty to accept a payment order or, before acceptance, to take any action, or refrain from taking action, with respect to the order except as provided in this chapter or by express agreement. Liability based on acceptance arises only when acceptance occurs as stated in Section 4A.209, and liability is limited to that provided in this chapter. A receiving bank is not the agent of the sender or beneficiary of the payment order it accepts, or of any other party to the funds transfer, and the bank owes no duty to any party to the funds transfer except as provided in this chapter or by express agreement.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

SUBCHAPTER C. EXECUTION OF SENDERS PAYMENT ORDER BY RECEIVING BANK

Sec. 4A.301. EXECUTION AND EXECUTION DATE. (a) A payment order is "executed" by the receiving bank when it issues a payment order intended to carry out the payment order received by the bank. A payment order received by the beneficiary's bank can be accepted but cannot be executed.

(b) "Execution date" of a payment order means the date on which the receiving bank may properly issue a payment order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the beneficiary on the payment date.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.302. OBLIGATIONS OF RECEIVING BANK IN EXECUTION OF PAYMENT ORDER. (a) Except as provided in Subsections (b) through (d), if the receiving bank accepts a payment order pursuant to Section 4A.209(a), the bank has the following obligations in executing the order:

(1) The receiving bank is obliged to issue, on the execution date, a payment order complying with the sender's order and to follow the sender's instructions concerning (i) any intermediary bank or funds transfer system to be used in carrying out the funds transfer, or (ii) the means by which payment orders are to be transmitted in the funds transfer. If the originator's bank issues a payment order to an intermediary bank, the originator's bank is obliged to instruct the intermediary bank according to the instruction of the originator. An intermediary bank in the funds transfer is similarly bound by an instruction given to it by the sender of the payment order it accepts.

(2) If the sender's instruction states that the funds transfer is to be carried out telephonically or by wire transfer or otherwise indicates that the funds transfer is to be carried out by the most expeditious means, the receiving bank is obliged to transmit its payment order by the most expeditious available means and to instruct any intermediary bank accordingly. If a sender's instruction states a payment date, the receiving bank is obliged to transmit its payment order at a time and by means reasonably necessary to allow payment to the beneficiary on the payment date or as soon thereafter as is feasible.

(b) Unless otherwise instructed, a receiving bank executing a payment order may (i) use any funds transfer system if use of that system is reasonable in the circumstances, and (ii) issue a payment order to the beneficiary's bank or to an intermediary bank through which a payment order conforming to the sender's order can expeditiously be issued to the beneficiary's bank if the receiving bank exercises ordinary care in the selection of the intermediary bank. A receiving bank is not required to follow an instruction of the sender designating a funds transfer system to be used in carrying out the funds transfer if the receiving bank, in good faith, determines that it is not feasible to follow the instruction or that following the instruction would unduly delay completion of the funds

transfer.

(c) Unless Subsection (a)(2) applies or the receiving bank is otherwise instructed, the bank may execute a payment order by transmitting its payment order by first class mail or by any means reasonable in the circumstances. If the receiving bank is instructed to execute the sender's order by transmitting its payment order by a particular means, the receiving bank may issue its payment order by the means stated or by any means as expeditious as the means stated.

(d) Unless instructed by the sender, (i) the receiving bank may not obtain payment of its charges for services and expenses in connection with the execution of the sender's order by issuing a payment order in an amount equal to the amount of the sender's order less the amount of the charges, and (ii) may not instruct a subsequent receiving bank to obtain payment of its charges in the same amount.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.303. ERRONEOUS EXECUTION OF PAYMENT ORDER. (a) A receiving bank that (i) executes the payment order of the sender by issuing a payment order in an amount greater than the amount of the sender's order or (ii) issues a payment order in execution of the sender's order and then issues a duplicate order, is entitled to payment of the amount of the sender's order under Section 4A.402(c) if that subsection is otherwise satisfied. The bank is entitled to recover from the beneficiary of the erroneous order the excess payment received to the extent allowed by the law governing mistake and restitution.

(b) A receiving bank that executes the payment order of the sender by issuing a payment order in an amount less than the amount of the sender's order is entitled to payment of the amount of the sender's order under Section 4A.402(c) if (i) that subsection is otherwise satisfied and (ii) the bank corrects its mistake by issuing an additional payment order for the benefit of the beneficiary of the sender's order. If the error is not corrected, the issuer of the erroneous order is entitled to receive or retain payment from the sender of the order it accepted only to the extent of the amount of the erroneous order. This subsection does not apply if the receiving bank executes the sender's payment order by issuing a payment order

in an amount less than the amount of the sender's order for the purpose of obtaining payment of its charges for services and expenses pursuant to instruction of the sender.

(c) If a receiving bank executes the payment order of the sender by issuing a payment order to a beneficiary different from the beneficiary of the sender's order and the funds transfer is completed on the basis of that error, the sender of the payment order that was erroneously executed and all previous senders in the funds transfer are not obliged to pay the payment orders they issued. The issuer of the erroneous order is entitled to recover from the beneficiary of the order the payment received to the extent allowed by the law governing mistake and restitution.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.304. DUTY OF SENDER TO REPORT ERRONEOUSLY EXECUTED PAYMENT ORDER. If the sender of a payment order that is erroneously executed as stated in Section 4A.303 receives notification from the receiving bank that the order was executed or that the sender's account was debited with respect to the order, the sender has a duty to exercise ordinary care to determine, on the basis of information available to the sender, that the order was erroneously executed and to notify the bank of the relevant facts within a reasonable time not exceeding 90 days after the notification from the bank was received by the sender. If the sender fails to perform that duty, the bank is not obliged to pay interest on any amount refundable to the sender under Section 4A.402(d) for the period before the bank learns of the execution error. The bank is not entitled to any recovery from the sender on account of a failure by the sender to perform the duty stated in this section.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.305. LIABILITY FOR LATE OR IMPROPER EXECUTION OR FAILURE TO EXECUTE PAYMENT ORDER. (a) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of Section 4A.302 of this chapter results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of

delay caused by the improper execution. Except as provided by Subsection (c), additional damages are not recoverable.

(b) If execution of a payment order by a receiving bank in breach of Section 4A.302 results in (i) noncompletion of the funds transfer, (ii) failure to use an intermediary bank designated by the originator, or (iii) issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by Subsection (a) of this section, resulting from the improper execution. Except as provided by Subsection (c), additional damages are not recoverable.

(c) In addition to the amounts payable under Subsections (a) and (b), damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank.

(d) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express written agreement of the receiving bank, but are not otherwise recoverable.

(e) Reasonable attorney's fees are recoverable if demand for compensation under Subsection (a) or (b) is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under Subsection (d) and the agreement does not provide for damages, reasonable attorney's fees are recoverable if demand for compensation under Subsection (d) of this section is made and refused before an action is brought on the claim.

(f) Except as provided by this section, the liability of a receiving bank under Subsections (a) and (b) of this section may not be varied by agreement.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

SUBCHAPTER D. PAYMENT

Sec. 4A.401. PAYMENT DATE. "Payment date" of a payment order means the day on which the amount of the order is payable to the

beneficiary by the beneficiary's bank. The payment date may be determined by instruction of the sender but cannot be earlier than the day the order is received by the beneficiary's bank and, unless otherwise determined, is the day the order is received by the beneficiary's bank.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.402. OBLIGATION OF SENDER TO PAY RECEIVING BANK. (a) This section is subject to Sections 4A.205 and 4A.207.

(b) With respect to a payment order issued to the beneficiary's bank, acceptance of the order by the bank obliges the sender to pay the bank the amount of the order, but payment is not due until the payment date of the order.

(c) This subsection is subject to Subsection (e) and to Section 4A.303. With respect to a payment order issued to a receiving bank other than the beneficiary's bank, acceptance of the order by the receiving bank obliges the sender to pay the bank the amount of the sender's order. Payment by the sender is not due until the execution date of the sender's order. The obligation of that sender to pay its payment order is excused if the funds transfer is not completed by acceptance by the beneficiary's bank of a payment order instructing payment to the beneficiary of that sender's payment order.

(d) If the sender of a payment order pays the order and was not obliged to pay all or part of the amount paid, the bank receiving payment is obliged to refund payment to the extent the sender was not obliged to pay. Except as provided by Sections 4A.204 and 4A.304, interest is payable on the refundable amount from the date of payment.

(e) If a funds transfer is not completed as provided by Subsection (c) and an intermediary bank is obliged to refund payment as provided by Subsection (d) but is unable to do so because not permitted by applicable law or because the bank suspends payments, a sender in the funds transfer that executed a payment order in compliance with an instruction, as provided by Section 4A.302(a)(1), to route the funds transfer through that intermediary bank is entitled to receive or retain payment from the sender of the payment order that it accepted. The first sender in the funds transfer that issued an instruction requiring routing through that intermediary

bank is subrogated to the right of the bank that paid the intermediary bank to a refund as stated in Subsection (d).

(f) The right of the sender of a payment order to be excused from the obligation to pay the order as stated in Subsection (c) or to receive a refund under Subsection (d) may not be varied by agreement.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.403. PAYMENT BY SENDER TO RECEIVING BANK. (a) Payment of the sender's obligation under Section 4A.402 to pay the receiving bank occurs as follows:

(1) If the sender is a bank, payment occurs when the receiving bank receives final settlement of the obligation through a Federal Reserve Bank or through a funds transfer system.

(2) If the sender is a bank and the sender (i) credited an account of the receiving bank with the sender, or (ii) caused an account of the receiving bank in another bank to be credited, payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact.

(3) If the receiving bank debits an account of the sender with the receiving bank, payment occurs when the debit is made to the extent the debit is covered by a withdrawable credit balance in the account.

(b) If the sender and receiving bank are members of a funds transfer system that nets obligations multilaterally among participants, the receiving bank receives final settlement when settlement is complete in accordance with the rules of the system. The obligation of the sender to pay the amount of a payment order transmitted through the funds transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against the sender's obligation the right of the sender to receive payment from the receiving bank of the amount of any other payment order transmitted to the sender by the receiving bank through the funds transfer system. The aggregate balance of obligations owed by each sender to each receiving bank in the funds transfer system may be satisfied, to the extent permitted by the rules of the system, by setting off and applying against that balance the aggregate

balance of obligations owed to the sender by other members of the system. The aggregate balance is determined after the right of setoff stated in the second sentence of this subsection has been exercised.

(c) If two banks transmit payment orders to each other under an agreement that settlement of the obligations of each bank to the other under Section 4A.402 will be made at the end of the day or other period, the total amount owed with respect to all orders transmitted by one bank shall be set off against the total amount owed with respect to all orders transmitted by the other bank. To the extent of the setoff, each bank has made payment to the other.

(d) In a case not covered by Subsection (a), the time when payment of the sender's obligation under Section 4A.402(b) or (c) occurs is governed by applicable principles of law that determine when an obligation is satisfied.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.404. OBLIGATION OF BENEFICIARY'S BANK TO PAY AND GIVE NOTICE TO BENEFICIARY. (a) Subject to Sections 4A.211(e) and 4A.405(d) and (e), if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. Payment is due on the payment date of the order, but if acceptance occurs on the payment date after the close of the funds transfer business day of the bank, payment is due on the next funds transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.

(b) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be

given by first class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorney's fees are recoverable if demand for interest is made and refused before an action is brought on the claim.

(c) The right of a beneficiary to receive payment and damages as stated in Subsection (a) may not be varied by agreement or a funds transfer system rule. The right of a beneficiary to be notified as stated in Subsection (b) may be varied by agreement of the beneficiary or by a funds transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.405. PAYMENT BY BENEFICIARY'S BANK TO BENEFICIARY. (a) If the beneficiary's bank credits an account of the beneficiary of a payment order, payment of the bank's obligation under Section 4A.404(a) occurs when and to the extent:

(1) the beneficiary is notified of the right to withdraw the credit;

(2) the bank lawfully applies the credit to a debt of the beneficiary; or

(3) funds with respect to the order are otherwise made available to the beneficiary by the bank.

(b) If the beneficiary's bank does not credit an account of the beneficiary of a payment order, the time when payment of the bank's obligation under Section 4A.404(a) occurs is governed by principles of law that determine when an obligation is satisfied.

(c) Except as provided by Subsections (d) and (e), if the beneficiary's bank pays the beneficiary of a payment order under a condition to payment or agreement of the beneficiary giving the bank the right to recover payment from the beneficiary if the bank does not receive payment of the order, the condition to payment or agreement is not enforceable.

(d) A funds transfer system rule may provide that payments made to beneficiaries of funds transfers through the system are

provisional until receipt of payment by the beneficiary's bank of the payment order is accepted. A beneficiary's bank that makes a payment that is provisional under the rule is entitled to refund from the beneficiary if (i) the rule requires that both the beneficiary and the originator be given notice of the provisional nature of the payment before the funds transfer is initiated, (ii) the beneficiary, the beneficiary's bank and the originator's bank agreed to be bound by the rule, and (iii) the beneficiary's bank did not receive payment of the payment order that it accepted. If the beneficiary is obliged to refund payment to the beneficiary's bank, acceptance of the payment order by the beneficiary's bank is nullified and no payment by the originator of the funds transfer to the beneficiary occurs under Section 4A.406.

(e) This subsection applies to a funds transfer that includes a payment order transmitted over a funds transfer system that (i) nets obligations multilaterally among participants, and (ii) has in effect a loss-sharing agreement among participants for the purpose of providing funds necessary to complete settlement of the obligations of one or more participants that do not meet their settlement obligations. If the beneficiary's bank in the funds transfer accepts a payment order and the system fails to complete settlement pursuant to its rules with respect to any payment order in the funds transfer:

(1) the acceptance by the beneficiary's bank is nullified and no person has any right or obligation based on the acceptance;

(2) the beneficiary's bank is entitled to recover payment from the beneficiary;

(3) no payment by the originator to the beneficiary occurs under Section 4A.406; and

(4) subject to Section 4A.402(e), each sender in the funds transfer is excused from its obligation to pay its payment order under Section 4A.402(c) because the funds transfer has not been completed.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.406. PAYMENT BY ORIGINATOR TO BENEFICIARY; DISCHARGE OF UNDERLYING OBLIGATION. (a) Subject to Sections 4A.211(e) and 4A.405(d) and (e), the originator of a funds transfer pays the beneficiary of the originator's payment order:

(1) at the time a payment order for the benefit of the beneficiary is accepted by the beneficiary's bank in the funds transfer; and

(2) in an amount equal to the amount of the order accepted by the beneficiary's bank, but not more than the amount of the originator's order.

(b) If payment under Subsection (a) is made to satisfy an obligation, the obligation is discharged to the same extent discharge would result from payment to the beneficiary of the same amount in money, unless (i) the payment under Subsection (a) of this section was made by a means prohibited by the contract of the beneficiary with respect to the obligation, (ii) the beneficiary, within a reasonable time after receiving notice of receipt of the order by the beneficiary's bank, notified the originator of the beneficiary's refusal of the payment, (iii) funds with respect to the order were not withdrawn by the beneficiary or applied to a debt of the beneficiary, and (iv) the beneficiary would suffer a loss that could reasonably have been avoided if payment had been made by a means complying with the contract. If payment by the originator does not result in discharge under this section, the originator is subrogated to the rights of the beneficiary to receive payment from the beneficiary's bank under Section 4A.404(a).

(c) For the purpose of determining whether discharge of an obligation occurs under Subsection (b), if the beneficiary's bank accepts a payment order in an amount equal to the amount of the originator's payment order less charges of one or more receiving banks in the funds transfer, payment to the beneficiary is deemed to be in the amount of the originator's order unless upon demand by the beneficiary the originator does not pay the beneficiary the amount of the deducted charges.

(d) Rights of the originator or of the beneficiary of a funds transfer under this section may be varied only by agreement of the originator and the beneficiary.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

SUBCHAPTER E. MISCELLANEOUS PROVISIONS

Sec. 4A.501. VARIATION BY AGREEMENT AND EFFECT OF FUNDS TRANSFER SYSTEM RULE. (a) Except as otherwise provided in this

chapter, the rights and obligations of a party to a funds transfer may be varied by agreement of the affected party.

(b) "Funds transfer system rule" means a rule of an association of banks (i) governing transmission of payment orders by means of a funds transfer system of the association or rights and obligations with respect to those orders, or (ii) to the extent the rule governs rights and obligations between banks that are parties to a funds transfer in which a Federal Reserve Bank, acting as an intermediary bank, sends a payment order to the beneficiary's bank. Except as otherwise provided in this chapter, a funds transfer system rule governing rights and obligations between participating banks using the system may be effective even if the rule conflicts with this chapter and indirectly affects another party to the funds transfer who does not consent to the rule. A funds transfer system rule may also govern rights and obligations of parties other than participating banks using the system to the extent stated in Sections 4A.404(c), 4A.405(d), and 4A.507(c).

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.502. CREDITOR PROCESS SERVED ON RECEIVING BANK; SETOFF BY BENEFICIARY'S BANK. (a) As used in this section, "creditor process" means levy, attachment, garnishment, notice of lien, sequestration, or similar process issued by or on behalf of a creditor or other claimant with respect to an account.

(b) This subsection applies to creditor process with respect to an authorized account of the sender of a payment order if the creditor process is served on the receiving bank. For the purpose of determining rights with respect to the creditor process, if the receiving bank accepts the payment order, the balance in the authorized account is deemed to be reduced by the amount of the payment order to the extent the bank did not otherwise receive payment of the order, unless the creditor process is served at a time and in a manner affording the bank a reasonable opportunity to act on it before the bank accepts the payment order.

(c) If a beneficiary's bank has received a payment order for payment to the beneficiary's account in the bank the following rules apply:

(1) The bank may credit the beneficiary's account, and the

amount credited may be set off against an obligation owed by the beneficiary to the bank or may be applied to satisfy creditor process served on the bank with respect to the account.

(2) The bank may credit the beneficiary's account and allow withdrawal of the amount credited unless creditor process with respect to the account is served at a time and in a manner affording the bank a reasonable opportunity to act to prevent withdrawal.

(3) If creditor process with respect to the beneficiary's account has been served and the bank has had a reasonable opportunity to act on it, the bank may not reject the payment order except for a reason unrelated to the service of process.

(d) Creditor process with respect to a payment by the originator to the beneficiary pursuant to a funds transfer may be served only on the beneficiary's bank with respect to the debt owed by that bank to the beneficiary. Any other bank served with the creditor process is not obliged to act with respect to the process.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.503. INJUNCTION OR RESTRAINING ORDER WITH RESPECT TO FUNDS TRANSFER. For proper cause and in compliance with applicable law, a court may restrain (i) a person from issuing a payment order to initiate a funds transfer, (ii) an originator's bank from executing the payment order of the originator, or (iii) the beneficiary's bank from releasing funds to the beneficiary or the beneficiary from withdrawing the funds. A court may not otherwise restrain a person from issuing a payment order, paying or receiving payment of a payment order, or otherwise acting with respect to a funds transfer.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.504. ORDER IN WHICH ITEMS AND PAYMENT ORDERS MAY BE CHARGED TO ACCOUNT; ORDER OF WITHDRAWALS FROM ACCOUNT. (a) If a receiving bank has received more than one payment order of the sender or one or more payment orders and other items that are payable from the sender's account, the bank may charge the sender's account with respect to the various orders and items in any sequence.

(b) In determining whether a credit to an account has been

withdrawn by the holder of the account or applied to a debt of the holder of the account, credits first made to the account are first withdrawn or applied.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.505. PRECLUSION OF OBJECTION TO DEBIT OF CUSTOMER'S ACCOUNT. If a receiving bank has received payment from its customer with respect to a payment order issued in the name of the customer as sender and accepted by the bank, and the customer received notification reasonably identifying the order, the customer is precluded from asserting that the bank is not entitled to retain the payment unless the customer notifies the bank of the customer's objection to the payment within one year after the notification was received by the customer.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.506. RATE OF INTEREST. (a) If, under this chapter, a receiving bank is obliged to pay interest with respect to a payment order issued to the bank, the amount payable may be determined (i) by agreement of the sender and receiving bank, or (ii) by funds transfer system rule if the payment order is transmitted through a funds transfer system.

(b) If the amount of interest is not determined by an agreement or rule as stated in Subsection (a), the amount is calculated by multiplying the applicable Federal Funds rate by the amount on which interest is payable, and then multiplying the product by the number of days for which interest is payable. The applicable Federal Funds rate is the average of the Federal Funds rates published by the Federal Reserve Bank of New York for each of the days for which interest is payable divided by 360. The Federal Funds rate for any day on which a published rate is not available is the same as the published rate for the next preceding day for which there is a published rate. If a receiving bank that accepted a payment order is required to refund payment to the sender of the order because the funds transfer was not completed, but the failure to complete was not due to any fault by the bank, the interest payable is reduced by a percentage equal to the reserve requirement on deposits of the

receiving bank.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993.

Sec. 4A.507. CHOICE OF LAW. (a) The following rules apply unless the affected parties otherwise agree or Subsection (c) applies:

(1) The rights and obligations between the sender of a payment order and the receiving bank are governed by the law of the jurisdiction in which the receiving bank is located.

(2) The rights and obligations between the beneficiary's bank and the beneficiary are governed by the law of the jurisdiction in which the beneficiary's bank is located.

(3) The issue of when payment is made pursuant to a funds transfer by the originator to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is located.

(b) If the parties described by each subdivision of Subsection (a) have made an agreement selecting the law of a particular jurisdiction to govern rights and obligations between each other, the law of that jurisdiction governs those rights and obligations as to matters of construction and interpretation, whether or not the payment order or the funds transfer bears a reasonable relation to that jurisdiction, and as to validity, to the extent permitted by Section 1.301 of this code.

(c) A funds transfer system rule may select the law of a particular jurisdiction to govern (i) rights and obligations between participating banks with respect to payment orders transmitted or processed through the system, or (ii) the rights and obligations of some or all parties to a funds transfer any part of which is carried out by means of the system. A choice of law made pursuant to clause (i) is binding on participating banks. A choice of law made pursuant to clause (ii) is binding on the originator, other sender, or a receiving bank having notice that the funds transfer system might be used in the funds transfer and of the choice of law by the system when the originator, other sender, or receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is bound by the choice of law if, when the funds transfer is initiated, the beneficiary has notice that the funds transfer system might be used in the funds transfer and of the choice of law by the system.

The law of a jurisdiction selected pursuant to this Subsection (c) may govern, as to matters of construction and interpretation, whether or not the law bears a reasonable relation to the matter in issue.

(d) In the event of inconsistency between an agreement under Subsection (b) and a choice-of-law rule under Subsection (c), the agreement under Subsection (b) prevails.

(e) If a funds transfer is made by use of more than one funds transfer system and there is inconsistency between choice-of-law rules of the systems, the matter in issue is governed by the law of the selected jurisdiction that has the most significant relationship to the matter in issue.

Added by Acts 1993, 73rd Leg., ch. 570, Sec. 7, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 542, Sec. 16, eff. Sept. 1, 2003.

CHAPTER 5. LETTERS OF CREDIT

Sec. 5.101. SHORT TITLE. This chapter may be cited as Uniform Commercial Code--Letters of Credit.

Amended by Acts 1999, 76th Leg., ch. 4, Sec. 1, eff. Sept. 1, 1999.

Sec. 5.102. DEFINITIONS. (a) in this chapter:

(1) "Adviser" means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended.

(2) "Applicant" means a person at whose request or for whose account a letter of credit is issued. The term includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.

(3) "Beneficiary" means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term includes a person to whom drawing rights have been transferred under a transferable letter of credit.

(4) "Confirmer" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another.

(5) "Dishonor" of a letter of credit means failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit.

(6) "Document" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion (i) that is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in Section 5.108(e); and (ii) that is capable of being examined for compliance with the terms and conditions of the letter of credit. A document may not be oral.

(7) "Good faith" means honesty in fact in the conduct or transaction concerned.

(8) "Honor" of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, "honor" occurs:

(A) upon payment;

(B) if the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment; or

(C) if the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.

(9) "Issuer" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes.

(10) "Letter of credit" means a definite undertaking that satisfies the requirements of Section 5.104 by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.

(11) "Nominated person" means a person whom the issuer:

(A) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit; and

(B) undertakes by agreement or custom and practice to reimburse.

(12) "Presentation" means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.

(13) "Presenter" means a person making a presentation as or on behalf of a beneficiary or nominated person.

(14) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) "Successor of a beneficiary" means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, an executor, a personal representative, a trustee in bankruptcy, a debtor in possession, a liquidator, and a receiver.

(b) Definitions in other chapters of this code applying to this chapter and the sections in which they appear are:

"Accept" or "Acceptance". Section 3.409.

"Value". Sections 3.303 and 4.211.

(c) Chapter 1 contains certain additional general definitions and principles of construction and interpretation applicable throughout this chapter.

Amended by Acts 1999, 76th Leg., ch. 4, Sec. 1, eff. Sept. 1, 1999.

Sec. 5.103. SCOPE. (a) This chapter applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(b) The statement of a rule in this chapter does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this chapter.

(c) With the exception of this subsection, Subsections (a) and (d), Sections 5.102(a)(9) and (10), Section 5.106(d), Section 5.110(c), and Section 5.114(d) and except to the extent prohibited in Sections 1.302 and 5.117(d), the effect of this chapter may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this chapter.

(d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the

existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary.

Amended by Acts 1999, 76th Leg., ch. 4, Sec. 1, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 542, Sec. 17, eff. Sept. 1, 2003.

Sec. 5.104. FORMAL REQUIREMENTS. A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated:

(1) by a signature; or

(2) in accordance with the agreement of the parties or the standard practice referred to in Section 5.108(e).

Amended by Acts 1999, 76th Leg., ch. 4, Sec. 1, eff. Sept. 1, 1999.

Sec. 5.105. CONSIDERATION. Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation.

Amended by Acts 1999, 76th Leg., ch. 4, Sec. 1, eff. Sept. 1, 1999.

Sec. 5.106. ISSUANCE, AMENDMENT, CANCELLATION, AND DURATION. (a) A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.

(b) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

(c) If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one year after its stated date of issuance or, if no date is stated, after the date on which it is issued.

(d) A letter of credit that states that it is perpetual expires five years after its stated date of issuance or, if no date is stated, after the date on which it is issued.

Amended by Acts 1999, 76th Leg., ch. 4, Sec. 1, eff. Sept. 1, 1999.

Sec. 5.107. CONFIRMER, NOMINATED PERSON, AND ADVISER. (a) A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

(b) A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.

(c) A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment, or advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the letter of credit, confirmation, or amendment is enforceable as issued.

(d) A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under Subsection (c). The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies.

Amended by Acts 1999, 76th Leg., ch. 4, Sec. 1, eff. Sept. 1, 1999.

Sec. 5.108. ISSUER'S RIGHTS AND OBLIGATIONS. (a) Except as otherwise provided in Section 5.109, an issuer shall honor a presentation that, as determined by the standard practice referred to in Subsection (e), appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise

provided in Section 5.113 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

(b) An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the date of its receipt of documents:

(1) to honor;

(2) if the letter of credit provides for honor to be completed more than seven business days after presentation, to accept a draft or incur a deferred obligation; or

(3) to give notice to the presenter of discrepancies in the presentation.

(c) Except as otherwise provided in Subsection (d), an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given or any discrepancy not stated in the notice if timely notice is given.

(d) Failure to give the notice specified in Subsection (b) or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in Section 5.109(a) or expiration of the letter of credit before presentation.

(e) An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

(f) An issuer is not responsible for:

(1) the performance or nonperformance of the underlying contract, arrangement, or transaction;

(2) an act or omission of others; or

(3) observance or knowledge of the usage of a particular trade other than the standard practice referred to in Subsection (e).

(g) If an undertaking constituting a letter of credit under Section 5.102(a)(10) contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

(h) An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

(i) An issuer that has honored a presentation as permitted or

required by this chapter:

(1) is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;

(2) takes the documents free of claims of the beneficiary or presenter;

(3) is precluded from asserting a right of recourse on a draft under Sections 3.414 and 3.415;

(4) except as otherwise provided in Sections 5.110 and 5.117, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender that are apparent on the face of the presentation; and

(5) is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged.

Amended by Acts 1999, 76th Leg., ch. 4, Sec. 1, eff. Sept. 1, 1999.

Sec. 5.109. FRAUD AND FORGERY. (a) If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:

(1) the issuer shall honor the presentation if honor is demanded by:

(A) a nominated person who has given value in good faith and without notice of forgery or material fraud;

(B) a confirmer who has honored its confirmation in good faith;

(C) a holder in due course of a draft drawn under the letter of credit that was taken after acceptance by the issuer or nominated person; or

(D) an assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and

(2) the issuer, acting in good faith, may honor or dishonor

the presentation in any other case.

(b) If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:

(1) the relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;

(2) a beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;

(3) all of the conditions to entitle a person to the relief under the law of this state have been met; and

(4) on the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud and the person demanding honor does not qualify for protection under Subsection (a)(1).

Amended by Acts 1999, 76th Leg., ch. 4, Sec. 1, eff. Sept. 1, 1999.

Sec. 5.110. WARRANTIES. (a) If its presentation is honored, the beneficiary warrants:

(1) to the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in Section 5.109(a); and

(2) to the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

(b) The warranties in Subsection (a) are in addition to warranties arising under Chapters 3, 4, 7, and 8 because of the presentation or transfer of documents covered by any of those chapters.

(c) Notwithstanding any agreement or term to the contrary, the warranties in Subsection (a) do not arise until the issuer honors the letter of credit.

Amended by Acts 1999, 76th Leg., ch. 4, Sec. 1, eff. Sept. 1, 1999.

Sec. 5.111. REMEDIES. (a) If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

(b) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.

(c) If an adviser or nominated person other than a confirmer breaches an obligation under this chapter or an issuer breaches an obligation not covered in Subsection (a) or (b), a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach. To the extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and Subsections (a) and (b).

(d) An issuer, nominated person, or adviser who is found liable under Subsection (a), (b), or (c) shall pay interest on the amount owed thereunder from the date of wrongful dishonor or other appropriate date.

(e) Reasonable attorney's fees and other expenses of litigation may be awarded to the prevailing party in an action in which a remedy is sought under this chapter.

(f) Damages that would otherwise be payable by a party for breach of an obligation under this chapter may be liquidated by agreement or undertaking, but only in an amount or by a formula that

is reasonable in light of the harm anticipated.

Amended by Acts 1999, 76th Leg., ch. 4, Sec. 1, eff. Sept. 1, 1999.

Sec. 5.112. TRANSFER OF LETTER OF CREDIT. (a) Except as otherwise provided in Section 5.113, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.

(b) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:

(1) the transfer would violate applicable law; or

(2) the transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in Section 5.108(e) or is otherwise reasonable under the circumstances.

Amended by Acts 1999, 76th Leg., ch. 4, Sec. 1, eff. Sept. 1, 1999.

Sec. 5.113. TRANSFER BY OPERATION OF LAW. (a) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

(b) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in Subsection (e), an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a transfer of drawing rights by operation of law under the standard practice referred to in Section 5.108(e) or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.

(c) An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

(d) Honor of a purported successor's apparently complying

presentation under Subsection (a) or (b) has the consequences specified in Section 5.108(i) even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of Section 5.109.

(e) An issuer whose rights of reimbursement are not covered by Subsection (d) or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under Subsection (b).

(f) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section.

Amended by Acts 1999, 76th Leg., ch. 4, Sec. 1, eff. Sept. 1, 1999.

Sec. 5.114. ASSIGNMENT OF PROCEEDS. (a) In this section, "proceeds of a letter of credit" means the cash, check, accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term does not include a beneficiary's drawing rights or documents presented by the beneficiary.

(b) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.

(c) An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.

(d) An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

(e) Rights of a transferee beneficiary or nominated person are independent of the beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.

(f) Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person nor the issuer's or nominated person's payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by Chapter 9 or other law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by Chapter 9 or other law.

Amended by Acts 1999, 76th Leg., ch. 4, Sec. 1, eff. Sept. 1, 1999.

Sec. 5.115. STATUTE OF LIMITATIONS. An action to enforce a right or obligation arising under this chapter must be commenced within one year after the expiration date of the relevant letter of credit or one year after the cause of action accrues, whichever occurs later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach.

Amended by Acts 1999, 76th Leg., ch. 4, Sec. 1, eff. Sept. 1, 1999.

Sec. 5.116. CHOICE OF LAW AND FORUM. (a) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in Section 5.104 or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(b) Unless Subsection (a) applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction,

choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities, and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

(c) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (i) this chapter would govern the liability of an issuer, nominated person, or adviser under Subsection (a) or (b), (ii) the relevant undertaking incorporates rules of custom or practice, and (iii) there is conflict between this chapter and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in Section 5.103(c).

(d) If there is conflict between this chapter and Chapter 3, 4, 4A, or 9, this chapter governs.

(e) The forum for settling disputes arising out of an undertaking within this chapter may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with Subsection (a).

Amended by Acts 1999, 76th Leg., ch. 4, Sec. 1, eff. Sept. 1, 1999.

Sec. 5.117. SUBROGATION OF ISSUER, APPLICANT, AND NOMINATED PERSON. (a) An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.

(b) An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in Subsection (a).

(c) A nominated person who pays or gives value against a draft

or demand presented under a letter of credit is subrogated to the rights of:

(1) the issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;

(2) the beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and

(3) the applicant to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

(d) Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in Subsections (a) and (b) do not arise until the issuer honors the letter of credit or otherwise pays, and the rights in Subsection (c) do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, the nominated person, and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense, or excuse.

Amended by Acts 1999, 76th Leg., ch. 4, Sec. 1, eff. Sept. 1, 1999.

Sec. 5.118. SECURITY INTEREST OF ISSUER OR NOMINATED PERSON. (a) An issuer or nominated person has a security interest in a document presented under a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation.

(b) So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under Subsection (a), the security interest continues and is subject to Chapter 9, but:

(1) a security agreement is not necessary to make the security interest enforceable under Section 9.203(b)(3);

(2) if the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and

(3) if the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, the security

interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 2.24, eff. July 1, 2001.

CHAPTER 7. DOCUMENTS OF TITLE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 7.101. SHORT TITLE. This chapter may be cited as Uniform Commercial Code--Documents of Title.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.
Amended by:
Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.102. DEFINITIONS AND INDEX OF DEFINITIONS. (a) In this chapter, unless the context otherwise requires:

(1) "Bailee" means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

(2) "Carrier" means a person that issues a bill of lading.

(3) "Consignee" means a person named in a bill of lading to which or to whose order the bill promises delivery.

(4) "Consignor" means a person named in a bill of lading as the person from which the goods have been received for shipment.

(5) "Delivery order" means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.

(6) [Reserved.]

(7) "Goods" means all things that are treated as movable for the purposes of a contract for storage or transportation.

(8) "Issuer" means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods

were misdescribed, or in any other respect the agent or employee violated the issuer's instructions.

(9) "Person entitled under the document" means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.

(10) [Reserved.]

(11) "Shipper" means a person that enters into a contract of transportation with a carrier.

(12) "Sign" means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic sound, symbol, or process.

(13) "Warehouse" means a person engaged in the business of storing goods for hire.

(b) Definitions in other chapters applying to this chapter and the sections in which they appear are:

(1) "Contract for sale," Section 2.106.

(2) "Lessee in ordinary course of business," Section 2A.103.

(3) "'Receipt' of goods," Section 2.103.

(c) In addition, Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.103. RELATION OF ARTICLE TO TREATY OR STATUTE. (a) This chapter is subject to any treaty or statute of the United States or a regulatory statute of this state to the extent the treaty, statute, or regulatory statute is applicable.

(b) This chapter does not repeal or modify any law prescribing the form or contents of a document of title or the services or facilities to be afforded by a bailee, or otherwise regulating a bailee's businesses in respects not specifically treated in this

chapter. However, violation of these laws does not affect the status of a document of title that otherwise complies with the definition of a document of title.

(c) This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of that Act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that Act (15 U.S.C. Section 7003(b)).

(d) To the extent there is a conflict between Chapter 322 and this chapter, this chapter governs.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.04, eff. April 1, 2009.

Sec. 7.104. NEGOTIABLE AND NONNEGOTIABLE DOCUMENT OF TITLE. (a) A document of title is negotiable if by its terms the goods are to be delivered to bearer or to the order of a named person.

(b) A document of title other than one described in Subsection (a) is nonnegotiable. A bill of lading that states that the goods are consigned to a named person is not made negotiable by a provision that the goods are to be delivered only against an order in a record signed by the same or another named person.

(c) A document of title is nonnegotiable if, at the time it is issued, the document has a conspicuous legend, however expressed, that it is nonnegotiable.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.105. REISSUANCE IN ALTERNATIVE MEDIUM. (a) Upon request of a person entitled under an electronic document of title, the issuer of the electronic document may issue a tangible document

of title as a substitute for the electronic document if:

(1) the person entitled under the electronic document surrenders control of the document to the issuer; and

(2) the tangible document when issued contains a statement that it is issued in substitution for the electronic document.

(b) Upon issuance of a tangible document of title in substitution for an electronic document of title in accordance with Subsection (a):

(1) the electronic document ceases to have any effect or validity; and

(2) the person that procured issuance of the tangible document warrants to all subsequent persons entitled under the tangible document that the warrantor was a person entitled under the electronic document when the warrantor surrendered control of the electronic document to the issuer.

(c) Upon request of a person entitled under a tangible document of title, the issuer of the tangible document may issue an electronic document of title as a substitute for the tangible document if:

(1) the person entitled under the tangible document surrenders possession of the document to the issuer; and

(2) the electronic document when issued contains a statement that it is issued in substitution for the tangible document.

(d) Upon issuance of the electronic document of title in substitution for a tangible document of title in accordance with Subsection (c):

(1) the tangible document ceases to have any effect or validity; and

(2) the person that procured issuance of the electronic document warrants to all subsequent persons entitled under the electronic document that the warrantor was a person entitled under the tangible document when the warrantor surrendered possession of the tangible document to the issuer.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.106. CONTROL OF ELECTRONIC DOCUMENT OF TITLE. (a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies Subsection (a), and a person is deemed to have control of an electronic document of title, if the document is created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in Subdivisions (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as:

(A) the person to which the document was issued; or

(B) if the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

SUBCHAPTER B. WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

Sec. 7.201. PERSON THAT MAY ISSUE A WAREHOUSE RECEIPT; STORAGE UNDER BOND. (a) A warehouse receipt may be issued by any warehouse.

(b) If goods, including distilled spirits and agricultural commodities, are stored under a statute requiring a bond against withdrawal or a license for the issuance of receipts in the nature of

warehouse receipts, a receipt issued for the goods is deemed to be a warehouse receipt even if issued by a person that is the owner of the goods and is not a warehouse.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.202. FORM OF WAREHOUSE RECEIPT. (a) A warehouse receipt need not be in any particular form.

(b) Unless a warehouse receipt provides for each of the following, the warehouse is liable for damages caused to a person injured by its omission:

(1) the location of the warehouse facility where the goods are stored;

(2) the date of issue of the receipt;

(3) the unique identification code of the receipt;

(4) a statement whether the goods received will be delivered to the bearer, to a named person, or to a named person or its order;

(5) the rate of storage and handling charges, but if goods are stored under a field warehousing arrangement, a statement of that fact is sufficient on a nonnegotiable receipt;

(6) a description of the goods or the packages containing them;

(7) the signature of the warehouse or its agent;

(8) if the receipt is issued for goods that the warehouse owns, either solely, jointly, or in common with others, the fact of that ownership; and

(9) a statement of the amount of advances made and of liabilities incurred for which the warehouse claims a lien or security interest, but if the precise amount of advances made or of liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouse or to its agent that issued the receipt, a statement of the fact that advances have been made or liabilities incurred and the purpose of the advances or liabilities is sufficient.

(c) A warehouse may insert in its receipt any terms that are

not contrary to this title and do not impair its obligation of delivery under Section 7.403 or its duty of care under Section 7.204. Any contrary provisions are ineffective.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.
Amended by:
Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.203. LIABILITY FOR NONRECEIPT OR MISDESCRIPTION. A party to or purchaser for value in good faith of a document of title, other than a bill of lading, that relies upon the description of the goods in the document may recover from the issuer damages caused by the nonreceipt or misdescription of the goods, except to the extent that:

(1) the document conspicuously indicates that the issuer does not know whether all or part of the goods in fact were received or conform to the description, such as a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by "contents, condition, and quality unknown," "said to contain," or words of similar import, if the indication is true; or

(2) the party or purchaser otherwise has notice of the nonreceipt or misdescription.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.
Amended by:
Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.204. DUTY OF CARE; CONTRACTUAL LIMITATION OF WAREHOUSE'S LIABILITY. (a) A warehouse is liable for damages for loss of or injury to the goods caused by its failure to exercise care with regard to the goods that a reasonably careful person would exercise under similar circumstances. However, unless otherwise agreed, the warehouse is not liable for damages that could not have been avoided by the exercise of that care.

(b) Damages may be limited by a term in the warehouse receipt or storage agreement limiting the amount of liability in case of loss

or damage beyond which the warehouse is not liable. Such a limitation is not effective with respect to the warehouse's liability for conversion to its own use. The warehouse's liability, on request of the bailor in a record at the time of signing such storage agreement or within a reasonable time after receipt of the warehouse receipt, may be increased on part or all of the goods covered by the storage agreement or the warehouse receipt. In this event, increased rates may be charged based on an increased valuation of the goods.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the bailment may be included in the warehouse receipt or storage agreement.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.205. TITLE UNDER WAREHOUSE RECEIPT DEFEATED IN CERTAIN CASES. A buyer in ordinary course of business of fungible goods sold and delivered by a warehouse that is also in the business of buying and selling such goods takes the goods free of any claim under a warehouse receipt even if the receipt is negotiable and has been duly negotiated.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.206. TERMINATION OF STORAGE AT WAREHOUSE'S OPTION. (a) A warehouse, by giving notice to the person on whose account the goods are held and any other person known to claim an interest in the goods, may require payment of any charges and removal of the goods from the warehouse at the termination of the period of storage fixed by the document of title or, if a period is not fixed, within a stated period not less than 30 days after the warehouse gives notice. If the goods are not removed before the date specified in the notice, the warehouse may sell them pursuant to Section 7.210.

(b) If a warehouse in good faith believes that goods are about

to deteriorate or decline in value to less than the amount of its lien within the time provided in Subsection (a) and Section 7.210, the warehouse may specify in the notice given under Subsection (a) any reasonable shorter time for removal of the goods and, if the goods are not removed, may sell them at public sale held not less than one week after a single advertisement or posting.

(c) If, as a result of a quality or condition of the goods of which the warehouse did not have notice at the time of deposit, the goods are a hazard to other property, the warehouse facilities, or other persons, the warehouse may sell the goods at public or private sale without advertisement or posting on reasonable notification to all persons known to claim an interest in the goods. If the warehouse, after a reasonable effort, is unable to sell the goods, it may dispose of them in any lawful manner and does not incur liability by reason of that disposition.

(d) A warehouse shall deliver the goods to any person entitled to them under this chapter upon due demand made at any time before sale or other disposition under this section.

(e) A warehouse may satisfy its lien from the proceeds of any sale or disposition under this section but shall hold the balance for delivery on the demand of any person to which the warehouse would have been bound to deliver the goods.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.207. GOODS MUST BE KEPT SEPARATE; FUNGIBLE GOODS. (a) Unless the warehouse receipt provides otherwise, a warehouse shall keep separate the goods covered by each receipt so as to permit at all times identification and delivery of those goods. However, different lots of fungible goods may be commingled.

(b) If different lots of fungible goods are commingled, the goods are owned in common by the persons entitled thereto and the warehouse is severally liable to each owner for that owner's share. If, because of overissue, a mass of fungible goods is insufficient to meet all the receipts the warehouse has issued against it, the persons entitled include all holders to which overissued receipts

have been duly negotiated.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.
Amended by:
Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.208. ALTERED WAREHOUSE RECEIPTS. If a blank in a negotiable tangible warehouse receipt has been filled in without authority, a good faith purchaser for value and without notice of the lack of authority may treat the insertion as authorized. Any other unauthorized alteration leaves any tangible or electronic warehouse receipt enforceable against the issuer according to its original tenor.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.
Amended by:
Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.209. LIEN OF WAREHOUSE. (a) A warehouse has a lien against the bailor on the goods covered by a warehouse receipt or storage agreement or on the proceeds thereof in its possession for charges for storage or transportation, including demurrage and terminal charges, insurance, labor, or other charges, present or future, in relation to the goods, and for expenses necessary for preservation of the goods or reasonably incurred in their sale pursuant to law. If the person on whose account the goods are held is liable for similar charges or expenses in relation to other goods whenever deposited and it is stated in the warehouse receipt or storage agreement that a lien is claimed for charges and expenses in relation to other goods, the warehouse also has a lien against the goods covered by the warehouse receipt or storage agreement or on the proceeds thereof in its possession for those charges and expenses, whether or not the other goods have been delivered by the warehouse. However, as against a person to which a negotiable warehouse receipt is duly negotiated, a warehouse's lien is limited to charges in an amount or at a rate specified in the warehouse receipt or, if no charges are so specified, to a reasonable charge for storage of the

specific goods covered by the receipt subsequent to the date of the receipt.

(b) The warehouse may also reserve a security interest under Chapter 9 against the bailor for the maximum amount specified on the receipt for charges other than those specified in Subsection (a), such as for money advanced and interest. A security interest is governed by Chapter 9.

(c) A warehouse's lien for charges and expenses under Subsection (a) or a security interest under Subsection (b) is also effective against any person that so entrusted the bailor with possession of the goods that a pledge of them by the bailor to a good faith purchaser for value would have been valid. However, the lien or security interest is not effective against a person that before issuance of a document of title had a legal interest or a perfected security interest in the goods and that did not:

(1) deliver or entrust the goods or any document covering the goods to the bailor or the bailor's nominee with actual or apparent authority to ship, store, or sell; or with power to obtain delivery under Section 7.403; or with power of disposition under Section 2.403, 2A.304(a)(2), 2A.305(a)(2), or 9.320 or other statute or rule of law; or

(2) acquiesce in the procurement by the bailor or its nominee of any document.

(d) A warehouse's lien on household goods for charges and expenses in relation to the goods under Subsection (a) is also effective against all persons if the depositor was the legal possessor of the goods at the time of deposit. In this subsection, "household goods" means furniture, furnishings, or personal effects used by the depositor in a dwelling.

(e) A warehouse loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1971, 62nd Leg., p. 3048, ch. 1010, Sec. 1, eff. June 15, 1971.

Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.210. ENFORCEMENT OF WAREHOUSE'S LIEN. (a) Except as otherwise provided in Subsection (b), a warehouse's lien may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the warehouse is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The warehouse has sold in a commercially reasonable manner if the warehouse sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) A warehouse's lien on goods, other than goods stored by a merchant in the course of its business, may be enforced only if the following requirements are satisfied:

(1) All persons known to claim an interest in the goods must be notified.

(2) The notification must include an itemized statement of the claim, a description of the goods subject to the lien, a demand for payment within a specified time not less than 10 days after receipt of the notification, and a conspicuous statement that unless the claim is paid within that time the goods will be advertised for sale and sold by auction at a specified time and place.

(3) The sale must conform to the terms of the notification.

(4) The sale must be held at the nearest suitable place to where the goods are held or stored.

(5) After the expiration of the time given in the notification, an advertisement of the sale must be published once a week for two weeks consecutively in a newspaper of general circulation where the sale is to be held. The advertisement must include a description of the goods, the name of the person on whose account the goods are being held, and the time and place of the sale. The sale must take place at least 15 days after the first

publication. If there is no newspaper of general circulation where the sale is to be held, the advertisement must be posted at least 10 days before the sale in not less than six conspicuous places in the neighborhood of the proposed sale.

(c) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the warehouse subject to the terms of the receipt and this chapter.

(d) A warehouse may buy at any public sale held pursuant to this section.

(e) A purchaser in good faith of goods sold to enforce a warehouse's lien takes the goods free of any rights of persons against which the lien was valid, despite the warehouse's noncompliance with this section.

(f) A warehouse may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the warehouse would have been bound to deliver the goods.

(g) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(h) If a lien is on goods stored by a merchant in the course of its business, the lien may be enforced in accordance with Subsection (a) or (b).

(i) A warehouse is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of wilful violation, is liable for conversion.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

SUBCHAPTER C. BILLS OF LADING: SPECIAL PROVISIONS

Sec. 7.301. LIABILITY FOR NONRECEIPT OR MISDESCRIPTION; "SAID TO CONTAIN"; "SHIPPER'S LOAD AND COUNT"; IMPROPER HANDLING. (a) A consignee of a nonnegotiable bill of lading which has given value in good faith, or a holder to which a negotiable bill has been duly

negotiated, relying upon the description of the goods in the bill or upon the date shown in the bill, may recover from the issuer damages caused by the misdating of the bill or the nonreceipt or misdescription of the goods, except to the extent that the document of title indicates that the issuer does not know whether any part or all of the goods in fact were received or conform to the description, such as in a case in which the description is in terms of marks or labels or kind, quantity, or condition, or the receipt or description is qualified by "contents or condition of contents of packages unknown," "said to contain," "shipper's weight, load and count," or words of similar import, if that indication is true.

(b) If goods are loaded by the issuer of the bill of lading, the issuer shall count the packages of goods if shipped in packages and ascertain the kind and quantity if shipped in bulk and words such as "shipper's weight, load and count," or words of similar import indicating that the description was made by the shipper are ineffective except as to goods concealed by packages.

(c) If bulk goods are loaded by a shipper that makes available to the issuer of the bill of lading adequate facilities for weighing those goods, the issuer shall ascertain the kind and quantity within a reasonable time after receiving the shipper's request in a record to do so. In that case, "shipper's weight" or words of similar import are ineffective.

(d) The issuer, by including in the bill of lading the words "shipper's weight, load and count," or words of similar import, may indicate that the goods were loaded by the shipper, and, if that statement is true, the issuer is not liable for damages caused by the improper loading. However, omission of such words does not imply liability for damages caused by improper loading.

(e) A shipper guarantees to the issuer the accuracy at the time of shipment of the description, marks, labels, number, kind, quantity, condition, and weight, as furnished by the shipper, and the shipper shall indemnify the issuer against damage caused by inaccuracies in those particulars. This right of the issuer to that indemnity does not limit its responsibility or liability under the contract of carriage to any person other than the shipper.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.
Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September

1, 2005.

Sec. 7.302. THROUGH BILLS OF LADING AND SIMILAR DOCUMENTS OF TITLE. (a) The issuer of a through bill of lading or other document of title embodying an undertaking to be performed in part by a person acting as its agent or by a performing carrier is liable to any person entitled to recover on the document for any breach by the other person or the performing carrier of its obligation under the document. However, to the extent that the bill covers an undertaking to be performed overseas or in territory not contiguous to the continental United States or an undertaking including matters other than transportation, this liability for breach by the other person or the performing carrier may be varied by agreement of the parties.

(b) If goods covered by a through bill of lading or other document of title embodying an undertaking to be performed in part by a person other than the issuer are received by that person, the person is subject, with respect to its own performance while the goods are in its possession, to the obligation of the issuer. The person's obligation is discharged by delivery of the goods to another person pursuant to the document and does not include liability for breach by any other person or by the issuer.

(c) The issuer of a through bill of lading or other document of title described in Subsection (a) is entitled to recover from the performing carrier, or other person in possession of the goods when the breach of the obligation under the document occurred:

(1) the amount it may be required to pay to any person entitled to recover on the document for the breach, as may be evidenced by any receipt, judgment, or transcript of judgment; and

(2) the amount of any expense reasonably incurred by the issuer in defending any action commenced by any person entitled to recover on the document for the breach.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.303. DIVERSION; RECONSIGNMENT; CHANGE OF INSTRUCTIONS.

(a) Unless the bill of lading otherwise provides, a carrier may deliver the goods to a person or destination other than that stated in the bill or may otherwise dispose of the goods, without liability for misdelivery, on instructions from:

(1) the holder of a negotiable bill;

(2) the consignor on a nonnegotiable bill even if the consignee has given contrary instructions;

(3) the consignee on a nonnegotiable bill in the absence of contrary instructions from the consignor, if the goods have arrived at the billed destination or if the consignee is in possession of the tangible bill or in control of the electronic bill; or

(4) the consignee on a nonnegotiable bill, if the consignee is entitled as against the consignor to dispose of the goods.

(b) Unless instructions described in Subsection (a) are included in a negotiable bill of lading, a person to which the bill is duly negotiated may hold the bailee according to the original terms.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.304. TANGIBLE BILLS OF LADING IN SET. (a) Except as customary in international transportation, a tangible bill of lading may not be issued in a set of parts. The issuer is liable for damages caused by violation of this subsection.

(b) If a tangible bill of lading is lawfully issued in a set of parts, each of which contains an identification code and is expressed to be valid only if the goods have not been delivered against any other part, the whole of the parts constitutes one bill.

(c) If a tangible negotiable bill of lading is lawfully issued in a set of parts and different parts are negotiated to different persons, the title of the holder to which the first due negotiation is made prevails as to both the document of title and the goods even if any later holder may have received the goods from the carrier in good faith and discharged the carrier's obligation by surrendering its part.

(d) A person that negotiates or transfers a single part of a

tangible bill of lading issued in a set is liable to holders of that part as if it were the whole set.

(e) The bailee is obliged to deliver in accordance with Subchapter D against the first presented part of a tangible bill of lading lawfully issued in a set. Delivery in this manner discharges the bailee's obligation on the whole bill.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.305. DESTINATION BILLS. (a) Instead of issuing a bill of lading to the consignor at the place of shipment, a carrier, at the request of the consignor, may procure the bill to be issued at destination or at any other place designated in the request.

(b) Upon request of any person entitled as against a carrier to control the goods while in transit and on surrender of possession or control of any outstanding bill of lading or other receipt covering the goods, the issuer, subject to Section 7.105, may procure a substitute bill to be issued at any place designated in the request.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.306. ALTERED BILLS OF LADING. An unauthorized alteration or filling in of a blank in a bill of lading leaves the bill enforceable according to its original tenor.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.307. LIEN OF CARRIER. (a) A carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its

possession for charges after the date of the carrier's receipt of the goods for storage or transportation, including demurrage and terminal charges, and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law. However, against a purchaser for value of a negotiable bill of lading, a carrier's lien is limited to charges stated in the bill or the applicable tariffs or, if no charges are stated, a reasonable charge.

(b) A lien for charges and expenses under Subsection (a) on goods that the carrier was required by law to receive for transportation is effective against the consignor or any person entitled to the goods unless the carrier had notice that the consignor lacked authority to subject the goods to those charges and expenses. Any other lien under Subsection (a) is effective against the consignor and any person that permitted the bailor to have control or possession of the goods unless the carrier had notice that the bailor lacked authority.

(c) A carrier loses its lien on any goods that it voluntarily delivers or unjustifiably refuses to deliver.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.308. ENFORCEMENT OF CARRIER'S LIEN. (a) A carrier's lien on goods may be enforced by public or private sale of the goods, in bulk or in packages, at any time or place and on any terms that are commercially reasonable, after notifying all persons known to claim an interest in the goods. The notification must include a statement of the amount due, the nature of the proposed sale, and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. The carrier has sold goods in a commercially reasonable manner if the carrier sells the goods in the usual manner in any recognized market therefor, sells at the price current in that market at the time of the sale, or has otherwise sold in conformity

with commercially reasonable practices among dealers in the type of goods sold. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable, except in cases covered by the preceding sentence.

(b) Before any sale pursuant to this section, any person claiming a right in the goods may pay the amount necessary to satisfy the lien and the reasonable expenses incurred in complying with this section. In that event, the goods may not be sold but must be retained by the carrier, subject to the terms of the bill of lading and this chapter.

(c) A carrier may buy at any public sale pursuant to this section.

(d) A purchaser in good faith of goods sold to enforce a carrier's lien takes the goods free of any rights of persons against which the lien was valid, despite the carrier's noncompliance with this section.

(e) A carrier may satisfy its lien from the proceeds of any sale pursuant to this section but shall hold the balance, if any, for delivery on demand to any person to which the carrier would have been bound to deliver the goods.

(f) The rights provided by this section are in addition to all other rights allowed by law to a creditor against a debtor.

(g) A carrier's lien may be enforced pursuant to either Subsection (a) or the procedure set forth in Section 7.210(b).

(h) A carrier is liable for damages caused by failure to comply with the requirements for sale under this section and, in case of wilful violation, is liable for conversion.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1983, 68th Leg., p. 1532, ch. 290, Sec. 5, eff. Aug. 29, 1983.
Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.309. DUTY OF CARE; CONTRACTUAL LIMITATION OF CARRIER'S LIABILITY. (a) A carrier that issues a bill of lading, whether negotiable or nonnegotiable, shall exercise the degree of care in relation to the goods which a reasonably careful person would

exercise under similar circumstances. This subsection does not affect any statute, regulation, or rule of law that imposes liability upon a common carrier for damages not caused by its negligence.

(b) Damages may be limited by a term in the bill of lading or in a transportation agreement that the carrier's liability may not exceed a value stated in the bill or transportation agreement if the carrier's rates are dependent upon value and the consignor is afforded an opportunity to declare a higher value and is advised of the opportunity. However, such a limitation is not effective with respect to the carrier's liability for conversion to its own use.

(c) Reasonable provisions as to the time and manner of presenting claims and commencing actions based on the shipment may be included in a bill of lading or a transportation agreement.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

SUBCHAPTER D. WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

Sec. 7.401. IRREGULARITIES IN ISSUE OF RECEIPT OR BILL OR CONDUCT OF ISSUER. The obligations imposed by this chapter on an issuer apply to a document of title even if:

(1) the document does not comply with the requirements of this chapter or of any other statute, rule, or regulation regarding its issue, form, or content;

(2) the issuer violated laws regulating the conduct of its business;

(3) the goods covered by the document were owned by the bailee when the document was issued; or

(4) the person issuing the document is not a warehouse but the document purports to be a warehouse receipt.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.402. DUPLICATE DOCUMENT OF TITLE; OVERISSUE. A duplicate or any other document of title purporting to cover goods already represented by an outstanding document of the same issuer does not confer any right in the goods, except as provided in the case of tangible bills of lading in a set of parts, overissue of documents for fungible goods, substitutes for lost, stolen, or destroyed documents, or substitute documents issued pursuant to Section 7.105. The issuer is liable for damages caused by its overissue or failure to identify a duplicate document by a conspicuous notation.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.403. OBLIGATION OF WAREHOUSE OR CARRIER TO DELIVER; EXCUSE. (a) A bailee shall deliver the goods to a person entitled under a document of title if the person complies with Subsections (b) and (c), unless and to the extent that the bailee establishes any of the following:

(1) delivery of the goods to a person whose receipt was rightful as against the claimant;

(2) damage to or delay, loss, or destruction of the goods for which the bailee is not liable;

(3) previous sale or other disposition of the goods in lawful enforcement of a lien or on a warehouse's lawful termination of storage;

(4) the exercise by a seller of its right to stop delivery pursuant to Section 2.705 or by a lessor of its right to stop delivery pursuant to Section 2A.526;

(5) a diversion, reconsignment, or other disposition pursuant to Section 7.303;

(6) release, satisfaction, or any other fact affording a personal defense against the claimant; or

(7) any other lawful excuse.

(b) A person claiming goods covered by a document of title shall satisfy the bailee's lien if the bailee so requests or the bailee is prohibited by law from delivering the goods until the

charges are paid.

(c) Unless a person claiming the goods is one against which the document of title does not confer a right under Section 7.503(a):

(1) the person claiming under a document shall surrender possession or control of any outstanding negotiable document covering the goods for cancellation or indication of partial deliveries; and

(2) the bailee shall cancel the document or conspicuously indicate in the document the partial delivery or be liable to any person to which the document is duly negotiated.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.404. NO LIABILITY FOR GOOD FAITH DELIVERY PURSUANT TO DOCUMENT OF TITLE. A bailee that in good faith has received goods and delivered or otherwise disposed of the goods according to the terms of a document of title or pursuant to this chapter is not liable for the goods even if:

(1) the person from which the bailee received the goods did not have authority to procure the document or to dispose of the goods; or

(2) the person to which the bailee delivered the goods did not have authority to receive the goods.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

SUBCHAPTER E. WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

Sec. 7.501. FORM OF NEGOTIATION AND REQUIREMENTS OF DUE NEGOTIATION. (a) The following rules apply to a negotiable tangible document of title:

(1) If the document's original terms run to the order of a named person, the document is negotiated by the named person's indorsement and delivery. After the named person's indorsement in

blank or to bearer, any person may negotiate the document by delivery alone.

(2) If the document's original terms run to bearer, it is negotiated by delivery alone.

(3) If the document's original terms run to the order of a named person and it is delivered to the named person, the effect is the same as if the document had been negotiated.

(4) Negotiation of the document after it has been indorsed to a named person requires indorsement by the named person as well as delivery.

(5) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves receiving the document in settlement or payment of a monetary obligation.

(b) The following rules apply to a negotiable electronic document of title:

(1) If the document's original terms run to the order of a named person or to bearer, the document is negotiated by delivery of the document to another person. Indorsement by the named person is not required to negotiate the document.

(2) If the document's original terms run to the order of a named person and the named person has control of the document, the effect is the same as if the document had been negotiated.

(3) A document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, unless it is established that the negotiation is not in the regular course of business or financing or involves taking delivery of the document in settlement or payment of a monetary obligation.

(c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights.

(d) The naming in a negotiable bill of lading of a person to be notified of the arrival of the goods does not limit the negotiability of the bill or constitute notice to a purchaser of the bill of any interest of that person in the goods.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.502. RIGHTS ACQUIRED BY DUE NEGOTIATION. (a) Subject to Sections 7.205 and 7.503, a holder to which a negotiable document of title has been duly negotiated acquires thereby:

(1) title to the document;

(2) title to the goods;

(3) all rights accruing under the law of agency or estoppel, including rights to goods delivered to the bailee after the document was issued; and

(4) the direct obligation of the issuer to hold or deliver the goods according to the terms of the document free of any defense or claim by the issuer except those arising under the terms of the document or under this chapter. In the case of a delivery order, the bailee's obligation accrues only upon the bailee's acceptance of the delivery order and the obligation acquired by the holder is that the issuer and any indorser will procure the acceptance of the bailee.

(b) Subject to Section 7.503, title and rights acquired by due negotiation are not defeated by any stoppage of the goods represented by the document of title or by surrender of the goods by the bailee and are not impaired even if:

(1) the due negotiation or any prior due negotiation constituted a breach of duty;

(2) any person has been deprived of possession of a negotiable tangible document or control of a negotiable electronic document by misrepresentation, fraud, accident, mistake, duress, loss, theft, or conversion; or

(3) a previous sale or other transfer of the goods or document has been made to a third person.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.503. DOCUMENT OF TITLE TO GOODS DEFEATED IN CERTAIN CASES. (a) A document of title confers no right in goods against a person that before issuance of the document had a legal interest or a perfected security interest in the goods and that did not:

(1) deliver or entrust the goods or any document covering the goods to the bailor or the bailor's nominee with actual or apparent authority to ship, store, or sell; with power to obtain delivery under Section 7.403; or with power of disposition under Section 2.403, 2A.304(a)(2), 2A.305(a)(2), or 9.320 or other statute or rule of law; or

(2) acquiesce in the procurement by the bailor or its nominee of any document.

(b) Title to goods based upon an unaccepted delivery order is subject to the rights of any person to which a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. That title may be defeated under Section 7.504 to the same extent as the rights of the issuer or a transferee from the issuer.

(c) Title to goods based upon a bill of lading issued to a freight forwarder is subject to the rights of any person to which a bill issued by the freight forwarder is duly negotiated. However, delivery by the carrier in accordance with Subchapter D pursuant to its own bill of lading discharges the carrier's obligation to deliver.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.25, eff. July 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.504. RIGHTS ACQUIRED IN ABSENCE OF DUE NEGOTIATION; EFFECT OF DIVERSION; STOPPAGE OF DELIVERY. (a) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

(b) In the case of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of

the transferee may be defeated:

(1) by those creditors of the transferor that could treat the transfer as void under Section 2.402 or 2A.308;

(2) by a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;

(3) by a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or

(4) as against the bailee, by good faith dealings of the bailee with the transferor.

(c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(d) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under Section 2.705 or a lessor under Section 2A.526, subject to the requirements of due notification in those sections. A bailee honoring the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.
Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.505. INDORSER NOT GUARANTOR FOR OTHER PARTIES. The indorsement of a tangible document of title issued by a bailee does not make the indorser liable for any default by the bailee or previous indorsers.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.
Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.506. DELIVERY WITHOUT INDORSEMENT; RIGHT TO COMPEL INDORSEMENT. The transferee of a negotiable tangible document of title has a specifically enforceable right to have its transferor supply any necessary indorsement, but the transfer becomes a negotiation only as of the time the indorsement is supplied.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.507. WARRANTIES ON NEGOTIATION OR DELIVERY OF DOCUMENT OF TITLE. If a person negotiates or delivers a document of title for value, otherwise than as a mere intermediary under Section 7.508, unless otherwise agreed, the transferor warrants to its immediate purchaser only in addition to any warranty made in selling or leasing the goods that:

(1) the document is genuine;

(2) the transferor does not have knowledge of any fact that would impair the document's validity or worth; and

(3) the negotiation or delivery is rightful and fully effective with respect to the title to the document and the goods it represents.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.508. WARRANTIES OF COLLECTING BANK AS TO DOCUMENTS OF TITLE. A collecting bank or other intermediary known to be entrusted with documents of title on behalf of another or with collection of a draft or other claim against delivery of documents warrants by the delivery of the documents only its own good faith and authority even if the collecting bank or other intermediary has purchased or made advances against the claim or draft to be collected.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.509. ADEQUATE COMPLIANCE WITH COMMERCIAL CONTRACT. Whether a document of title is adequate to fulfill the obligations of a contract for sale, a contract for lease, or the conditions of a letter of credit is determined by Chapter 2, 2A, or 5.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

SUBCHAPTER F. WAREHOUSE RECEIPTS AND BILLS OF LADING: MISCELLANEOUS PROVISIONS

Sec. 7.601. LOST, STOLEN, OR DESTROYED DOCUMENTS OF TITLE. (a) If a document of title is lost, stolen, or destroyed, a court may order delivery of the goods or issuance of a substitute document and the bailee may without liability to any person comply with the order. If the document was negotiable, a court may not order delivery of the goods or issuance of a substitute document without the claimant's posting security unless it finds that any person that may suffer loss as a result of nonsurrender of possession or control of the document is adequately protected against the loss. If the document was nonnegotiable, the court may require security. The court may also order payment of the bailee's reasonable costs and attorney's fees in any action under this subsection.

(b) A bailee that without court order delivers goods to a person claiming under a missing negotiable document of title is liable to any person injured thereby. If the delivery is not in good faith, the bailee is liable for conversion. Delivery in good faith is not conversion if the claimant posts security with the bailee in an amount at least double the value of the goods at the time of posting to indemnify any person injured by the delivery that files a notice of claim within one year after the delivery.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September

1, 2005.

Sec. 7.602. ATTACHMENT OF GOODS COVERED BY NEGOTIABLE DOCUMENT OF TITLE. Unless a document of title was originally issued upon delivery of the goods by a person that did not have power to dispose of them, a lien does not attach by virtue of any judicial process to goods in the possession of a bailee for which a negotiable document of title is outstanding unless possession or control of the document is first surrendered to the bailee or the document's negotiation is enjoined. The bailee may not be compelled to deliver the goods pursuant to process until possession or control of the document is surrendered to the bailee or to the court. A purchaser of the document for value without notice of the process or injunction takes free of the lien imposed by judicial process.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

Sec. 7.603. CONFLICTING CLAIMS; INTERPLEADER. If more than one person claims title to or possession of the goods, the bailee is excused from delivery until the bailee has a reasonable time to ascertain the validity of the adverse claims or to commence an action for interpleader. The bailee may assert an interpleader either in defending an action for nondelivery of the goods or by original action.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 1, eff. September 1, 2005.

CHAPTER 8. INVESTMENT SECURITIES

SUBCHAPTER A. SHORT TITLE AND GENERAL MATTERS

Sec. 8.101. SHORT TITLE. This chapter may be cited as Uniform Commercial Code--Investment Securities.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.102. DEFINITIONS. (a) In this chapter:

(1) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(2) "Bearer form," as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(3) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(4) "Certificated security" means a security that is represented by a certificate.

(5) "Clearing corporation" means:

(A) a person that is registered as a "clearing agency" under the federal securities laws;

(B) a federal reserve bank; or

(C) any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

(6) "Communicate" means to:

(A) send a signed writing; or

(B) transmit information by any mechanism agreed on by the persons transmitting and receiving the information.

(7) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of Section 8.501(b)(2) or (3), that person is the entitlement holder.

(8) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security

entitlement.

(9) "Financial asset," except as otherwise provided in Section 8.103, means:

(A) a security;

(B) an obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person that is, or is of a type, dealt in or traded on financial markets or that is recognized in any area in which it is issued or dealt in as a medium for investment; or

(C) any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this chapter.

As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(10) Reserved.

(11) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(12) "Instruction" means a notification communicated to the issuer of an uncertificated security that directs that the transfer of the security be registered or that the security be redeemed.

(13) "Registered form," as applied to a certificated security, means a form in which:

(A) the security certificate specifies a person entitled to the security; and

(B) a transfer of the security may be registered on books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(14) "Securities intermediary" means:

(A) a clearing corporation; or

(B) a person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(15) "Security," except as otherwise provided in Section

8.103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(A) that is represented by a security certificate in bearer or registered form, or the transfer of which may be registered on books maintained for that purpose by or on behalf of the issuer;

(B) that is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(C) that:

(i) is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(ii) is a medium for investment and by its terms expressly provides that it is a security governed by this chapter.

(16) "Security certificate" means a certificate representing a security.

(17) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Subchapter E.

(18) "Uncertificated security" means a security that is not represented by a certificate.

(b) Other definitions applying to this chapter and the sections in which they appear are:

Appropriate person	Section 8.107
Control	Section 8.106
Delivery	Section 8.301
Investment company security	Section 8.103
Issuer	Section 8.201
Overissue	Section 8.210
Protected purchaser	Section 8.303
Securities account	Section 8.501

(c) In addition, Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

(d) The characterization of a person, business, or transaction for purposes of this chapter does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995;

Acts 2003, 78th Leg., ch. 542, Sec. 18, eff. Sept. 1, 2003.

Sec. 8.103. RULES FOR DETERMINING WHETHER CERTAIN OBLIGATIONS AND INTERESTS ARE SECURITIES OR FINANCIAL ASSETS. (a) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(b) An investment company security is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. "Investment company security" does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this chapter, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by this chapter and not by Chapter 3, even though it also meets the requirements of that chapter. However, a negotiable instrument governed by Chapter 3 is a financial asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) A commodity contract, as defined in Section 9.102(a)(15), is not a security or a financial asset.

(g) A document of title, as defined in Section 1.201(b)(16), is not a financial asset unless Section 8.102(a)(9)(C) applies.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 414, Sec. 2.26, eff. July 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 18, eff. September 1, 2005.

Sec. 8.104. ACQUISITION OF SECURITY OR FINANCIAL ASSET OR INTEREST THEREIN. (a) A person acquires a security or an interest therein under this chapter if:

(1) the person is a purchaser to whom a security is delivered pursuant to Section 8.301; or

(2) the person acquires a security entitlement to the security pursuant to Section 8.501.

(b) A person acquires a financial asset, other than a security, or an interest therein, under this chapter, if the person acquires a security entitlement to the financial asset.

(c) A person who acquires a security entitlement to a security or other financial asset has the rights specified in Subchapter E, but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in Section 8.503.

(d) Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to Subsection (a) or (b).

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.105. NOTICE OF ADVERSE CLAIM. (a) A person has notice of an adverse claim if:

(1) the person knows of the adverse claim;

(2) the person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or

(3) the person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.

(b) Having knowledge that a financial asset or interest therein

is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.

(c) An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:

(1) one year after a date set for presentment or surrender for redemption or exchange; or

(2) six months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.

(d) A purchaser of a certificated security has notice of an adverse claim if the security certificate:

(1) whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(2) is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.

(e) Filing of a financing statement under Chapter 9 is not notice of an adverse claim to a financial asset.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.106. CONTROL. (a) A purchaser has control of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(b) A purchaser has control of a certificated security in registered form if the certificated security is delivered to the purchaser and:

(1) the certificate is indorsed to the purchaser or in

blank by an effective indorsement; or

(2) the certificate is registered in the name of the purchaser, on original issue or registration of transfer by the issuer.

(c) A purchaser has control of an uncertificated security if:

(1) the uncertificated security is delivered to the purchaser; or

(2) the issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(d) A purchaser has control of a security entitlement if:

(1) the purchaser becomes the entitlement holder;

(2) the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or

(3) another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.

(e) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(f) A purchaser who has satisfied the requirements of Subsection (c) or (d) has control, even if the registered owner in the case of Subsection (c) or the entitlement holder in the case of Subsection (d) retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(g) An issuer or a securities intermediary may not enter into an agreement of the kind described in Subsection (c)(2) or (d)(2) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 414, Sec. 2.27, eff. July 1, 2001.

Sec. 8.107. WHETHER INDORSEMENT, INSTRUCTION, OR ENTITLEMENT ORDER IS EFFECTIVE. (a) "Appropriate person" means:

(1) with respect to an indorsement, the person specified by a security certificate or by an effective special indorsement to be entitled to the security;

(2) with respect to an instruction, the registered owner of an uncertificated security;

(3) with respect to an entitlement order, the entitlement holder;

(4) if the person designated in Subdivision (1), (2), or (3) is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent; or

(5) if the person designated in Subdivision (1), (2), or (3) lacks capacity, the designated person's guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.

(b) An indorsement, instruction, or entitlement order is effective if:

(1) it is made by the appropriate person;

(2) it is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under Section 8.106(c)(2) or (d)(2); or

(3) the appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

(c) An indorsement, instruction, or entitlement order made by a representative is effective even if:

(1) the representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or

(2) the representative's action in making the indorsement, instruction, or entitlement order or using the proceeds of the

transaction is otherwise a breach of duty.

(d) If a security is registered in the name of or specially indorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an indorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

(e) Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date the indorsement, instruction, or entitlement order is made, and an indorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.108. WARRANTIES IN DIRECT HOLDING. (a) A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by indorsement, warrants to any subsequent purchaser, that:

(1) the certificate is genuine and has not been materially altered;

(2) the transferor or indorser does not know of any fact that might impair the validity of the security;

(3) there is no adverse claim to the security;

(4) the transfer does not violate any restriction on transfer;

(5) if the transfer is by indorsement, the indorsement is made by an appropriate person, or if the indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(6) the transfer is otherwise effective and rightful.

(b) A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:

(1) the instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person;

(2) the security is valid;

(3) there is no adverse claim to the security; and

(4) at the time the instruction is presented to the issuer:

(A) the purchaser will be entitled to the registration of transfer;

(B) the transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction;

(C) the transfer will not violate any restriction on transfer; and

(D) the requested transfer will otherwise be effective and rightful.

(c) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:

(1) the uncertificated security is valid;

(2) there is no adverse claim to the security;

(3) the transfer does not violate any restriction on transfer; and

(4) the transfer is otherwise effective and rightful.

(d) A person who indorses a security certificate warrants to the issuer that:

(1) there is no adverse claim to the security; and

(2) the indorsement is effective.

(e) A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:

(1) the instruction is effective; and

(2) at the time the instruction is presented to the issuer the purchaser will be entitled to the registration of transfer.

(f) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary indorsement.

(g) If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security

certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

(h) A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under Subsection (g).

(i) Except as otherwise provided in Subsection (g), a broker acting for a customer makes to the issuer and a purchaser the warranties provided in Subsections (a)-(f). A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in Subsection (a) or (b), and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.109. WARRANTIES IN INDIRECT HOLDING. (a) A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

(1) the entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(2) there is no adverse claim to the security entitlement.

(b) A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in Section 8.108(a) or (b).

(c) If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement holder the warranties specified in Section 8.108(a) or (b).

Added by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.110. APPLICABILITY; CHOICE OF LAW. (a) The local law of the issuer's jurisdiction, as specified in Subsection (d), governs:

(1) the validity of a security;

(2) the rights and duties of the issuer with respect to registration of transfer;

(3) the effectiveness of registration of transfer by the issuer;

(4) whether the issuer owes any duties to an adverse claimant to a security; and

(5) whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(b) The local law of the securities intermediary's jurisdiction, as specified in Subsection (e), governs:

(1) acquisition of a security entitlement from the securities intermediary;

(2) the rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(3) whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(4) whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(c) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(d) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing the matters specified in Subsections (a)(2)-(5).

(e) The following rules determine a securities intermediary's jurisdiction for purposes of this section:

(1) If an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this subchapter, this chapter, or this title, that jurisdiction is the securities intermediary's jurisdiction.

(2) If Subdivision (1) does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(3) If neither Subdivision (1) nor Subdivision (2) applies and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(4) If none of the preceding subdivisions applies, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located.

(5) If none of the preceding subdivisions applies, the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.

(f) A securities intermediary's jurisdiction is not determined by:

(1) the physical location of certificates representing financial assets;

(2) the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement; or

(3) the location of facilities for data processing or other recordkeeping concerning the account.

Added by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.28, eff. July 1, 2001.

Sec. 8.111. CLEARING CORPORATION RULES. A rule adopted by a

clearing corporation governing rights and obligations among the clearing corporation and its participants in the clearing corporation is effective even if the rule conflicts with this chapter and affects another party who does not consent to the rule.

Added by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.112. CREDITOR'S LEGAL PROCESS. (a) The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in Subsection (d). However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process on the issuer.

(b) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process on the issuer at its chief executive office in the United States, except as otherwise provided in Subsection (d).

(c) The interest of a debtor in a security entitlement may be reached by a creditor only by legal process on the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in Subsection (d).

(d) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security registered in the name of a secured party, or in a security entitlement maintained in the name of a secured party may be reached by a creditor by legal process on the secured party.

(e) A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process.

Added by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.113. STATUTE OF FRAUDS INAPPLICABLE. A contract or

modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within one year of its making.

Added by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.114. EVIDENTIARY RULES CONCERNING CERTIFICATED SECURITIES. The following rules apply in an action on a certificated security against the issuer:

(1) Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary indorsement is admitted.

(2) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.

(3) If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security.

(4) If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff, or some person under whom the plaintiff claims, is a person against whom the defense or defect cannot be asserted.

Added by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.115. SECURITIES INTERMEDIARY AND OTHERS NOT LIABLE TO ADVERSE CLAIMANT. A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or bailee:

(1) took the action after it had been served with an injunction, restraining order, or other legal process enjoining it from doing so issued by a court of competent jurisdiction and had a

reasonable opportunity to act on the injunction, restraining order, or other legal process;

(2) acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or

(3) in the case of a security certificate that has been stolen, acted with notice of the adverse claim.

Added by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.116. SECURITIES INTERMEDIARY AS PURCHASER FOR VALUE. A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favor of an entitlement holder.

Added by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER B. ISSUE AND ISSUER

Sec. 8.201. ISSUER. (a) With respect to an obligation on or a defense to a security, "issuer" includes a person that:

(1) places or authorizes the placing of its name on a security certificate, other than as authenticating trustee, registrar, transfer agent, or the like, to evidence a share, participation, or other interest in its property or in an enterprise or to evidence its duty to perform an obligation represented by the certificate;

(2) creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security;

(3) directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented by a security certificate; or

(4) becomes responsible for, or in place of, another person described as an issuer in this section.

(b) With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.

(c) With respect to a registration of a transfer, "issuer" means a person on whose behalf transfer books are maintained.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.202. ISSUER'S RESPONSIBILITY AND DEFENSES; NOTICE OF DEFECT OR DEFENSE. (a) Even against a purchaser for value and without notice, the terms of a certificated security include terms stated on the certificate and terms made part of the security by reference on the certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like to the extent the terms referred to do not conflict with terms stated on the certificate. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice. The terms of an uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like pursuant to which the security is issued.

(b) The following rules apply if an issuer asserts that a security is not valid:

(1) A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than a purchaser who takes by original issue.

(2) Subdivision (1) applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if:

(A) there has been substantial compliance with the legal requirements governing the issue; or

(B) the issuer has received a substantial consideration

for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(c) Except as otherwise provided in Section 8.205, lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.

(d) All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.

(e) This section does not affect the right of a party to cancel a contract for a security "when, as and if issued" or "when distributed" in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

(f) If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.203. STALENESS AS NOTICE OF DEFECT OR DEFENSE. After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or setting a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer if the act or event:

(1) requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate, the money or security is available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; or

(2) is not covered by Subdivision (1) and the purchaser takes the security more than two years after the date set for

surrender or presentation or the date on which performance became due.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.204. EFFECT OF ISSUER'S RESTRICTION ON TRANSFER. A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless:

(1) the security is certificated and the restriction is noted conspicuously on the security certificate; or

(2) the security is uncertificated and the registered owner has been notified of the restriction.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.205. EFFECT OF UNAUTHORIZED SIGNATURE ON SECURITY CERTIFICATE. An unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by:

(1) an authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security certificate or of similar security certificates or with the immediate preparation for signing of any of them; or

(2) an employee of the issuer, or of any of the persons listed in Subdivision (1), entrusted with responsible handling of the security certificate.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.206. COMPLETION OR ALTERATION OF SECURITY CERTIFICATE. (a) If a security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(1) any person may complete it by filling in the blanks as authorized; and

(2) even if the blanks are incorrectly filled in, the

security certificate as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(b) A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.207. RIGHTS AND DUTIES OF ISSUER WITH RESPECT TO REGISTERED OWNERS. (a) Before due presentment for registration of transfer of a certificated security in registered form or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.

(b) This chapter does not affect the liability of the registered owner of a security for a call, assessment, or the like.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.208. EFFECT OF SIGNATURE OF AUTHENTICATING TRUSTEE, REGISTRAR, OR TRANSFER AGENT. (a) A person signing a security certificate as authenticating trustee, registrar, transfer agent, or the like warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect, that:

(1) the certificate is genuine;

(2) the person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer; and

(3) the person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.

(b) Unless otherwise agreed, a person signing under Subsection (a) does not assume responsibility for the validity of the security in other respects.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.209. ISSUER'S LIEN. A lien in favor of an issuer on a certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate.

Added by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1996.

Sec. 8.210. OVERISSUE. (a) In this section, "overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.

(b) Except as otherwise provided in Subsections (c) and (d), the provisions of this chapter that validate a security or compel its issue or reissue do not apply to the extent that validation, issue, or reissue would result in overissue.

(c) If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated, against surrender of any security certificate the person holds.

(d) If a security is not reasonably available for purchase, a person entitled to issue or validation may recover from the issuer the price the person or the last purchaser for value paid for it with interest from the date of the person's demand.

Added by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER C. TRANSFER OF CERTIFICATED AND UNCERTIFICATED SECURITIES

Sec. 8.301. DELIVERY. (a) Delivery of a certificated security to a purchaser occurs when:

(1) the purchaser acquires possession of the security certificate;

(2) another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(3) a securities intermediary acting on behalf of the

purchaser acquires possession of the security certificate, only if the certificate is in registered form and is (i) registered in the name of the purchaser, (ii) payable to the order of the purchaser, or (iii) specially indorsed to the purchaser by an effective indorsement and has not been indorsed to the securities intermediary or in blank.

(b) Delivery of an uncertificated security to a purchaser occurs when:

(1) the issuer registers the purchaser as the registered owner, on original issue or registration of transfer; or

(2) another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 414, Sec. 2.29, eff. July 1, 2001.

Sec. 8.302. RIGHTS OF PURCHASER. (a) Except as otherwise provided in Subsections (b) and (c), a purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer.

(b) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(c) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 414, Sec. 2.30, eff. July 1, 2001.

Sec. 8.303. PROTECTED PURCHASER. (a) "Protected purchaser" means a purchaser of a certificated or uncertificated security, or of an interest therein, who:

(1) gives value;

(2) does not have notice of any adverse claim to the security; and

(3) obtains control of the certificated or uncertificated security.

(b) In addition to acquiring the rights of a purchaser, a

protected purchaser also acquires its interest in the security free of any adverse claim.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.304. INDORSEMENT. (a) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement to a special indorsement.

(b) An indorsement purporting to be only of part of a security certificate representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(c) An indorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificate.

(d) If a security certificate in registered form has been delivered to a purchaser without a necessary indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied. However, against a transferor, a transfer is complete on delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

(e) An indorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.

(f) Unless otherwise agreed, a person making an indorsement assumes only the obligations provided in Section 8.108 and not an obligation that the security will be honored by the issuer.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.305. INSTRUCTION. (a) If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed, even though it has been completed incorrectly.

(b) Unless otherwise agreed, a person initiating an instruction

assumes only the obligations imposed by Section 8.108 and not an obligation that the security will be honored by the issuer.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.306. EFFECT OF GUARANTEEING SIGNATURE, INDORSEMENT, OR INSTRUCTION. (a) A person who guarantees a signature of an indorser of a security certificate warrants that at the time of signing:

(1) the signature was genuine;

(2) the signer was an appropriate person to indorse or, if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and

(3) the signer had legal capacity to sign.

(b) A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

(1) the signature was genuine;

(2) the signer was an appropriate person to originate the instruction or, if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty; and

(3) the signer had legal capacity to sign.

(c) A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under Subsection (b) and also warrants that at the time the instruction is presented to the issuer:

(1) the person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and

(2) the transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(d) A guarantor under Subsections (a) and (b) or a special guarantor under Subsection (c) does not otherwise warrant the rightfulness of the transfer.

(e) A person who guarantees an indorsement of a security certificate makes the warranties of a signature guarantor under

Subsection (a) and also warrants the rightfulness of the transfer in all respects.

(f) A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under Subsection (c) and also warrants the rightfulness of the transfer in all respects.

(g) An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a guaranty of instruction as a condition to registration of transfer.

(h) The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An indorser or originator of an instruction whose signature, indorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.307. PURCHASER'S RIGHT TO REQUISITES FOR REGISTRATION OF TRANSFER. Unless otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the purchaser may reject or rescind the transfer.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER D. REGISTRATION

Sec. 8.401. DUTY OF ISSUER TO REGISTER TRANSFER. (a) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security, the issuer shall register the transfer as requested if:

(1) under the terms of the security the person seeking registration of transfer is eligible to have the security registered

in its name;

(2) the indorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(3) reasonable assurance is given that the indorsement or instruction is genuine and authorized (Section 8.402);

(4) any applicable law relating to the collection of taxes has been complied with;

(5) the transfer does not violate any restriction on transfer imposed by the issuer in accordance with Section 8.204;

(6) a demand that the issuer not register transfer has not become effective under Section 8.403, or the issuer has complied with Section 8.403(b) but no legal process or indemnity bond is obtained as provided in Section 8.403(d); and

(7) the transfer is in fact rightful or is to a protected purchaser.

(b) If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person's principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.402. ASSURANCE THAT INDORSEMENT OR INSTRUCTION IS EFFECTIVE. (a) An issuer may require the following assurance that each necessary indorsement or each instruction is genuine and authorized:

(1) in all cases, a guaranty of the signature of the person making an indorsement or originating an instruction, including, in the case of an instruction, reasonable assurance of identity;

(2) if the indorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;

(3) if the indorsement is made or the instruction is originated by a fiduciary pursuant to Section 8.107(a)(4) or (5), appropriate evidence of appointment or incumbency;

(4) if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

(5) if the indorsement is made or the instruction is originated by a person not covered by another provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the provisions of this subsection.

(b) An issuer may elect to require reasonable assurance beyond that specified in this section.

(c) In this section:

(1) "Appropriate evidence of appointment or incumbency" means:

(A) in the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof and dated within 60 days before the date of presentation for transfer; or

(B) in any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by an issuer to be responsible or, in the absence of that document or certificate, other evidence the issuer reasonably considers appropriate.

(2) "Guaranty of the signature" means a guaranty signed by or on behalf of a person reasonably believed by the issuer to be responsible. An issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995

Sec. 8.403. DEMAND THAT ISSUER NOT REGISTER TRANSFER. (a) A person who is an appropriate person to make an indorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security is a part and provides an address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.

(b) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate

to (i) the person who initiated the demand at the address provided in the demand and (ii) the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:

(1) the certificated security has been presented for registration of transfer or the instruction for registration of transfer of the uncertificated security has been received;

(2) a demand that the issuer not register transfer had previously been received; and

(3) the issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.

(c) The period described in Subsection (b)(3) may not exceed 30 days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

(d) An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, either:

(1) obtain an appropriate injunction, restraining order, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or

(2) file with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.

(e) This section does not relieve an issuer from liability for registering transfer pursuant to an indorsement or instruction that was not effective.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.404. WRONGFUL REGISTRATION. (a) Except as otherwise provided in Section 8.406, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a

security to a person not entitled to it, and the transfer was registered:

(1) pursuant to an ineffective indorsement or instruction;

(2) after a demand that the issuer not register transfer became effective under Section 8.403(a) and the issuer did not comply with Section 8.403(b);

(3) after the issuer had been served with an appropriate injunction, restraining order, or other process from a court of competent jurisdiction enjoining it from registering the transfer, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(4) by an issuer acting in collusion with the wrongdoer.

(b) An issuer that is liable for wrongful registration of transfer under Subsection (a) on demand shall provide the person entitled to the security with a like certificated or uncertificated security and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by Section 8.210.

(c) Except as otherwise provided in Subsection (a) or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if registration was made pursuant to an effective indorsement or instruction.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.405. REPLACEMENT OF LOST, DESTROYED, OR WRONGFULLY TAKEN SECURITY CERTIFICATE. (a) If an owner of a certificated security, whether in registered or bearer form, claims that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the owner:

(1) so requests before the issuer has notice that the certificate has been acquired by a protected purchaser;

(2) files with the issuer a sufficient indemnity bond; and

(3) satisfies other reasonable requirements imposed by the issuer.

(b) If, after the issue of a new security certificate, a protected purchaser of the original certificate presents it for

registration of transfer, the issuer shall register the transfer unless an overissue would result. In that case, the issuer's liability is governed by Section 8.210. In addition to any rights on the indemnity bond, an issuer may recover the new certificate from a person to whom it was issued or any person taking under that person, except a protected purchaser.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.406. OBLIGATION TO NOTIFY ISSUER OF LOST, DESTROYED, OR WRONGFULLY TAKEN SECURITY CERTIFICATE. If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under Section 8.404 or a claim to a new security certificate under Section 8.405.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.407. AUTHENTICATING TRUSTEE, TRANSFER AGENT, AND REGISTRAR. A person acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the cancellation of surrendered security certificates has the same obligation to the holder or owner of a certificated or uncertificated security with regard to the particular functions performed as the issuer has in regard to those functions.

Amended by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER E. SECURITY ENTITLEMENTS

Sec. 8.501. SECURITIES ACCOUNT; ACQUISITION OF SECURITY ENTITLEMENT FROM SECURITIES INTERMEDIARY. (a) "Securities account" means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the

account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

(b) Except as otherwise provided in Subsections (d) and (e), a person acquires a security entitlement if a securities intermediary:

(1) indicates by book entry that a financial asset has been credited to the person's securities account;

(2) receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or

(3) becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.

(c) If a condition of Subsection (b) has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

(d) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the other person and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

(e) Issuance of a security is not establishment of a security entitlement.

Added by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.502. ASSERTION OF ADVERSE CLAIM AGAINST ENTITLEMENT HOLDER. An action based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement under Section 8.501 for value and without notice of the adverse claim.

Added by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.503. PROPERTY INTEREST OF ENTITLEMENT HOLDER IN FINANCIAL ASSET HELD BY SECURITIES INTERMEDIARY. (a) To the extent necessary for a securities intermediary to satisfy all security

entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in Section 8.511.

(b) An entitlement holder's property interest with respect to a particular financial asset under Subsection (a) is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

(c) An entitlement holder's property interest with respect to a particular financial asset under Subsection (a) may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under Sections 8.505-8.508.

(d) An entitlement holder's property interest with respect to a particular financial asset under Subsection (a) may be enforced against a purchaser of the financial asset or interest therein only if:

(1) insolvency proceedings have been initiated by or against the securities intermediary;

(2) the securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;

(3) the securities intermediary violated its obligations under Section 8.504 by transferring the financial asset or interest therein to the purchaser; and

(4) the purchaser is not protected under Subsection (f).

(e) The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

(f) An action based on the entitlement holder's property interest with respect to a particular financial asset under Subsection (a), whether framed in conversion, replevin, constructive

trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under Section 8.504.

Added by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.504. DUTY OF SECURITIES INTERMEDIARY TO MAINTAIN FINANCIAL ASSET. (a) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

(b) Except to the extent otherwise agreed on by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to Subsection (a).

(c) A securities intermediary satisfies the duty in Subsection (a) if:

(1) the securities intermediary acts with respect to the duty as agreed on by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

(d) This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements.

Added by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.505. DUTY OF SECURITIES INTERMEDIARY WITH RESPECT TO PAYMENTS AND DISTRIBUTIONS. (a) A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts with respect to the

duty as agreed on by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

(b) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary.

Added by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.506. DUTY OF SECURITIES INTERMEDIARY TO EXERCISE RIGHTS AS DIRECTED BY ENTITLEMENT HOLDER. A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts with respect to the duty as agreed on by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

Added by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.507. DUTY OF SECURITIES INTERMEDIARY TO COMPLY WITH ENTITLEMENT ORDER. (a) A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts with respect to the duty as agreed on by the entitlement holder and the securities

intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

(b) If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages.

Added by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.508. DUTY OF SECURITIES INTERMEDIARY TO CHANGE ENTITLEMENT HOLDER'S POSITION TO OTHER FORM OF SECURITY HOLDING. A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for which the entitlement holder is eligible or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary. A securities intermediary satisfies the duty if:

(1) the securities intermediary acts as agreed on by the entitlement holder and the securities intermediary; or

(2) in the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder.

Added by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.509. SPECIFICATION OF DUTIES OF SECURITIES INTERMEDIARY BY OTHER STATUTE OR REGULATION; MANNER OF PERFORMANCE OF DUTIES OF SECURITIES INTERMEDIARY AND EXERCISE OF RIGHTS OF ENTITLEMENT HOLDER. (a) If the substance of a duty imposed on a securities intermediary by Sections 8.504-8.508 is the subject of another statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.

(b) To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by another statute, regulation, or rule or by agreement between the securities intermediary and the entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

(c) The obligation of a securities intermediary to perform the duties imposed by Sections 8.504-8.508 is subject to:

(1) rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and

(2) rights of the securities intermediary under another law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

(d) Sections 8.504-8.508 do not require a securities intermediary to take any action that is prohibited by another statute, regulation, or rule.

Added by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

Sec. 8.510. RIGHTS OF PURCHASER OF SECURITY ENTITLEMENT FROM ENTITLEMENT HOLDER. (a) In a case not covered by the priority rules in Chapter 9 or the rules stated in Subsection (c), an action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(b) If an adverse claim could not have been asserted against an entitlement holder under Section 8.502, the adverse claim cannot be asserted against a person who purchases from the entitlement holder a security entitlement or an interest therein.

(c) In a case not covered by the priority rules in Chapter 9, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain

control. Except as otherwise provided in Subsection (d), purchasers who have control rank according to priority in time of:

(1) the purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under Section 8.106(d)(1);

(2) the securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under Section 8.106(d)(2); or

(3) if the purchaser obtained control through another person under Section 8.106(d)(3), the time on which priority would be based under this subsection if the other person were the secured party.

(d) A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed on by the securities intermediary.

Added by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 414, Sec. 2.31, eff. July 1, 2001.

Sec. 8.511. PRIORITY AMONG SECURITY INTERESTS AND ENTITLEMENT HOLDERS. (a) Except as otherwise provided in Subsections (b) and (c), if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

(b) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

(c) If a clearing corporation does not have sufficient

financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders.

Added by Acts 1995, 74th Leg., ch. 962, Sec. 1, eff. Sept. 1, 1995.

CHAPTER 9. SECURED TRANSACTIONS

SUBCHAPTER A. SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS

Sec. 9.101. SHORT TITLE. This chapter may be cited as Uniform Commercial Code--Secured Transactions.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.102. DEFINITIONS AND INDEX OF DEFINITIONS. (a) In this chapter:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account," except as used in "account for," means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include (i) rights to payment evidenced by chattel paper or an instrument, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights

arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting," except as used in "accounting for," means a record:

(A) authenticated by a secured party;

(B) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(C) identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest in farm products:

(A) that secures payment or performance of an obligation for:

(i) goods or services furnished in connection with a debtor's farming operation; or

(ii) rent on real property leased by a debtor in connection with its farming operation;

(B) that is created by statute in favor of a person that:

(i) in the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) leased real property to a debtor in connection with the debtor's farming operation; and

(C) whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) oil, gas, or other minerals that are subject to a security interest that:

(i) is created by a debtor having an interest in the minerals before extraction; and

(ii) attaches to the minerals as extracted; or

(B) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) to sign; or

(B) with present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this subdivision, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) proceeds to which a security interest attaches;

(B) accounts, chattel paper, payment intangibles, and

promissory notes that have been sold; and

(C) goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) the claimant is an organization; or

(B) the claimant is an individual and the claim:

(i) arose in the course of the claimant's business or profession; and

(ii) does not include damages arising out of personal injury to or the death of an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) traded on a foreign commodity board of trade, exchange, or market and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

(A) is registered as a futures commission merchant under federal commodities law; or

(B) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

(A) to send a written or other tangible record;

(B) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its

form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) the merchant:

(i) deals in goods of that kind under a name other than the name of the person making delivery;

(ii) is not an auctioneer; and

(iii) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) with respect to each delivery, the aggregate value of the goods is $1,000 or more at the time of delivery;

(C) the goods are not consumer goods immediately before delivery;

(D) the transaction does not create a security interest that secures an obligation; and

(E) the transaction does not involve delivery of a work of art to an art dealer or delivery of a sound recording to a distributor if Chapter 2101, Occupations Code, applies to the delivery.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which:

(A) an individual incurs an obligation primarily for personal, family, or household purposes; and

(B) a security interest in consumer goods secures the obligation.

(25) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) "Consumer transaction" means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) "Continuation statement" means an amendment of a

financing statement that:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) a person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) a consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term includes a nonnegotiable certificate of deposit. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in Section 7.201(b).

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) crops grown, growing, or to be grown, including:

(i) crops produced on trees, vines, and bushes; and

(ii) aquatic goods produced in aquacultural operations;

(B) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) supplies used or produced in a farming operation; or

(D) products of crops or livestock in their

unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to Section 9.519(a).

(37) "Filing office" means an office designated in Section 9.501 as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to Section 9.526.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying Sections 9.502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility that are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under the real property law of the state in which the real property is situated.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

(43) Reserved.

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use

the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health care insurance receivable" means an interest in or claim under a policy of insurance that is a right to payment of a monetary obligation for health care goods or services provided or to be provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card, or (iv) nonnegotiable certificates of deposit.

(48) "Inventory" means goods, other than farm products, that:

(A) are leased by a person as lessor;

(B) are held by a person for sale or lease or to be furnished under a contract of service;

(C) are furnished by a person under a contract of service; or

(D) consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization," with respect to a registered organization, means the jurisdiction under whose law the

organization is formed or organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

(A) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) an assignee for benefit of creditors from the time of assignment;

(C) a trustee in bankruptcy from the date of the filing of the petition; or

(D) a receiver in equity from the time of appointment.

(53) "Manufactured home" means a structure, transportable in one or more sections, that, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and that is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this subdivision except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under Title 42 of the United States Code.

(54) "Manufactured-home transaction" means a secured transaction:

(A) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) "Mortgage" means a consensual interest in real property, including fixtures, that secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under Section 9.203(d) by a security agreement previously entered into by another person.

(57) "New value" means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Nonnegotiable certificate of deposit" means a writing signed by a bank that:

(A) states on its face that it is a certificate of deposit, as defined in Section 3.104, or receipt for a book entry;

(B) contains an acknowledgement that a sum of money has been received by the bank, with an express or implied agreement that the bank will repay the sum of money; and

(C) is not a negotiable instrument.

(60) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(61) "Original debtor," except as used in Section 9.310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under Section 9.203(d).

(62) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(63) "Person related to," with respect to an individual, means:

(A) the spouse of the individual;

(B) a brother, brother-in-law, sister, or sister-in-law of the individual;

(C) an ancestor or lineal descendant of the individual or the individual's spouse; or

(D) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(64) "Person related to," with respect to an organization,

means:

(A) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) an officer or director of, or a person performing similar functions with respect to, the organization;

(C) an officer or director of, or a person performing similar functions with respect to, a person described in Paragraph (A);

(D) the spouse of an individual described in Paragraph (A), (B), or (C); or

(E) an individual who is related by blood or marriage to an individual described in Paragraph (A), (B), (C), or (D) and shares the same home with the individual.

(65) "Proceeds," except as used in Section 9.609(b), means the following property:

(A) whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) whatever is collected on, or distributed on account of, collateral;

(C) rights arising out of collateral;

(D) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to the collateral; or

(E) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to the collateral.

(66) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgement by a bank that the bank has received for deposit a sum of money or funds.

(67) "Proposal" means a record authenticated by a secured party that includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to Sections 9.620, 9.621, and 9.622.

(68) "Public-finance transaction" means a secured transaction in connection with which:

(A) debt securities are issued;

(B) all or a portion of the securities issued have an

initial stated maturity of at least 20 years; and

(C) the debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee or a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68-a) "Public organic record" means a record that is available to the public for inspection and that is:

(A) a record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States that amends or restates the initial record;

(B) an organic record of a business trust consisting of the record initially filed with a state and any record filed with the state that amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or

(C) a record consisting of legislation enacted by the legislature of a state or the Congress of the United States that forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States that amends or restates the name of the organization.

(69) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(70) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(71) "Registered organization" means an organization formed or organized solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state.

(72) "Secondary obligor" means an obligor to the extent that:

(A) the obligor's obligation is secondary; or

(B) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(73) "Secured party" means:

(A) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) a person that holds an agricultural lien;

(C) a consignor;

(D) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) a person that holds a security interest arising under Section 2.401, 2.505, 2.711(c), 2A.508(e), 4.210, or 5.118.

(74) "Security agreement" means an agreement that creates or provides for a security interest.

(75) "Send," in connection with a record or notification, means:

(A) to deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) to cause the record or notification to be received within the time that it would have been received if properly sent under Paragraph (A).

(76) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of "goods."

(77) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(78) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(79) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(80) "Termination statement" means an amendment of a financing statement that:

(A) identifies, by its file number, the initial financing statement to which it relates; and

(B) indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(81) "Transmitting utility" means a person primarily engaged in the business of:

(A) operating a railroad, subway, street railway, or trolley bus;

(B) transmitting communications electrically, electromagnetically, or by light;

(C) transmitting goods by pipeline or sewer; or

(D) transmitting or producing and transmitting electricity, steam, gas, or water.

(b) The following definitions in other chapters apply to this chapter:

"Applicant"	Section 5.102.
"Beneficiary"	Section 5.102.
"Broker"	Section 8.102.
"Certificated security"	Section 8.102.
"Check"	Section 3.104.
"Clearing corporation"	Section 8.102.
"Contract for sale"	Section 2.106.
"Control" (with respect to a document of title)	Section 7.106.
"Customer"	Section 4.104.
"Entitlement holder"	Section 8.102.
"Financial asset"	Section 8.102.
"Holder in due course"	Section 3.302.
"Issuer" (with respect to a letter of credit or letter-of-credit right)	Section 5.102.
"Issuer" (with respect to a security)	Section 8.201.
"Lease"	Section 2A.103.
"Lease agreement"	Section 2A.103.
"Lease contract"	Section 2A.103.
"Leasehold interest"	Section 2A.103.

"Lessee"	Section 2A.103.
"Lessee in ordinary course of business"	Section 2A.103.
"Lessor"	Section 2A.103.
"Lessor's residual interest"	Section 2A.103.
"Letter of credit"	Section 5.102.
"Merchant"	Section 2.104.
"Negotiable instrument"	Section 3.104.
"Nominated person"	Section 5.102.
"Note"	Section 3.104.
"Proceeds of a letter of credit"	Section 5.114.
"Prove"	Section 3.103.
"Sale"	Section 2.106.
"Securities account"	Section 8.501.
"Securities intermediary"	Section 8.102.
"Security"	Section 8.102.
"Security certificate"	Section 8.102.
"Security entitlement"	Section 8.102.
"Uncertificated security"	Section 8.102.

(c) Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001; Acts 2001, 77th Leg., ch. 705, Sec. 1, eff. June 13, 2001; Acts 2001, 77th Leg., ch. 1420, Sec. 14.728, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 542, Sec. 19, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 917, Sec. 1, 2, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 19, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 233 (S.B. 846), Sec. 3, eff. May 27, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 67 (S.B. 782), Sec. 1, eff. July 1, 2013.

Sec. 9.103. PURCHASE-MONEY SECURITY INTEREST; APPLICATION OF PAYMENTS; BURDEN OF ESTABLISHING. (a) In this section:

(1) "Purchase-money collateral" means goods or software

that secures a purchase-money obligation incurred with respect to that collateral.

(2) "Purchase-money obligation" means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(b) A security interest in goods is a purchase-money security interest:

(1) to the extent that the goods are purchase-money collateral with respect to that security interest;

(2) if the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

(3) also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(c) A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

(1) the debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

(2) the debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(d) The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(e) In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) in accordance with any reasonable method of application to which the parties agree;

(2) in the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(3) in the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(A) to obligations that are not secured; and

(B) if more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(f) In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:

(1) the purchase-money collateral also secures an obligation that is not a purchase-money obligation;

(2) collateral that is not purchase-money collateral also secures the purchase-money obligation; or

(3) the purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

(g) In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

(h) The limitation of the rules in Subsections (e), (f), and (g) to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.104. CONTROL OF DEPOSIT ACCOUNT. (a) A secured party has control of a deposit account if:

(1) the secured party is the bank with which the deposit account is maintained;

(2) the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or

(3) the secured party becomes the bank's customer with

respect to the deposit account.

(b) A secured party that has satisfied Subsection (a) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001; Acts 2001, 77th Leg., ch. 705, Sec. 2, eff. June 13, 2001.

Sec. 9.105. CONTROL OF ELECTRONIC CHATTEL PAPER. (a) A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

(b) A system satisfies Subsection (a), and a secured party has control of electronic chattel paper, if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the record or records exists that is unique, identifiable, and, except as otherwise provided in Subdivisions (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the secured party as the assignee of the record or records;

(3) the authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 67 (S.B. 782), Sec. 2, eff. July 1, 2013.

Sec. 9.106. CONTROL OF INVESTMENT PROPERTY. (a) A person has control of a certificated security, uncertificated security, or security entitlement as provided in Section 8.106.

(b) A secured party has control of a commodity contract if:

(1) the secured party is the commodity intermediary with which the commodity contract is carried; or

(2) the commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

(c) A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.107. CONTROL OF LETTER-OF-CREDIT RIGHT. A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under Section 5.114(c) or otherwise applicable law or practice.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.108. SUFFICIENCY OF DESCRIPTION. (a) Except as otherwise provided in Subsections (c), (d), and (e), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(b) Except as otherwise provided in Subsection (d), a description of collateral reasonably identifies the collateral if it identifies the collateral by:

(1) specific listing;

(2) category;

(3) except as otherwise provided in Subsection (e), a type of collateral defined in this title;

(4) quantity;

(5) computational or allocational formula or procedure; or

(6) except as otherwise provided in Subsection (c), any other method, if the identity of the collateral is objectively determinable.

(c) A description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral.

(d) Except as otherwise provided in Subsection (e), a description of a security entitlement, securities account, or commodity account is sufficient if it describes:

(1) the collateral by those terms or as investment property; or

(2) the underlying financial asset or commodity contract.

(e) A description only by type of collateral defined in this title is an insufficient description of:

(1) a commercial tort claim; or

(2) in a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.109. SCOPE. (a) Except as otherwise provided in Subsections (c), (d), and (e), this chapter applies to:

(1) a transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(2) an agricultural lien;

(3) a sale of accounts, chattel paper, payment intangibles, or promissory notes;

(4) a consignment;

(5) a security interest arising under Section 2.401, 2.505, 2.711(c), or 2A.508(e), as provided in Section 9.110; and

(6) a security interest arising under Section 4.210 or 5.118.

(b) The application of this chapter to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this chapter does not apply.

(c) This chapter does not apply to the extent that:

(1) a statute, regulation, or treaty of the United States preempts this chapter;

(2) another statute of this state expressly governs the creation, perfection, priority, or enforcement of a security interest created by this state or a governmental unit of this state;

(3) a statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or

(4) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under Section 5.114.

(d) This chapter does not apply to:

(1) a landlord's lien, other than an agricultural lien;

(2) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but Section 9.333 applies with respect to priority of the lien;

(3) an assignment of a claim for wages, salary, or other compensation of an employee;

(4) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(5) an assignment of accounts, chattel paper, payment intangibles, or promissory notes that is for the purpose of collection only;

(6) an assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(7) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(8) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but Sections 9.315 and 9.322 apply with respect to proceeds and priorities in proceeds;

(9) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(10) a right of recoupment or set-off, but:

(A) Section 9.340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and

(B) Section 9.404 applies with respect to defenses or claims of an account debtor;

(11) the creation or transfer of an interest in or lien on real property, including a lease or rents, as defined by Section 64.001, Property Code, the interest of a vendor or vendee in a contract for deed to purchase an interest in real property, or the interest of an optionor or optionee in an option to purchase an interest in real property, except to the extent that provision is made for:

(A) liens on real property in Sections 9.203 and 9.308;

(B) fixtures in Section 9.334;

(C) fixture filings in Sections 9.501, 9.502, 9.512, 9.516, and 9.519; and

(D) security agreements covering personal and real property in Section 9.604;

(12) an assignment of a claim arising in tort, other than a commercial tort claim, but Sections 9.315 and 9.322 apply with respect to proceeds and priorities in proceeds; or

(13) an assignment of a deposit account, other than a nonnegotiable certificate of deposit, in a consumer transaction, but Sections 9.315 and 9.322 apply with respect to proceeds and priorities in proceeds.

(e) The application of this chapter to the sale of accounts, chattel paper, payment intangibles, or promissory notes is not to recharacterize that sale as a transaction to secure indebtedness but to protect purchasers of those assets by providing a notice filing system. For all purposes, in the absence of fraud or intentional misrepresentation, the parties' characterization of a transaction as a sale of such assets shall be conclusive that the transaction is a sale and is not a secured transaction and that title, legal and equitable, has passed to the party characterized as the purchaser of those assets regardless of whether the secured party has any recourse against the debtor, whether the debtor is entitled to any surplus, or any other term of the parties' agreement.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1,

2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 636 (S.B. 889), Sec. 1, eff. June 17, 2011.

Sec. 9.110. SECURITY INTERESTS ARISING UNDER CHAPTER 2 OR 2A. A security interest arising under Section 2.401, 2.505, 2.711(c), or 2A.508(e) is subject to this chapter. However, until the debtor obtains possession of the goods:

(1) the security interest is enforceable, even if Section 9.203(b)(3) has not been satisfied;

(2) filing is not required to perfect the security interest;

(3) the rights of the secured party after default by the debtor are governed by Chapter 2 or 2A; and

(4) the security interest has priority over a conflicting security interest created by the debtor.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

SUBCHAPTER B. EFFECTIVENESS OF SECURITY AGREEMENT; ATTACHMENT OF SECURITY INTEREST; RIGHTS OF PARTIES TO SECURITY AGREEMENT

Sec. 9.201. GENERAL EFFECTIVENESS OF SECURITY AGREEMENT. (a) Except as otherwise provided by this title, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(b) A transaction subject to this chapter is subject to any applicable rule of law that establishes a different rule for consumers and to:

(1) Title 4, Finance Code; and

(2) Subchapter E, Chapter 17.

(c) In case of conflict between this chapter and a rule of law, statute, or regulation described in Subsection (b), the rule of law, statute, or regulation controls. Failure to comply with a statute or regulation described in Subsection (b) has only the effect the statute or regulation specifies.

(d) This chapter does not:

(1) validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in Subsection (b); or

(2) extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.202. TITLE TO COLLATERAL IMMATERIAL. Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this chapter with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

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

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

(1) value has been given;

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

(3) one of the following conditions is met:

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

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

(C) the collateral is a certificated security in

registered form and the security certificate has been delivered to the secured party under Section 8.301 pursuant to the debtor's security agreement; or

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

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

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

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

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

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

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

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

(f) The attachment of

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

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

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

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

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

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 20, eff. September 1, 2005.

Sec. 9.204. AFTER-ACQUIRED PROPERTY; FUTURE ADVANCES. (a) Except as provided in Subsection (b), a security agreement may create or provide for a security interest in after-acquired collateral.

(b) A security interest does not attach under a term constituting an after-acquired property clause to:

(1) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or

(2) a commercial tort claim.

(c) A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.205. USE OR DISPOSITION OF COLLATERAL PERMISSIBLE. (a) A security interest is not invalid or fraudulent against creditors

solely because:

(1) the debtor has the right or ability to:

(A) use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;

(B) collect, compromise, enforce, or otherwise deal with collateral;

(C) accept the return of collateral or make repossessions; or

(D) use, commingle, or dispose of proceeds; or

(2) the secured party fails to require the debtor to account for proceeds or replace collateral.

(b) This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.206. SECURITY INTEREST ARISING IN PURCHASE OR DELIVERY OF FINANCIAL ASSET. (a) A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

(1) the person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

(2) the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(b) The security interest described in Subsection (a) secures the person's obligation to pay for the financial asset.

(c) A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

(1) the security or other financial asset:

(A) in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment; and

(B) is delivered under an agreement between persons in the business of dealing with such securities or financial assets;

and

(2) the agreement calls for delivery against payment.

(d) The security interest described in Subsection (c) secures the obligation to make payment for the delivery.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.207. RIGHTS AND DUTIES OF SECURED PARTY HAVING POSSESSION OR CONTROL OF COLLATERAL. (a) Except as otherwise provided in Subsection (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Except as otherwise provided in Subsection (d), if a secured party has possession of collateral:

(1) reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) the risk of accidental loss or damage is on the debtor to the extent of any deficiency in any effective insurance coverage;

(3) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) the secured party may use or operate the collateral:

(A) for the purpose of preserving the collateral or its value;

(B) as permitted by an order of a court having competent jurisdiction; or

(C) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Except as otherwise provided in Subsection (d), a secured party having possession of collateral or control of collateral under Section 7.106, 9.104, 9.105, 9.106, or 9.107:

(1) may hold as additional security any proceeds, except money or funds, received from the collateral;

(2) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) may create a security interest in the collateral.

(d) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) Subsection (a) does not apply unless the secured party is entitled under an agreement:

(A) to charge back uncollected collateral; or

(B) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) Subsections (b) and (c) do not apply.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 21, eff. September 1, 2005.

Sec. 9.208. ADDITIONAL DUTIES OF SECURED PARTY HAVING CONTROL OF COLLATERAL. (a) This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within 10 days after receiving an authenticated demand by the debtor:

(1) a secured party having control of a deposit account under Section 9.104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) a secured party having control of a deposit account under Section 9.104(a)(3) shall:

(A) pay the debtor the balance on deposit in the deposit account; or

(B) transfer the balance on deposit into a deposit account in the debtor's name;

(3) a secured party, other than a buyer, having control of electronic chattel paper under Section 9.105 shall:

(A) communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy that add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) a secured party having control of investment property under Section 8.106(d)(2) or 9.106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

(5) a secured party having control of a letter-of-credit right under Section 9.107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and

(6) a secured party having control of an electronic document shall:

(A) give control of the electronic document to the debtor or its designated custodian;

(B) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 22, eff. September 1, 2005.

Sec. 9.209. DUTIES OF SECURED PARTY IF ACCOUNT DEBTOR HAS BEEN NOTIFIED OF ASSIGNMENT. (a) Except as otherwise provided in Subsection (c), this section applies if:

(1) there is no outstanding secured obligation; and

(2) the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within 10 days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under Section 9.406(a) an authenticated record that releases the account debtor from any further obligation to the secured party.

(c) This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.210. REQUEST FOR ACCOUNTING; REQUEST REGARDING LIST OF COLLATERAL OR STATEMENT OF ACCOUNT. (a) In this section:

(1) "Request" means a record of a type described in Subdivision (2), (3), or (4).

(2) "Request for an accounting" means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) "Request regarding a list of collateral" means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) "Request regarding a statement of account" means a record authenticated by a debtor requesting that the recipient

approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) Subject to Subsections (c), (d), (e), and (f), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within 14 days after receipt:

(1) in the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(2) in the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(c) A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within 14 days after receipt.

(d) A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(1) disclaiming any interest in the collateral; and

(2) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

(e) A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(1) disclaiming any interest in the obligations; and

(2) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(f) A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding $25 for each

additional response.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.
Amended by Acts 2001, 77th Leg., ch. 705, Sec. 3, eff. June 13, 2001.

SUBCHAPTER C. PERFECTION AND PRIORITY

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

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

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

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

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

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

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

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

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 23, eff. September 1, 2005.

Sec. 9.302. LAW GOVERNING PERFECTION AND PRIORITY OF AGRICULTURAL LIENS. While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

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

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

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

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.304. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN DEPOSIT ACCOUNTS. (a) The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

(b) The following rules determine a bank's jurisdiction for purposes of this subchapter:

(1) If an agreement between the bank and its customer governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this subchapter, this chapter, or this title, that jurisdiction is the bank's jurisdiction.

(2) If Subdivision (1) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(3) If neither Subdivision (1) nor Subdivision (2) applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If none of the preceding subdivisions applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(5) If none of the preceding subdivisions applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001; Acts 2003, 78th Leg., ch. 917, Sec. 3, eff. Sept. 1, 2003.

Sec. 9.305. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN INVESTMENT PROPERTY. (a) Except as otherwise provided in Subsection (c), the following rules apply:

(1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

(2) The local law of the issuer's jurisdiction as specified in Section 8.110(d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(3) The local law of the securities intermediary's jurisdiction as specified in Section 8.110(e) governs perfection, the

effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

(4) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

(b) The following rules determine a commodity intermediary's jurisdiction for purposes of this subchapter:

(1) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this subchapter, this chapter, or this title, that jurisdiction is the commodity intermediary's jurisdiction.

(2) If Subdivision (1) does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(3) If neither Subdivision (1) nor Subdivision (2) applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(4) If none of the preceding subdivisions applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

(5) If none of the preceding subdivisions applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

(c) The local law of the jurisdiction in which the debtor is located governs:

(1) perfection of a security interest in investment property by filing;

(2) automatic perfection of a security interest in investment property created by a broker or securities intermediary; and

(3) automatic perfection of a security interest in a

commodity contract or commodity account created by a commodity intermediary.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.306. LAW GOVERNING PERFECTION AND PRIORITY OF SECURITY INTERESTS IN LETTER-OF-CREDIT RIGHTS. (a) Subject to Subsection (c), the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(b) For purposes of this subchapter, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in Section 5.116.

(c) This section does not apply to a security interest that is perfected only under Section 9.308(d).

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.307. LOCATION OF DEBTOR. (a) In this section, "place of business" means a place where a debtor conducts its affairs.

(b) Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) Subsection (b) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority

over the rights of a lien creditor with respect to the collateral. If Subsection (b) does not apply, the debtor is located in the District of Columbia.

(d) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by Subsections (b) and (c).

(e) A registered organization that is organized under the law of a state is located in that state.

(f) Except as otherwise provided in Subsection (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) in the state that the law of the United States designates, if the law designates a state of location;

(2) in the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location, including by designating its main office, home office, or other comparable office; or

(3) in the District of Columbia, if neither Subdivision (1) nor Subdivision (2) applies.

(g) A registered organization continues to be located in the jurisdiction specified by Subsection (e) or (f) notwithstanding:

(1) the suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) the dissolution, winding up, or cancellation of the existence of the registered organization.

(h) The United States is located in the District of Columbia.

(i) A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(j) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) This section applies only for purposes of this subchapter.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 67 (S.B. 782), Sec. 3, eff. July 1, 2013.

Sec. 9.308. WHEN SECURITY INTEREST OR AGRICULTURAL LIEN IS PERFECTED; CONTINUITY OF PERFECTION. (a) Except as otherwise provided in this section and Section 9.309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in Sections 9.310 through 9.316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in Section 9.310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this chapter and is later perfected by another method under this chapter, without an intermediate period when it was unperfected.

(d) Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(f) Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(g) Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.309. SECURITY INTEREST PERFECTED UPON ATTACHMENT. The

following security interests are perfected when they attach:

(1) a purchase money security interest in consumer goods, except as otherwise provided in Section 9.311(b) with respect to consumer goods that are subject to a statute or treaty described in Section 9.311(a);

(2) an assignment of accounts or payment intangibles that does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

(3) a sale of a payment intangible;

(4) a sale of a promissory note;

(5) a security interest created by the assignment of a health-care-insurance receivable to the provider of the health care goods or services;

(6) a security interest arising under Section 2.401, 2.505, 2.711(c), or 2A.508(e), until the debtor obtains possession of the collateral;

(7) a security interest of a collecting bank arising under Section 4.210;

(8) a security interest of an issuer or nominated person arising under Section 5.118;

(9) a security interest arising in the delivery of a financial asset under Section 9.206(c);

(10) a security interest in investment property created by a broker or securities intermediary;

(11) a security interest in a commodity contract or a commodity account created by a commodity intermediary;

(12) an assignment for the benefit of all the creditors of the transferor and subsequent transfers by the assignee thereunder;

(13) a security interest created by an assignment of a beneficial interest in a decedent's estate; and

(14) a sale by an individual of an account that is a right to payment of winnings in a lottery or other game of chance.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001; Acts 2003, 78th Leg., ch. 917, Sec. 4, eff. Sept. 1, 2003.

Sec. 9.310. WHEN FILING REQUIRED TO PERFECT SECURITY INTEREST OR AGRICULTURAL LIEN; SECURITY INTERESTS AND AGRICULTURAL LIENS TO

WHICH FILING PROVISIONS DO NOT APPLY. (a) Except as otherwise provided in Subsection (b) and Section 9.312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) The filing of a financing statement is not necessary to perfect a security interest:

(1) that is perfected under Section 9.308(d), (e), (f), or (g);

(2) that is perfected under Section 9.309 when it attaches;

(3) in property subject to a statute, regulation, or treaty described in Section 9.311(a);

(4) in goods in possession of a bailee that is perfected under Section 9.312(d)(1) or (2);

(5) in certificated securities, documents, goods, or instruments which is perfected without filing, control or possession under Section 9.312(e), (f), or (g);

(6) in collateral in the secured party's possession under Section 9.313;

(7) in a certificated security that is perfected by delivery of the security certificate to the secured party under Section 9.313;

(8) in deposit accounts, electronic chattel paper, electronic documents, investment property, or letter-of-credit rights that is perfected by control under Section 9.314;

(9) in proceeds that is perfected under Section 9.315;

(10) that is perfected under Section 9.316; or

(11) in oil or gas production or their proceeds under Section 9.343.

(c) If a secured party assigns a perfected security interest or agricultural lien, a filing under this Chapter is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 24, eff. September 1, 2005.

Sec. 9.311. PERFECTION OF SECURITY INTERESTS IN PROPERTY SUBJECT TO CERTAIN STATUTES, REGULATIONS, AND TREATIES. (a) Except as otherwise provided in Subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt Section 9.310(a);

(2) the following statutes of this state: a certificate of title statute of this state or rules adopted under the statute to the extent the statute or rules provide for a security interest to be indicated on the certificate of title as a condition or result of perfection or such alternative to notation as may be prescribed by those statutes or rules of this state; or Chapter 261, relating to utility security instruments; or

(3) a statute of another jurisdiction that provides for a security interest to be indicated on a certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with the requirements of a statute, regulation, or treaty described in Subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this Chapter. Except as otherwise provided in Subsection (d) and Sections 9.313 and 9.316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in Subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Except as otherwise provided in Subsection (d) and Sections 9.316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in Subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this Chapter.

(d) During any period in which collateral subject to a statute specified in Subsection (a)(2) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply

to a security interest in that collateral created by that person.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001; Acts 2001, 77th Leg., ch. 705, Sec. 4, eff. June 13, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.754, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.05, eff. April 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 67 (S.B. 782), Sec. 4, eff. July 1, 2013.

Sec. 9.312. PERFECTION OF SECURITY INTERESTS IN CHATTEL PAPER, DEPOSIT ACCOUNTS, DOCUMENTS, AND GOODS COVERED BY DOCUMENTS, INSTRUMENTS, INVESTMENT PROPERTY, LETTER-OF-CREDIT RIGHTS, AND MONEY; PERFECTION BY PERMISSIVE FILING; TEMPORARY PERFECTION WITHOUT FILING OR TRANSFER OF POSSESSION. (a) A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) Except as otherwise provided in Sections 9.315(c) and (d) for proceeds:

(1) a security interest in a deposit account may be perfected only by control under Section 9.314;

(2) and except as otherwise provided in Section 9.308(d), a security interest in a letter-of-credit right may be perfected only by control under Section 9.314; and

(3) a security interest in money may be perfected only by the secured party's taking possession under Section 9.313.

(c) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) a security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) a security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) issuance of a document in the name of the secured party;

(2) the bailee's receipt of notification of the secured party's interest; or

(3) filing as to the goods.

(e) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) ultimate sale or exchange; or

(2) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) ultimate sale or exchange; or

(2) presentation, collection, enforcement, renewal, or registration of transfer.

(h) After the 20-day period specified in Subsection (e), (f), or (g) expires, perfection depends upon compliance with this chapter.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 25, eff. September 1, 2005.

Sec. 9.313. WHEN POSSESSION BY OR DELIVERY TO SECURED PARTY PERFECTS SECURITY INTEREST WITHOUT FILING. (a) Except as otherwise provided in Subsection (b), a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated

securities by taking delivery of the certificated securities under Section 8.301.

(b) With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in Section 9.316(d).

(c) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business when:

(1) the person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) the person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under Section 8.301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) If a person acknowledges that it holds possession for the secured party's benefit:

(1) the acknowledgment is effective under Subsection (c) or Section 8.301(a), even if the acknowledgment violates the rights of a debtor; and

(2) unless the person otherwise agrees or law other than this chapter otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the

ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) to hold possession of the collateral for the secured party's benefit; or

(2) to redeliver the collateral to the secured party.

(i) A secured party does not relinquish possession, even if a delivery under Subsection (h) violates the rights of a debtor. A person to which collateral is delivered under Subsection (h) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this chapter otherwise provides.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 26, eff. September 1, 2005.

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

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

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

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

(2) one of the following occurs:

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

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

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

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 27, eff. September 1, 2005.

Sec. 9.315. SECURED PARTY'S RIGHTS ON DISPOSITION OF COLLATERAL AND IN PROCEEDS. (a) Except as otherwise provided in this chapter and Section 2.403(b):

(1) a security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(2) a security interest attaches to any identifiable proceeds of collateral.

(b) Proceeds that are commingled with other property are identifiable proceeds:

(1) if the proceeds are goods, to the extent provided by Section 9.336; and

(2) if the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this chapter with respect to commingled property of the type involved.

(c) A security interest in proceeds is a perfected security interest if the interest in the original collateral was perfected.

(d) A perfected security interest in proceeds becomes unperfected on the 21st day after the security interest attaches to receipt of the proceeds unless:

(1) the following conditions are satisfied:

(A) a filed financing statement covers the original collateral;

(B) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(C) the proceeds are not acquired with cash proceeds;

(2) the proceeds are identifiable cash proceeds; or

(3) the security interest in the proceeds is perfected other than under Subsection (c) when the security interest attaches to the proceeds or within 20 days thereafter.

(e) If a filed financing statement covers the original collateral, a security interest in proceeds that remains perfected under Subsection (d)(1) becomes unperfected at the later of:

(1) when the effectiveness of the filed financing statement lapses under Section 9.515 or is terminated under Section 9.513; or

(2) the 21st day after the security interest attaches to the proceeds.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.316. EFFECT OF CHANGE IN GOVERNING LAW. (a) A security interest perfected pursuant to the law of the jurisdiction designated in Section 9.301(1) or 9.305(c) remains perfected until the earliest of:

(1) the time perfection would have ceased under the law of that jurisdiction;

(2) the expiration of four months after a change of the debtor's location to another jurisdiction; or

(3) the expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) If a security interest described in Subsection (a) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(1) the collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) thereafter the collateral is brought into another jurisdiction; and

(3) upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Except as otherwise provided in Subsection (e), a security interest in goods covered by a certificate of title that is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) A security interest described in Subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under Section 9.311(b) or 9.313 are not satisfied before the earlier of:

(1) the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this State; or

(2) the expiration of four months after the goods had become so covered.

(f) A security interest in deposit accounts, letter-of-credit rights, or investment property that is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) the time the security interest would have become unperfected under the law of that jurisdiction; or

(2) the expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) If a security interest described in Subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(h) The following rules apply to collateral to which a security

interest attaches within four months after the debtor changes its location to another jurisdiction:

(1) A financing statement filed before the change of the debtor's location pursuant to the law of the jurisdiction designated in Section 9.301(1) or 9.305(c) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral if the debtor had not changed its location.

(2) If a security interest that is perfected by a financing statement that is effective under Subdivision (1) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in Section 9.301(1) or 9.305(c) or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(i) If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in Section 9.301(1) or 9.305(c) and the new debtor is located in another jurisdiction, the following rules apply:

(1) The financing statement is effective to perfect a security interest in collateral in which the new debtor has or acquires rights before or within four months after the new debtor becomes bound under Section 9.203(d), if the financing statement would have been effective to perfect a security interest in the collateral if the collateral had been acquired by the original debtor.

(2) A security interest that is perfected by the financing statement and that becomes perfected under the law of the other jurisdiction before the earlier of the expiration of the four-month period or the time the financing statement would have become ineffective under the law of the jurisdiction designated in Section 9.301(1) or 9.305(c) remains perfected thereafter. A security interest that is perfected by the financing statement but that does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 67 (S.B. 782), Sec. 5, eff. July 1, 2013.
Acts 2011, 82nd Leg., R.S., Ch. 67 (S.B. 782), Sec. 6, eff. July 1, 2013.

Sec. 9.317. INTERESTS THAT TAKE PRIORITY OVER OR TAKE FREE OF SECURITY INTEREST OR AGRICULTURAL LIEN. (a) A security interest or agricultural lien is subordinate to the rights of:

(1) a person entitled to priority under Section 9.322; and

(2) except as otherwise provided in Subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) the security interest or agricultural lien is perfected; or

(B) one of the conditions specified in Section 9.203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Except as otherwise provided in Subsection (e), a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in Subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in Sections 9.320 and 9.321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor

receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor that arise between the time the security interest attaches and the time of filing.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001; Acts 2001, 77th Leg., ch. 705, Sec. 6, eff. June 13, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 28, eff. September 1, 2005.
Acts 2011, 82nd Leg., R.S., Ch. 67 (S.B. 782), Sec. 7, eff. July 1, 2013.

Sec. 9.318. NO INTEREST RETAINED IN RIGHT TO PAYMENT THAT IS SOLD; RIGHTS AND TITLE OF SELLER OF ACCOUNT OR CHATTEL PAPER WITH RESPECT TO CREDITORS AND PURCHASERS. (a) A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

(b) For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.319. RIGHTS AND TITLE OF CONSIGNEE WITH RESPECT TO CREDITORS AND PURCHASERS. (a) Except as otherwise provided in Subsection (b), for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

(b) For purposes of determining the rights of a creditor of a consignee, law other than this chapter determines the rights and title of a consignee while goods are in the consignee's possession if, under this subchapter, a perfected security interest held by the

consignor would have priority over the rights of the creditor.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.320. BUYERS OF GOODS. (a) Except as otherwise provided by Subsection (e), a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(b) Except as otherwise provided in Subsection (e), a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

(1) without knowledge of the security interest;

(2) for value;

(3) primarily for the buyer's personal, family, or household purposes; and

(4) before the filing of a financing statement covering the goods.

(c) To the extent that it affects the priority of a security interest over a buyer of goods under Subsection (b), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by Sections 9.316(a) and (b).

(d) A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) Subsections (a) and (b) do not affect a security interest in goods in the possession of the secured party under Section 9.313.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.321. LICENSEE OF GENERAL INTANGIBLE AND LESSEE OF GOODS IN ORDINARY COURSE OF BUSINESS. (a) In this section, "licensee in ordinary course of business" means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business

of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

(b) A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(c) A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.322. PRIORITIES AMONG CONFLICTING SECURITY INTERESTS IN AND AGRICULTURAL LIENS ON SAME COLLATERAL. (a) Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) For the purposes of Subsection (a)(1):

(1) the time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(2) the time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also

the time of filing or perfection as to a security interest in the supporting obligation.

(c) Except as otherwise provided in Subsection (f), a security interest in collateral that qualifies for priority over a conflicting security interest under Section 9.327, 9.328, 9.329, 9.330, or 9.331 also has priority over a conflicting security interest in:

(1) any supporting obligation for the collateral; and

(2) proceeds of the collateral if:

(A) the security interest in proceeds is perfected;

(B) the proceeds are cash proceeds or of the same type as the collateral; and

(C) in the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(d) Subject to Subsection (e) and except as otherwise provided in Subsection (f), if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(e) Subsection (d) applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

(f) Subsections (a)-(e) are subject to:

(1) Subsection (g) and the other provisions of this subchapter;

(2) Section 4.210 with respect to a security interest of a collecting bank;

(3) Section 5.118 with respect to a security interest of an issuer or nominated person; and

(4) Section 9.110 with respect to a security interest arising under Chapter 2 or 2A.

(g) A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.323. FUTURE ADVANCES. (a) Except as otherwise provided in Subsection (c), for purposes of determining the priority of a perfected security interest under Section 9.322(a)(1), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

(1) is made while the security interest is perfected only:

(A) under Section 9.309 when it attaches; or

(B) temporarily under Section 9.312(e), (f), or (g); and

(2) is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under Section 9.309 or 9.312(e), (f), or (g).

(b) Except as otherwise provided in Subsection (c), a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than 45 days after the person becomes a lien creditor unless the advance is made:

(1) without knowledge of the lien; or

(2) pursuant to a commitment entered into without knowledge of the lien.

(c) Subsections (a) and (b) do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

(d) Except as otherwise provided in Subsection (e), a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

(1) the time the secured party acquires knowledge of the buyer's purchase; or

(2) 45 days after the purchase.

(e) Subsection (d) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period.

(f) Except as otherwise provided in Subsection (g), a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

(1) the time the secured party acquires knowledge of the

lease; or

(2) 45 days after the lease contract becomes enforceable.

(g) Subsection (f) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001. Amended by Acts 2001, 77th Leg., ch. 705, Sec. 7, eff. June 13, 2001.

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

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

(1) the purchase-money security interest is perfected when the debtor receives possession of the inventory;

(2) except where excused by Section 9.343 (oil and gas production), the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) the holder of the conflicting security interest receives any required notification within five years before the debtor receives possession of the inventory; and

(4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) Subsections (b)(2)-(4) apply only if the holder of the

conflicting security interest had filed a financing statement covering the same types of inventory:

(1) if the purchase-money security interest is perfected by filing, before the date of the filing; or

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

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

(1) the purchase-money security interest is perfected when the debtor receives possession of the livestock;

(2) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) the holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

(4) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

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

(1) if the purchase-money security interest is perfected by filing, before the date of the filing; or

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

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

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

(1) a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) in all other cases, Section 9.322(a) applies to the qualifying security interests.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.325. PRIORITY OF SECURITY INTERESTS IN TRANSFERRED COLLATERAL. (a) Except as otherwise provided in Subsection (b), a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

(1) the debtor acquired the collateral subject to the security interest created by the other person;

(2) the security interest created by the other person was perfected when the debtor acquired the collateral; and

(3) there is no period thereafter when the security interest is unperfected.

(b) Subsection (a) subordinates a security interest only if the security interest:

(1) otherwise would have priority solely under Section 9.322(a) or 9.324; or

(2) arose solely under Section 2.711(c) or 2A.508(e).

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.326. PRIORITY OF SECURITY INTERESTS CREATED BY NEW DEBTOR. (a) Subject to Subsection (b), a security interest that is created by a new debtor in collateral in which the new debtor has or acquires rights and perfected by a filed financing statement that would be ineffective to perfect the security interest but for the application of Section 9.508 or of Sections 9.508 and 9.316(i)(1) is subordinate to a security interest in the same collateral that is perfected other than by such a filed financing statement.

(b) The other provisions of this subchapter determine the priority among conflicting security interests in the same collateral

perfected by filed financing statements described in Subsection (a). However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 67 (S.B. 782), Sec. 8, eff. July 1, 2013.

Sec. 9.327. PRIORITY OF SECURITY INTERESTS IN DEPOSIT ACCOUNT. The following rules govern priority among conflicting security interests in the same deposit account:

(1) A security interest held by a secured party having control of the deposit account under Section 9.104 has priority over a conflicting security interest held by a secured party that does not have control.

(2) Except as otherwise provided in Subdivisions (3) and (4), security interests perfected by control under Section 9.314 rank according to priority in time of obtaining control.

(3) Except as otherwise provided in Subdivision (4), a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(4) A security interest perfected by control under Section 9.104(a)(3) has priority over a security interest held by the bank with which the deposit account is maintained.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.328. PRIORITY OF SECURITY INTERESTS IN INVESTMENT PROPERTY. The following rules govern priority among conflicting security interests in the same investment property:

(1) A security interest held by a secured party having control of investment property under Section 9.106 has priority over a security interest held by a secured party that does not have control of the investment property.

(2) Except as otherwise provided in Subdivisions (3) and

(4), conflicting security interests held by secured parties each of which has control under Section 9.106 rank according to priority in time of:

(A) if the collateral is a security, obtaining control;

(B) if the collateral is a security entitlement carried in a securities account and:

(i) if the secured party obtained control under Section 8.106(d)(1), the secured party's becoming the person for which the securities account is maintained;

(ii) if the secured party obtained control under Section 8.106(d)(2), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(iii) if the secured party obtained control through another person under Section 8.106(d)(3), the time on which priority would be based under this subdivision if the other person were the secured party; or

(C) if the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in Section 9.106(b)(2) with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest in a certificated security in registered form that is perfected by taking delivery under Section 9.313(a) and not by control under Section 9.314 has priority over a conflicting security interest perfected by a method other than control.

(6) Conflicting security interests created by a broker, securities intermediary, or commodity intermediary that are perfected without control under Section 9.106 rank equally.

(7) In all other cases, priority among conflicting security

interests in investment property is governed by Sections 9.322 and 9.323.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.329. PRIORITY OF SECURITY INTERESTS IN LETTER-OF-CREDIT RIGHT. The following rules govern priority among conflicting security interests in the same letter-of-credit right:

(1) A security interest held by a secured party having control of the letter-of-credit right under Section 9.107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

(2) Security interests perfected by control under Section 9.314 rank according to priority in time of obtaining control.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.330. PRIORITY OF PURCHASER OF CHATTEL PAPER OR INSTRUMENT. (a) A purchaser of chattel paper has priority over a security interest in the chattel paper that is claimed merely as proceeds of inventory subject to a security interest if:

(1) in good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 9.105; and

(2) the chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(b) A purchaser of chattel paper has priority over a security interest in the chattel paper that is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under Section 9.105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(c) Except as otherwise provided in Section 9.327, a purchaser having priority in chattel paper under Subsection (a) or (b) also has priority in proceeds of the chattel paper to the extent that:

(1) Section 9.322 provides for priority in the proceeds; or

(2) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(d) Except as otherwise provided in Section 9.331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) For purposes of Subsections (a) and (b), the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) For purposes of Subsections (b) and (d), if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.331. PRIORITY OF RIGHTS OF PURCHASERS OF INSTRUMENTS, DOCUMENTS, AND SECURITIES UNDER OTHER CHAPTERS; PRIORITY OF INTERESTS IN FINANCIAL ASSETS AND SECURITY ENTITLEMENTS UNDER CHAPTER 8. (a) This chapter does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Chapters 3, 7, and 8.

(b) This chapter does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Chapter 8.

(c) Filing under this chapter does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in Subsections (a) and (b).

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001. Amended by Acts 2001, 77th Leg., ch. 705, Sec. 8, eff. June 13, 2001.

Sec. 9.332. TRANSFER OF MONEY; TRANSFER OF FUNDS FROM DEPOSIT ACCOUNT. (a) A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(b) A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.333. PRIORITY OF CERTAIN LIENS ARISING BY OPERATION OF LAW. (a) In this section, "possessory lien" means an interest, other than a security interest or an agricultural lien:

(1) that secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;

(2) that is created by statute or rule of law in favor of the person; and

(3) whose effectiveness depends on the person's possession of the goods.

(b) A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.334. PRIORITY OF SECURITY INTERESTS IN FIXTURES AND CROPS. (a) A security interest under this chapter may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this chapter in ordinary building materials incorporated into an improvement on land.

(b) This chapter does not prevent creation of an encumbrance upon fixtures under real property law.

(c) In cases not governed by Subsections (d)-(h), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) Except as otherwise provided in Subsection (h), a perfected

security interest in fixtures has priority over the conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(1) the security interest is a purchase-money security interest;

(2) the interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) the security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.

(e) A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) the debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(A) is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(B) has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) before the goods become fixtures, the security interest is perfected by any method permitted by this chapter and the fixtures are readily removable:

(A) factory or office machines;

(B) equipment that is not primarily used or leased for use in the operation of the real property; or

(C) replacements of domestic appliances that are consumer goods;

(3) the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this chapter; or

(4) the security interest is:

(A) created in a manufactured home in a manufactured-home transaction; and

(B) perfected pursuant to a statute described in Section 9.311(a)(2).

(f) A security interest in fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real property if:

(1) the encumbrancer or owner has, in an authenticated

record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) the debtor has a right to remove the goods as against the encumbrancer or owner.

(g) The priority of the security interest under Subsection (f)(2) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in Subsections (e) and (f), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001. Amended by Acts 2001, 77th Leg., ch. 705, Sec. 9, eff. June 13, 2001.

Sec. 9.335. ACCESSIONS. (a) A security interest may be created in an accession and continues in collateral that becomes an accession.

(b) If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(c) Except as otherwise provided in Subsection (d), the other provisions of this subchapter determine the priority of a security interest in an accession.

(d) A security interest in an accession is subordinate to a security interest in the whole that is perfected by compliance with the requirements of a certificate-of-title statute under Section 9.311(b).

(e) After default, subject to Subchapter F, a secured party may

remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(f) A secured party that removes an accession from other goods under Subsection (e) shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.336. COMMINGLED GOODS. (a) In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(c) If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under Subsection (c) is perfected.

(e) Except as otherwise provided in Subsection (f), the other provisions of this subchapter determine the priority of a security interest that attaches to the product or mass under Subsection (c).

(f) If more than one security interest attaches to the product or mass under Subsection (c), the following rules determine priority:

(1) A security interest that is perfected under Subsection (d) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) If more than one security interest is perfected under Subsection (d), the security interests rank equally in proportion to

the value of the collateral at the time it became commingled goods.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001. Amended by Acts 2001, 77th Leg., ch. 705, Sec. 10, eff. June 13, 2001.

Sec. 9.337. PRIORITY OF SECURITY INTERESTS IN GOODS COVERED BY CERTIFICATE OF TITLE. If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this state issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) a buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) the security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under Section 9.311(b), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.338. PRIORITY OF SECURITY INTEREST OR AGRICULTURAL LIEN PERFECTED BY FILED FINANCING STATEMENT PROVIDING CERTAIN INCORRECT INFORMATION. If a security interest or agricultural lien is perfected by a filed financing statement providing information described in Section 9.516(b)(5) that is incorrect at the time the financing statement is filed:

(1) the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible

chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 29, eff. September 1, 2005.

Sec. 9.339. PRIORITY SUBJECT TO SUBORDINATION. This chapter does not preclude subordination by agreement by a person entitled to priority.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.340. EFFECTIVENESS OF RIGHT OF RECOUPMENT OR SET-OFF AGAINST DEPOSIT ACCOUNT. (a) Except as otherwise provided in Subsection (c), a bank with which a deposit account is maintained may exercise any right of recoupment or set-off against a secured party that holds a security interest in the deposit account.

(b) Except as otherwise provided in Subsection (c), the application of this chapter to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.

(c) The exercise by a bank of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account that is perfected by control under Section 9.104(a)(3), if the set-off is based on a claim against the debtor.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.341. BANK'S RIGHTS AND DUTIES WITH RESPECT TO DEPOSIT ACCOUNT. Except as otherwise provided in Section 9.340(c), and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

(1) the creation, attachment, or perfection of a security

interest in the deposit account;

(2) the bank's knowledge of the security interest; or

(3) the bank's receipt of instructions from the secured party.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.342. BANK'S RIGHT TO REFUSE TO ENTER INTO OR DISCLOSE EXISTENCE OF CONTROL AGREEMENT. This chapter does not require a bank to enter into an agreement of the kind described in Section 9.104(a)(2), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.343. OIL AND GAS INTERESTS: SECURITY INTEREST PERFECTED WITHOUT FILING; STATUTORY LIEN. (a) This section provides a security interest in favor of interest owners, as secured parties, to secure the obligations of the first purchaser of oil and gas production, as debtor, to pay the purchase price. An authenticated record giving the interest owner a right under real property law operates as a security agreement created under this chapter. The act of the first purchaser in signing an agreement to purchase oil or gas production, in issuing a division order, or in making any other voluntary communication to the interest owner or any governmental agency recognizing the interest owner's right operates as an authentication of a security agreement in accordance with Section 9.203(b) for purposes of this chapter.

(b) The security interest provided by this section is perfected automatically without the filing of a financing statement. If the interest of the secured party is evidenced by a deed, mineral deed, reservation in either, oil or gas lease, assignment, or any other such record recorded in the real property records of a county clerk, that record is effective as a filed financing statement for purposes of this chapter, but no fee is required except a fee that is otherwise required by the county clerk, and there is no requirement of refiling every five years to maintain effectiveness of the filing.

(c) The security interest exists in oil and gas production, and also in the identifiable proceeds of that production owned by, received by, or due to the first purchaser:

(1) for an unlimited time if:

(A) the proceeds are oil or gas production, inventory of raw, refined, or manufactured oil or gas production, or rights to or products of any of those, although the sale of those proceeds by a first purchaser to a buyer in the ordinary course of business as provided in Subsection (e) cuts off the security interest in those proceeds;

(B) the proceeds are accounts, chattel paper, instruments, documents, or payment intangibles; or

(C) the proceeds are cash proceeds, as defined in Section 9.102; and

(2) for the length of time provided in Section 9.315 for all other proceeds.

(d) This section creates a lien that secures the payment of all taxes that are or should be withheld or paid by the first purchaser and a lien that secures the rights of any person who would be entitled to a security interest under Subsection (a) except for lack of any adoption of a security agreement by the first purchaser or a lack of possession or record required by Section 9.203 for the security interest to be enforceable.

(e) The security interests and liens created by this section have priority over any purchaser who is not a buyer in the ordinary course of the first purchaser's business, but are cut off by the sale to a buyer from the first purchaser who is in the ordinary course of the first purchaser's business under Section 9.320(a). But in either case, whether or not the buyer from the first purchaser is in ordinary course, a security interest will continue in the proceeds of the sale by the first purchaser as provided in Subsection (c).

(f) The security interests and all liens created by this section have the following priorities over other Chapter 9 security interests:

(1) A security interest created by this section is treated as a purchase-money security interest for purposes of determining its relative priority under Section 9.324 over other security interests not provided for by this section. A holder of a security interest created under this section is not required to give the written notice every five years as provided in Section 9.324(b)(3) to have purchase-

money priority over a security interest with a prior financing statement covering inventory.

(2) A statutory lien is subordinate to all other perfected Chapter 9 security interests and has priority over unperfected Chapter 9 security interests and the lien creditors, buyers, and transferees mentioned in Section 9.317.

(g) The security interests and liens created by this section have the following priorities among themselves:

(1) If a record effective as a filed financing statement under Subsection (b) exists, the security interests perfected by that record have priority over a security interest automatically perfected without filing under Subsection (b). If several security interests perfected by records exist, they have the same priority among themselves as established by real property law for interests in oil and gas in place. If real property law establishes no priority among them, they share priority pro rata.

(2) A security interest perfected automatically without filing under Subsection (b) has priority over a lien created under Subsection (d).

(3) A nontax lien under Subsection (d) has priority over a lien created under that subsection that secures the payment of taxes.

(h) The priorities for statutory liens mentioned in Section 9.333 do not apply to any security interest or statutory lien created by this section. But if a pipeline common carrier has a statutory or tariff lien that is effective and enforceable against a trustee in bankruptcy and not invalidated by the Federal Tax Lien Act, that lien has priority over the security interests and statutory liens created by this section.

(i) If oil or gas production in which there are security interests or statutory liens created by this section is commingled with inventory or other production, the rules of Section 9.336 apply.

(j) A security interest or statutory lien created by this section remains effective against the debtor and perfected against the debtor's creditors even if assigned, regardless of whether the assignment is perfected against the assignor's creditors. If a deed, mineral deed, assignment of oil and gas lease, or other such record evidencing the assignment is filed in the real property records of the county, it will have the same effect as filing an amended financing statement under Section 9.514.

(k) This section does not impair an operator's right to set-off

or withhold funds from other interest owners as security for or in satisfaction of any debt or security interest. In case of a dispute between an operator and another interest owner, a good faith tender of funds by anyone to the person who the operator and other interest owner agree on, to a person who otherwise shows himself or herself to be the one entitled to the funds, or to a court of competent jurisdiction in the event of litigation or bankruptcy operates as a tender of the funds to both.

(l) A first purchaser who acts in good faith may terminate an interest owner's security interest or statutory lien under this section by paying, or by making and keeping open a tender of, the amount the first purchaser believes to be due to the interest owner:

(1) if the interest owner's rights are to oil or gas production or its proceeds, either to the operator alone, in which event the operator is considered the first purchaser, or to some combination of the interest owner and the operator, as the first purchaser chooses;

(2) whatever the nature of the production to which the interest owner has rights, to the person that the interest owner agreed to or acquiesced in; or

(3) to a court of competent jurisdiction in the event of litigation or bankruptcy.

(m) A person who buys from a first purchaser can ensure that the person buys free and clear of an interest owner's security interest or statutory lien under this section:

(1) by buying in the ordinary course of the first purchaser's business from the first purchaser under Section 9.320(a);

(2) by obtaining the interest owner's consent to the sale under Section 9.315(a)(1);

(3) by ensuring that the first purchaser has paid the interest owner or, provided that gas production is involved, or the interest owner has so agreed or acquiesced, by ensuring that the first purchaser has paid the interest owner's operator; or

(4) by ensuring that the person or the first purchaser or some other person has withheld funds sufficient to pay amounts in dispute and has maintained a tender of those funds to whoever shows himself or herself to be the person entitled.

(n) If a tender under Subsection (m)(4) that is valid thereafter fails, the security interest and liens governed by this section remain effective.

(o) In addition to the usual remedy of sequestration available to secured parties, and the remedies given in Subchapter F, the holders of security interests and liens created by this section have available to them, to the extent constitutionally permitted, the remedies of replevin, attachment, and garnishment to assist them in realizing upon their rights.

(p) The rights of any person claiming under a security interest or lien created by this section are governed by the other provisions of this chapter except to the extent that this section necessarily displaces those provisions. This section does not invalidate or otherwise affect the interests of any person in any real property before severance of any oil or gas production.

(q) The security interest created under Subsections (a) and (b) do not apply to proceeds of gas production that have been withheld, in cash or account form, by a purchaser under Section 201.204(c), Tax Code.

(r) In this section:

(1) "Oil and gas production" means any oil, natural gas, condensate of either, natural gas liquids, other gaseous, liquid, or dissolved hydrocarbons, sulfur, or helium, or other substance produced as a by-product or adjunct to their production, or any combination of these, which is severed, extracted, or produced from the ground, the seabed, or other submerged lands within the jurisdiction of this state. Any such substance, including recoverable or recovered natural gas liquids, that is transported to or in a natural gas pipeline or natural gas gathering system, or otherwise transported or sold for use as natural gas, or is transported or sold for the extraction of helium or natural gas liquids is "gas production." Any such substance that is transported or sold to persons and for purposes not included in the foregoing natural gas definition is "oil production."

(2) "Interest owner" means a person owning an entire or fractional interest of any kind or nature in oil or gas production at the time of severance, or a person who has an express, implied, or constructive right to receive a monetary payment determined by the value of oil or gas production or by the amount of production.

(3) "First purchaser" means the first person that purchases oil or gas production from an operator or interest owner after the production is severed, or an operator that receives production proceeds from a third-party purchaser who acts in good faith under a

division order or other agreement authenticated by the operator under which the operator collects proceeds of production on behalf of other interest owners. To the extent the operator receives proceeds attributable to the interest of other interest owners from a third-party purchaser who acts in good faith under a division order or other agreement authenticated by such operator, the operator is considered to be the first purchaser of the production for all purposes under this section, notwithstanding the characterization of other persons as first purchasers under other laws or regulations. To the extent the operator has not received from the third-party purchaser proceeds attributable to the operator's interest and the interest of other interest owners, the operator is not considered the first purchaser for the purposes of this section and is entitled to all rights and benefits under this section. Nothing in this section impairs or affects any rights otherwise held by a royalty owner to take its share of oil in kind or receive payment directly from a third-party purchaser for the royalty owner's share of oil production with or without a previously made agreement.

(4) "Operator" means a person engaged in the business of severing oil or gas production from the ground, whether for the person alone, only for other persons, or for the person and others.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

SUBCHAPTER D. RIGHTS OF THIRD PARTIES

Sec. 9.401. ALIENABILITY OF DEBTOR'S RIGHTS. (a) Except as otherwise provided in Subsection (b) and Sections 9.406, 9.407, 9.408, and 9.409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this chapter.

(b) An agreement between the debtor and secured party that prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.402. SECURED PARTY NOT OBLIGATED ON CONTRACT OF DEBTOR

OR IN TORT. The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.403. AGREEMENT NOT TO ASSERT DEFENSES AGAINST ASSIGNEE. (a) In this section, "value" has the meaning provided in Section 3.303(a).

(b) Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

(1) for value;

(2) in good faith;

(3) without notice of a claim of a property or possessory right to the property assigned; and

(4) without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under Section 3.305(a).

(c) Subsection (b) does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under Section 3.305(b).

(d) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this chapter requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:

(1) the record has the same effect as if the record included such a statement; and

(2) the account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

(e) This section is subject to law other than this chapter that establishes a different rule for an account debtor who is an

individual and who incurred the obligation primarily for personal, family, or household purposes.

(f) Except as otherwise provided in Subsection (d), this section does not displace law other than this chapter that gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.404. RIGHTS ACQUIRED BY ASSIGNEE; CLAIMS AND DEFENSES AGAINST ASSIGNEE. (a) Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to Subsections (b)-(e), the rights of an assignee are subject to:

(1) all terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

(2) any other defense or claim of the account debtor against the assignor that accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(b) Subject to Subsection (c) and except as otherwise provided in Subsection (d), the claim of an account debtor against an assignor may be asserted against an assignee under Subsection (a) only to reduce the amount the account debtor owes.

(c) This section is subject to law other than this chapter that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this chapter requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) This section does not apply to an assignment of a health-

care-insurance receivable.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.405. MODIFICATION OF ASSIGNED CONTRACT. (a) A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to Subsections (b)-(d).

(b) Subsection (a) applies to the extent that:

(1) the right to payment or a part thereof under an assigned contract has not been fully earned by performance; or

(2) the right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under Section 9.406(a).

(c) This section is subject to law other than this chapter that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) This section does not apply to an assignment of a health-care-insurance receivable.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.406. DISCHARGE OF ACCOUNT DEBTOR; NOTIFICATION OF ASSIGNMENT; IDENTIFICATION AND PROOF OF ASSIGNMENT; RESTRICTIONS ON ASSIGNMENT OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, AND PROMISSORY NOTES INEFFECTIVE. (a) Subject to Subsections (b)-(i), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge

the obligation by paying the assignor.

(b) Subject to Subsection (h), notification is ineffective under Subsection (a):

(1) if it does not reasonably identify the rights assigned;

(2) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this chapter; or

(3) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) a portion has been assigned to another assignee; or

(C) the account debtor knows that the assignment to that assignee is limited.

(c) Subject to Subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under Subsection (a).

(d) Except as otherwise provided in Subsection (e) and Sections 2A.303 and 9.407, and subject to Subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Subsection (d) does not apply to the sale of a payment intangible or promissory note, other than a sale pursuant to a disposition under Section 9.610 or an acceptance of collateral under

Section 9.620.

(f) Except as otherwise provided in Sections 2A.303 and 9.407, and subject to Subsections (h), (i), and (k), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account or chattel paper; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subject to Subsection (h), an account debtor may not waive or vary its option under Subsection (b)(3).

(h) This section is subject to law other than this chapter that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) This section does not apply to an assignment of a health-care-insurance receivable.

(j) This section does not apply to an interest in a partnership or limited liability company.

(k) An assignment under this section is subject to Section 466.410, Government Code, except to the extent that Section 466.410(a), Government Code, prohibits the assignment of installment prize payments due within the final two years of the prize payment schedule, in which case this section shall prevail over Section 466.410 solely to the extent necessary to permit such assignment.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001; Acts 2001, 77th Leg., ch. 705, Sec. 11, eff. June 13, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 60, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 67 (S.B. 782), Sec. 9, eff. July 1, 2013.

Sec. 9.407. RESTRICTIONS ON CREATION OR ENFORCEMENT OF SECURITY INTEREST IN LEASEHOLD INTEREST OR IN LESSOR'S RESIDUAL INTEREST. (a) Except as otherwise provided in Subsection (b), a term in a lease agreement is ineffective to the extent that it:

(1) prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(2) provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(b) Except as otherwise provided in Section 2A.303(g), a term described in Subsection (a)(2) is effective to the extent that there is:

(1) a transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(2) a delegation of a material performance of either party to the lease contract in violation of the term.

(c) The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of Section 2A.303(d) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001; Acts 2001, 77th Leg., ch. 705, Sec. 12, eff. June 13, 2001.

Sec. 9.408. RESTRICTIONS ON ASSIGNMENT OF PROMISSORY NOTES,

HEALTH-CARE-INSURANCE RECEIVABLES, AND CERTAIN GENERAL INTANGIBLES INEFFECTIVE. (a) Except as otherwise provided in Subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor that relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under Section 9.610 or an acceptance of collateral under Section 9.620.

(c) A rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) would impair the creation, attachment, or perfection of a security interest; or

(2) provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor that relates to a

health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in Subsection (c) would be effective under law other than this chapter but is ineffective under Subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) is not enforceable against the person obligated on the promissory note or the account debtor;

(2) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) This section does not apply to an interest in a partnership or limited liability company.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001; Acts 2001, 77th Leg., ch. 705, Sec. 13, eff. June 13, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 61, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 67 (S.B. 782), Sec. 10, eff. July 1, 2013.

Sec. 9.409. RESTRICTIONS ON ASSIGNMENT OF LETTER-OF-CREDIT

RIGHTS INEFFECTIVE. (a) A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit that prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:

(1) would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or

(2) provides that the assignment or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(b) To the extent that a term in a letter of credit is ineffective under Subsection (a) but would be effective under law other than this chapter or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

(1) is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;

(2) imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and

(3) does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001; Acts 2001, 77th Leg., ch. 705, Sec. 14, eff. June 13, 2001.

SUBCHAPTER E. FILING

Sec. 9.501. FILING OFFICE. (a) Except as otherwise provided in Subsection (b), if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(1) the office designated for the filing or recording of a record of a mortgage on the related real property, if:

(A) the collateral is as-extracted collateral or timber to be cut; or

(B) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2) the office of the Secretary of State, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of the Secretary of State. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement that is or is to become fixtures.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.502. CONTENTS OF FINANCING STATEMENT; RECORD OF MORTGAGE AS FINANCING STATEMENT; TIME OF FILING FINANCING STATEMENT. (a) Subject to Subsection (b), a financing statement is sufficient only if it:

(1) provides the name of the debtor;

(2) provides the name of the secured party or a representative of the secured party; and

(3) indicates the collateral covered by the financing statement.

(b) Except as otherwise provided in Section 9.501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or that is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy Subsection (a) and also:

(1) indicate that it covers this type of collateral;

(2) indicate that it is to be filed for record in the real property records;

(3) provide a description of the real property to which the

collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and

(4) if the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) the record indicates the goods or accounts that it covers;

(2) the goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) the record satisfies the requirements for a financing statement in this section, but:

(A) the record need not indicate that it is to be filed in the real property records; and

(B) the record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom Section 9.503(a)(4) or (5) applies; and

(4) the record is duly recorded.

(d) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 67 (S.B. 782), Sec. 11, eff. July 1, 2013.

Sec. 9.503. NAME OF DEBTOR AND SECURED PARTY. (a) A financing statement sufficiently provides the name of the debtor:

(1) except as otherwise provided in Subdivision (3), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing

statement provides the name that is stated to be the registered organization's name on the public organic record most recently filed with or issued or enacted by the registered organization's jurisdiction of organization that purports to state, amend, or restate the registered organization's name;

(2) subject to Subsection (f), if the collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and, in a separate part of the financing statement, indicates that the collateral is being administered by a personal representative;

(3) if the collateral is held in a trust that is not a registered organization, only if the financing statement:

(A) provides, as the name of the debtor:

(i) if the organic record of the trust specifies a name for the trust, the name so specified; or

(ii) if the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and

(B) in a separate part of the financing statement:

(i) if the name is provided in accordance with Paragraph (A)(i), indicates that the collateral is held in a trust; or

(ii) if the name is provided in accordance with Paragraph (A)(ii), provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

(4) subject to Subsection (g), if the debtor is an individual to whom this state has issued a driver's license that has not expired or to whom the agency of this state that issues driver's licenses has issued, in lieu of a driver's license, a personal identification card that has not expired, only if the financing statement provides the name of the individual that is indicated on the driver's license or personal identification card;

(5) if the debtor is an individual to whom Subdivision (4) does not apply, only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor; and

(6) in other cases:

(A) if the debtor has a name, only if it provides the organizational name of the debtor; and

(B) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

(b) A financing statement that provides the name of the debtor in accordance with Subsection (a) is not rendered ineffective by the absence of:

(1) a trade name or other name of the debtor; or

(2) unless required under Subsection (a)(6)(B), names of partners, members, associates, or other persons comprising the debtor.

(c) A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) A financing statement may provide the name of more than one debtor and the name of more than one secured party.

(f) The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the "name of the decedent" under Subsection (a)(2).

(g) If this state has issued to an individual more than one driver's license or, if none, more than one identification card, of a kind described in Subsection (a)(4), the driver's license or identification card, as applicable, that was issued most recently is the one to which Subsection (a)(4) refers.

(h) The "name of the settlor or testator" means:

(1) if the settlor is a registered organization, the name of the registered organization indicated on the public organic record filed with or issued or enacted by the registered organization's jurisdiction of organization; or

(2) in other cases, the name of the settlor or testator indicated in the trust's organic record.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 565 (S.B. 1540), Sec. 1, eff. June 16, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 67 (S.B. 782), Sec. 12, eff. July 1, 2013.

Sec. 9.504. INDICATION OF COLLATERAL. A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

(1) a description of the collateral pursuant to Section 9.108; or

(2) an indication that the financing statement covers all assets or all personal property.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001; Acts 2001, 77th Leg., ch. 705, Sec. 15, eff. June 13, 2001.

Sec. 9.505. FILING AND COMPLIANCE WITH OTHER STATUTES AND TREATIES FOR CONSIGNMENTS, LEASES, OTHER BAILMENTS, AND OTHER TRANSACTIONS. (a) A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in Section 9.311(a), using the terms "consignor," "consignee," "lessor," "lessee," "bailor," "bailee," "licensor," "licensee," "owner," "registered owner," "buyer," or "seller," or words of similar import, instead of the terms "secured party" and "debtor."

(b) This subchapter applies to the filing of a financing statement under Subsection (a) and, as appropriate, to compliance that is equivalent to filing a financing statement under Section 9.311(b), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner, or buyer that attaches to the collateral is perfected by the filing or compliance.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.506. EFFECT OF ERRORS OR OMISSIONS. (a) A financing statement substantially satisfying the requirements of this subchapter is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) Except as otherwise provided in Subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9.503(a) is seriously misleading.

(c) If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with Section 9.503(a), the name provided does not make the financing statement seriously misleading.

(d) For purposes of Section 9.508(b), the "debtor's correct name" in Subsection (c) means the correct name of the new debtor.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.507. EFFECT OF CERTAIN EVENTS ON EFFECTIVENESS OF FINANCING STATEMENT. (a) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Except as otherwise provided in Subsection (c) and Section 9.508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under Section 9.506.

(c) If the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under Section 9.503(a) so that the financing statement becomes seriously misleading under Section 9.506:

(1) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the filed financing statement becomes seriously misleading; and

(2) the financing statement is not effective to perfect a

security interest in collateral acquired by the debtor more than four months after the filed financing statement becomes seriously misleading, unless an amendment to the financing statement that renders the financing statement not seriously misleading is filed within four months after that event.

Amended by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 67 (S.B. 782), Sec. 13, eff. July 1, 2013.

Sec. 9.508. EFFECTIVENESS OF FINANCING STATEMENT IF NEW DEBTOR BECOMES BOUND BY SECURITY AGREEMENT. (a) Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(b) If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under Subsection (a) to be seriously misleading under Section 9.506:

(1) the financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under Section 9.203(d); and

(2) the financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under Section 9.203(d) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

(c) This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under Section 9.507(a).

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.509. PERSONS ENTITLED TO FILE A RECORD. (a) A person

may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) the debtor authorizes the filing in an authenticated record or pursuant to Subsection (b) or (c); or

(2) the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1) the collateral described in the security agreement; and

(2) property that becomes collateral under Section 9.315(a)(2), whether or not the security agreement expressly covers proceeds.

(c) By acquiring collateral in which a security interest or agricultural lien continues under Section 9.315(a)(1), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under Section 9.315(a)(2).

(d) A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(1) the secured party of record authorizes the filing; or

(2) the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by Section 9.513(a) or (c), the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under Subsection (d).

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001. Amended by Acts 2001, 77th Leg., ch. 705, Sec. 16, eff. June 13, 2001.

Sec. 9.510. EFFECTIVENESS OF FILED RECORD. (a) A filed record is effective only to the extent that it was filed by a person that may file it under Section 9.509.

(b) A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) A continuation statement that is not filed within the six-month period prescribed by Section 9.515(d) is ineffective.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.511. SECURED PARTY OF RECORD. (a) A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under Section 9.514(a), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(b) If an amendment of a financing statement that provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under Section 9.514(b), the assignee named in the amendment is a secured party of record.

(c) A person remains a secured party of record until the filing of an amendment of the financing statement that deletes the person.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.512. AMENDMENT OF FINANCING STATEMENT. (a) Subject to Section 9.509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to Subsection (e), otherwise amend the information provided in a financing statement by filing an amendment that:

(1) identifies, by its file number, the initial financing statement to which the amendment relates; and

(2) if the amendment relates to an initial financing statement filed or recorded in a filing office described in Section 9.501(a)(1), provides the information specified in Section 9.502(b).

(b) Except as otherwise provided in Section 9.515, the filing

of an amendment does not extend the period of effectiveness of the financing statement.

(c) A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(d) A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(e) An amendment is ineffective to the extent it:

(1) purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

(2) purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

(f) A secured party may change the name or mailing address of the secured party in more than one financing statement by filing a master amendment setting forth the name of the secured party and file number of each financing statement and the new name or mailing address of the secured party. The secured party must also provide filing information in computer-readable form prescribed by the Secretary of State.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.513. TERMINATION STATEMENT. (a) A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) the debtor did not authorize the filing of the initial financing statement.

(b) To comply with Subsection (a), a secured party shall cause the secured party of record to file the termination statement:

(1) within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make advances, incur an obligation, or otherwise give value; or

(2) if earlier, within 20 days after the secured party

receives an authenticated demand from a debtor.

(c) In cases not governed by Subsection (a), within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2) the financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) the financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) the debtor did not authorize the filing of the initial financing statement.

(d) Except as otherwise provided in Section 9.510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in Section 9.510, for purposes of Sections 9.519(g), 9.522(a), and 9.523(c), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001. Amended by Acts 2001, 77th Leg., ch. 705, Sec. 17, eff. June 13, 2001.

Sec. 9.514. ASSIGNMENT OF POWERS OF SECURED PARTY OF RECORD. (a) Except as otherwise provided in Subsection (c), an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name

and address of the secured party.

(b) Except as otherwise provided in Subsection (c), a secured party of record may assign of record all or a part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement that:

(1) identifies, by its file number, the initial financing statement to which it relates;

(2) provides the name of the assignor; and

(3) provides the name and mailing address of the assignee.

(c) An assignment of record of a security interest in a fixture covered by a record of a mortgage that is effective as a financing statement filed as a fixture filing under Section 9.502(c) may be made only by an assignment of record of the mortgage in the manner provided by law of this state other than this chapter.

(d) A secured party of record may assign of record all of the secured party's rights under more than one financing statement filed with the Secretary of State by filing a master assignment setting forth the name of the secured party of record and file number of each financing statement and the name and mailing address of the assignee. The secured party must also provide filing information in computer-readable form prescribed by the Secretary of State.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.515. DURATION AND EFFECTIVENESS OF FINANCING STATEMENT; EFFECT OF LAPSED FINANCING STATEMENT. (a) Except as otherwise provided in Subsections (b)-(g), a filed financing statement is effective for a period of five years after the date of filing.

(b) Except as otherwise provided in Subsections (e), (f), and (g), an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of 30 years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(c) The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to Subsection (d). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the

financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) A continuation statement may be filed only within six months before the expiration of the five-year period specified in Subsection (a) or the 30-year period specified in Subsection (b), whichever is applicable.

(e) Except as otherwise provided in Section 9.510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in Subsection (c), unless, before the lapse, another continuation statement is filed pursuant to Subsection (d). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) If a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) A record of a mortgage that is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under Section 9.502(c) remains effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001. Amended by Acts 2003, 78th Leg., ch. 917, Sec. 5, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 67 (S.B. 782), Sec. 14, eff. July 1, 2013.

Sec. 9.516. WHAT CONSTITUTES FILING; EFFECTIVENESS OF FILING. (a) Except as otherwise provided in Subsection (b), communication of a record to a filing office and tender of the filing fee or

acceptance of the record by the filing office constitutes filing.

(b) Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) the record is not communicated by a method or medium of communication authorized by the filing office;

(2) an amount equal to or greater than the applicable filing fee is not tendered;

(3) the filing office is unable to index the record because:

(A) in the case of an initial financing statement, the record does not provide a name for the debtor;

(B) in the case of an amendment or information statement, the record:

(i) does not identify the initial financing statement as required by Section 9.512 or 9.518, as applicable; or

(ii) identifies an initial financing statement whose effectiveness has lapsed under Section 9.515;

(C) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual that was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's surname; or

(D) in the case of a record filed or recorded in the filing office described in Section 9.501(a)(1), the record does not provide the name of the debtor and a sufficient description of the real property to which it relates;

(4) in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) in the case of an initial financing statement or an amendment that provides a name of a debtor that was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) provide a mailing address for the debtor; or

(B) indicate whether the name provided as the name of the debtor is the name of an individual or an organization;

(6) in the case of an assignment reflected in an initial financing statement under Section 9.514(a) or an amendment filed under Section 9.514(b), the record does not provide a name and

mailing address for the assignee;

(7) in the case of a continuation statement, the record is not filed within the six-month period prescribed by Section 9.515(d); or

(8) the record is not on an industry standard form, including a national standard form or a form approved by the International Association of Commercial Administrators, adopted by rule by the secretary of state.

(c) For purposes of Subsection (b):

(1) a record does not provide information if the filing office is unable to read or decipher the information; and

(2) a record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by Section 9.512, 9.514, or 9.518, is an initial financing statement.

(d) A record that is communicated to the filing office with tender of the filing fee, but that the filing office refuses to accept for a reason other than one set forth in Subsection (b), is effective as a filed record except as against a purchaser of the collateral that gives value in reasonable reliance upon the absence of the record from the files.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001. Amended by Acts 2003, 78th Leg., ch. 748, Sec. 1, eff. Jan. 1, 2004. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 565 (S.B. 1540), Sec. 2, eff. June 16, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 67 (S.B. 782), Sec. 15, eff. July 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 749 (S.B. 474), Sec. 1, eff. July 1, 2013.

Sec. 9.517. EFFECT OF INDEXING ERRORS. The failure of the filing office to index a record or to correctly index information contained in a record does not affect the effectiveness of the filed record.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 565 (S.B. 1540), Sec. 3, eff.

June 16, 2007.

Sec. 9.518. CLAIM CONCERNING INACCURATE OR WRONGFULLY FILED RECORD. (a) Any person named as a debtor or a secured party may file an information statement with respect to a record if the person believes that the record is inaccurate or was wrongfully filed.

(b) An information statement must:

(1) identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) indicate that it is an information statement; and

(3) provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) The filing of an information statement does not affect the effectiveness of an initial financing statement or other filed record.

(d) Filing of an information statement is not effective as an amendment to a filed financing statement and is not sufficient to effect a change in the manner in which the filing office has indexed a financing statement or information contained in a financing statement.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 565 (S.B. 1540), Sec. 4, eff. June 16, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 67 (S.B. 782), Sec. 16, eff. July 1, 2013.

Sec. 9.5185. FRAUDULENT FILING. (a) A person may not intentionally or knowingly present for filing or cause to be presented for filing a financing statement that the person knows:

(1) is forged;

(2) contains a material false statement; or

(3) is groundless.

(b) A person who violates Subsection (a) is liable to the owner of property covered by the financing statement for:

(1) the greater of $5,000 or the owner's actual damages;

(2) court costs; and

(3) reasonable attorney's fees.

(c) A person who violates Subsection (a) also may be prosecuted under Section 37.101, Penal Code.

(d) An owner of property covered by a fraudulent financing statement described in Subsection (a) also may file suit in a court of suitable jurisdiction requesting specific relief, including, but not limited to, release of the fraudulent financing statement. A successful plaintiff is entitled to reasonable attorney's fees and costs of court assessed against the person who filed the fraudulent financing statement. If the person who filed the fraudulent financing statement cannot be located or is a fictitious person, the owner of the property may serve the known or unknown defendant through publication in a newspaper of general circulation in the county in which the suit is brought.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.519. NUMBERING, MAINTAINING, AND INDEXING RECORDS; COMMUNICATING INFORMATION PROVIDED IN RECORDS. (a) For each record filed in a filing office, the filing office shall:

(1) assign a unique number to the filed record;

(2) create a record that bears the number assigned to the filed record and the date and time of filing;

(3) maintain the filed record for public inspection; and

(4) index the filed record in accordance with Subsections (c), (d), and (e).

(b) Except as provided in Subsection (i), a file number assigned after January 1, 2002, must include a digit that:

(1) is mathematically derived from or related to the other digits of the file number; and

(2) aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error.

(c) Except as otherwise provided in Subsections (d) and (e), the filing office shall:

(1) index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

(2) index a record that provides a name of a debtor that was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(d) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, it must be filed for record and the filing office shall index it:

(1) under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

(2) to the extent that the law of this state provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

(e) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under Section 9.514(a) or an amendment filed under Section 9.514(b):

(1) under the name of the assignor as grantor; and

(2) to the extent that the law of this state provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

(f) The filing office shall maintain a capability:

(1) to retrieve a record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates; and

(2) to associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(g) The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under Section 9.515 with respect to all secured parties of record.

(h) Except as provided in Subsection (i), the filing office shall perform the acts required by Subsections (a)-(e) at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the record in question.

(i) Subsections (b) and (h) do not apply to a filing office described in Section 9.501(a)(1).

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.520. ACCEPTANCE AND REFUSAL TO ACCEPT RECORD. (a) A filing office shall refuse to accept a record for filing for a reason set forth in Section 9.516(b) and may refuse to accept a record for filing only for a reason set forth in Section 9.516(b).

(b) If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule, but in the case of a filing office described in Section 9.501(a)(2), in no event more than two business days after the filing office receives the record.

(c) A filed financing statement satisfying Sections 9.502(a) and (b) is effective, even if the filing office is required to refuse to accept it for filing under Subsection (a). However, Section 9.338 applies to a filed financing statement providing information described in Section 9.516(b)(5) that is incorrect at the time the financing statement is filed.

(d) If a record communicated to a filing office provides information that relates to more than one debtor, this subchapter applies as to each debtor separately.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.5211. UNIFORM FORM OF WRITTEN FINANCING STATEMENT AND AMENDMENT. (a) Except as provided by Section 9.516(b), a filing office that accepts written records may not refuse to accept a written initial financing statement on an industry standard form, including a national standard form or a form approved by the

International Association of Commercial Administrators, adopted by rule by the secretary of state.

(b) Except as provided by Section 9.516(b), a filing office that accepts written records may not refuse to accept a written record on an industry standard form, including a national standard form or a form approved by the International Association of Commercial Administrators, adopted by rule by the secretary of state.

Added by Acts 2003, 78th Leg., ch. 748, Sec. 2, eff. Jan. 1, 2004.

Sec. 9.522. MAINTENANCE AND DESTRUCTION OF RECORDS. (a) The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under Section 9.515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.

(b) Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement that complies with Subsection (a).

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.523. INFORMATION FROM FILING OFFICE; SALE OR LICENSE OF RECORDS. (a) If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to Section 9.519(a)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

(1) note upon the copy the number assigned to the record pursuant to Section 9.519(a)(1) and the date and time of the filing of the record; and

(2) send the copy to the person.

(b) If a person files a record other than a written record, the

filing office shall communicate to the person an acknowledgment that provides:

(1) the information in the record;

(2) the number assigned to the record pursuant to Section 9.519(a)(1); and

(3) the date and time of the filing of the record.

(c) The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

(1) whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:

(A) designates a particular debtor or, if the request so states, designates a particular debtor at the address specified in the request;

(B) has not lapsed under Section 9.515 with respect to all secured parties of record; and

(C) if the request so states, has lapsed under Section 9.515 and a record of which is maintained by the filing office under Section 9.522(a);

(2) the date and time of filing of each financing statement; and

(3) the information provided in each financing statement.

(d) In complying with its duty under Subsection (c), the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing its written certificate.

(e) The filing office shall perform the acts required by Subsections (a)-(d) at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the request.

(f) At least weekly, the Secretary of State shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed with the Secretary under this subchapter, in every medium from time to time available to the Secretary.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.524. DELAY BY FILING OFFICE. Delay by the filing office beyond a time limit prescribed by this subchapter is excused if:

(1) the delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond control of the filing office; and

(2) the filing office exercises reasonable diligence under the circumstances.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.525. FEES. (a) Except as otherwise provided in Subsections (b), (e), and (f), the fee for filing and indexing a record under this subchapter is:

(1) $15 if the record is communicated in writing and consists of one or two pages;

(2) $30 if the record is communicated in writing and consists of more than two pages; and

(3) $5 if the record is communicated by another medium authorized by filing-office rule.

(b) Except as otherwise provided in Subsection (e), the fee for filing and indexing an initial financing statement of the following kinds is:

(1) $60 if the financing statement indicates that it is filed in connection with a public-finance transaction;

(2) $60 if the financing statement indicates that it is filed in connection with a manufactured-home transaction; and

(3) $60 if the debtor is a transmitting utility.

(c) The number of names required to be indexed does not affect the amount of the fee in Subsections (a) and (b).

(d) The fee for responding to a request for information from the filing office, including for communicating whether there is on file any financing statement naming a particular debtor, is:

(1) $15 if the request is communicated in writing; and

(2) an amount established by the filing office if the request is communicated by another medium authorized by filing-office rule.

(e) This section does not require a fee with respect to a record of a mortgage that is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted

collateral or timber to be cut under Section 9.502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

(f) The filing fee for filing, indexing, and furnishing filing data about a statement of master amendment under Section 9.512(f) or master assignment under Section 9.514(d) is $500 plus 50 cents for each financing statement covered by the master statement in excess of 50.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001. Amended by Acts 2001, 77th Leg., ch. 705, Sec. 18, eff. June 13, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 547 (S.B. 1699), Sec. 1, eff. September 1, 2009.

Sec. 9.526. FILING-OFFICE RULES. (a) The Secretary of State shall adopt and publish rules to implement this chapter. The filing-office rules must be consistent with this chapter.

(b) To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this subchapter, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this subchapter, the Secretary of State, so far as is consistent with the purposes, policies, and provisions of this chapter, in adopting, amending, and repealing filing-office rules, shall:

(1) consult with filing offices in other jurisdictions that enact substantially this subchapter;

(2) consult the most recent version of the Model Administrative Rules promulgated by the International Association of Commercial Administrators or any successor organization; and

(3) take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially this subchapter.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 547 (S.B. 1699), Sec. 2, eff.

September 1, 2009.

Sec. 9.527. DUTY TO REPORT. The Secretary of State shall report before January 1 of each odd-numbered year to the Legislature on the operation of the filing office. The report must contain a statement of the extent to which:

(1) the filing-office rules are not in harmony with the rules of filing offices in other jurisdictions that enact substantially this subchapter and the reasons for these variations; and

(2) the filing-office rules are not in harmony with the most recent version of the Model Administrative Rules promulgated by the International Association of Commercial Administrators, or any successor organization, and the reasons for these variations.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 547 (S.B. 1699), Sec. 3, eff. September 1, 2009.

SUBCHAPTER F. DEFAULT

Sec. 9.601. RIGHTS AFTER DEFAULT; JUDICIAL ENFORCEMENT; CONSIGNOR OR BUYER OF ACCOUNTS, CHATTEL PAPER, PAYMENT INTANGIBLES, OR PROMISSORY NOTES. (a) After default, a secured party has the rights provided in this subchapter and, except as otherwise provided in Section 9.602, those provided by agreement of the parties. A secured party:

(1) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) A secured party in possession of collateral or control of collateral under Section 7.106, 9.104, 9.105, 9.106, or 9.107 has the rights and duties provided in Section 9.207.

(c) The rights under Subsections (a) and (b) are cumulative and may be exercised simultaneously.

(d) Except as otherwise provided in Subsection (g) and Section

9.605, after default, a debtor and an obligor have the rights provided in this subchapter and by agreement of the parties.

(e) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) the date of the perfection of the security interest or agricultural lien in the collateral;

(2) the date of filing a financing statement covering the collateral; or

(3) any date specified in a statute under which the agricultural lien was created.

(f) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.

(g) Except as otherwise provided in Section 9.607(c), this subchapter imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001. Amended by:

Acts 2005, 79th Leg., Ch. 122 (S.B. 1593), Sec. 30, eff. September 1, 2005.

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

(1) Section 9.207(b)(4)(C), which deals with use and operation of the collateral by the secured party;

(2) Section 9.210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;

(3) Section 9.607(c), which deals with collection and enforcement of collateral;

(4) Sections 9.608(a) and 9.615(c) to the extent that they

deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(5) Sections 9.608(a) and 9.615(d) to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) Section 9.609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

(7) Sections 9.610(b), 9.611, 9.613, and 9.614, which deal with disposition of collateral;

(8) Section 9.615(f), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;

(9) Section 9.616, which deals with explanation of the calculation of a surplus or deficiency;

(10) Sections 9.620, 9.621, and 9.622, which deal with acceptance of collateral in satisfaction of obligation;

(11) Section 9.623, which deals with redemption of collateral;

(12) Section 9.624, which deals with permissible waivers; and

(13) Sections 9.625 and 9.626, which deal with the secured party's liability for failure to comply with this chapter.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.603. AGREEMENT ON STANDARDS CONCERNING RIGHTS AND DUTIES. (a) The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in Section 9.602 if the standards are not manifestly unreasonable.

(b) Subsection (a) does not apply to the duty under Section 9.609 to refrain from breaching the peace.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.604. PROCEDURE IF SECURITY AGREEMENT COVERS REAL PROPERTY OR FIXTURES. (a) If a security agreement covers both personal and real property, a secured party may proceed:

(1) under this subchapter as to the personal property

without prejudicing any rights with respect to the real property; or

(2) as to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this subchapter do not apply.

(b) Subject to Subsection (c), if a security agreement covers goods that are or become fixtures, a secured party may proceed:

(1) under this subchapter; or

(2) in accordance with the rights with respect to real property, in which case the other provisions of this subchapter do not apply.

(c) Subject to the other provisions of this subchapter, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(d) A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.605. UNKNOWN DEBTOR OR SECONDARY OBLIGOR. A secured party does not owe a duty based on its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.606. TIME OF DEFAULT FOR AGRICULTURAL LIEN. For purposes of this subchapter, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.607. COLLECTION AND ENFORCEMENT BY SECURED PARTY. (a) If so agreed, and in any event after default, a secured party:

(1) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) may take any proceeds to which the secured party is entitled under Section 9.315;

(3) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(4) if it holds a security interest in a deposit account perfected by control under Section 9.104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) if it holds a security interest in a deposit account perfected by control under Section 9.104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) If necessary to enable a secured party to exercise under Subsection (a)(3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) a copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) the secured party's sworn affidavit in recordable form stating that:

(A) a default has occurred with respect to the obligation secured by the mortgage; and

(B) the secured party is entitled to enforce the mortgage nonjudicially.

(c) A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) A secured party may deduct from the collections made pursuant to Subsection (c) reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(e) This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 67 (S.B. 782), Sec. 17, eff. July 1, 2013.

Sec. 9.608. APPLICATION OF PROCEEDS OF COLLECTION OR ENFORCEMENT; LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS. (a) If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under Section 9.607 in the following order to:

(A) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(B) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or

enforcement is made; and

(C) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under Subdivision (1)(C).

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under Section 9.607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001. Amended by Acts 2001, 77th Leg., ch. 705, Sec. 19, eff. June 13, 2001.

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

(1) may take possession of the collateral; and

(2) without removal, may render equipment unusable and dispose of collateral on the debtor's premises under Section 9.610.

(b) A secured party may proceed under Subsection (a):

(1) pursuant to judicial process; or

(2) without judicial process, if it proceeds without breach of the peace.

(c) If so agreed, and in any event after default, a secured

party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party that is reasonably convenient to both parties.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

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

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

(c) A secured party may purchase collateral:

(1) at a public disposition; or

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

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

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

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

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

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

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

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

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

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

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

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

(1) the debtor;

(2) any secondary obligor; and

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

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

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

(i) identified the collateral;

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

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

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

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

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

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

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

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

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

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

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

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

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.613. CONTENTS AND FORM OF NOTIFICATION BEFORE DISPOSITION OF COLLATERAL: GENERAL. Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) describes the debtor and the secured party;

(B) describes the collateral that is the subject of the intended disposition;

(C) states the method of intended disposition;

(D) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) states the time and place of a public disposition

or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in Subdivision (1) are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in Subdivision (1) are sufficient, even if the notification includes:

(A) information not specified by that subdivision; or

(B) minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in Section 9.614(3), when completed, each provide sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

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

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

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

[For a public disposition:]

We will sell [or lease or license, as applicable] the [describe collateral] [to the highest qualified bidder] in public as follows: Day and Date: _____ Time: _____ Place: _____[For a private disposition:]

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

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

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001. Amended by Acts 2001, 77th Leg., ch. 705, Sec. 20, eff. June 13, 2001.

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

(1) A notification of disposition must provide the following information:

(A) the information specified in Section 9.613(1);

(B) a description of any liability for a deficiency of the person to which the notification is sent;

(C) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under Section 9.623 is available; and

(D) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed, provides sufficient information:

_____ [Name and address of secured party]

_____ [Date]

NOTICE OF OUR PLAN TO SELL PROPERTY

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

Subject: _____ [Identification of Transaction]

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

[For a public disposition:]

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

Date:_____

Time:_____

Place:_____

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

[For a private disposition:]

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

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

You can get the property back at any time before we sell it by paying

us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at _____[telephone number].

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

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

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

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

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

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

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

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.615. APPLICATION OF PROCEEDS OF DISPOSITION; LIABILITY FOR DEFICIENCY AND RIGHT TO SURPLUS. (a) A secured party shall apply or pay over for application the cash proceeds of disposition under Section 9.610 in the following order to:

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

(2) the satisfaction of obligations secured by the security

interest or agricultural lien under which the disposition is made;

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

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

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

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

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

(c) A secured party need not apply or pay over for application noncash proceeds of disposition under Section 9.610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

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

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

(2) the obligor is liable for any deficiency.

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

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

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

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

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

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

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

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

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

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

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001. Amended by Acts 2001, 77th Leg., ch. 705, Sec. 21, eff. June 13, 2001.

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

(1) "Explanation" means a writing that:

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

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

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

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

(2) "Request" means a record:

(A) authenticated by a debtor or consumer obligor;

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

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

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

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

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

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

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

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

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

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

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

(2) the amount of proceeds of the disposition;

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

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

(5) the amount, in the aggregate or by type, and types of

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

(6) the amount of the surplus or deficiency.

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

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

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.617. RIGHTS OF TRANSFEREE OF COLLATERAL. (a) A secured party's disposition of collateral after default:

(1) transfers to a transferee for value all of the debtor's rights in the collateral;

(2) discharges the security interest under which the disposition is made; and

(3) discharges any subordinate security interest or other subordinate lien.

(b) A transferee that acts in good faith takes free of the rights and interests described in Subsection (a), even if the secured party fails to comply with this chapter or the requirements of any judicial proceeding.

(c) If a transferee does not take free of the rights and interests described in Subsection (a), the transferee takes the collateral subject to:

(1) the debtor's rights in the collateral;

(2) the security interest or agricultural lien under which the disposition is made; and

(3) any other security interest or other lien.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.618. RIGHTS AND DUTIES OF CERTAIN SECONDARY OBLIGORS. (a) A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

(1) receives an assignment of a secured obligation from the secured party;

(2) receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(3) is subrogated to the rights of a secured party with respect to collateral.

(b) An assignment, transfer, or subrogation described in Subsection (a):

(1) is not a disposition of collateral under Section 9.610; and

(2) relieves the secured party of further duties under this chapter.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.619. TRANSFER OF RECORD OR LEGAL TITLE. (a) In this section, "transfer statement" means a record authenticated by a secured party stating:

(1) that the debtor has defaulted in connection with an obligation secured by specified collateral;

(2) that the secured party has exercised its post-default remedies with respect to the collateral;

(3) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

(4) the name and mailing address of the secured party, debtor, and transferee.

(b) A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

(1) accept the transfer statement;

(2) promptly amend its records to reflect the transfer;

and

(3) if applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) A transfer of the record or legal title to collateral to a secured party under Subsection (b) or otherwise is not of itself a disposition of collateral under this chapter and does not of itself relieve the secured party of its duties under this chapter.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

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

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

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

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

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

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

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

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

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

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

(c) For purposes of this section:

(1) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor

agrees to the terms of the acceptance in a record authenticated after default; and

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

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

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

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

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

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

(2) in other cases:

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

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

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

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

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

(f) To comply with Subsection (e), the secured party shall dispose of the collateral:

(1) within 90 days after taking possession; or

(2) within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

(g) In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

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

(1) any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;

(2) any other secured party or lienholder that, 10 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(A) identified the collateral;

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

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

(3) any other secured party that, 10 days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Section 9.311(a).

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

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

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

(1) discharges the obligation to the extent consented to by the debtor;

(2) transfers to the secured party all of a debtor's rights in the collateral;

(3) discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate

security interest or other subordinate lien; and

(4) terminates any other subordinate interest.

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

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

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

(b) To redeem collateral, a person shall tender:

(1) fulfillment of all obligations secured by the collateral; and

(2) the reasonable expenses and attorneys' fees described in Section 9.615(a)(1).

(c) A redemption may occur at any time before a secured party:

(1) has collected collateral under Section 9.607;

(2) has disposed of collateral or entered into a contract for its disposition under Section 9.610; or

(3) has accepted collateral in full or partial satisfaction of the obligation it secures under Section 9.622.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

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

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

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

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.625. REMEDIES FOR SECURED PARTY'S FAILURE TO COMPLY WITH CHAPTER. (a) If it is established that a secured party is not proceeding in accordance with this chapter, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) Subject to Subsections (c), (d), and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this chapter. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) Except as otherwise provided in Section 9.628:

(1) a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under Subsection (b) for its loss; and

(2) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this subchapter may recover for that failure in any event an amount not less than the credit service charge plus 10 percent of the principal amount of the obligation or the time price differential plus 10 percent of the cash price.

(d) A debtor whose deficiency is eliminated under Section 9.626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under Section 9.626 may not otherwise recover under Subsection (b) for noncompliance with the provisions of this subchapter relating to collection, enforcement, disposition, or acceptance.

(e) In addition to any damages recoverable under Subsection (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover $500 in each case from a person that:

(1) fails to comply with Section 9.208;

(2) fails to comply with Section 9.209;

(3) files a record that the person is not entitled to file under Section 9.509(a);

(4) fails to cause the secured party of record to file or send a termination statement as required by Section 9.513(a) or (c);

(5) fails to comply with Section 9.616(b)(1) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(6) fails to comply with Section 9.616(b)(2).

(f) A debtor or consumer obligor may recover damages under Subsection (b) and, in addition, $500 in each case from a person that, without reasonable cause, fails to comply with a request under Section 9.210. A recipient of a request under Section 9.210 that never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under Section 9.210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001. Amended by Acts 2001, 77th Leg., ch. 705, Sec. 22, eff. June 13, 2001.

Sec. 9.626. ACTION IN WHICH DEFICIENCY OR SURPLUS IS IN ISSUE. (a) In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) A secured party need not prove compliance with the provisions of this subchapter relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this subchapter.

(3) Except as otherwise provided in Section 9.628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this subchapter relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:

(A) the proceeds of the collection, enforcement, disposition, or acceptance; or

(B) the amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this subchapter relating to collection, enforcement, disposition, or acceptance.

(4) For purposes of Subdivision (3)(B), the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.

(5) If a deficiency or surplus is calculated under Section 9.615(f), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(b) The limitation of the rules in Subsection (a) to transactions other than consumer transactions is intended to leave to the court the determination of the proper rules in consumer transactions. The court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.627. DETERMINATION OF WHETHER CONDUCT WAS COMMERCIALLY REASONABLE. (a) The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(b) A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(1) in the usual manner on any recognized market;

(2) at the price current in any recognized market at the time of the disposition; or

(3) otherwise in conformity with reasonable commercial

practices among dealers in the type of property that was the subject of the disposition.

(c) A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

(1) in a judicial proceeding;

(2) by a bona fide creditors' committee;

(3) by a representative of creditors; or

(4) by an assignee for the benefit of creditors.

(d) Approval under Subsection (c) need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

Sec. 9.628. NONLIABILITY AND LIMITATION ON LIABILITY OF SECURED PARTY; LIABILITY OF SECONDARY OBLIGOR. (a) Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this chapter; and

(2) the secured party's failure to comply with this chapter does not affect the liability of the person for a deficiency.

(b) A secured party is not liable because of its status as secured party:

(1) to a person that is a debtor or obligor, unless the secured party knows:

(A) that the person is a debtor or obligor;

(B) the identity of the person; and

(C) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) that the person is a debtor; and

(B) the identity of the person.

(c) A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured

party's belief is based on its reasonable reliance on:

(1) a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) A secured party is not liable to any person under Section 9.625(c)(2) for its failure to comply with Section 9.616.

(e) A secured party is not liable under Section 9.625(c)(2) more than once with respect to any one secured obligation.

Added by Acts 1999, 76th Leg., ch. 414, Sec. 1.01, eff. July 1, 2001.

SUBCHAPTER G. TRANSITION PROVISIONS

Sec. 9.701. EFFECTIVE DATE OF REVISIONS. (a) In this subchapter, "revision" means the revision of this chapter enacted by the 76th Legislature, Regular Session, 1999.

(b) The revision takes effect July 1, 2001.

Reenacted from Acts 1999, 76th Leg., ch. 414 and amended by Acts 2001, 77th Leg., ch. 705, Sec. 23, eff. June 13, 2001.

Sec. 9.702. SAVING CLAUSE. (a) Except as otherwise provided in this subchapter, this chapter, as revised, applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before the revision takes effect.

(b) Except as otherwise provided in Subsection (c) and Sections 9.703-9.709:

(1) transactions and liens that were not governed by this chapter, as it existed immediately before the effective date of the revision, were validly entered into or created before the effective date of the revision, and would be subject to this chapter, as revised, if they had been entered into or created on or after the effective date of the revision, and the rights, duties, and interests flowing from those transactions and liens remain valid on and after the effective date of the revision; and

(2) the transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by this chapter, as revised, or by the law that otherwise would apply if the revision had not taken effect.

(c) The revision does not affect an action, case, or proceeding commenced before the effective date of the revision.

Reenacted from Acts 1999, 76th Leg., ch. 414, Sec. 3.02 and amended by Acts 2001, 77th Leg., ch. 705, Sec. 23, eff. June 13, 2001.

Sec. 9.703. SECURITY INTEREST PERFECTED BEFORE EFFECTIVE DATE. (a) A security interest that is enforceable immediately before the effective date of the revision and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this chapter, as revised, if, on the effective date of the revision, the applicable requirements for enforceability and perfection under this chapter, as revised, are satisfied without further action.

(b) Except as otherwise provided in Section 9.705, if, immediately before the revision takes effect, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under this chapter, as revised, are not satisfied when the revision takes effect, the security interest:

(1) is a perfected security interest until July 1, 2002;

(2) remains enforceable after June 30, 2002, only if the security interest becomes enforceable under Section 9.203, as revised, before July 1, 2002; and

(3) remains perfected after June 30, 2002, only if the applicable requirements for perfection under this chapter, as revised, are satisfied before July 1, 2002.

Reenacted from Acts 1999, 76th Leg., ch. 414, Sec. 3.03 and amended by Acts 2001, 77th Leg., ch. 705, Sec. 23, eff. June 13, 2001.

Sec. 9.704. SECURITY INTEREST UNPERFECTED BEFORE EFFECTIVE DATE. A security interest that is enforceable immediately before the revision takes effect but that would be subordinate to the rights of a person that becomes a lien creditor at that time:

(1) remains an enforceable security interest until July 1, 2002;

(2) remains enforceable after June 30, 2002, if the security interest becomes enforceable under Section 9.203, as

revised, before July 1, 2002; and

(3) becomes perfected:

(A) without further action, when the revision takes effect, if the applicable requirements for perfection under this chapter, as revised, are satisfied before or at that time; or

(B) when the applicable requirements for perfection are satisfied if the requirements are satisfied after the revision takes effect.

Reenacted from Acts 1999, 76th Leg., ch. 414, Sec. 3.04 and amended by Acts 2001, 77th Leg., ch. 705, Sec. 23, eff. June 13, 2001.

Sec. 9.705. EFFECTIVENESS OF ACTION TAKEN BEFORE EFFECTIVE DATE. (a) If action, other than the filing of a financing statement, is taken before the revision takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before the revision takes effect, the action is effective to perfect a security interest that attaches under this chapter, as revised, within one year after the effective date of the revision. An attached security interest becomes unperfected on July 1, 2002, unless the security interest becomes a perfected security interest under this chapter, as revised, before that date.

(b) The filing of a financing statement before the effective date of the revision is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this chapter, as revised.

(c) The revision does not render ineffective an effective financing statement that, before the effective date of the revision, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in Section 9.103, as it existed immediately before the effective date of the revision. However, except as otherwise provided in Subsections (d), (e), and (g) and Section 9.706, the financing statement ceases to be effective at the earlier of:

(1) the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(2) June 30, 2006.

(d) The filing of a continuation statement after the revision takes effect does not continue the effectiveness of the financing statement filed before the revision takes effect. However, upon the timely filing of a continuation statement after the revision takes effect and in accordance with the law of the jurisdiction governing perfection as provided in Subchapter C, as revised, the effectiveness of a financing statement filed in the same office in that jurisdiction before the revision takes effect continues for the period provided by the law of that jurisdiction.

(e) Subsection (c)(2) applies to a financing statement that, before the revision takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in Section 9.103, as it existed immediately before the effective date of the revision, only to the extent that Subchapter C, as revised, provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) A financing statement that includes a financing statement filed before the revision takes effect and a continuation statement filed after the revision takes effect is effective only to the extent that it satisfies the requirements of Subchapter E, as revised, for an initial financing statement.

(g) Subsection (c)(2) does not apply to a financing statement that was filed before July 1, 2001, in the proper office in this state pursuant to Section 9.401, as that section existed immediately before July 1, 2001, and as to which the proper filing office was not changed pursuant to Section 9.501 of the revision. The lapse date of such a financing statement is the day when the financing statement would have ceased to be effective under Section 9.403(b), as that section existed immediately before July 1, 2001. On timely filing of a continuation statement within six months before that lapse date, the effectiveness of the financing statement continues for another period of five years commencing on the lapse date, and succeeding continuation statements may be filed within six months before the expiration of the five-year period and each additional five-year period to continue the effectiveness of the financing statement.

Reenacted from Acts 1999, 76th Leg., ch. 414, Sec. 3.05 and amended

by Acts 2001, 77th Leg., ch. 705, Sec. 23, eff. June 13, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 565 (S.B. 1540), Sec. 5, eff. June 16, 2007.

Sec. 9.706. WHEN INITIAL FINANCING STATEMENT SUFFICES TO CONTINUE EFFECTIVENESS OF FINANCING STATEMENT. (a) The filing of an initial financing statement in the office specified in Section 9.501, as revised, continues the effectiveness of a financing statement filed before the revision takes effect if:

(1) the filing of an initial financing statement in that office would be effective to perfect a security interest under this chapter, as revised;

(2) the pre-effective-date financing statement was filed in an office in another state or another office in this state; and

(3) the initial financing statement satisfies Subsection (c).

(b) The filing of an initial financing statement under Subsection (a) continues the effectiveness of the pre-effective-date financing statement:

(1) if the initial financing statement is filed before the revision takes effect, for the period provided in Section 9.403, as it existed immediately before the effective date of the revision, with respect to a financing statement; and

(2) if the initial financing statement is filed after the revision takes effect, for the period provided in Section 9.515, as revised, with respect to an initial financing statement.

(c) To be effective for purposes of Subsection (a), an initial financing statement must:

(1) satisfy the requirements of Subchapter E, as revised, for an initial financing statement;

(2) identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) indicate that the pre-effective-date financing statement remains effective.

Reenacted from Acts 1999, 76th Leg., ch. 414, Sec. 3.06 and amended by Acts 2001, 77th Leg., ch. 705, Sec. 23, eff. June 13, 2001.

Sec. 9.707. AMENDMENT OF PRE-EFFECTIVE-DATE FINANCING STATEMENT. (a) In this section, "pre-effective-date financing statement" means a financing statement filed before the revision takes effect.

(b) After the revision takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in Subchapter C. However, the effectiveness of a pre-effective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Except as otherwise provided in Subsection (d), if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after the revision takes effect only if:

(1) the pre-effective-date financing statement and an amendment are filed in the office specified in Section 9.501;

(2) an amendment is filed in the office specified in Section 9.501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies Section 9.706(c); or

(3) an initial financing statement that provides the information as amended and satisfies Section 9.706(c) is filed in the office specified in Section 9.501.

(d) If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under Sections 9.705(d) and (f) or Section 9.706.

(e) Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated after the revision takes effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies Section 9.706(c) has been filed in the office specified by the law of the jurisdiction

governing perfection as provided in Subchapter C as the office in which to file a financing statement.

Reenacted from Acts 1999, 76th Leg., ch. 414, and amended by Acts 2001, 77th Leg., ch. 705, Sec. 23, eff. June 13, 2001.

Sec. 9.708. PERSONS ENTITLED TO FILE INITIAL FINANCING STATEMENT OR CONTINUATION STATEMENT. A person may file an initial financing statement or a continuation statement under this subchapter if:

(1) the secured party of record authorizes the filing; and

(2) the filing is necessary under this subchapter:

(A) to continue the effectiveness of a financing statement filed before the revision takes effect; or

(B) to perfect or continue the perfection of a security interest.

Reenacted from Acts 1999, 7th Leg., ch. 414, Sec. 3.07 and amended by Acts 2001, 77th Leg., ch. 705, Sec. 23, eff. June 13, 2001.

Sec. 9.709. PRIORITY. (a) This chapter, as revised, determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before the revision takes effect, this chapter, as it existed before the effective date of the revision, determines priority.

(b) For purposes of Section 9.322(a), as revised, the priority of a security interest that becomes enforceable under Section 9.203, as revised, dates from the time the revision takes effect if the security interest is perfected under this chapter, as revised, by the filing of a financing statement before the revision takes effect that would not have been effective to perfect the security interest under this chapter, as it existed immediately before the effective date of the revision. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.

Reenacted from Acts 1999, 76th Leg., ch. 414, Sec. 3.08 and amended by Acts 2001, 77th Leg., ch. 705, Sec. 23, eff. June 13, 2001.

SUBCHAPTER H. TRANSITION PROVISIONS FOR 2013 AMENDMENTS

Sec. 9.801. EFFECTIVE DATE OF AMENDMENTS. (a) In this subchapter, "2013 amendments" means the amendments to this chapter enacted by the Act of the 82nd Legislature, Regular Session, 2011, that enacted this subchapter.

(b) The 2013 amendments take effect July 1, 2013.

Added by Acts 2011, 82nd Leg., R.S., Ch. 67 (S.B. 782), Sec. 18, eff. July 1, 2013.

Sec. 9.802. SAVING CLAUSE. (a) Except as otherwise provided in this subchapter, the 2013 amendments apply to a transaction or lien within its scope, even if the transaction or lien was entered into or created before July 1, 2013.

(b) The 2013 amendments do not affect an action, case, or proceeding commenced before July 1, 2013.

Added by Acts 2011, 82nd Leg., R.S., Ch. 67 (S.B. 782), Sec. 18, eff. July 1, 2013.

Sec. 9.803. SECURITY INTEREST PERFECTED BEFORE EFFECTIVE DATE. (a) A security interest that is a perfected security interest immediately before July 1, 2013, is a perfected security interest under this chapter, as amended by the 2013 amendments, if, when the 2013 amendments take effect, the applicable requirements for attachment and perfection under this chapter, as amended by the 2013 amendments, are satisfied without further action.

(b) Except as otherwise provided in Section 9.805, if, immediately before July 1, 2013, a security interest is a perfected security interest, but the applicable requirements for perfection under this chapter, as amended by the 2013 amendments, are not satisfied when the 2013 amendments take effect, the security interest remains perfected thereafter only if the applicable requirements for perfection under this chapter, as amended by the 2013 amendments, are satisfied within one year after the 2013 amendments take effect.

Added by Acts 2011, 82nd Leg., R.S., Ch. 67 (S.B. 782), Sec. 18, eff. July 1, 2013.

Sec. 9.804. SECURITY INTEREST UNPERFECTED BEFORE EFFECTIVE DATE. A security interest that is an unperfected security interest immediately before July 1, 2013, becomes a perfected security interest:

(1) without further action, when the 2013 amendments take effect if the applicable requirements for perfection under this chapter, as amended by the 2013 amendments, are satisfied before or at that time; or

(2) when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

Added by Acts 2011, 82nd Leg., R.S., Ch. 67 (S.B. 782), Sec. 18, eff. July 1, 2013.

Sec. 9.805. EFFECTIVENESS OF ACTION TAKEN BEFORE EFFECTIVE DATE. (a) The filing of a financing statement before the 2013 amendments take effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this chapter, as amended by the 2013 amendments.

(b) The 2013 amendments do not render ineffective an effective financing statement that, before July 1, 2013, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this chapter as it existed before amendment. However, except as otherwise provided in Subsections (c) and (d) and Section 9.806, the financing statement ceases to be effective:

(1) if the financing statement is filed in this state, at the time the financing statement would have ceased to be effective had the 2013 amendments not taken effect; or

(2) if the financing statement is filed in another jurisdiction, at the earlier of:

(A) the time the financing statement would have ceased to be effective under the law of that jurisdiction; or

(B) June 30, 2018.

(c) The filing of a continuation statement after the 2013 amendments take effect does not continue the effectiveness of the financing statement filed before July 1, 2013. However, on the timely filing of a continuation statement after the 2013 amendments take effect and in accordance with the law of the jurisdiction

governing perfection as provided in this chapter, as amended by the 2013 amendments, the effectiveness of a financing statement filed in the same office in that jurisdiction before the 2013 amendments take effect continues for the period provided by the law of that jurisdiction.

(d) Subsection (b)(2)(B) applies to a financing statement that, before July 1, 2013, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this chapter as it existed before amendment, only to the extent that this chapter, as amended by the 2013 amendments, provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(e) A financing statement that includes a financing statement filed before the 2013 amendments take effect and a continuation statement filed after the 2013 amendments take effect is effective only to the extent that it satisfies the requirements of Subchapter E, as amended by the 2013 amendments, for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of Section 9.503(a)(2), as amended by the 2013 amendments. A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of Section 9.503(a)(3), as amended by the 2013 amendments.

Added by Acts 2011, 82nd Leg., R.S., Ch. 67 (S.B. 782), Sec. 18, eff. July 1, 2013.

Sec. 9.806. WHEN INITIAL FINANCING STATEMENT SUFFICES TO CONTINUE EFFECTIVENESS OF FINANCING STATEMENT. (a) The filing of an initial financing statement in the office specified in Section 9.501 continues the effectiveness of a financing statement filed before July 1, 2013, if:

(1) the filing of an initial financing statement in that office would be effective to perfect a security interest under this chapter, as amended by the 2013 amendments;

(2) the pre-effective-date financing statement was filed in an office in another state; and

(3) the initial financing statement satisfies Subsection (c).

(b) The filing of an initial financing statement under Subsection (a) continues the effectiveness of the pre-effective-date financing statement:

(1) if the initial financing statement is filed before July 1, 2013, for the period provided in unamended Section 9.515 with respect to an initial financing statement; and

(2) if the initial financing statement is filed after the 2013 amendments take effect, for the period provided in Section 9.515, as amended by the 2013 amendments, with respect to an initial financing statement.

(c) To be effective for purposes of Subsection (a), an initial financing statement must:

(1) satisfy the requirements of Subchapter E, as amended by the 2013 amendments, for an initial financing statement;

(2) identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) indicate that the pre-effective-date financing statement remains effective.

Added by Acts 2011, 82nd Leg., R.S., Ch. 67 (S.B. 782), Sec. 18, eff. July 1, 2013.

Sec. 9.807. AMENDMENT OF PRE-EFFECTIVE-DATE FINANCING STATEMENT. (a) In this section, "pre-effective-date financing statement" means a financing statement filed before July 1, 2013.

(b) After the 2013 amendments take effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a pre-effective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in this chapter, as amended by the 2013 amendments. However, the effectiveness of a pre-effective-date financing statement also may be terminated in

accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Except as otherwise provided in Subsection (d), if the law of this state governs perfection of a security interest, the information in a pre-effective-date financing statement may be amended after the 2013 amendments take effect only if:

(1) the pre-effective-date financing statement and an amendment are filed in the office specified in Section 9.501;

(2) an amendment is filed in the office specified in Section 9.501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies Section 9.806(c); or

(3) an initial financing statement that provides the information as amended and satisfies Section 9.806(c) is filed in the office specified in Section 9.501.

(d) If the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement may be continued only under Sections 9.805(c) and (e) or Section 9.806.

(e) Whether or not the law of this state governs perfection of a security interest, the effectiveness of a pre-effective-date financing statement filed in this state may be terminated after the 2013 amendments take effect by filing a termination statement in the office in which the pre-effective-date financing statement is filed, unless an initial financing statement that satisfies Section 9.806(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in this chapter, as amended by the 2013 amendments, as the office in which to file a financing statement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 67 (S.B. 782), Sec. 18, eff. July 1, 2013.

Sec. 9.808. PERSON ENTITLED TO FILE INITIAL FINANCING STATEMENT OR CONTINUATION STATEMENT. A person may file an initial financing statement or a continuation statement under this subchapter if:

(1) the secured party of record authorizes the filing; and

(2) the filing is necessary under this subchapter:

(A) to continue the effectiveness of a financing

statement filed before July 1, 2013; or

(B) to perfect or continue the perfection of a security interest.

Added by Acts 2011, 82nd Leg., R.S., Ch. 67 (S.B. 782), Sec. 18, eff. July 1, 2013.

Sec. 9.809. PRIORITY. The 2013 amendments determine the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before July 1, 2013, this chapter as it existed before amendment determines priority.

Added by Acts 2011, 82nd Leg., R.S., Ch. 67 (S.B. 782), Sec. 18, eff. July 1, 2013.

TITLE 2. COMPETITION AND TRADE PRACTICES

CHAPTER 15. MONOPOLIES, TRUSTS AND CONSPIRACIES IN RESTRAINT OF TRADE

SUBCHAPTER A. GENERAL PROVISIONS AND PROHIBITED RESTRAINTS

Sec. 15.01. TITLE OF ACT. This Act shall be known and may be cited as the Texas Free Enterprise and Antitrust Act of 1983.

Amended by Acts 1983, 68th Leg., p. 3010, ch. 519, Sec. 1, eff. Aug. 29, 1983.

Sec. 15.02. APPLICABILITY OF PROVISIONS. (a) The provisions of this Act are cumulative of each other and of any other provision of law of this state in effect relating to the same subject. Among other things, the provisions of this Act preserve the constitutional and common law authority of the attorney general to bring actions under state and federal law.

(b) If any of the provisions of this Act are held invalid, the remainder shall not be affected as a result; nor shall the application of the provision held invalid to persons or circumstances other than those as to which it is held invalid be affected as a result.

Amended by Acts 1983, 68th Leg., p. 3010, ch. 519, Sec. 1, eff. Aug.

29, 1983.

Sec. 15.03. DEFINITIONS. Except as otherwise provided in Subsection (a) of Section 15.10 of this Act, for purposes of this Act:

(1) The term "attorney general" means the Attorney General of Texas or any assistant attorney general acting under the direction of the Attorney General of Texas.

(2) The term "goods" means any property, tangible or intangible, real, personal, or mixed, and any article, commodity, or other thing of value, including insurance.

(3) The term "person" means a natural person, proprietorship, partnership, corporation, municipal corporation, association, or any other public or private group, however organized, but does not include the State of Texas, its departments, and its administrative agencies or a community center operating under Subchapter A, Chapter 534, Health and Safety Code.

(4) The term "services" means any work or labor, including without limitation work or labor furnished in connection with the sale, lease, or repair of goods.

(5) The terms "trade" and "commerce" mean the sale, purchase, lease, exchange, or distribution of any goods or services; the offering for sale, purchase, lease, or exchange of any goods or services; the advertising of any goods or services; the business of insurance; and all other economic activity undertaken in whole or in part for the purpose of financial gain involving or relating to any goods or services.

Amended by Acts 1983, 68th Leg., p. 3010, ch. 519, Sec. 1, eff. Aug. 29, 1983; Acts 1991, 72nd Leg., ch. 242, Sec. 6.01, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 601, Sec. 2, eff. Sept. 1, 1995.

Sec. 15.04. PURPOSE AND CONSTRUCTION. The purpose of this Act is to maintain and promote economic competition in trade and commerce occurring wholly or partly within the State of Texas and to provide the benefits of that competition to consumers in the state. The provisions of this Act shall be construed to accomplish this purpose and shall be construed in harmony with federal judicial

interpretations of comparable federal antitrust statutes to the extent consistent with this purpose.

Amended by Acts 1983, 68th Leg., p. 3010, ch. 519, Sec. 1, eff. Aug. 29, 1983; Acts 1991, 72nd Leg., ch. 242, Sec. 6.02, eff. Sept. 1, 1991.

Sec. 15.05. UNLAWFUL PRACTICES. (a) Every contract, combination, or conspiracy in restraint of trade or commerce is unlawful.

(b) It is unlawful for any person to monopolize, attempt to monopolize, or conspire to monopolize any part of trade or commerce.

(c) It is unlawful for any person to sell, lease, or contract for the sale or lease of any goods, whether patented or unpatented, for use, consumption, or resale or to fix a price for such use, consumption, or resale or to discount from or rebate upon such price, on the condition, agreement, or understanding that the purchaser or lessee shall not use or deal in the goods of a competitor or competitors of the seller or lessor, where the effect of the condition, agreement, or understanding may be to lessen competition substantially in any line of trade or commerce.

(d) It is unlawful for any person to acquire, directly or indirectly, the whole or any part of the stock or other share capital or the assets of any other person or persons, where the effect of such acquisition may be to lessen competition substantially in any line of trade or commerce.

This subsection shall not be construed:

(1) to prohibit the purchase of stock or other share capital of another person where the purchase is made solely for investment and does not confer control of that person in a manner that could substantially lessen competition;

(2) to prevent a corporation from forming subsidiary or parent corporations for the purpose of conducting its immediately lawful business, or any natural and legitimate branch extensions of such business, or from owning and holding all or a part of the stock or other share capital of a subsidiary, or transferring all or part of its stock or other share capital to be owned and held by a parent, where the effect of such a transaction is not to lessen competition substantially;

(3) to affect or impair any right previously legally acquired; or

(4) to apply to transactions duly consummated pursuant to authority given by any statute of this state or of the United States or pursuant to authority or approval given by any regulatory agency of this state or of the United States under any constitutional or statutory provisions vesting the agency with such power.

(e) It is unlawful for an employer and a labor union or other organization to agree or combine so that:

(1) a person is denied the right to work for an employer because of membership or nonmembership in the labor union or other organization; or

(2) membership or nonmembership in the labor union or other organization is made a condition of obtaining or keeping a job with the employer.

(f) It is not unlawful for:

(1) employees to agree to quit their employment or to refuse to deal with tangible personal property of their immediate employer, unless their refusal to deal with tangible personal property of their immediate employer is intended to induce or has the effect of inducing that employer to refrain from buying or otherwise acquiring tangible personal property from a person; or

(2) persons to agree to refer for employment a migratory worker who works on seasonal crops if the referral is made irrespective of whether or not the worker belongs to a labor union or organization.

(g) Nothing in this section shall be construed to prohibit activities that are exempt from the operation of the federal antitrust laws, 15 U.S.C. Section 1 et seq., except that an exemption otherwise available under the McCarran-Ferguson Act (15 U.S.C. Sections 1011-1015) does not serve to exempt activities under this Act. Nothing in this section shall apply to actions required or affirmatively approved by any statute of this state or of the United States or by a regulatory agency of this state or of the United States duly acting under any constitutional or statutory authority vesting the agency with such power.

(h) In any lawsuit alleging a contract, combination, or conspiracy to fix prices, evidence of uniform prices alone shall not be sufficient to establish a violation of Subsection (a) of Section 15.05.

(i) In determining whether a restraint related to the sale or delivery of professional services is reasonable, except in cases involving price fixing, or other per se violations, the court may consider, but shall not reach its decision solely on the basis of, criteria which include: (1) whether the activities involved maintain or improve the quality of such services to benefit the public interest; (2) whether the activities involved limit or reduce the cost of such services to benefit the public interest. For purposes of this subsection, the term "professional services" means services performed by any licensed accountant, physician, or professional engineer in connection with his or her professional employment or practice.

Amended by Acts 1983, 68th Leg., p. 3010, ch. 519, Sec. 1, eff. Aug. 29, 1983; Acts 1991, 72nd Leg., ch. 242, Sec. 6.02, eff. Sept. 1, 1991.

SUBCHAPTER B. PROCEDURE AND EVIDENCE

Sec. 15.10. CIVIL INVESTIGATIVE DEMANDS. (a) Definitions. For purposes of this section:

(1) The terms "antitrust investigation" and "investigation" mean any inquiry conducted by the attorney general for the purpose of ascertaining whether any person is or has been engaged in or is actively preparing to engage in activities which may constitute an antitrust violation.

(2) The term "antitrust violation" means any act or omission in violation of any of the prohibitions contained in Section 15.05 of this Act or in violation of any of the antitrust laws set forth in Subsection (a) of Section 12 of Title 15, the United States Code.

(3) The terms "civil investigative demand" and "demand" mean any demand issued by the attorney general under Subsection (b) of this section.

(4) The terms "documentary material" and "material" include the original or any identical copy and all nonidentical copies of any contract, agreement, book, booklet, brochure, pamphlet, catalog, magazine, notice, announcement, circular, bulletin, instruction, minutes, agenda, study, analysis, report, graph, map, chart, table, schedule, note, letter, telegram, telephone or other message, product

of discovery, magnetic or electronic recording, and any other written, printed, or recorded matter.

(5) The term "person" means a natural person, proprietorship, partnership, corporation, municipal corporation, association, or any other public or private group, however organized, and includes any person acting under color or authority of state law.

(6) The term "product of discovery" includes without limitation the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature; any digest, analysis, selection, compilation, or other derivation thereof, and any index or manner of access thereto.

(b) Authority to Issue Demand. Whenever the attorney general has reason to believe that any person may be in possession, custody, or control of any documentary material or may have any information relevant to a civil antitrust investigation, the attorney general may, prior to the institution of a civil proceeding, issue in writing and serve upon such person a civil investigative demand requiring the person to produce such documentary material for inspection and copying, to answer in writing written interrogatories, to give oral testimony, or to provide any combination of such material, answers, and testimony; provided, however, that the attorney general may not issue and serve a demand for documentary material upon a proprietorship or partnership whose annual gross income does not exceed $5 million.

(c) Contents of Demand.

(1) Each demand shall describe the nature of the activities that are the subject of the investigation and shall set forth each statute and section of that statute that may have been or may be violated as a result of such activities. Each demand shall advise the person upon whom the demand is to be served that the person has the right to object to the demand as provided for in this section.

(2) Each demand for production of documentary material shall:

(A) describe the class or classes of material to be produced with reasonable specificity so that the material demanded is fairly identified;

(B) prescribe a return date or dates which will provide a reasonable period of time within which the material is to be

produced; and

(C) identify the individual or individuals acting on behalf of the attorney general to whom the material is to be made available for inspection and copying.

(3) Each demand for answers to written interrogatories shall:

(A) propound the interrogatories with definiteness and certainty;

(B) prescribe a date or dates by which answers to interrogatories shall be submitted; and

(C) identify the individual or individuals acting on behalf of the attorney general to whom the answers should be submitted.

(4) Each demand for the giving of oral testimony shall:

(A) prescribe a reasonable date, time, and place at which the testimony shall begin; and

(B) identify the individual or individuals acting on behalf of the attorney general who will conduct the examination.

(5) No demand for any product of discovery may be returned until 20 days after the attorney general serves a copy of the demand upon the person from whom the discovery was obtained.

(d) Protected Material and Information.

(1) A demand may require the production of documentary material, the submission of answers to written interrogatories, or the giving of oral testimony only if the material or information sought would be discoverable under the Texas Rules of Civil Procedure or other state law relating to discovery.

(2) Any demand for a product of discovery supercedes any inconsistent order, rule, or provision of law (other than this subchapter) preventing or restraining disclosure of such product of discovery; provided, however, that voluntary disclosure of a product of discovery under this section does not constitute a waiver of any right or privilege, including any right or privilege which may be invoked to resist discovery of trial preparation materials, to which the person making the disclosure may be entitled.

(e) Service; Proof of Service.

(1) Service of any demand or of any petition filed under Subsection (f) or (h) of this section may be made upon any natural person by delivering a duly executed copy of the demand or petition to the person to be served or by mailing such copy by registered or

certified mail, return receipt requested, to such person at his or her residence or principal office or place of business.

(2) Service of any demand or of any petition filed under Subsection (f) or (h) of this section may be made upon any person other than a natural person by delivering a duly executed copy of the demand or petition to a person to whom delivery would be appropriate under state law if the demand or petition were process in a civil suit.

(3) A verified return by the individual serving any demand or any petition filed under Subsection (f) or (h) setting forth the manner of service shall be proof of such service. In the case of service by registered or certified mail, the return shall be accompanied by the return post office receipt of delivery of the demand or petition.

(f) Petition for Order Modifying or Setting Aside Demand. At any time before the return date specified in a demand or within 20 days after the demand has been served, whichever period is shorter, the person who has been served and, in the case of a demand for a product of discovery, the person from whom the discovery was obtained may file a petition for an order modifying or setting aside the demand in the district court in the county of the person's residence or principal office or place of business or in a district court of Travis County. Any such petition shall specify each ground upon which the petitioner relies in seeking the relief sought. The petition may be based upon any failure of such demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of the petitioner. The petitioner shall serve a copy of the petition upon the attorney general. The attorney general may submit an answer to the petition. In ruling on the petition, the court shall presume absent evidence to the contrary that the attorney general issued the demand in good faith and within the scope of his or her authority.

(g) Compliance With Demand.

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

(2) The time for compliance with the demand in whole or in part shall not run during the pendency of any petition filed under Subsection (f) of this section; provided, however, that the petitioner shall comply with any portions of the demand not sought to be modified or set aside.

(3) Documentary Material.

(A) Any person upon whom any demand for the production of documentary material has been duly served under this section shall make such material available to the attorney general for inspection and copying during normal business hours on the return date specified in the demand at the person's principal office or place of business or as otherwise may be agreed upon by the person and the attorney general. The attorney general shall bear the expense of any copying. The person may substitute copies for originals of all or part of the requested documents so long as the originals are made available for inspection. The person shall indicate in writing which if any of the documents produced contain trade secrets or confidential information.

(B) The production of documentary material in response to any demand shall be made under a sworn certificate in such form as the demand designates by a natural person having knowledge of the facts and circumstances relating to such production to the effect that all of the requested material in the possession, custody, or control of the person to whom the demand is directed has been produced.

(4) Interrogatories.

(A) Each interrogatory in any demand duly served under this section shall be answered separately and fully in writing, unless it is objected to, in which case the basis for the objection shall be set forth in lieu of an answer. The person shall indicate in writing which if any of the answers contain trade secrets or confidential information.

(B) Answers to interrogatories shall be submitted under a sworn certificate in such form as the related demand designates by a natural person having knowledge of the facts and circumstances relating to the preparation of the answers to the effect that all of the requested information in the possession, custody, control, or knowledge of the person to whom the demand is directed has been set forth fully and accurately.

(5) Oral Examination.

(A) The examination of any person pursuant to a demand for oral testimony duly served under this section shall be taken before any person authorized to administer oaths and affirmations by the laws of Texas or the United States. The person before whom the testimony is to be taken shall put the witness on oath or affirmation and shall personally or by someone acting under his or her direction

and in his or her presence record the witness's testimony. At the expense of the attorney general, the testimony shall be taken stenographically and may be transcribed.

(B) The oral testimony of any person taken pursuant to a demand served under this section shall be taken in the county where the person resides, is found, transacts business, or in such other place as may be agreed upon by the person and the attorney general.

(C) Any person compelled to appear under a demand for oral testimony under this section may be accompanied, represented, and advised by counsel. Counsel may advise such person in confidence, either upon the request of such person or upon counsel's own initiative, with respect to any question arising in connection with the examination.

(D) The individual conducting the examination on behalf of the attorney general shall exclude from the place of examination all other persons except the person being examined, the person's counsel, the counsel of the person to whom the demand has been issued, the person before whom the testimony is to be taken, any stenographer taking the testimony, and any persons assisting the individual conducting the examination.

(E) During the examination, the person being examined or his or her counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may properly be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Neither such person nor his or her counsel shall otherwise object to or refuse to answer any question or interrupt the oral examination. If the person refuses to answer any question, the attorney general may petition the district court in the county where the examination is being conducted for an order compelling the person to answer the question.

(F) If and when the testimony has been fully transcribed, the person before whom the testimony was taken shall promptly transmit the transcript of the testimony to the witness and a copy of the transcript to the attorney general. The witness shall have a reasonable opportunity to examine the transcript and make any changes in form or substance accompanied by a statement of the reasons for such changes. The witness shall then sign and return the

transcript, unless he or she is ill, cannot be found, refuses to sign, or in writing waives the signing. If the witness does not sign the transcript within 15 days of receiving it, the person before whom the testimony has been given shall sign it and state on the record the reason, if known, for the witness's failure to sign. The officer shall then certify on the transcript that the witness was duly sworn and that the transcript is a true record of the testimony given by the witness and promptly transmit a copy of the certified transcript to the attorney general.

(G) Upon request, the attorney general shall furnish a copy of the certified transcript to the witness.

(H) The witness shall be entitled to the same fees and mileage that are paid to witnesses in the district courts of Texas.

(h) Failure To Comply With Demand.

(1) Petition for Enforcement. Whenever any person fails to comply with any demand duly served on such person under this section, the attorney general may file in the district court in the county in which the person resides, is found, or transacts business and serve on the person a petition for an order of the court for enforcement of this section. If the person transacts business in more than one county, the petition shall be filed in the county of the person's principal office or place of business in the state or in any other county as may be agreed upon by the person and the attorney general.

(2) Deliberate Noncompliance. Any person, who, with intent to avoid, evade, or prevent compliance in whole or part with a demand issued under this section, removes from any place, conceals, withholds, destroys, mutilates, alters, or by any other means falsifies any documentary material or otherwise provides inaccurate information is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $5,000 or by confinement in county jail for not more than one year or by both.

(i) Disclosure and Use of Material and Information.

(1) Except as provided in this section or ordered by a court for good cause shown, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies or contents thereof, shall be available for examination or used by any person without the consent of the person who produced the material, answers, or testimony and, in the case of any product of discovery, of the person from whom the discovery was obtained.

(2) The attorney general may make available for inspection

or prepare copies of documentary material, answers to interrogatories, or transcripts of oral testimony in his or her possession as he or she determines may be required by the state in the course of any investigation or a judicial proceeding in which the state is a party.

(3) The attorney general may make available for inspection or prepare copies of documentary material, answers to interrogatories, or transcripts of oral testimony in his or her possession as he or she determines may be required for official use by any officer of the State of Texas or of the United States charged with the enforcement of the laws of the State of Texas or the United States; provided that any material disclosed under this subsection may not be used for criminal law enforcement purposes.

(4) Upon request, the attorney general shall make available copies of documentary material, answers to interrogatories, and transcripts of oral testimony for inspection by the person who produced such material or information and, in the case of a product of discovery, the person from whom the discovery was obtained or by any duly authorized representative of the person, including his or her counsel.

(5) Not later than 15 days prior to disclosing any documentary material or answers to written interrogatories designated as containing trade secrets or confidential information under this subsection, the attorney general shall notify the person who produced the material of the attorney general's intent to make such disclosure. The person who produced the documentary material or answers to written interrogatories may petition a district court in any county of this state in which the person resides, does business, or maintains its principal office for a protective order limiting the terms under which the attorney general may disclose such trade secrets or confidential information.

(6) Upon written request, the attorney general shall return documentary material produced under this section in connection with an antitrust investigation to the person who produced it whenever:

(A) any case or proceeding before any court arising out of the investigation has been completed; or

(B) the attorney general has decided after completing an examination and analysis of such material not to institute any case or proceeding before a court in connection with the investigation.

(j) Jurisdiction. Whenever any petition is filed in the district court in any county as provided for in this section, the court shall have jurisdiction to hear and determine the matter presented and to enter any order or orders required to implement the provisions of this section. Any final order is subject to appeal. Failure to comply with any final order entered by a court under this section is punishable by the court as a contempt of the order.

(k) Nonexclusive Procedures. Nothing in this section shall preclude the attorney general from using procedures not specified in the section in conducting an antitrust investigation; provided, however, that in conducting such an investigation, the attorney general shall use the procedures set forth in this section in lieu of those set forth in Article 1302-5.01 through Article 1302-5.06, Texas Miscellaneous Corporation Laws Act.

Added by Acts 1983, 68th Leg., p. 3019, ch. 519, Sec. 2, eff. Aug. 29, 1983.

Sec. 15.11. PARTY TO SUIT MAY SUBPOENA WITNESS. (a) A party to a suit brought to enforce any of the prohibitions in Section 15.05 of this Act or to enforce the laws conserving natural resources may apply to the clerk of the court in which the suit is pending to subpoena a witness located anywhere in the state. On receipt of the application, the clerk shall issue the subpoena applied for but may not issue more than five subpoenas for a party without first obtaining the court's written approval.

(b) A witness subpoenaed under Subsection (a) of this section who fails to appear and testify in compliance with the subpoena is guilty of contempt of court and may be fined not more than $100 and attached and imprisoned in the county jail until he or she appears in court and testifies as required.

Added by Acts 1983, 68th Leg., p. 3019, ch. 519, Sec. 2, eff. Aug. 29, 1983.

Sec. 15.12. ADDITIONAL PROCEDURES. In addition to the procedures set forth in this subchapter, the attorney general and any other party to a suit brought by the attorney general to enforce any of the prohibitions in Section 15.05 of this Act may request

discovery and production of documents and other things, serve written interrogatories, and subpoena and depose witnesses in accordance with the applicable provisions of the Texas Rules of Civil Procedure and other state law relating to discovery.

Amended by Acts 1983, 68th Leg., p. 3019, ch. 519, Sec. 2, eff. Aug. 29, 1983.

Sec. 15.13. IMMUNITY FROM CRIMINAL PROSECUTION. (a) Application by Attorney General. If a person upon whom an investigative demand or request for discovery has been properly served pursuant to Section 15.10, 15.11, or 15.12 of this Act refuses or is likely to refuse to comply with the demand or request on the basis of his or her privilege against self-incrimination, the attorney general may apply to a district court in the county in which the person is located for an order granting the person immunity from prosecution and compelling the person's compliance with the demand or request.

(b) Order Granting Immunity and Compelling Testimony and Production. Upon receipt of an application filed under Subsection (a) of this section, the court may issue an order granting the person immunity from prosecution and requiring the person to comply with the demand or request notwithstanding his or her claim of privilege. The order shall explain the scope of protection afforded by it.

(c) Effectiveness of Order. An order may be issued under Subsection (b) of this section prior to the assertion of the privilege against self-incrimination but shall not be effective until the person to whom it is directed asserts the privilege and is informed of the order.

(d) Compliance with Order. A person who has been informed of an order issued by a court under this section compelling his or her testimony or production of material may not refuse to comply with the order on the basis of his or her privilege against self-incrimination. A person who complies with the order may not be criminally prosecuted for or on account of any act, transaction, matter, or thing about which he or she is ordered to testify or produce unless the alleged offense is perjury or failure to comply with the order. Failure to comply with the order may be punished by the court as contempt of the order.

Amended by Acts 1983, 68th Leg., p. 3019, ch. 519, Sec. 2, eff. Aug. 29, 1983.

Sec. 15.16. DECLARATORY JUDGMENT ACTION. (a) A person (other than a foreign corporation not having a permit or certificate of authority to do business in this state) uncertain of whether or not his or her action or proposed action violates or will violate the prohibitions contained in Section 15.05 of this Act may file suit against the state for declaratory judgment, citing this section as authority, in one of the Travis County district courts.

(b) Citation and all process in the suit shall be served on the attorney general, who shall represent the state. The petition shall describe in detail the person's action or proposed action and all other relevant facts, and the court in its declaratory judgment shall fully recite the action or proposed action and other facts considered.

(c) A declaratory judgment granted under this section which rules that action or proposed action does not violate the prohibitions contained in Section 15.05 of this Act:

(1) shall be strictly construed and may not be extended by implication to an action or fact not recited in the judgment;

(2) does not bind the state with reference to a person not a party to the suit in which the judgment was granted; and

(3) does not estop the state from subsequently establishing a violation of the prohibitions contained in Section 15.05 of this Act based on an action or fact not recited in the declaratory judgment, which action or fact, when combined with an action or fact recited in the judgment, constitutes a violation of the prohibitions contained in Section 15.05 of this Act.

(d) A person filing suit under this section shall pay all costs of the suit.

Amended by Acts 1983, 68th Leg., p. 3019, ch. 519, Sec. 2, eff. Aug. 29, 1983.

SUBCHAPTER C. ENFORCEMENT

Sec. 15.20. CIVIL SUITS BY THE STATE. (a) Suit to Collect Civil Fine. The attorney general may file suit in district court in

Travis County or in any county in the State of Texas in which any of the named defendants resides, does business, or maintains its principal office on behalf of the State of Texas to collect a civil fine from any person, other than a municipal corporation, whom the attorney general believes has violated any of the prohibitions in Subsection (a), (b), or (c) of Section 15.05 of this Act. Every person adjudged to have violated any of these prohibitions shall pay a fine to the state not to exceed $1 million if a corporation, or, if any other person, $100,000.

(b) Suit for Injunctive Relief. The attorney general may file suit against any person, other than a municipal corporation, in district court in Travis County, or in any county in the State of Texas in which any of the named defendants resides, does business, or maintains its principal office on behalf of the State of Texas to enjoin temporarily or permanently any activity or contemplated activity that violates or threatens to violate any of the prohibitions in Section 15.05 of this Act. In any such suit, the court shall apply the same principles as those generally applied by courts of equity in suits for injunctive relief against threatened conduct that would cause injury to business or property. In any such suit in which the state substantially prevails on the merits, the state shall be entitled to recover the cost of suit.

Upon finding a violation of the prohibition against acquiring the stock, share capital, or assets of a person in Subsection (d) of Section 15.05 of this Act, the court shall, upon further finding that no other remedy will eliminate the lessening of competition, order the divestiture or other disposition of the stock, share capital, or assets and shall prescribe a reasonable time, manner, and degree of the divestiture or other disposition.

(c) No suit filed under Subsection (a) or (b) of this section may be transferred to another county except on order of the court.

(d) Nothing in this section shall be construed to limit the constitutional or common law authority of the attorney general to bring actions under state and federal law.

Amended by Acts 1983, 68th Leg., p. 3034, ch. 519, Sec. 3, eff. Aug. 29, 1983.

Sec. 15.21. SUITS BY INJURED PERSONS OR GOVERNMENTAL ENTITIES.

(a) Suit to Recover Damages.

(1) Any person or governmental entity, including the State of Texas and any of its political subdivisions or tax-supported institutions, whose business or property has been injured by reason of any conduct declared unlawful in Subsection (a), (b), or (c) of Section 15.05 of this Act may sue any person, other than a municipal corporation, in district court in any county of this state in which any of the named defendants resides, does business, or maintains its principal office or in any county in which any of the named plaintiffs resided at the time the cause of action or any part thereof arose and shall recover actual damages sustained, interest on actual damages for the period beginning on the date of service of such person's pleading setting forth a claim under the antitrust laws and ending on the date of judgment (the rate of such interest to be in accordance with Texas law regarding postjudgment interest rates and the amount of interest to be adjusted by the court if it finds that the award of all or part of such interest is unjust in the circumstances), and the cost of suit, including a reasonable attorney's fee; provided, however, that if the trier of fact finds that the unlawful conduct was willful or flagrant, it shall increase the recovery to threefold the damages sustained and the cost of suit, including a reasonable attorney's fee; provided that interest on actual damages as specified above may not be recovered when recovered damages are increased threefold.

(2) Any person or governmental entity who obtains a judgment for damages under 15 U.S.C. Section 15 or any other provision of federal law comparable to this subsection may not recover damages in a suit under this subsection based on substantially the same conduct that was the subject of the federal suit.

(3) On a finding by the court that an action under this section was groundless and brought in bad faith or for the purpose of harassment, the court shall award to the defendant or defendants a reasonable attorney's fee, court costs, and other reasonable expenses of litigation.

(b) Suit for Injunctive Relief. Any person or governmental entity, including the State of Texas and any of its political subdivisions or tax-supported institutions, whose business or property is threatened with injury by reason of anything declared unlawful in Subsection (a), (b), or (c) of Section 15.05 of this Act

may sue any person, other than a municipal corporation, in district court in any county of this state in which any of the named defendants resides, does business, or maintains its principal office or in any county in which any of the named plaintiffs resided at the time the cause of action or any part thereof arose to enjoin the unlawful practice temporarily or permanently. In any such suit, the court shall apply the same principles as those generally applied by courts of equity in suits for injunctive relief against threatened conduct that would cause injury to business or property. In any such suit in which the plaintiff substantially prevails on the merits, the plaintiff shall be entitled to recover the cost of suit, including a reasonable attorney's fee based on the fair market value of the attorney services used.

(c) Copies of Complaints to Attorney General. Any person or governmental entity filing suit under this section shall mail a copy of the complaint to the Attorney General of Texas. The attorney general as representative of the public may intervene in the action by filing a notice of intervention with the court before which the action is pending and serving copies of the notice on all parties to the action. The penalty for failure to comply with this subsection shall be a monetary fine not in excess of $200. The attorney general may file suit to recover the fine on behalf of the state in the district court in which the private suit has been brought.

Amended by Acts 1983, 68th Leg., p. 3034, ch. 519, Sec. 3, eff. Aug. 29, 1983.

Sec. 15.22. CRIMINAL SUITS. (a) Every person, other than a municipal corporation, who acts in violation of any of the prohibitions in Section 15.05(a) or (b) shall be deemed guilty of a felony and upon conviction shall be punished by confinement in the Texas Department of Criminal Justice for a term of not more than three years or by a fine not to exceed $5,000 or by both.

(b) A district attorney or criminal district attorney may file criminal suit to enforce the provisions in Subsection (a) of this section in district court in Travis County or in any county in which any of the acts that allegedly have contributed to a violation of any of the prohibitions in Subsections (a) and (b) of Section 15.05 of this Act are alleged to have occurred or to be occurring.

Amended by Acts 1983, 68th Leg., p. 3034, ch. 519, Sec. 3, eff. Aug. 29, 1983.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.010, eff. September 1, 2009.

Sec. 15.24. JUDGMENT IN FAVOR OF THE STATE EVIDENCE IN ACTION. A final judgment rendered in an action brought under Section 15.20 or 15.22 of this Act to the effect that a defendant or defendants have violated any of the prohibitions in Section 15.05 of this Act is prima facie evidence against such defendant or defendants in any action brought under Section 15.21 as to all matters with respect to which the judgment would be an estoppel between the parties to the suit. This section shall not apply to consent judgments or decrees entered before any testimony has been taken.

Added by Acts 1983, 68th Leg., p. 3034, ch. 519, Sec. 3, eff. Aug. 29, 1983.

Sec. 15.25. LIMITATION OF ACTIONS. (a) Any suit to recover damages under Section 15.21 of this Act is barred unless filed within four years after the cause of action accrued or within one year after the conclusion of any action brought by the state under Section 15.20 or 15.22 of this Act based in whole or in part on the same conduct, whichever is longer. For the purpose of this subsection, a cause of action for a continuing violation is considered to accrue at any and all times during the period of the violation.

(b) No suit under this Act shall be barred on the grounds that the activity or conduct complained of in any way affects or involves interstate or foreign commerce. It is the intent of the legislature to exercise its powers to the full extent consistent with the constitutions of the State of Texas and the United States.

Added by Acts 1983, 68th Leg., p. 3034, ch. 519, Sec. 3, eff. Aug. 29, 1983.

Sec. 15.26. JURISDICTION. Whenever any suit or petition is filed in the district court in any county in the State of Texas as

provided for in Section 15.10, 15.20, 15.21, or 15.22 of this Act, the court shall have jurisdiction and venue to hear and determine the matter presented and to enter any order or orders required to implement the provisions of this Act. Once suit is properly filed, it may be transferred to another county upon order of the court for good cause shown.

Added by Acts 1983, 68th Leg., p. 3034, ch. 519, Sec. 3, eff. Aug. 29, 1983.

SUBCHAPTER D. RECOVERY OF DAMAGES PURSUANT TO FEDERAL ANTITRUST LAWS

Sec. 15.40. AUTHORITY, POWERS, AND DUTIES OF ATTORNEY GENERAL. (a) The attorney general may bring an action on behalf of the state or of any of its political subdivisions or tax supported institutions to recover the damages provided for by the federal antitrust laws, Title 15, United States Code, provided that the attorney general shall notify in writing any political subdivision or tax supported institution of his intention to bring any such action on its behalf, and at any time within 30 days thereafter, such political subdivision or tax supported institution may, by formal resolution of its governing body or as otherwise specifically provided by applicable law, withdraw the authority of the attorney general to bring the intended action. In any action brought pursuant to this section on behalf of any political subdivision or tax supported institution of the state, the state shall retain for deposit in the general revenue fund of the State Treasury, out of the proceeds, if any, resulting from such action, an amount equal to the expense incurred by the state in the investigation and prosecution of such action.

(b) In any action brought by the attorney general pursuant to the federal antitrust laws for the recovery of damages by the estate or any of its political subdivisions or tax supported institutions, in addition to his other powers and authority the attorney general may enter into contracts relating to the investigation and the prosecution of such action with any other party who could bring a similar action or who has brought such an action for the recovery of damages and with whom the attorney general finds it advantageous to act jointly, or to share common expenses or to cooperate in any manner relative to such action. In any such action the attorney general may undertake, among other things, either to render legal

services as special counsel to, or to obtain the legal services of special counsel from, any department or agency of the United States, any other state or any department or agency thereof, any county, city, public corporation or public district of this state or of any other state, that has brought or intends to bring a similar action for the recovery of damages, or their duly authorized legal representatives in such action.

Added by Acts 1969, 61st Leg., p. 1708, ch. 559, Sec. 1, eff. June 10, 1969.

SUBCHAPTER E. COVENANTS NOT TO COMPETE

Sec. 15.50. CRITERIA FOR ENFORCEABILITY OF COVENANTS NOT TO COMPETE. (a) Notwithstanding Section 15.05 of this code, and subject to any applicable provision of Subsection (b), a covenant not to compete is enforceable if it is ancillary to or part of an otherwise enforceable agreement at the time the agreement is made to the extent that it contains limitations as to time, geographical area, and scope of activity to be restrained that are reasonable and do not impose a greater restraint than is necessary to protect the goodwill or other business interest of the promisee.

(b) A covenant not to compete relating to the practice of medicine is enforceable against a person licensed as a physician by the Texas Medical Board if such covenant complies with the following requirements:

(1) the covenant must:

(A) not deny the physician access to a list of his patients whom he had seen or treated within one year of termination of the contract or employment;

(B) provide access to medical records of the physician's patients upon authorization of the patient and any copies of medical records for a reasonable fee as established by the Texas Medical Board under Section 159.008, Occupations Code; and

(C) provide that any access to a list of patients or to patients' medical records after termination of the contract or employment shall not require such list or records to be provided in a format different than that by which such records are maintained except by mutual consent of the parties to the contract;

(2) the covenant must provide for a buy out of the covenant

by the physician at a reasonable price or, at the option of either party, as determined by a mutually agreed upon arbitrator or, in the case of an inability to agree, an arbitrator of the court whose decision shall be binding on the parties; and

(3) the covenant must provide that the physician will not be prohibited from providing continuing care and treatment to a specific patient or patients during the course of an acute illness even after the contract or employment has been terminated.

(c) Subsection (b) does not apply to a physician's business ownership interest in a licensed hospital or licensed ambulatory surgical center.

Added by Acts 1989, 71st Leg., ch. 1193, Sec. 1, eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 965, Sec. 1, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1574, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.729, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 971 (H.B. 3623), Sec. 1, eff. September 1, 2009.

Sec. 15.51. PROCEDURES AND REMEDIES IN ACTIONS TO ENFORCE COVENANTS NOT TO COMPETE. (a) Except as provided in Subsection (c) of this section, a court may award the promisee under a covenant not to compete damages, injunctive relief, or both damages and injunctive relief for a breach by the promisor of the covenant.

(b) If the primary purpose of the agreement to which the covenant is ancillary is to obligate the promisor to render personal services, for a term or at will, the promisee has the burden of establishing that the covenant meets the criteria specified by Section 15.50 of this code. If the agreement has a different primary purpose, the promisor has the burden of establishing that the covenant does not meet those criteria. For the purposes of this subsection, the "burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(c) If the covenant is found to be ancillary to or part of an otherwise enforceable agreement but contains limitations as to time, geographical area, or scope of activity to be restrained that are not reasonable and impose a greater restraint than is necessary to

protect the goodwill or other business interest of the promisee, the court shall reform the covenant to the extent necessary to cause the limitations contained in the covenant as to time, geographical area, and scope of activity to be restrained to be reasonable and to impose a restraint that is not greater than necessary to protect the goodwill or other business interest of the promisee and enforce the covenant as reformed, except that the court may not award the promisee damages for a breach of the covenant before its reformation and the relief granted to the promisee shall be limited to injunctive relief. If the primary purpose of the agreement to which the covenant is ancillary is to obligate the promisor to render personal services, the promisor establishes that the promisee knew at the time of the execution of the agreement that the covenant did not contain limitations as to time, geographical area, and scope of activity to be restrained that were reasonable and the limitations imposed a greater restraint than necessary to protect the goodwill or other business interest of the promisee, and the promisee sought to enforce the covenant to a greater extent than was necessary to protect the goodwill or other business interest of the promisee, the court may award the promisor the costs, including reasonable attorney's fees, actually and reasonably incurred by the promisor in defending the action to enforce the covenant.

Added by Acts 1989, 71st Leg., ch. 1193, Sec. 1, eff. Aug. 28, 1989. Amended by Acts 1993, 73rd Leg., ch. 965, Sec. 2, eff. Sept. 1, 1993.

Sec. 15.52. PREEMPTION OF OTHER LAW. The criteria for enforceability of a covenant not to compete provided by Section 15.50 of this code and the procedures and remedies in an action to enforce a covenant not to compete provided by Section 15.51 of this code are exclusive and preempt any other criteria for enforceability of a covenant not to compete or procedures and remedies in an action to enforce a covenant not to compete under common law or otherwise.

Added by Acts 1993, 73rd Leg., ch. 965, Sec. 3, eff. Sept. 1, 1993.

CHAPTER 16. TRADEMARKS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 16.001. DEFINITIONS. In this chapter:

(1) "Applicant" means a person applying for registration of a mark under this chapter. The term includes the person's legal representative, successor, and assignee.

(2) "Dilution" means dilution by blurring or dilution by tarnishment, without regard to the presence or absence of:

(A) competition between the owner of a famous mark and another person;

(B) actual or likely confusion, mistake, or deception; or

(C) actual economic harm.

(3) "Dilution by blurring" means an association arising from the similarity between a mark or trade name and a famous mark that impairs the famous mark's distinctiveness.

(4) "Dilution by tarnishment" means an association arising from the similarity between a mark or trade name and a famous mark that harms the famous mark's reputation.

(5) "Mark" includes a trademark or service mark that is registrable under this chapter, regardless of whether the trademark or service mark is actually registered.

(6) "Person," with respect to the applicant or another person who is entitled to a benefit or privilege or is rendered liable under this chapter, includes:

(A) a natural person; and

(B) a firm, partnership, corporation, association, union, or other organization that may sue or be sued in that capacity.

(7) "Registrant" means the person to whom a registration of a mark has been issued under this chapter. The term includes the person's legal representative, successor, or assignee.

(8) "Service mark":

(A) means a word, name, symbol, or device, or any combination of those terms, used by a person to:

(i) identify and distinguish the services of one person, including a unique service, from the services of another; and

(ii) indicate the source of the services, regardless of whether the source is unknown; and

(B) includes the titles, character names used by a person, and other distinctive features of radio or television programs, regardless of whether the titles, character names, or programs advertise the sponsor's goods.

(9) "Trade name" means a name used by a person to identify the person's business or vocation.

(10) "Trademark" means a word, name, symbol, or device, or any combination of those terms, used by a person to:

(A) identify and distinguish the person's goods, including a unique product, from the goods manufactured or sold by another; and

(B) indicate the source of the goods, regardless of whether the source is unknown.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 1, eff. September 1, 2012.

Sec. 16.002. INAPPLICABILITY OF CHAPTER. (a) This chapter does not apply to the registration or use of a livestock brand or other indicia of ownership of goods that do not qualify as a mark.

(b) Except as provided by this subsection, a trade name is not registrable under this chapter. If a trade name is also a service mark or trademark, the trade name is registrable as a service mark or trademark.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 1, eff. September 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 762 (S.B. 1033), Sec. 1, eff. September 1, 2013.

Sec. 16.003. WHEN MARK CONSIDERED TO BE IN USE. (a) A mark is considered to be in use in this state in connection with goods when:

(1) the mark is placed in any manner on:

(A) the goods;

(B) containers of the goods;

(C) displays associated with the goods;

(D) tags or labels affixed to the goods; or

(E) documents associated with the goods or sale of the goods, if the nature of the goods makes placement described by Paragraphs (A) through (D) impracticable; and

(2) the goods are sold or transported in commerce in this

state.

(b) A mark is considered to be in use in this state in connection with services when:

(1) the mark is used or displayed in this state in connection with selling or advertising the services; and

(2) the services are rendered in this state.

(c) Use of a mark made merely to reserve a right in the mark is not considered to be a bona fide use of a mark for purposes of this chapter.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 1, eff. September 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 762 (S.B. 1033), Sec. 2, eff. September 1, 2013.

Sec. 16.004. WHEN MARK CONSIDERED TO BE ABANDONED. (a) A mark is considered to be abandoned when:

(1) the mark's use has been discontinued with intent not to resume the use; or

(2) the owner's conduct, including an omission or commission of an act, causes the mark to lose its significance as a mark.

(b) Intent not to resume use of a mark under Subsection (a)(1) may be inferred from the circumstances.

(c) Nonuse of a mark as described by Subsection (a)(1) for three consecutive years constitutes prima facie evidence of the mark's abandonment.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 1, eff. September 1, 2012.

SUBCHAPTER B. REGISTRATION OF MARK

Sec. 16.051. REGISTRABLE MARKS. (a) A mark that distinguishes an applicant's goods or services from those of others is registrable unless the mark:

(1) consists of or comprises matter that is immoral, deceptive, or scandalous;

(2) consists of or comprises matter that may disparage, falsely suggest a connection with, or bring into contempt or disrepute:

(A) a person, whether living or dead;

(B) an institution;

(C) a belief; or

(D) a national symbol;

(3) depicts, comprises, or simulates the flag, the coat of arms, or other insignia of:

(A) the United States;

(B) a state;

(C) a municipality; or

(D) a foreign nation;

(4) consists of or comprises the name, signature, or portrait of a particular living individual who has not consented in writing to the mark's registration;

(5) when used on or in connection with the applicant's goods or services:

(A) is merely descriptive or deceptively misdescriptive of the applicant's goods or services; or

(B) is primarily geographically descriptive or deceptively misdescriptive of the applicant's goods or services;

(6) is primarily merely a surname; or

(7) is likely to cause confusion or mistake, or to deceive, because, when used on or in connection with the applicant's goods or services, it resembles:

(A) a mark registered in this state; or

(B) an unabandoned mark registered with the United States Patent and Trademark Office.

(b) Subsection (a)(5) or (6) does not prevent the registration of a mark used by the applicant that has become distinctive as applied to the applicant's goods or services. The secretary of state may accept as evidence that a mark has become distinctive, when used on or in connection with the applicant's goods or services, proof of continuous use of the mark as such by the applicant in this state for the five years preceding the date on which the claim of distinctiveness is made.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 1, eff.

September 1, 2012.

Sec. 16.052. APPLICATION FOR REGISTRATION. (a) Subject to the limitations prescribed by this chapter, a person who uses a mark may file an application to register the mark in the office of the secretary of state in the manner prescribed by the secretary of state.

(b) The application must include:

(1) the name and business address of the applicant;

(2) if the applicant is a corporation, the state under whose laws the applicant was incorporated or organized;

(3) if the applicant is a partnership, the state under whose laws the partnership was organized and the names of the general partners;

(4) the names or a description of the goods or services on or in connection with which the mark is being used;

(5) the mode or manner in which the mark is being used on or in connection with the goods or services;

(6) the class to which the goods or services belong;

(7) the date the applicant or applicant's predecessor in interest first used the mark anywhere;

(8) the date the applicant or the applicant's predecessor in interest first used the mark in this state; and

(9) a statement that:

(A) the applicant is the owner of the mark;

(B) the mark is in use; and

(C) to the knowledge of the person verifying the application, no other person:

(i) has registered the mark, either federally or in this state; or

(ii) is entitled to use the mark in this state:

(a) in the identical form used by the applicant; or

(b) in a form that is likely, when used on or in connection with the goods or services of the other person, to cause confusion or mistake, or to deceive, because of its resemblance to the mark.

(c) The secretary of state may also require a statement as to whether the applicant or the applicant's predecessor in interest has

filed an application to register the mark, or a portion or composite of the mark, with the United States Patent and Trademark Office, and, if so, the applicant shall fully disclose information with respect to that filing, including:

(1) the filing date and serial number of each application;

(2) the status of the filing; and

(3) if any application was finally refused registration or has not otherwise resulted in the issuance of a registration, the reasons for the refusal or nonissuance.

(d) The application must be accompanied by:

(1) three specimens of the mark as actually used; and

(2) an application fee payable to the secretary of state.

(e) The application must be signed and verified by the oath or affirmation of:

(1) the applicant; or

(2) a member of the firm or officer of the corporation or association that is applying for registration of the mark, as applicable.

(f) The secretary of state may also require that a drawing of the mark that complies with any requirement specified by the secretary of state accompany the application.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 1, eff. September 1, 2012.

Sec. 16.053. FILING OF APPLICATION; EXAMINATION. (a) On the filing of an application for registration and payment of the application fee, the secretary of state shall examine the application for compliance with this chapter.

(b) The applicant shall provide to the secretary of state any additional pertinent information requested by the secretary of state, including a description of a design mark.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 1, eff. September 1, 2012.

Sec. 16.054. AMENDMENT TO APPLICATION. (a) In response to the

secretary of state's rejection of or objection to the registration, the applicant may amend, or authorize the secretary of state to amend, the application on reasonable request of the secretary of state or if the applicant considers it advisable.

(b) The secretary of state, on agreement by the applicant, may amend the application submitted by the applicant. The secretary of state may require the applicant to submit a new application instead of amending the application.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 1, eff. September 1, 2012.

Sec. 16.055. DISCLAIMER OF UNREGISTRABLE COMPONENT. (a) The secretary of state may require the applicant to disclaim an unregistrable component of a mark that is otherwise registrable. An applicant may voluntarily disclaim a component of a mark sought to be registered.

(b) A disclaimer may not prejudice or affect:

(1) the rights of the applicant or registrant in the disclaimed matter; or

(2) the rights of the applicant or registrant to submit another application to register the mark if the disclaimed matter is or has become distinctive of the applicant's or registrant's goods or services.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 1, eff. September 1, 2012.

Sec. 16.056. CONCURRENT APPLICATIONS FOR SAME OR SIMILAR MARK. (a) When concurrently processing applications for the same or confusingly similar marks used on or in connection with the same or related goods or services, the secretary of state shall grant priority to the application that was filed first. If a prior filed application is granted a registration, the secretary of state shall reject any other subsequently filed application.

(b) An applicant whose application is rejected under this section may bring an action in accordance with Section 16.106 for

cancellation of the previously issued registration on the ground that the applicant has a prior or superior right to the mark.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 1, eff. September 1, 2012.

Sec. 16.057. DENIAL OF REGISTRATION; NOTICE. (a) If the secretary of state determines that the applicant is not entitled to register the mark, the secretary of state shall:

(1) notify the applicant of the determination and the reason for the denial of the application; and

(2) give the applicant reasonable time as prescribed by the secretary of state in which to issue a response to the denial or amend the application, in which event the secretary of state shall reexamine the application.

(b) The applicant may repeat the examination procedures described by Subsection (a) until the earlier of:

(1) the expiration of the period prescribed by the secretary of state under Subsection (a)(2); or

(2) the date on which the secretary of state finally refuses registration of the application.

(c) If the applicant fails to respond to the denial or to amend the application within the period prescribed by the secretary of state under Subsection (a)(2), the application is considered to have been abandoned.

(d) If the secretary of state finally refuses registration of the mark, the applicant may seek a writ of mandamus against the secretary of state to compel registration in accordance with the procedures prescribed by Section 16.106. The writ of mandamus may be granted, without cost to the secretary of state, on proof that all the statements in the application are true and that the mark is otherwise entitled to registration.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 1, eff. September 1, 2012.

Sec. 16.058. CERTIFICATE OF REGISTRATION. (a) If the

application complies with the requirements of this chapter, the secretary of state shall cause a certificate of registration to be issued and delivered to the applicant.

(b) The certificate of registration must:

(1) be signed by the secretary of state;

(2) be issued under the secretary of state's official seal;

(3) indicate the name and business address of the person claiming ownership of the mark;

(4) if the applicant is a corporation, indicate the state under whose laws the applicant was incorporated or organized;

(5) if the applicant is a partnership, indicate the state under whose laws the partnership was organized and the names of the general partners;

(6) include a description of the goods or services on or in connection with which the mark is being used;

(7) state the class of the goods or services;

(8) state the date claimed for the first use of the mark anywhere;

(9) state the date claimed for the first use of the mark in this state;

(10) show a reproduction of the mark;

(11) state the registration date; and

(12) state the term of the registration.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 1, eff. September 1, 2012.

Sec. 16.059. TERM AND RENEWAL OF REGISTRATION. (a) The registration of a mark under this chapter expires on the fifth anniversary of the date of registration.

(b) The registration of a mark under this chapter may be renewed for an additional five-year term by filing a renewal application in the manner prescribed by the secretary of state and paying a renewal fee not earlier than the 180th day before the date the registration expires.

(c) An application for renewal under this chapter, whether of a registration made under this chapter, or a registration that took effect under a predecessor statute, must include:

(1) a verified statement stating that the mark has been and is still in use in this state; and

(2) a specimen of the mark, as actually used on or in connection with the goods or services.

(d) A mark for which a registration was in effect on August 31, 2012, continues in effect for the unexpired term of the registration and may be renewed by complying with the requirements for renewal under this section.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 1, eff. September 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 762 (S.B. 1033), Sec. 3, eff. September 1, 2013.

Sec. 16.060. RECORD AND PROOF OF REGISTRATION. (a) The secretary of state shall keep for public examination a record of all:

(1) marks registered or renewed under this chapter;

(2) assignments recorded under Section 16.061; and

(3) other instruments recorded under Section 16.062.

(b) Registration of a mark under this chapter is constructive notice throughout this state of the registrant's claim of ownership of the mark throughout this state.

(c) A certificate of registration issued by the secretary of state under this chapter, or a copy of it certified by the secretary of state, is admissible in evidence as prima facie proof of:

(1) the validity of the registration;

(2) the registrant's ownership of the mark; and

(3) the registrant's exclusive right to use the mark in commerce in this state in connection with the goods or services specified in the certificate, subject to any conditions and limitations stated in the certificate.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 1, eff. September 1, 2012.

Sec. 16.061. ASSIGNMENT OF MARK AND REGISTRATION. (a) A mark and its registration under this chapter are assignable with the

goodwill of the business in which the mark is used, or with that part of the goodwill of the business connected with the use of, and symbolized by, the mark.

(b) An assignment must be made by a properly executed written instrument and may be recorded with the secretary of state by:

(1) filing the assignment; and

(2) paying a recording fee to the secretary of state.

(c) If an assignment has been properly filed for record under Subsection (b), the secretary of state shall issue in the assignee's name a new certificate of registration for the remainder of the term of the mark's registration or last renewal.

(d) The assignment of a mark registered under this chapter is void against a purchaser who purchases the mark for valuable consideration after the assignment is made and without notice of it unless the assignment is recorded by the secretary of state:

(1) not later than the 90th day after the date of the assignment; or

(2) before the mark is purchased.

(e) An acknowledgment is prima facie evidence of the execution of an assignment, and when recorded by the secretary of state, the record is prima facie evidence of execution.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 1, eff. September 1, 2012.

Sec. 16.062. RECORDING OF OTHER INSTRUMENTS. (a) A certificate of the registrant or applicant effecting a name change of the person to whom the mark was issued or for whom an application was filed may be recorded with the secretary of state by paying a recording fee to the secretary of state.

(b) Other properly executed written instruments that relate to a mark registered or an application pending with the secretary of state under this chapter, including a license, security interest, or mortgage, may be recorded with the secretary of state, at the secretary of state's discretion.

(c) An acknowledgment is prima facie evidence of the execution of an instrument other than an assignment under this section, and when recorded by the secretary of state, the record is prima facie

evidence of execution.

(d) The secretary of state must accept for recording a copy of an original instrument under this section if the copy is certified to be a true copy by any party to the transaction or the party's successor.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 1, eff. September 1, 2012.

Sec. 16.063. CHANGE OF REGISTRANT'S NAME. If a registrant's name is changed during the unexpired term of a mark's registration, a new certificate of registration may be issued for the remainder of the unexpired term in the new name of the registrant on the filing of a certificate under Section 16.062.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 1, eff. September 1, 2012.

Sec. 16.064. CANCELLATION OF REGISTRATION. (a) The secretary of state shall cancel a registration:

(1) in force on August 31, 2012, that has not been renewed under Section 16.059;

(2) on receipt of a voluntary request for cancellation from the registrant under this chapter or the registrant's assignee of record;

(3) granted under this chapter and not renewed under Section 16.059;

(4) with respect to which a court has rendered a judgment finding that:

(A) the registered mark has been abandoned;

(B) the registrant is not the owner of the mark;

(C) the registration was granted improperly;

(D) the registration was obtained fraudulently;

(E) the registered mark is or has become the generic name for the goods or services, or part of the goods or services, in connection with which the mark was registered;

(F) the registered mark is so similar, as to be likely

to cause confusion or mistake or to deceive, to a mark that:

(i) is registered by another person in the United States Patent and Trademark Office before the date the application for registration was filed under this chapter; and

(ii) is not abandoned; or

(G) the registration was canceled by order of a court on any ground; or

(5) when a court of competent jurisdiction orders cancellation of a registration on any ground.

(b) If a registrant's mark is considered for cancellation under Subsection (a)(4)(F) and the registrant proves that the registrant is the owner of a mark concurrently registered as a mark with the United States Patent and Trademark Office to cover a geographical area that includes a part of this state, the secretary of state may not cancel registration of the mark for the geographical area of this state covered by the federal registration.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 1, eff. September 1, 2012.

Sec. 16.065. CLASSIFICATION OF GOODS AND SERVICES. (a) The secretary of state by rule shall establish a classification of goods and services for the convenient administration of this chapter. The classifications established under this section may not limit or expand an applicant's or registrant's rights. To the extent practicable, the classification of goods and services must conform to the classification of goods and services adopted by the United States Patent and Trademark Office.

(b) An applicant may include in a single application for registration of a mark any or all goods or services in connection with which the mark is actually being used and the appropriate class or classes of the goods or services.

(c) If a single application for registration of a mark includes goods or services that belong in multiple classes, the secretary of state may require payment of a fee for each class of goods or services.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 1, eff.

September 1, 2012.

Sec. 16.066. FEES. (a) The secretary of state by rule shall prescribe the amount of fees payable for the various applications and for the filing and recording of those applications for related services.

(b) Unless specified otherwise by the secretary of state, a fee under this chapter is not refundable.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 1, eff. September 1, 2012.

SUBCHAPTER C. ENFORCEMENT

Sec. 16.101. FRAUDULENT REGISTRATION. A person who procures for the person or another the filing of an application or the registration of a mark under this chapter by knowingly making a false or fraudulent representation or declaration, oral or written, or by any other fraudulent means, is liable to pay all damages sustained as a result of the filing or registration. The damages may be recovered by or on behalf of the injured party in any court of competent jurisdiction.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 1, eff. September 1, 2012.

Sec. 16.102. INFRINGEMENT OF REGISTERED MARK. (a) Subject to Section 16.107, a person commits an infringement if the person:

(1) without the registrant's consent, uses anywhere in this state a reproduction, counterfeit, copy, or colorable imitation of a mark registered under this chapter in connection with selling, distributing, offering for sale, or advertising goods or services when the use is likely to deceive or cause confusion or mistake as to the source or origin of the goods or services; or

(2) reproduces, counterfeits, copies, or colorably imitates a mark registered under this chapter and applies the reproduction, counterfeit, copy, or colorable imitation to a label, sign, print,

package, wrapper, receptacle, or advertisement intended to be used in selling or distributing, or in connection with the sale or distribution of, goods or services in this state.

(b) A registrant may sue for damages and to enjoin an infringement proscribed by Subsection (a).

(c) If the court determines that there has been an infringement, the court shall enjoin the act of infringement and may:

(1) subject to Subsection (d), require the violator to pay the registrant all profits derived from or damages resulting from the acts of infringement; and

(2) order that the infringing counterfeits or imitations in the possession or under the control of the violator be:

(A) delivered to an officer of the court to be destroyed; or

(B) delivered to the registrant to be destroyed.

(d) If the court finds that the violator acted with actual knowledge of the registrant's mark or in bad faith, the court, in the court's discretion, may:

(1) enter judgment in an amount not to exceed three times the amount of profits and damages; and

(2) award reasonable attorney's fees to the prevailing party.

(e) A registrant is entitled to recover damages under Subsections (a)(2), (c)(1), and (d) only if the violator acted with intent to cause confusion or mistake or to deceive.

(f) The enumeration of any right or remedy under this section does not affect the prosecution of conduct under the penal laws of this state.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 1, eff. September 1, 2012.

Sec. 16.103. INJURY TO BUSINESS REPUTATION; DILUTION. (a) Subject to the principles of equity, the owner of a mark that is famous and distinctive, inherently or through acquired distinctiveness, in this state is entitled to enjoin another person's commercial use of a mark or trade name that begins after the mark has become famous if use of the mark or trade name is likely to cause the

dilution of the famous mark.

(b) For purposes of this section, a mark is considered to be famous if the mark is widely recognized by the public throughout this state or in a geographic area in this state as a designation of source of the goods or services of the mark's owner. In determining whether a mark is famous, a court may consider factors including:

(1) the duration, extent, and geographic reach of the advertisement and publicity of the mark in this state, regardless of whether the mark is advertised or publicized by the owner or a third party;

(2) the amount, volume, and geographic extent of sales of goods or services offered under the mark in this state;

(3) the extent of actual recognition of the mark in this state; and

(4) whether the mark is registered in this state or in the United States Patent and Trademark Office.

(c) In an action brought under this section, the owner of a famous mark is entitled to injunctive relief throughout the geographic area in this state in which the mark is found to have become famous before the use of the other mark. If the court finds that the person against whom the injunctive relief is sought wilfully intended to cause the dilution of the famous mark, the owner shall also be entitled to remedies under this chapter, subject to the court's discretion and principles of equity.

(d) A person may not bring an action under this section for:

(1) a fair use, including a nominative or descriptive fair use, or facilitation of the fair use, of a famous mark by another person other than as a designation of source for the person's own goods or services, including a fair use in connection with:

(A) advertising or promoting that permits consumers to compare goods or services; or

(B) identifying and parodying, criticizing, or commenting on the famous mark owner or the famous mark owner's goods or services;

(2) a noncommercial use of the mark; or

(3) any form of news reporting or commentary.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 1, eff. September 1, 2012.

Sec. 16.104. REMEDIES. (a) An owner of a mark registered under this chapter may bring an action to enjoin the manufacture, use, display, or sale of any counterfeits or imitations of a mark.

(b) If the court finds that a wrongful act described by Subsection (a) has been committed, the court shall enjoin the wrongful manufacture, use, display, or sale and may:

(1) subject to Subsection (c), require the violator to pay to the owner of the mark all profits derived from or damages resulting from the wrongful acts; and

(2) order that the wrongful counterfeits or imitations in the possession or under the control of the defendant be:

(A) delivered to an officer of the court to be destroyed; or

(B) delivered to the complainant to be destroyed.

(c) If the court finds that the violator committed the wrongful acts with knowledge of the registrant's mark or in bad faith, or otherwise as according to the circumstances of the case, the court, in the court's discretion, may:

(1) enter judgment in an amount not to exceed three times the amount of profits and damages; and

(2) award reasonable attorney's fees to the prevailing party.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 1, eff. September 1, 2012.

Sec. 16.105. OLYMPIC SYMBOLS. (a) Without the permission of the United States Olympic Committee, a person may not, for the purpose of trade, to induce the sale of goods or services, or to promote a theatrical exhibition, athletic performance, or competition, use:

(1) the symbol of the International Olympic Committee, consisting of five interlocking rings;

(2) the emblem of the United States Olympic Committee, consisting of an escutcheon having a blue chief and vertically extending red and white bars on the base with five interlocking rings

displayed on the chief;

(3) a trademark, trade name, sign, symbol, or insignia falsely representing association with or authorization by the International Olympic Committee or the United States Olympic Committee; or

(4) the words "Olympic," "Olympiad," or "Citius Altius Fortius" or a combination or simulation of those words that tends to cause confusion or mistake, to deceive, or to suggest falsely a connection with the United States Olympic Committee or an Olympic activity.

(b) On violation of Subsection (a), the United States Olympic Committee is entitled to the remedies available to a registrant on infringement of a mark registered under this chapter.

Added by Acts 1997, 75th Leg., ch. 248, Sec. 2, eff. Sept. 1, 1997. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 1, eff. September 1, 2012.

Sec. 16.106. FORUM FOR ACTIONS REGARDING REGISTRATION; SERVICE ON OUT-OF-STATE REGISTRANTS. (a) An action to require cancellation of a mark registered under this chapter or in mandamus to compel registration of a mark under this chapter shall be brought in a district court of Travis County. In an action to compel registration of a mark, the proceeding must be based solely on the record before the secretary of state.

(b) In an action for cancellation, the secretary of state may not be made a party to the proceeding but shall be notified of the filing of the complaint by the clerk of the court in which the action is filed and shall be given the right to intervene in the action.

(c) In an action brought against a nonresident registrant, service may be made on the secretary of state as agent for service of process of the registrant in accordance with the procedures established for service on foreign corporations and business entities under the Business Organizations Code.

Added by Acts 1997, 75th Leg., ch. 248, Sec. 2, eff. Sept. 1, 1997. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 1, eff. September 1, 2012.

Sec. 16.107. COMMON LAW RIGHTS NOT AFFECTED. No registration under this chapter adversely affects common law rights acquired prior to registration under this chapter. However, during any period when the registration of a mark under this chapter is in force and the registrant has not abandoned the mark, no common law rights as against the registrant of the mark may be acquired.

Added by Acts 1997, 75th Leg., ch. 248, Sec. 2, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 563 (H.B. 3141), Sec. 1, eff. September 1, 2012.

CHAPTER 17. DECEPTIVE TRADE PRACTICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 17.01. DEFINITIONS. In this chapter, unless the context requires a different definition,

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

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

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

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

Sec. 17.08. PRIVATE USE OF STATE SEAL. (a) In this section:

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

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

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

(C) use of the state seal or a representation of the state seal in an encyclopedia, dictionary, book, journal, pamphlet, periodical, magazine, or newspaper incident to a description or

history of seals, coats of arms, heraldry, or this state;

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

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

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

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

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

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

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

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

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

(2) for another commercial purpose.

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

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

Chapter 2001, Government Code.

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

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

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

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

(1) reproduced in complete form; and

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

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

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

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967. Amended by Acts 1985, 69th Leg., ch. 811, Sec. 10, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 300, Sec. 8, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921 (H.B. 3167), Sec. 2A.001, eff. September 1, 2007.

Sec. 17.11. DECEPTIVE WHOLESALE AND GOING-OUT-OF-BUSINESS ADVERTISING. (a) In Subsection (b) of this section, unless the context requires a different definition, "wholesaler" means a person who sells for the purpose of resale and not directly to a consuming purchaser.

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

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

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

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 17.12. DECEPTIVE ADVERTISING. (a) No person may disseminate a statement he knows materially misrepresents the cost or character of tangible personal property, a security, service, or anything he may offer for the purpose of

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

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

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

(c) A person's proprietary mark appearing on or in a statement

described in Subsection (a) of this section is prima facie evidence that the person disseminated the statement.

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

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

SUBCHAPTER C. REGULATING THE SALE OR TRANSFER OF SECONDHAND WATCHES

Sec. 17.18. APPLICABILITY OF SUBCHAPTER TO SECONDHAND WATCHES. (a) A watch is secondhand if its

(1) case, movement, or case and movement as a unit, has been previously sold or transferred to a person for his own use or the use of another;

(2) serial number, movement number, or other identification mark or number has been removed, altered, or covered up; or

(3) movement is more than one year old and has been repaired even though the watch has been returned to the seller or transferor for exchange or credit as described in Subsection (b)(1) of this section.

(b) A watch is not secondhand if

(1) after the sale or transfer described in Subsection (a)(1) of this section,

(A) the purchaser or transferee returns the watch to the seller or transferor for exchange or credit within one year from the date of sale or transfer to him;

(B) the seller or transferor keeps a written record showing

(i) the purchaser's or transferee's name;

(ii) the date of sale or transfer;

(iii) the serial number on the case and movement, if present; and

(iv) any proprietary mark;

(C) the record is kept for at least five years from the date of sale or transfer; and

(D) the record is open for inspection at the seller's or transferor's business address during business hours by

(i) the county or district attorney of the county in which the seller or transferor does business; or

(ii) his duly authorized representative; or

(2) its movement is merely cleaned, oiled, or recased.

(c) The provisions of Subsections (a) and (b) of this section do not apply to a pawnbroker's auction sale of unredeemed pledges.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 17.19. LABELING SECONDHAND WATCHES. No person in the business of buying or selling watches may sell or exchange, offer to sell or exchange, possess, or display with intent to sell or exchange a secondhand watch unless he

(1) fastens to the watch a clearly written or printed tag bearing the word "secondhand"; and

(2) places the tag so the word "secondhand" is in plain sight at all times.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 17.20. CONTENT OF INVOICE FOR SECONDHAND WATCH. (a) No person in the business of buying or selling watches may sell or transfer a secondhand watch unless he gives the purchaser or transferee a written invoice

(1) bearing the words "secondhand watch" in letters larger than any other letters on the invoice, except those of the letterhead; and

(2) listing the following items:

(A) the seller's or transferor's name and address;

(B) the purchaser's or transferee's name and address;

(C) the date of sale or transfer;

(D) the name of the watch or its manufacturer; and

(E) the serial number or proprietary mark on the watch or, if the serial number or proprietary mark has been removed, altered, or covered up, a statement to that effect.

(b) The seller or transferor shall keep on file a duplicate of the invoice required by Subsection (a) of this section for at least five years from the date of sale or transfer.

(c) The county or district attorney, or his authorized

representative, of the county in which the seller or transferor does business may inspect the duplicate invoice described in Subsection (b) of this section

(1) during the seller's or transferor's business hours; and

(2) at the seller's or transferor's business address.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 17.21. ADVERTISING WATCH AS SECONDHAND. No person may advertise or display a secondhand watch for sale or exchange unless he clearly states in the advertisement or display that the watch is secondhand.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 17.22. CRIMINAL PENALTY. A person, or his agent or employee, who violates a provision of Section 17.19, 17.20, or 17.21 of this code is guilty of a misdemeanor and upon conviction is punishable by imprisonment in the county jail for not more than 100 days or by a fine of not more than $500 or by both.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

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

Sec. 17.29. MISUSING CONTAINER; EVIDENCE OF MISUSE AND CONTAINER'S OWNERSHIP. (a) In this section, unless the context requires a different definition, "container" also includes drink-dispensing fountain.

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

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

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

(3) refuse to return the container to the owner if he

requests its return.

(c) A person's wilful

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

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

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

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

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

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

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

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 17.30. MISUSING DAIRY CONTAINER BEARING PROPRIETARY MARK. (a) In this section, unless the context requires a different definition, "dairy container" includes butter box, ice cream can, ice cream tub, milk bottle, milk bottle case, milk can, and milk jar.

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

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

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

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

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

(2) substitute on a dairy container his proprietary mark

for that of the owner.

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

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

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1, eff. Sept. 1, 1967.

Sec. 17.31. IDENTIFICATION, POSSESSION, AND USE OF CERTAIN CONTAINERS. (a) In this section:

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

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

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

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

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

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

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

(8) "Poultry box" means a permanent type of container that is used by a processor, distributor, retailer, or food service

establishment or an agent of one of those persons to transport, store, or carry poultry.

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

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

(c) A person may not:

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

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

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

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

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

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

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

(f) A person may not:

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

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

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

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

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

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

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

Added by Acts 1989, 71st Leg., ch. 724, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER E. DECEPTIVE TRADE PRACTICES AND CONSUMER PROTECTION

Sec. 17.41. SHORT TITLE. This subchapter may be cited as the Deceptive Trade Practices-Consumer Protection Act.

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

Sec. 17.42. WAIVERS: PUBLIC POLICY. (a) Any waiver by a consumer of the provisions of this subchapter is contrary to public policy and is unenforceable and void; provided, however, that a waiver is valid and enforceable if:

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

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

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

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

(c) A waiver under this section must be:

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

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

(3) in substantially the following form:

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

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

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

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

Sec. 17.43. CUMULATIVE REMEDIES. The provisions of this subchapter are not exclusive. The remedies provided in this subchapter are in addition to any other procedures or remedies provided for in any other law; provided, however, that no recovery shall be permitted under both this subchapter and another law of both damages and penalties for the same act or practice. A violation of a provision of law other than this subchapter is not in and of itself a violation of this subchapter. An act or practice that is a violation of a provision of law other than this subchapter may be made the basis of an action under this subchapter if the act or practice is proscribed by a provision of this subchapter or is declared by such other law to be actionable under this subchapter. The provisions of

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

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

Sec. 17.44. CONSTRUCTION AND APPLICATION. (a) This subchapter shall be liberally construed and applied to promote its underlying purposes, which are to protect consumers against false, misleading, and deceptive business practices, unconscionable actions, and breaches of warranty and to provide efficient and economical procedures to secure such protection.

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

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

Sec. 17.45. DEFINITIONS. As used in this subchapter:

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

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

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

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

(5) "Unconscionable action or course of action" means an act or practice which, to a consumer's detriment, takes advantage of the lack of knowledge, ability, experience, or capacity of the

consumer to a grossly unfair degree.

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

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

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

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

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

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

(12) "Residence" means a building:

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

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

(13) "Intentionally" means actual awareness of the falsity, deception, or unfairness of the act or practice, or the condition, defect, or failure constituting a breach of warranty giving rise to

the consumer's claim, coupled with the specific intent that the consumer act in detrimental reliance on the falsity or deception or in detrimental ignorance of the unfairness. Intention may be inferred from objective manifestations that indicate that the person acted intentionally or from facts showing that a defendant acted with flagrant disregard of prudent and fair business practices to the extent that the defendant should be treated as having acted intentionally.

Added by Acts 1973, 63rd Leg., p. 322, ch. 143, Sec. 1, eff. May 21, 1973. Amended by Acts 1975, 64th Leg., p. 149, ch. 62, Sec. 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 600, ch. 216, Sec. 1, eff. May 23, 1977; Acts 1979, 66th Leg., p. 1327, ch. 603, Sec. 2, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 4943, ch. 883, Sec. 2, 3, eff. Aug. 29, 1983; Acts 1995, 74th Leg., ch. 414, Sec. 2, eff. Sept. 1, 1995.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 411 (S.B. 1047), Sec. 1, eff. September 1, 2007.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 1265 and H.B. 2573, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 17.46. DECEPTIVE TRADE PRACTICES UNLAWFUL. (a) False, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful and are subject to action by the consumer protection division under Sections 17.47, 17.58, 17.60, and 17.61 of this code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(18) advertising, selling, or distributing a card which purports to be a prescription drug identification card issued under Section 4151.152, Insurance Code, in accordance with rules adopted by

the commissioner of insurance, which offers a discount on the purchase of health care goods or services from a third party provider, and which is not evidence of insurance coverage, unless:

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

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

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

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

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

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

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

(23) filing suit founded upon a written contractual obligation of and signed by the defendant to pay money arising out of or based on a consumer transaction for goods, services, loans, or extensions of credit intended primarily for personal, family, household, or agricultural use in any county other than in the county in which the defendant resides at the time of the commencement of the action or in the county in which the defendant in fact signed the

contract; provided, however, that a violation of this subsection shall not occur where it is shown by the person filing such suit he neither knew or had reason to know that the county in which such suit was filed was neither the county in which the defendant resides at the commencement of the suit nor the county in which the defendant in fact signed the contract;

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

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

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

(27) taking advantage of a disaster declared by the governor under Chapter 418, Government Code, by:

(A) selling or leasing fuel, food, medicine, or another necessity at an exorbitant or excessive price; or

(B) demanding an exorbitant or excessive price in connection with the sale or lease of fuel, food, medicine, or another necessity.

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

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

(d) For the purposes of the relief authorized in Subdivision

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

Added by Acts 1973, 63rd Leg., p. 322, ch. 143, Sec. 1, eff. May 21, 1973. Amended by Acts 1977, 65th Leg., p. 601, ch. 216, Sec. 2, 3, eff. May 23, 1977; Acts 1977, 65th Leg., p. 892, ch. 336, Sec. 1, eff. Aug. 29, 1977; Acts 1979, 66th Leg., p. 1327, ch. 603, Sec. 3, eff. Aug. 27, 1979; Acts 1987, 70th Leg., ch. 280, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 570, Sec. 6, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 414, Sec. 3, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 463, Sec. 1, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 962, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1229, Sec. 27, eff. June 1, 2002; Acts 2003, 78th Leg., ch. 1276, Sec. 4.001(a), eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.101, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1230 (H.B. 2427), Sec. 26, eff. September 1, 2007.

Sec. 17.461. PYRAMID PROMOTIONAL SCHEME. (a) In this section:

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

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

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

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

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

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

(4) "Product" means a good, a service, or intangible

property of any kind.

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

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

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

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

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

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

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

Added by Acts 1995, 74th Leg., ch. 463, Sec. 2, eff. Sept. 1, 1995.

Sec. 17.462. LISTING OF BUSINESS LOCATION OF CERTAIN BUSINESSES. (a) A person may not misrepresent the geographical location of a business that derives 50 percent or more of its gross income from the sale or arranging for the sale of flowers or floral arrangements in the listing of the business:

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

(2) on an Internet website; or

(3) in a print advertisement.

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

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

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

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

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

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

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

(d) This section does not apply to:

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

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

(3) an owner or publisher of a print medium providing

information about other businesses;

(4) an Internet service provider; or

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

(e) This section creates no duty and imposes no obligation upon anyone other than the business that is the subject of the advertisement or listing.

(f) A violation of this section is a false, misleading, or deceptive act or practice under this subchapter, and any public or private right or remedy prescribed by this subchapter may be used to enforce this section.

Added by Acts 2003, 78th Leg., ch. 138, Sec. 1, eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 489 (H.B. 989), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 489 (H.B. 989), Sec. 2, eff. September 1, 2011.

Sec. 17.47. RESTRAINING ORDERS. (a) Whenever the consumer protection division has reason to believe that any person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this subchapter, and that proceedings would be in the public interest, the division may bring an action in the name of the state against the person to restrain by temporary restraining order, temporary injunction, or permanent injunction the use of such method, act, or practice.

Nothing herein shall require the consumer protection division to notify such person that court action is or may be under consideration. Provided, however, the consumer protection division shall, at least seven days prior to instituting such court action, contact such person to inform him in general of the alleged unlawful conduct. Cessation of unlawful conduct after such prior contact shall not render such court action moot under any circumstances, and such injunctive relief shall lie even if such person has ceased such unlawful conduct after such prior contact. Such prior contact shall not be required if, in the opinion of the consumer protection division, there is good cause to believe that such person would evade service of process if prior contact were made or that such person

would destroy relevant records if prior contact were made, or that such an emergency exists that immediate and irreparable injury, loss, or damage would occur as a result of such delay in obtaining a temporary restraining order.

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

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

(1) not more than $20,000 per violation; and

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

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

(e) Any person who violates the terms of an injunction under this section shall forfeit and pay to the state a civil penalty of not more than $10,000 per violation, not to exceed $50,000. In determining whether or not an injunction has been violated the court

shall take into consideration the maintenance of procedures reasonably adapted to insure compliance with the injunction. For the purposes of this section, the district court issuing the injunction shall retain jurisdiction, and the cause shall be continued, and in these cases, the consumer protection division, or the district or county attorney with prior notice to the consumer protection division, acting in the name of the state, may petition for recovery of civil penalties under this section.

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

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

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

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

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

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

(6) any other matter that justice may require.

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

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

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2573, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 17.48. DUTY OF DISTRICT AND COUNTY ATTORNEY. (a) It is the duty of the district and county attorneys to lend to the consumer protection division any assistance requested in the commencement and prosecutions of action under this subchapter.

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

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

Sec. 17.49. EXEMPTIONS. (a) Nothing in this subchapter shall apply to the owner or employees of a regularly published newspaper, magazine, or telephone directory, or broadcast station, or billboard, wherein any advertisement in violation of this subchapter is published or disseminated, unless it is established that the owner or employees of the advertising medium have knowledge of the false, deceptive, or misleading acts or practices declared to be unlawful by this subchapter, or had a direct or substantial financial interest in the sale or distribution of the unlawfully advertised good or service. Financial interest as used in this section relates to an expectation which would be the direct result of such advertisement.

(b) Nothing in this subchapter shall apply to acts or practices

authorized under specific rules or regulations promulgated by the Federal Trade Commission under Section 5(a)(1) of the Federal Trade Commission Act [15 U.S.C.A. 45(a)(1)]. The provisions of this subchapter do apply to any act or practice prohibited or not specifically authorized by a rule or regulation of the Federal Trade Commission. An act or practice is not specifically authorized if no rule or regulation has been issued on the act or practice.

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

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

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

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

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

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

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

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

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

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

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

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

(g) Nothing in this subchapter shall apply to a cause of action arising from a transaction, a project, or a set of transactions

relating to the same project, involving total consideration by the consumer of more than $500,000, other than a cause of action involving a consumer's residence.

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

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

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

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

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

Added by Acts 1973, 63rd Leg., p. 322, ch. 143, Sec. 1, eff. May 21, 1973. Amended by Acts 1995, 74th Leg., ch. 414, Sec. 4, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1229, Sec. 28, eff. June 1, 2002; Acts 2003, 78th Leg., ch. 1276, Sec. 4.001(b), eff. Sept. 1, 2003. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 189 (S.B. 1353), Sec. 1, eff. May 28, 2011.

Sec. 17.50. RELIEF FOR CONSUMERS. (a) A consumer may maintain an action where any of the following constitute a producing cause of economic damages or damages for mental anguish:

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

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

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

(2) breach of an express or implied warranty;

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

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

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

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

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

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

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

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

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

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

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

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

(2) additional damages under Subsection (b).

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

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

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

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.102, eff. September 1, 2005.

Sec. 17.501. CONSUMER PROTECTION DIVISION PARTICIPATION IN CLASS ACTION. (a) A consumer filing an action under Section 17.50 that is to be maintained as a class action shall send to the consumer protection division:

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

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

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

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

(b) The court shall abate the action for 60 days if the court

finds that notice was not provided to the consumer protection division as required by Subsection (a).

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

Added by Acts 2003, 78th Leg., ch. 360, Sec. 2, eff. Sept. 1, 2003.

Sec. 17.505. NOTICE; INSPECTION. (a) As a prerequisite to filing a suit seeking damages under Subdivision (1) of Subsection (b) of Section 17.50 of this subchapter against any person, a consumer shall give written notice to the person at least 60 days before filing the suit advising the person in reasonable detail of the consumer's specific complaint and the amount of economic damages, damages for mental anguish, and expenses, including attorneys' fees, if any, reasonably incurred by the consumer in asserting the claim against the defendant. During the 60-day period a written request to inspect, in a reasonable manner and at a reasonable time and place, the goods that are the subject of the consumer's action or claim may be presented to the consumer.

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

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

(d) The court shall abate the suit if the court, after a hearing, finds that the person is entitled to an abatement because notice was not provided as required by this section. A suit is

automatically abated without the order of the court beginning on the 11th day after the date a plea in abatement is filed under Subsection (c) if the plea in abatement:

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

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

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

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

Sec. 17.5051. MEDIATION. (a) A party may, not later than the 90th day after the date of service of a pleading in which relief under this subchapter is sought, file a motion to compel mediation of the dispute in the manner provided by this section.

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

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

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

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

(f) A party may not compel mediation under this section if the

amount of economic damages claimed is less than $15,000, unless the party seeking to compel mediation agrees to pay the costs of the mediation.

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

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

Added by Acts 1995, 74th Leg., ch. 414, Sec. 7, eff. Sept. 1, 1995.

Sec. 17.5052. OFFERS OF SETTLEMENT. (a) A person who receives notice under Section 17.505 may tender an offer of settlement at any time during the period beginning on the date the notice is received and ending on the 60th day after that date.

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

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

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

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

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

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

(f) A settlement offer tendered by a person against whom a claim under this subchapter is pending that complies with this

section and that has been rejected by the consumer may be filed with the court with an affidavit certifying its rejection.

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

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

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

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

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

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

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

Added by Acts 1995, 74th Leg., ch. 414, Sec. 7, eff. Sept. 1, 1995.

Sec. 17.506. DAMAGES: DEFENSES. (a) In an action brought under Section 17.50 of this subchapter, it is a defense to the award of any damages or attorneys' fees if the defendant proves that before

consummation of the transaction he gave reasonable and timely written notice to the plaintiff of the defendant's reliance on:

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

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

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

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

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

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

(1) the amount of economic damages and damages for mental

anguish claimed; and

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

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

Sec. 17.55. PROMOTIONAL MATERIAL. If damages or civil penalties are assessed against the seller of goods or services for advertisements or promotional material in a suit filed under Section 17.47, 17.48, 17.50, or 17.51 of this subchapter, the seller of the goods or services has a cause of action against a third party for the amount of damages or civil penalties assessed against the seller plus attorneys' fees on a showing that:

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

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

(3) the seller has ceased disseminating the material.

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

Sec. 17.555. INDEMNITY. A person against whom an action has been brought under this subchapter may seek contribution or indemnity from one who, under the statute law or at common law, may have liability for the damaging event of which the consumer complains. A person seeking indemnity as provided by this section may recover all sums that he is required to pay as a result of the action, his attorney's fees reasonable in relation to the amount of work performed in maintaining his action for indemnity, and his costs.

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

Text of section as amended by Acts 1995, 74th Leg., ch. 138, Sec. 7.

Sec. 17.56. VENUE. Except as provided by Article 5.06-1(8), Insurance Code, an action brought which alleges a claim to relief under Section 17.50 of this subchapter shall be brought as provided by Chapter 15, Civil Practice and Remedies Code.

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

Text of section as amended by Acts 1995, 74th Leg., ch. 414, Sec. 9.

Sec. 17.56. VENUE. An action brought under this subchapter may be brought:

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

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

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

Sec. 17.565. LIMITATION. All actions brought under this subchapter must be commenced within two years after the date on which the false, misleading, or deceptive act or practice occurred or within two years after the consumer discovered or in the exercise of reasonable diligence should have discovered the occurrence of the false, misleading, or deceptive act or practice. The period of limitation provided in this section may be extended for a period of 180 days if the plaintiff proves that failure timely to commence the action was caused by the defendant's knowingly engaging in conduct

solely calculated to induce the plaintiff to refrain from or postpone the commencement of the action.

Added by Acts 1979, 66th Leg., p. 1332, ch. 603, Sec. 8, eff. Aug. 27, 1979. Renumbered from Bus. & C. Code Sec. 17.56A by Acts 1987, 70th Leg., ch. 167, Sec. 5.02(7), eff. Sept. 1, 1987.

Sec. 17.57. SUBPOENAS. The clerk of a district court at the request of any party to a suit pending in his court which is brought under this subchapter shall issue a subpoena for any witness or witnesses who may be represented to reside within 100 miles of the courthouse of the county in which the suit is pending or who may be found within such distance at the time of trial. The clerk shall issue a separate subpoena and a copy thereof for each witness subpoenaed. When an action is pending in Travis County on the consent of the parties a subpoena may be issued for any witness or witnesses who may be represented to reside within 100 miles of the courthouse of a county in which the suit could otherwise have been brought or who may be found within such distance at the time of the trial.

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

Sec. 17.58. VOLUNTARY COMPLIANCE. (a) In the administration of this subchapter the consumer protection division may accept assurance of voluntary compliance with respect to any act or practice which violates this subchapter from any person who is engaging in, has engaged in, or is about to engage in the act or practice. The assurance shall be in writing and shall be filed with and subject to the approval of the district court in the county in which the alleged violator resides or does business or in the district court of Travis County.

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

(c) An assurance of voluntary compliance shall not be

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

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

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

Sec. 17.59. POST JUDGMENT RELIEF. (a) If a money judgment entered under this subchapter is unsatisfied 30 days after it becomes final and if the prevailing party has made a good faith attempt to obtain satisfaction of the judgment, the following presumptions exist with respect to the party against whom the judgment was entered:

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

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

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

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

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

(c) The order appointing a receiver must clearly state whether the receiver will have general power to manage and operate the defendant's business or have power to manage only a defendant's

finances. The order shall limit the duration of the receivership to such time as the judgment or judgments awarded under this subchapter are paid in full. Where there are judgments against a defendant which have been awarded to more than one plaintiff, the court shall have discretion to take any action necessary to efficiently operate a receivership in order to accomplish the purpose of collecting the judgments.

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

Sec. 17.60. REPORTS AND EXAMINATIONS. Whenever the consumer protection division has reason to believe that a person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this subchapter, or when it reasonably believes it to be in the public interest to conduct an investigation to ascertain whether any person is engaging in, has engaged in, or is about to engage in any such act or practice, an authorized member of the division may:

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

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

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

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

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

Sec. 17.61. CIVIL INVESTIGATIVE DEMAND. (a) Whenever the consumer protection division believes that any person may be in possession, custody, or control of the original copy of any documentary material relevant to the subject matter of an investigation of a possible violation of this subchapter, an authorized agent of the division may execute in writing and serve on the person a civil investigative demand requiring the person to produce the documentary material and permit inspection and copying.

(b) Each demand shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Added by Acts 1973, 63rd Leg., p. 322, ch. 143, Sec. 1, eff. May 21, 1973. Amended by Acts 1989, 71st Leg., ch. 1082, Sec. 8.03, eff. Jan. 1, 1991; Acts 1991, 72nd Leg., ch. 242, Sec. 11.20, eff. Sept. 1, 1991.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 411 (S.B. 1047), Sec. 2, eff. September 1, 2007.

Sec. 17.62. PENALTIES. (a) Any person who, with intent to avoid, evade, or prevent compliance, in whole or in part, with Section 17.60 or 17.61 of this subchapter, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any documentary material or merchandise or sample of merchandise is guilty of a misdemeanor and on conviction is punishable by a fine of not more than $5,000 or by confinement in the county jail for not more than one year, or both.

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

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

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

Sec. 17.63. APPLICATION. The provisions of this subchapter apply only to acts or practices occurring after the effective date of this subchapter, except a right of action or power granted to the attorney general under Chapter 10, Title 79, Revised Civil Statutes of Texas, 1925, as amended, prior to the effective date of this subchapter.

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

1973.

SUBCHAPTER F. GOING OUT OF BUSINESS SALES

Sec. 17.81. DEFINITION. In this chapter "going out of business sale" means an offer to sell to the public, or the sale to the public of, goods, wares, and merchandise on the implied or direct representation by written or oral advertising that the sale is in anticipation of the termination of all of the operations of a business at all of its locations in a county and in all of the counties immediately adjacent to that county.

Added by Acts 1985, 69th Leg., ch. 172, Sec. 1, eff. Sept. 1, 1985.

Sec. 17.82. PROHIBITED CONDUCT. (a) A person may not conduct a sale advertised with the phrase "going out of business," "closing out," "shutting doors forever," or "bankruptcy sale"; the word "foreclosure" or "bankruptcy"; or a similar phrase or word indicating that an enterprise is ceasing business unless the business is closing all of its operations in a county and in all of the counties immediately adjacent to that county and follows the procedures required by this subchapter.

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

Added by Acts 1985, 69th Leg., ch. 172, Sec. 1, eff. Sept. 1, 1985.

Sec. 17.83. ORIGINAL INVENTORY. (a) To conduct a going out of business sale, a person must file an original inventory with the chief appraiser of the appraisal district in which the person's principal place of business in the state is located. The original inventory must be accompanied by a filing fee of $20.

(b) The original inventory must include:

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

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

(3) a description of the place where the liquidation sale

is to be held;

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

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

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

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

Sec. 17.835. NOTICE OF FILING OF ORIGINAL INVENTORY. Not later than the fifth business day after the date on which a person files an original inventory under Section 17.83, the chief appraiser shall send notice of the filing to the comptroller, the county clerk of the county in which the person's principal place of business in the state is located, and the tax collector for each of the taxing units that tax the property described in the original inventory.

Added by Acts 2001, 77th Leg., ch. 291, Sec. 2, eff. Sept. 1, 2001.

Sec. 17.84. PERMIT. (a) After receiving an original inventory, the chief appraiser shall issue to the applicant a permit for a going out of business sale. The permit is valid for 120 days after the day that it is issued and is not renewable.

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

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

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

Sec. 17.85. DEADLINE FOR ORDERS. A person may not sell an item at a going out of business sale if the person ordered the item after

the beginning date of the sale.

Added by Acts 1985, 69th Leg., ch. 172, Sec. 1, eff. Sept. 1, 1985.

Sec. 17.86. SALE INVENTORY. Before the end of each 30-day period during the going out of business sale the permit holder shall file with the chief appraiser a sale inventory containing a complete and detailed list of the goods, wares, and merchandise listed in the original inventory that have not been sold before the date that the sale inventory is filed. A sale inventory must list items offered on the beginning date of the sale separately from the items added to the sale inventory after that date.

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

Sec. 17.87. FINAL INVENTORY. Within 30 days after the day that the going out of business sale ends, the permit holder shall file with the chief appraiser a final inventory. The final inventory must include:

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

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

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

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

Sec. 17.88. DISPOSITION OF SALE ITEMS. After a permit expires, the permit holder may not sell at retail an item offered at the sale covered by the permit.

Added by Acts 1985, 69th Leg., ch. 172, Sec. 1, eff. Sept. 1, 1985.

Sec. 17.89. LATER SALES. A person may not conduct a going out

of business sale beginning within two years after the ending date of the most recent going out of business sale conducted by the person.

Added by Acts 1985, 69th Leg., ch. 172, Sec. 1, eff. Sept. 1, 1985.

Sec. 17.90. FORM OF INVENTORY. An inventory filed under this subchapter must be in the form of a sworn affidavit.

Added by Acts 1985, 69th Leg., ch. 172, Sec. 1, eff. Sept. 1, 1985.

Sec. 17.91. EXCEPTIONS. This subchapter does not apply to:

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

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

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

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

Added by Acts 1985, 69th Leg., ch. 172, Sec. 1, eff. Sept. 1, 1985.

Sec. 17.92. PENALTY. (a) A person commits an offense if the person:

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

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

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

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

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

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

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

Added by Acts 1985, 69th Leg., ch. 172, Sec. 1, eff. Sept. 1, 1985.

Sec. 17.93. INJUNCTION. The attorney general may bring an action to enjoin a violation of this subchapter.

Added by Acts 1985, 69th Leg., ch. 172, Sec. 1, eff. Sept. 1, 1985.

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

Sec. 17.821. DEFINITIONS. In this chapter:

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

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

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

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

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

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

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

Sec. 17.822. MEAT LABELING. (a) If a person sells both kosher meat and nonkosher meat in the same retail store, the person shall clearly label each portion of kosher meat with the word "kosher." If unwrapped or unpackaged meat products are displayed for sale, the display case or container in which the meat is displayed must be clearly labeled with the word "kosher" or "nonkosher," as applicable.

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

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

Sec. 17.823. SALE OF NONKOSHER FOOD. A person commits an

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

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

Sec. 17.824. EXCEPTION. It is an exception to the application of Subsection (b) of Section 17.822 or Section 17.823 of this code that a person describes or labels food as "kosher-style," and, if the description is written, the words "kosher" and "style" are of the same size type or script.

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

Sec. 17.825. CIVIL REMEDY. A consumer aggrieved by a violation of this chapter may maintain a cause of action for damages in accordance with Section 17.50 of this code.

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

Sec. 17.826. PENALTY. An offense under this chapter is punishable by the fine imposed for an offense under Subsection (d) of Section 17.12 of this code.

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

SUBCHAPTER H. SALE OF INDIAN ARTICLES

Sec. 17.851. DEFINITIONS. In this subchapter:

(1) "American Indian" or "Indian" means an individual who is an enrolled member of a federally or state recognized American Indian tribe, band, nation, rancheria, or pueblo or who is an Alaska

Native and a member of an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. Sec. 1601 et seq.).

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

(A) is Indian handcrafted; and

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

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

(A) is not Indian handcrafted; or

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

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

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

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

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

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

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

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

(11) "Simulated turquoise" means:

(A) reconstituted turquoise, which is turquoise dust or

particles that are mixed with plastic resins and are compressed into a solid form so as to resemble natural turquoise; or

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

Added by Acts 1989, 71st Leg., ch. 897, Sec. 1, eff. Aug. 28, 1989.

Sec. 17.852. INQUIRY AS TO PRODUCER. (a) Each person selling or offering for sale authentic or nonauthentic Indian arts and crafts shall request the suppliers of those arts and crafts to disclose the methods used in producing those arts and crafts and to determine whether those arts and crafts are in fact authentic Indian arts and crafts.

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

Added by Acts 1989, 71st Leg., ch. 897, Sec. 1, eff. Aug. 28, 1989.

Sec. 17.853. UNLAWFUL ACTS. A person may not:

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

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

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

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

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

Added by Acts 1989, 71st Leg., ch. 897, Sec. 1, eff. Aug. 28, 1989.

Sec. 17.854. PENALTY. A person who violates this subchapter commits an offense. An offense under this section is a Class B misdemeanor.

Added by Acts 1989, 71st Leg., ch. 897, Sec. 1, eff. Aug. 28, 1989.

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

Sec. 17.881. DEFINITIONS. In this subchapter:

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

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

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

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

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

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

Added by Acts 2003, 78th Leg., ch. 1013, Sec. 1, eff. Sept. 1, 2003.

Sec. 17.882. MEAT LABELING. (a) If a person sells both halal meat and nonhalal meat in the same retail store, the person shall clearly label each portion of halal meat with the word "halal." If an unwrapped or unpackaged meat product is displayed for sale, the display case or container in which the meat is displayed must be clearly labeled with the word "halal" or "nonhalal," as applicable.

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

Added by Acts 2003, 78th Leg., ch. 1013, Sec. 1, eff. Sept. 1, 2003.

Sec. 17.883. SALE OF NONHALAL FOOD. A person commits an

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

Added by Acts 2003, 78th Leg., ch. 1013, Sec. 1, eff. Sept. 1, 2003.

Sec. 17.884. CIVIL REMEDY. A consumer aggrieved by a violation of this subchapter may maintain a cause of action for damages in accordance with Section 17.50.

Added by Acts 2003, 78th Leg., ch. 1013, Sec. 1, eff. Sept. 1, 2003.

Sec. 17.885. CRIMINAL PENALTY. An offense under this subchapter is punishable by the fine imposed for an offense under Section 17.12(d).

Added by Acts 2003, 78th Leg., ch. 1013, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER J. PROTECTION FROM MISLEADING OR DECEPTIVE LIVE MUSICAL PERFORMANCES

Sec. 17.901. DEFINITIONS. In this subchapter:

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

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

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

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

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

Added by Acts 2007, 80th Leg., R.S., Ch. 595 (H.B. 54), Sec. 1, eff. September 1, 2007.

Sec. 17.902. UNAUTHORIZED ADVERTISEMENT, PROMOTION, OR CONDUCTION OF CERTAIN LIVE MUSICAL PERFORMANCES. A person may not advertise, promote, or conduct a live musical performance in this state through the use of a false, deceptive, or misleading affiliation, connection, or association between a recording group and a performing musical group. An act is not considered a violation of this section if:

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

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

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

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

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

Added by Acts 2007, 80th Leg., R.S., Ch. 595 (H.B. 54), Sec. 1, eff. September 1, 2007.

Sec. 17.903. INJUNCTION; RESTITUTION. (a) If the attorney general has reason to believe that a person is engaging in, has engaged in, or is about to engage in an act or practice that violates Section 17.902, and that proceedings would be in the public interest, the attorney general may bring an action in the name of the state against the person to restrain that act or practice by temporary or permanent injunction.

(b) The prosecuting attorney in the county in which a violation of Section 17.902 occurs, with prior written notice to the attorney general, may institute and prosecute an action seeking injunctive relief under this section. The prosecuting attorney shall make a full

report to the attorney general regarding any action prosecuted by the prosecuting attorney under this subsection. The report must include a statement regarding the final disposition of the matter.

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

Added by Acts 2007, 80th Leg., R.S., Ch. 595 (H.B. 54), Sec. 1, eff. September 1, 2007.

Sec. 17.904. CIVIL PENALTY. (a) A person who violates Section 17.902 is liable to the state for a civil penalty of not less than $5,000 or more than $15,000 for each violation. Each performance that violates Section 17.902 constitutes a separate violation.

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

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

Added by Acts 2007, 80th Leg., R.S., Ch. 595 (H.B. 54), Sec. 1, eff. September 1, 2007.

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

Sec. 17.921. DEFINITIONS. In this subchapter:

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

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

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

(4) "Public donations receptacle" means a large container or bin in a parking lot or public place that is intended for use as a

collection point for clothing or household goods donated by the public.

Added by Acts 2009, 81st Leg., R.S., Ch. 1368 (S.B. 776), Sec. 1, eff. September 1, 2009.

Sec. 17.922. REQUIRED DISCLOSURE FOR COLLECTIONS THROUGH PUBLIC RECEPTACLE. (a) A for-profit entity or individual may not use a public donations receptacle to collect donated clothing or household goods and subsequently sell the donated items unless the for-profit entity or individual attaches to the receptacle a notice that:

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

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

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

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

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

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

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

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

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

"THIS DONATION RECEPTACLE IS OPERATED BY (NAME OF FOR-PROFIT ENTITY OR INDIVIDUAL) ON BEHALF OF (NAME OF CHARITABLE ORGANIZATION). Donations are sold for profit by (name of for-profit entity or

individual) and a flat fee of (insert amount) is paid to (name of charitable organization)."

Added by Acts 2009, 81st Leg., R.S., Ch. 1368 (S.B. 776), Sec. 1, eff. September 1, 2009.

Sec. 17.923. REQUIRED DISCLOSURES FOR TELEPHONE OR DOOR-TO-DOOR SOLICITATIONS. (a) A for-profit entity or individual who makes, or directs another person to make, a telephone or door-to-door solicitation requesting that the person solicited donate clothing or household goods may not subsequently sell the donated items unless the solicitor provides to each person solicited, before accepting a donation from the person, the appropriate disclaimer prescribed by this section.

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

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

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

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

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

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1368 (S.B. 776), Sec. 1, eff. September 1, 2009.

Sec. 17.924. REQUIRED DISCLOSURES FOR MAIL SOLICITATIONS. (a) A for-profit entity or individual who mails, or directs another

person to mail, a solicitation requesting that the recipient donate clothing or household goods may not subsequently sell the donated items unless the solicitor includes with the mailed solicitation the appropriate disclosure prescribed by this section, prominently displayed in boldfaced type or capital letters in English and Spanish.

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

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

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

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

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

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1368 (S.B. 776), Sec. 1, eff. September 1, 2009.

Sec. 17.925. LOCAL ORDINANCE OR REGULATION. Nothing in this subchapter shall be construed to limit the authority of a local government to adopt an ordinance or regulation relating to the use of public donations receptacles as a collection point for donated clothing or household goods if the ordinance or regulation is compatible with and equal to or more stringent than a requirement prescribed by this subchapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 1368 (S.B. 776), Sec. 1,

eff. September 1, 2009.

Sec. 17.926. CIVIL PENALTY. (a) Except as provided by Subsection (b), a person who violates this subchapter is liable to this state for a civil penalty in an amount not to exceed $500 for each violation. Each sale of a donated item is considered a separate violation for purposes of this subsection.

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

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

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

Added by Acts 2009, 81st Leg., R.S., Ch. 1368 (S.B. 776), Sec. 1, eff. September 1, 2009.

CHAPTER 20. REGULATION OF CONSUMER CREDIT REPORTING AGENCIES

SUBCHAPTER A. GENERAL REQUIREMENTS

Sec. 20.01. DEFINITIONS. In this chapter:

(1) "Adverse action" includes:

(A) the denial of, increase in a charge for, or reduction in the amount of insurance for personal, family, or household purposes;

(B) the denial of employment or other decision made for employment purposes that adversely affects a current or prospective employee; or

(C) an action or determination with respect to a consumer's application for credit that is adverse to the consumer's interests.

(2) "Consumer" means an individual who resides in this state.

(3) "Consumer file" means all of the information about a

consumer that is recorded and retained by a consumer reporting agency regardless of how the information is stored.

(4) "Consumer report" means a communication or other information by a consumer reporting agency relating to the credit worthiness, credit standing, credit capacity, debts, character, general reputation, personal characteristics, or mode of living of a consumer that is used or expected to be used or collected, wholly or partly, as a factor in establishing the consumer's eligibility for credit or insurance for personal, family, or household purposes, employment purposes, or other purpose authorized under Sections 603 and 604 of the Fair Credit Reporting Act (15 U.S.C. Sections 1681a and 1681b), as amended. The term does not include:

(A) a report containing information solely on a transaction between the consumer and the person making the report;

(B) an authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(C) a report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer makes a decision with respect to the request, if the third party advises the consumer of the name and address of the person to whom the request was made and the person makes the disclosures that must be made under Section 615 of the Fair Credit Reporting Act (15 U.S.C. Section 1681m), as amended, to the consumer in the event of adverse action against the consumer;

(D) any communication of information described in this subdivision among persons related by common ownership or affiliated by corporate control; or

(E) any communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity before the time that the information is initially communicated to direct that such information not be communicated among such persons.

(5) "Consumer reporting agency" means a person that regularly engages wholly or partly in the practice of assembling or evaluating consumer credit information or other information on consumers to furnish consumer reports to third parties for monetary fees, for dues, or on a cooperative nonprofit basis. The term does

not include a business entity that provides only check verification or check guarantee services.

(6) "Investigative consumer report" means all or part of a consumer report in which information on the character, general reputation, personal characteristics, or mode of living of a consumer is obtained through a personal interview with a neighbor, friend, or associate of the consumer or others with whom the consumer is acquainted or who may have knowledge concerning any such information. The term does not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when the information was obtained directly from a creditor of the consumer or from the consumer.

(7) "Security alert" means a notice placed on a consumer file that alerts a recipient of a consumer report involving that consumer file that the consumer's identity may have been used without the consumer's consent to fraudulently obtain goods or services in the consumer's name.

(8) "Security freeze" means a notice placed on a consumer file that prohibits a consumer reporting agency from releasing a consumer report relating to the extension of credit involving that consumer file without the express authorization of the consumer.

Added by Acts 1997, 75th Leg., ch. 1396, Sec. 33(a), eff. Oct. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1326, Sec. 1, eff. Sept. 1, 2003.
Assigned by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 2, eff. January 1, 2014.

Sec. 20.02. PERMISSIBLE PURPOSES; PROHIBITION; USE OF CONSUMER'S SOCIAL SECURITY NUMBER. (a) A consumer reporting agency may furnish a consumer report only:

(1) in response to a court order issued by a court with proper jurisdiction;

(2) in accordance with the written instructions of the consumer to whom the report relates; or

(3) to a person the agency has reason to believe:

(A) intends to use the information in connection with a transaction involving the extension of credit to, or review or

collection of an account of, the consumer to whom the report relates;

(B) intends to use the information for employment purposes as authorized under the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), as amended, and regulations adopted under that Act;

(C) intends to use the information in connection with the underwriting of insurance involving the consumer as authorized under the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), as amended, and regulations adopted under that Act;

(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental entity required by law to consider an applicant's financial responsibility or status;

(E) has a legitimate business need for the information in connection with a business transaction involving the consumer; or

(F) intends to use the information for any purpose authorized under the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), as amended, and regulations adopted under that Act.

(b) A consumer reporting agency may not prohibit a user of a consumer report or investigative consumer report from disclosing the contents of the report or providing a copy of the report to the consumer to whom it relates at the consumer's request if adverse action against the consumer based wholly or partly on the report has been taken or is contemplated by the user of the report. A user of a consumer report or a consumer reporting agency may not be found liable or otherwise held responsible for a disclosed or copied report when acting under this subsection. The disclosure or copy of the report, by itself, does not make a user of the report a consumer reporting agency.

(c) If a consumer furnishes the consumer's social security number to a person for use in obtaining a consumer report, the person shall include the consumer's social security number with the request for the consumer report and shall include the social security number with all future reports of information regarding the consumer made by the person to a consumer reporting agency unless the person has reason to believe that the social security number is inaccurate.

Added by Acts 1997, 75th Leg., ch. 1396, Sec. 33(a), eff. Oct. 1, 1997.
Assigned by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 2, eff.

January 1, 2014.

Sec. 20.021. CHECK VERIFICATION AND CHECK GUARANTEE SERVICES; DISCLOSURES TO CONSUMERS. (a) In this section, "check verifier" means any business offering check verification or check guarantee services in this state.

(b) On request and proper identification provided by a consumer, a check verifier shall disclose to the consumer in writing all information pertaining to the consumer in the check verifier's files at the time of the request, including:

(1) the criteria used by the check verifier to reject a check from the consumer;

(2) a set of instructions describing how information is presented on the check verifier's written disclosure of the consumer file; and

(3) a toll-free number at which personnel are available to consumers during normal business hours for use in resolving a dispute if the consumer submits a written dispute to the check verifier.

(c) A check verifier may not charge a consumer for disclosing the information required under Subsection (b) if the check verifier has rejected a check from the consumer in the 30 days prior to the consumer's request for information. A check verifier may otherwise impose a reasonable charge on a consumer for the disclosure of information pertaining to the consumer in an amount not to exceed $8.

Added by Acts 2003, 78th Leg., ch. 1291, Sec. 2, eff. Sept. 1, 2003. Renumbered from Business and Commerce Code, Section 20.11 by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 23.001(2), eff. September 1, 2005.
Assigned by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 2, eff. January 1, 2014.

Sec. 20.03. DISCLOSURES TO CONSUMERS. (a) On request and proper identification provided by a consumer, a consumer reporting agency shall disclose to the consumer in writing all information pertaining to the consumer in the consumer reporting agency's files at the time of the request, including:

(1) the name of each person requesting credit information

about the consumer during the preceding six months and the date of each request;

(2) a set of instructions describing how information is presented on the consumer reporting agency's written disclosure of the consumer file; and

(3) if the consumer reporting agency compiles and maintains files on a nationwide basis, a toll-free number at which personnel are available to consumers during normal business hours for use in resolving a dispute if the consumer submits a written dispute to the consumer reporting agency.

(b) The information must be disclosed in a clear, accurate manner that is understandable to a consumer.

(c) A consumer reporting agency shall provide a copy of the consumer's file to the consumer on the request of the consumer and on evidence of proper identification, as directed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), as amended, and regulations adopted under that Act.

(d) Any written disclosure to a consumer by a consumer reporting agency under this chapter must include a written statement that explains in clear and simple language the consumer's rights under this chapter and includes:

(1) the process for receiving a consumer report or consumer file;

(2) the process for requesting or removing a security alert or freeze;

(3) the toll-free telephone number for requesting a security alert;

(4) applicable fees;

(5) dispute procedures;

(6) the process for correcting a consumer file or report; and

(7) information on a consumer's right to bring an action in court or arbitrate a dispute.

Added by Acts 1997, 75th Leg., ch. 1396, Sec. 33(a), eff. Oct. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1326, Sec. 2, eff. Sept. 1, 2003.
Assigned by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 2, eff. January 1, 2014.

SUBCHAPTER B. SECURITY ALERT AND SECURITY FREEZE

Sec. 20.031. REQUESTING SECURITY ALERT. On a request in writing or by telephone and with proper identification provided by a consumer, a consumer reporting agency shall place a security alert on the consumer's consumer file not later than 24 hours after the date the agency receives the request. The security alert must remain in effect for not less than 45 days after the date the agency places the security alert on the file. There is no limit on the number of security alerts a consumer may request. At the end of a 45-day security alert, on request in writing or by telephone and with proper identification provided by the consumer, the agency shall provide the consumer with a copy of the consumer's file. A consumer may include with the security alert request a telephone number to be used by persons to verify the consumer's identity before entering into a transaction with the consumer.

Added by Acts 2003, 78th Leg., ch. 1326, Sec. 3, eff. Sept. 1, 2003. Assigned by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 3, eff. January 1, 2014.

Sec. 20.032. NOTIFICATION OF SECURITY ALERT. A consumer reporting agency shall notify a person who requests a consumer report if a security alert is in effect for the consumer file involved in that report and include a verification telephone number for the consumer if the consumer has provided a number under Section 20.031.

Added by Acts 2003, 78th Leg., ch. 1326, Sec. 3, eff. Sept. 1, 2003. Assigned by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 3, eff. January 1, 2014.

Sec. 20.033. TOLL-FREE SECURITY ALERT REQUEST NUMBER. A consumer reporting agency shall maintain a toll-free telephone number that is answered at a minimum during normal business hours to accept security alert requests from consumers. If calls are not answered after normal business hours, an automated answering system shall record requests and calls shall be returned to the consumer not later than two hours after the time the normal business day begins on the next business day after the date the call was received.

Added by Acts 2003, 78th Leg., ch. 1326, Sec. 3, eff. Sept. 1, 2003.
Assigned by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 3, eff. January 1, 2014.

Sec. 20.034. REQUESTING SECURITY FREEZE. (a) On written request sent by certified mail that includes proper identification provided by a consumer, a consumer reporting agency shall place a security freeze on a consumer's consumer file not later than the fifth business day after the date the agency receives the request.

(b) On written request for a security freeze provided by a consumer under Subsection (a), a consumer reporting agency shall disclose to the consumer the process of placing, removing, and temporarily lifting a security freeze and the process for allowing access to information from the consumer's consumer file for a specific requester or period while the security freeze is in effect.

(c) A consumer reporting agency shall, not later than the 10th business day after the date the agency receives the request for a security freeze:

(1) send a written confirmation of the security freeze to the consumer; and

(2) provide the consumer with a unique personal identification number or password to be used by the consumer to authorize a removal or temporary lifting of the security freeze under Section 20.037.

(d) A consumer may request in writing a replacement personal identification number or password. The request must comply with the requirements for requesting a security freeze under Subsection (a). The consumer reporting agency shall not later than the third business day after the date the agency receives the request for a replacement personal identification number or password provide the consumer with a new unique personal identification number or password to be used by the consumer instead of the number or password that was provided under Subsection (c).

Added by Acts 2003, 78th Leg., ch. 1326, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1143 (S.B. 222), Sec. 1, eff. September 1, 2007.
Assigned by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 3, eff.

January 1, 2014.

Sec. 20.035. NOTIFICATION OF CHANGE. If a security freeze is in place, a consumer reporting agency shall notify the consumer in writing of a change in the consumer file to the consumer's name, date of birth, social security number, or address not later than 30 calendar days after the date the change is made. The agency shall send notification of a change of address to the new address and former address. This section does not require notice of an immaterial change, including a street abbreviation change or correction of a transposition of letters or misspelling of a word.

Added by Acts 2003, 78th Leg., ch. 1326, Sec. 3, eff. Sept. 1, 2003. Assigned by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 3, eff. January 1, 2014.

Sec. 20.036. NOTIFICATION OF SECURITY FREEZE. A consumer reporting agency shall notify a person who requests a consumer report if a security freeze is in effect for the consumer file involved in that report.

Added by Acts 2003, 78th Leg., ch. 1326, Sec. 3, eff. Sept. 1, 2003. Assigned by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 3, eff. January 1, 2014.

Sec. 20.037. REMOVAL OR TEMPORARY LIFTING OF SECURITY FREEZE. (a) On a request in writing or by telephone and with proper identification provided by a consumer, including the consumer's personal identification number or password provided under Section 20.034, a consumer reporting agency shall remove a security freeze not later than the third business day after the date the agency receives the request.

(b) On a request in writing or by telephone and with proper identification provided by a consumer, including the consumer's personal identification number or password provided under Section 20.034, a consumer reporting agency, not later than the third business day after the date the agency receives the request, shall temporarily lift the security freeze for:

(1) a certain properly designated period; or

(2) a certain properly identified requester.

(c) A consumer reporting agency may develop procedures involving the use of a telephone, a facsimile machine, the Internet, or another electronic medium to receive and process a request from a consumer under this section.

(d) A consumer reporting agency shall remove a security freeze placed on a consumer file if the security freeze was placed due to a material misrepresentation of fact by the consumer. The consumer reporting agency shall notify the consumer in writing before removing the security freeze under this subsection.

(e) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1143, Sec. 4, eff. September 1, 2007.

Added by Acts 2003, 78th Leg., ch. 1326, Sec. 3, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1143 (S.B. 222), Sec. 4, eff. September 1, 2007.

Assigned by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 3, eff. January 1, 2014.

Sec. 20.038. EXEMPTION FROM SECURITY FREEZE. A security freeze does not apply to a consumer report provided to:

(1) a state or local governmental entity, including a law enforcement agency or court or private collection agency, if the entity, agency, or court is acting under a court order, warrant, subpoena, or administrative subpoena;

(2) a child support agency as defined by Section 101.004, Family Code, acting to investigate or collect child support payments or acting under Title IV-D of the Social Security Act (42 U.S.C. Section 651 et seq.);

(3) the Health and Human Services Commission acting under Section 531.102, Government Code;

(4) the comptroller acting to investigate or collect delinquent sales or franchise taxes;

(5) a tax assessor-collector acting to investigate or collect delinquent ad valorem taxes;

(6) a person for the purposes of prescreening as provided by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), as

amended;

(7) a person with whom the consumer has an account or contract or to whom the consumer has issued a negotiable instrument, or the person's subsidiary, affiliate, agent, assignee, prospective assignee, or private collection agency, for purposes related to that account, contract, or instrument;

(8) a subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted under Section 20.037(b);

(9) a person who administers a credit file monitoring subscription service to which the consumer has subscribed;

(10) a person for the purpose of providing a consumer with a copy of the consumer's report on the consumer's request;

(11) a check service or fraud prevention service company that issues consumer reports:

(A) to prevent or investigate fraud; or

(B) for purposes of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment;

(12) a deposit account information service company that issues consumer reports related to account closures caused by fraud, substantial overdrafts, automated teller machine abuses, or similar negative information regarding a consumer to an inquiring financial institution for use by the financial institution only in reviewing a consumer request for a deposit account with that institution; or

(13) a consumer reporting agency that:

(A) acts only to resell credit information by assembling and merging information contained in a database of another consumer reporting agency or multiple consumer reporting agencies; and

(B) does not maintain a permanent database of credit information from which new consumer reports are produced.

Added by Acts 2003, 78th Leg., ch. 1326, Sec. 3, eff. Sept. 1, 2003. Assigned by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 3, eff. January 1, 2014.

Sec. 20.0385. APPLICABILITY OF SECURITY ALERT AND SECURITY FREEZE. (a) The requirement under this chapter to place a security

alert or security freeze on a consumer file does not apply to:

(1) a check service or fraud prevention service company that issues consumer reports:

(A) to prevent or investigate fraud; or

(B) for purposes of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment; or

(2) a deposit account information service company that issues consumer reports related to account closures caused by fraud, substantial overdrafts, automated teller machine abuses, or similar negative information regarding a consumer to an inquiring financial institution for use by the financial institution only in reviewing a consumer request for a deposit account with that institution.

(b) The requirement under this chapter to place a security freeze on a consumer file does not apply to a consumer reporting agency that:

(1) acts only to resell credit information by assembling and merging information contained in a database of another consumer reporting agency or multiple consumer reporting agencies; and

(2) does not maintain a permanent database of credit information from which new consumer reports are produced.

(c) Notwithstanding Section 20.12, a violation of a requirement under this chapter to place, temporarily lift, or remove a security freeze on a consumer file is not a false, misleading, or deceptive act or practice under Subchapter E, Chapter 17.

Added by Acts 2003, 78th Leg., ch. 1326, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1143 (S.B. 222), Sec. 2, eff. September 1, 2007.
Assigned by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 3, eff. January 1, 2014.

Sec. 20.039. RESPECT OF SECURITY FREEZE. A consumer reporting agency shall honor a security freeze placed on a consumer file by another consumer reporting agency.

Added by Acts 2003, 78th Leg., ch. 1326, Sec. 3, eff. Sept. 1, 2003.
Assigned by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 3, eff. January 1, 2014.

SUBCHAPTER C. RESTRICTIONS ON AND AUTHORITY OF CONSUMERS AND CONSUMER REPORTING AGENCIES

Sec. 20.04. CHARGES FOR CERTAIN DISCLOSURES OR SERVICES. (a) Except as provided by Subsection (b), a consumer reporting agency may impose a reasonable charge on a consumer for the disclosure of information pertaining to the consumer or for placing a security freeze on a consumer file, temporarily lifting a security freeze for a designated period or for an identified requester, or removing a security freeze in accordance with this chapter. The amount of the charge for the disclosure of information pertaining to the consumer may not exceed $8. The amount of the charge for placing a security freeze on a consumer file, temporarily lifting a security freeze for a designated period, or removing a security freeze may not exceed $10 per request. The amount of the charge for temporarily lifting a security freeze for an identified requester may not exceed $12 per request. On January 1 of each year, a consumer reporting agency may increase the charge for disclosure to a consumer or for placing, temporarily lifting, or removing a security freeze. The increase, if any, must be based proportionally on changes to the Consumer Price Index for All Urban Consumers as determined by the United States Department of Labor with fractional changes rounded to the nearest 50 cents.

(b) A consumer reporting agency may not charge a fee for:

(1) a request by a consumer for a copy of the consumer's file:

(A) made not later than the 60th day after the date on which adverse action is taken against the consumer; or

(B) made on the expiration of a 45-day security alert;

(2) notification of the deletion of information that is found to be inaccurate or can no longer be verified sent to a person designated by the consumer, as prescribed by Section 611 of the Fair Credit Reporting Act (15 U.S.C. Section 1681i), as amended;

(3) a set of instructions for understanding the information presented on the consumer report;

(4) a toll-free telephone number that consumers may call to obtain additional assistance concerning the consumer report or to request a security alert;

(5) a request for a security alert made by a consumer; or

(6) the placement, temporary lifting, or removal of a security freeze at the request of a consumer who has submitted to the consumer reporting agency a copy of a valid police report, investigative report, or complaint involving the alleged commission of an offense under Section 32.51, Penal Code.

Added by Acts 1997, 75th Leg., ch. 1396, Sec. 33(a), eff. Oct. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1326, Sec. 4, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1143 (S.B. 222), Sec. 3, eff. September 1, 2007.
Assigned by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 4, eff. January 1, 2014.

Sec. 20.05. REPORTING OF INFORMATION PROHIBITED. (a) Except as provided by Subsection (b), a consumer reporting agency may not furnish a consumer report containing information related to:

(1) a case under Title 11 of the United States Code or under the federal Bankruptcy Act in which the date of entry of the order for relief or the date of adjudication predates the consumer report by more than 10 years;

(2) a suit or judgment in which the date of entry predates the consumer report by more than seven years or the governing statute of limitations, whichever is longer;

(3) a tax lien in which the date of payment predates the consumer report by more than seven years;

(4) a record of arrest, indictment, or conviction of a crime in which the date of disposition, release, or parole predates the consumer report by more than seven years; or

(5) another item or event that predates the consumer report by more than seven years.

(b) A consumer reporting agency may furnish a consumer report that contains information described by Subsection (a) if the information is provided in connection with:

(1) a credit transaction with a principal amount that is or may reasonably be expected to be $150,000 or more;

(2) the underwriting of life insurance for a face amount that is or may reasonably be expected to be $150,000 or more; or

(3) the employment of a consumer at an annual salary that is or may reasonably be expected to be $75,000 or more.

(b-1) A consumer reporting agency may furnish to a person a consumer report that contains information described by Subsection (a) if the information is needed by the person to avoid a violation of 18 U.S.C. Section 1033.

(c) A consumer reporting agency may not furnish medical information about a consumer in a consumer report that is being obtained for employment purposes or in connection with a credit, insurance, or direct marketing transaction unless the consumer consents to the furnishing of the medical information.

Added by Acts 1997, 75th Leg., ch. 1396, Sec. 33(a), eff. Oct. 1, 1997.
Amended by:

Acts 2005, 79th Leg., Ch. 599 (H.B. 1893), Sec. 1, eff. June 17, 2005.
Assigned by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 4, eff. January 1, 2014.

Sec. 20.06. DISPUTE PROCEDURE. (a) If the completeness or accuracy of information contained in a consumer's file is disputed by the consumer and the consumer notifies the consumer reporting agency of the dispute, the agency shall reinvestigate the disputed information free of charge and record the current status of the disputed information not later than the 30th business day after the date on which the agency receives the notice. The consumer reporting agency shall provide the consumer with the option of notifying the agency of a dispute concerning the consumer's file by speaking directly to a representative of the agency during normal business hours.

(b) Not later than the fifth business day after the date on which a consumer reporting agency receives notice of a dispute from a consumer in accordance with Subsection (a), the agency shall provide notice of the dispute to each person who provided any information related to the dispute.

(c) A consumer reporting agency may terminate a reinvestigation of information disputed by a consumer under Subsection (a) if the agency reasonably determines that the dispute is frivolous or

irrelevant. An agency that terminates a reinvestigation of disputed information under this subsection shall promptly notify the consumer of the termination and the reasons for the termination by mail, or if authorized by the consumer, by telephone. The presence of contradictory information in a consumer's file does not by itself constitute reasonable grounds for determining that the dispute is frivolous or irrelevant.

(d) If disputed information is found to be inaccurate or cannot be verified after a reinvestigation under Subsection (a), the consumer reporting agency, unless otherwise directed by the consumer, shall promptly delete the information from the consumer's file, revise the consumer file, and provide the revised consumer report to the consumer and to each person who requested the consumer report within the preceding six months. The consumer reporting agency may not report the inaccurate or unverified information in subsequent reports.

(e) Information deleted under Subsection (d) may not be reinserted in the consumer's file unless the person who furnishes the information to the consumer reporting agency reinvestigates and states in writing or by electronic record to the agency that the information is complete and accurate.

(f) A consumer reporting agency shall provide written notice of the results of a reinvestigation or reinsertion made under this section not later than the fifth business day after the date on which the reinvestigation or reinsertion has been completed. The notice must include:

(1) a statement that the reinvestigation is complete;

(2) a statement of the determination made by the agency on the completeness or accuracy of the disputed information;

(3) a copy of the consumer's file or consumer report and a description of the results of the reinvestigation;

(4) a statement that a description of the procedure used to determine the accuracy and completeness of the information shall be provided to the consumer by the agency on request, including the name, business address, and, if available, the telephone number of each person contacted in connection with the information;

(5) a statement that the consumer is entitled to add a statement to the consumer's file disputing the accuracy or completeness of the information as provided by Section 611 of the Fair Credit Reporting Act (15 U.S.C. Section 1681i), as amended; and

(6) a statement that the consumer may be entitled to dispute resolution as prescribed by this section, after the consumer receives the notice specified under this subsection.

(g) This section does not require a person who obtains a consumer report for resale to another person to alter or correct an inaccuracy in the consumer report if the report was not assembled or prepared by the person.

(h) This section applies to a business offering check verification or check guarantee services in this state.

Added by Acts 1997, 75th Leg., ch. 1396, Sec. 33(a), eff. Oct. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 851, Sec. 3, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1291, Sec. 1, eff. Sept. 1, 2003. Assigned by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 4, eff. January 1, 2014.

Sec. 20.07. CORRECTION OF INACCURATE INFORMATION. (a) A consumer reporting agency shall provide a person who provides consumer credit information to the agency with the option of correcting previously reported inaccurate information by submitting the correction by facsimile or other automated means.

(b) The credit reporting agency which receives a correction shall have reasonable procedures to assure that previously reported inaccurate information in a consumer's file is corrected in a prompt and timely fashion.

Added by Acts 1997, 75th Leg., ch. 1396, Sec. 33(a), eff. Oct. 1, 1997.
Assigned by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 4, eff. January 1, 2014.

SUBCHAPTER D. ENFORCEMENT

Sec. 20.08. CONSUMER'S RIGHT TO FILE ACTION IN COURT OR ARBITRATE DISPUTES. (a) An action to enforce an obligation of a consumer reporting agency to a consumer under this chapter may be brought in any court as provided by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), as amended, or, if agreed to by both parties, may be submitted to binding arbitration after the consumer has followed all dispute procedures in Section 20.06 and has received

the notice specified in Section 20.06(f) in the manner provided by the rules of the American Arbitration Association.

(b) A decision rendered by an arbitrator under this section does not affect the validity of an obligation or debt owed by the consumer to any party.

(c) A prevailing party in an action or arbitration proceeding brought under this section shall be compensated for the party's attorney fees and costs of the proceeding as determined by the court or arbitration.

(d) A consumer may not submit to arbitration more than one action against a particular consumer reporting agency during any 120-day period.

(e) The results of an arbitration action brought against a consumer reporting agency doing business in this state shall be communicated in a timely manner to other consumer reporting agencies doing business in this state.

(f) If a determination is made in favor of a consumer after submission of a dispute to arbitration, the disputed adverse information in the consumer's file or record shall be removed or stricken in a timely manner. If the adverse information is not removed or stricken, the consumer may bring an action against the noncomplying agency under this section regardless of the 120-day waiting period required under this section.

Added by Acts 1997, 75th Leg., ch. 1396, Sec. 33(a), eff. Oct. 1, 1997.
Assigned by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 5, eff. January 1, 2014.

Sec. 20.09. CIVIL LIABILITY. (a) A consumer reporting agency that wilfully violates this chapter is liable to the consumer against whom the violation occurs for the greater of three times the amount of actual damages to the consumer or $1,000, reasonable attorney fees, and court or arbitration costs.

(b) A consumer reporting agency that negligently violates this chapter is liable to the consumer against whom the violation occurs for the greater of the amount of actual damages to the consumer or $500, reasonable attorney fees, and court or arbitration costs. A consumer reporting agency is not considered to have negligently

violated this chapter if, not later than the 30th day after the date on which the agency receives notice of a dispute from the consumer under Section 20.06 that clearly explains the nature and substance of the dispute, the agency completes the reinvestigation and sends the consumer and, at the request of the consumer, each person who received the consumer information written notification of the results of the reinvestigation in accordance with Section 20.06(f).

(c) In addition to liability imposed under Subsection (a), a consumer reporting agency that does not correct a consumer's file and consumer report before the 10th day after the date on which a judgment is entered against the agency because of inaccurate information contained in a consumer's file is also liable for $1,000 a day until the inaccuracy is corrected.

Added by Acts 1997, 75th Leg., ch. 1396, Sec. 33(a), eff. Oct. 1, 1997.
Assigned by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 5, eff. January 1, 2014.

Sec. 20.10. REMEDIES CUMULATIVE. An action taken under this chapter does not prohibit a consumer from taking any other action authorized by law except that a credit reporting agency may not be subject to suit with respect to any issue that was the subject of an arbitration proceeding brought under Section 20.08.

Added by Acts 1997, 75th Leg., ch. 1396, Sec. 33(a), eff. Oct. 1, 1997.
Assigned by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 5, eff. January 1, 2014.

Sec. 20.11. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The attorney general may file a suit against a person for:

(1) injunctive relief to prevent or restrain a violation of this chapter; or

(2) a civil penalty in an amount not to exceed $2,000 for each violation of this chapter.

(b) If the attorney general brings an action against a person under Subsection (a) and an injunction is granted against the person or the person is found liable for a civil penalty, the attorney

general may recover reasonable expenses, court costs, investigative costs, and attorney's fees.

(c) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty under this section.

Added by Acts 2003, 78th Leg., ch. 1326, Sec. 5, eff. Sept. 1, 2003. Assigned by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 5, eff. January 1, 2014.

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

Added by Acts 2003, 78th Leg., ch. 1326, Sec. 5, eff. Sept. 1, 2003. Assigned by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 5, eff. January 1, 2014.

Sec. 20.13. VENUE. An action brought under this chapter shall be filed in a district court:

(1) in Travis County;

(2) in any county in which the violation occurred; or

(3) in the county in which the victim resides, regardless of whether the alleged violator has resided, worked, or done business in the county in which the victim resides.

Added by Acts 2003, 78th Leg., ch. 1326, Sec. 5, eff. Sept. 1, 2003. Assigned by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 5, eff. January 1, 2014.

SUBCHAPTER E. SECURITY FREEZE FOR CHILD

Sec. 20.21. DEFINITIONS. In this subchapter:

(1) "Protected consumer" means an individual who resides in this state and is younger than 16 years of age at the time a request for the placement of a security freeze is made.

(2) "Record," with respect to a protected consumer, means a compilation of information identifying a protected consumer created by a consumer reporting agency solely to comply with this subchapter.

(3) "Representative" means a person who provides to a

consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer.

(4) "Security freeze," with respect to a protected consumer, means:

(A) if a consumer reporting agency does not have a consumer file pertaining to the protected consumer, a restriction that:

(i) is placed on the protected consumer's record in accordance with this subchapter; and

(ii) prohibits a consumer reporting agency from releasing a consumer report relating to the extension of credit involving the consumer's record without the express authorization of the consumer's representative or the consumer, as applicable; or

(B) if a consumer reporting agency has a consumer file pertaining to the protected consumer, a restriction that:

(i) is placed on the protected consumer's consumer report in accordance with this subchapter; and

(ii) except as otherwise provided by this subchapter, prohibits a consumer reporting agency from releasing the protected consumer's consumer report relating to the extension of credit involving that consumer file, or any information derived from the protected consumer's consumer report.

Added by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 1, eff. January 1, 2014.

Sec. 20.22. APPLICABILITY; CONFLICT OF LAW. (a) This subchapter does not apply to the use of a protected consumer's consumer report or record by:

(1) a person administering a credit file monitoring subscription service to which:

(A) the protected consumer has subscribed; or

(B) the representative of the protected consumer has subscribed on behalf of the protected consumer;

(2) a person providing the protected consumer or the protected consumer's representative with a copy of the protected consumer's consumer report on request of the protected consumer or the protected consumer's representative;

(3) a consumer reporting agency with respect to a database

or file that consists entirely of information concerning, and is used solely for, one or more of the following:

(A) criminal history record information;

(B) personal loss history information;

(C) fraud prevention or detection;

(D) tenant screening; or

(E) employment screening; or

(4) an entity described by Section 20.038(11), (12), or (13).

(b) To the extent of a conflict between a provision of this subchapter relating to a protected consumer and another provision of this chapter, this subchapter controls.

Added by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 1, eff. January 1, 2014.

Sec. 20.23. PROOF OF AUTHORITY AND IDENTIFICATION. (a) Documentation that shows a person has authority to act on behalf of a protected consumer is considered sufficient proof of authority for purposes of this subchapter, including:

(1) an order issued by a court; or

(2) a written, notarized statement signed by a representative that expressly describes the authority of the representative to act on behalf of a protected consumer.

(b) Information or documentation that identifies a protected consumer or a representative of a protected consumer is considered sufficient proof of identity for purposes of this subchapter, including:

(1) a social security number or a copy of the social security card issued by the United States Social Security Administration;

(2) a certified or official copy of a birth certificate issued by the entity authorized to issue the birth certificate;

(3) a copy of a driver's license or identification card issued by the Department of Public Safety; or

(4) any other government-issued identification.

Added by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 1, eff. January 1, 2014.

Sec. 20.24. USE OF RECORD TO CONSIDER CREDITWORTHINESS OR FOR OTHER PURPOSES PROHIBITED. A protected consumer's record may not be created or used to consider the protected consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living for any purpose described by Section 20.01(4).

Added by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 1, eff. January 1, 2014.

Sec. 20.25. REQUEST TO PLACE A SECURITY FREEZE; CREATION OF RECORD. (a) Except as provided by Subsection (b), a consumer reporting agency shall place a security freeze on a protected consumer's consumer file if:

(1) the consumer reporting agency receives a request from the protected consumer's representative for the placement of the security freeze as provided by this section; and

(2) the protected consumer's representative:

(A) submits the request to the consumer reporting agency at the address or other point of contact of and in the manner specified by the consumer reporting agency;

(B) provides to the consumer reporting agency sufficient proof of identification of the protected consumer and the representative;

(C) provides to the consumer reporting agency sufficient proof of authority to act on behalf of the protected consumer; and

(D) pays to the consumer reporting agency a fee as provided by Section 20.29.

(b) If a consumer reporting agency does not have a consumer file pertaining to a protected consumer when the consumer reporting agency receives a request under Subsection (a) and if the requirements of Subsection (a) are met, the consumer reporting agency shall create a record for the protected consumer and place a security freeze on the protected consumer's record.

(c) The consumer reporting agency shall place the security freeze on the protected consumer's consumer file or record, as applicable, not later than the 30th day after receiving a request that meets the requirements of Subsection (a).

Added by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 1, eff. January 1, 2014.

Sec. 20.26. RELEASE OF CONSUMER REPORT PROHIBITED. Unless a security freeze on a protected consumer's consumer file or record is removed under Section 20.28 or 20.30, a consumer reporting agency may not release any consumer report relating to the protected consumer, any information derived from the protected consumer's consumer report, or any record created for the protected consumer.

Added by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 1, eff. January 1, 2014.

Sec. 20.27. PERIOD OF SECURITY FREEZE. A security freeze on a protected consumer's consumer file or record remains in effect until:

(1) the protected consumer or the protected consumer's representative requests that the consumer reporting agency remove the security freeze in accordance with Section 20.28; or

(2) a consumer reporting agency removes the security freeze under Section 20.30.

Added by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 1, eff. January 1, 2014.

Sec. 20.28. REMOVAL OF SECURITY FREEZE. (a) A protected consumer or a protected consumer's representative may remove a security freeze on a protected consumer's consumer file or record if the protected consumer or representative:

(1) submits a request for the removal of the security freeze to the consumer reporting agency at the address or other point of contact of and in the manner specified by the consumer reporting agency;

(2) provides to the consumer reporting agency:

(A) in the case of a request by the protected consumer:

(i) sufficient proof of identification of the protected consumer; and

(ii) proof that the sufficient proof of authority for the protected consumer's representative to act on behalf of the

protected consumer is no longer valid; or

(B) in the case of a request by the representative of a protected consumer:

(i) sufficient proof of identification of the protected consumer and the representative; and

(ii) sufficient proof of authority to act on behalf of the protected consumer; and

(3) pays to the consumer reporting agency a fee as provided by Section 20.29.

(b) The consumer reporting agency shall remove the security freeze on the protected consumer's consumer file or record not later than the 30th day after the date the agency receives a request that meets the requirements of Subsection (a).

Added by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 1, eff. January 1, 2014.

Sec. 20.29. FEES. (a) A consumer reporting agency may not charge a fee for any service performed under this subchapter other than a fee authorized by this section.

(b) Except as provided by Subsection (c), a consumer reporting agency may charge a reasonable fee in an amount not to exceed $10 for each placement or removal of a security freeze on the protected consumer's consumer file or record.

(c) A consumer reporting agency may not charge a fee for the placement of a security freeze under this subchapter if:

(1) the protected consumer's representative submits to the consumer reporting agency a copy of a valid police report, investigative report, or complaint involving the commission of an offense under Section 32.51, Penal Code; or

(2) at the time the protected consumer's representative makes the request for a security freeze:

(A) the protected consumer is under the age of 16; and

(B) the consumer reporting agency has created a consumer report pertaining to the protected consumer.

Added by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 1, eff. January 1, 2014.

Sec. 20.30. EFFECT OF MATERIAL MISREPRESENTATION OF FACT. A consumer reporting agency may remove a security freeze on a protected consumer's consumer file or record, or delete a record of a protected consumer, if the security freeze was placed or the record was created based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.

Added by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 1, eff. January 1, 2014.

Sec. 20.31. REMEDY FOR VIOLATION. Notwithstanding Subchapter D or any other law, the exclusive remedy for a violation of this subchapter is a suit filed by the attorney general under Section 20.11.

Added by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 1, eff. January 1, 2014.

CHAPTER 21. REGULATION OF CERTAIN RESIDENTIAL FORECLOSURE CONSULTING SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 21.001. DEFINITIONS. (a) In this chapter:

(1) "Foreclosure consultant" means a person who makes a solicitation, representation, or offer to a homeowner to perform for compensation, or who for compensation performs, a service that the person represents will do any of the following:

(A) prevent or postpone a foreclosure sale;

(B) obtain a forbearance from:

(i) a mortgagee;

(ii) a beneficiary of a deed of trust; or

(iii) another person who holds a lien secured by the residence in foreclosure;

(C) assist the homeowner:

(i) to cure the default giving rise to the foreclosure action; or

(ii) to exercise the right of reinstatement of the homeowner's obligation secured by the residence in foreclosure;

(D) obtain an extension of the period within which the homeowner may reinstate the homeowner's obligation secured by the

residence in foreclosure;

(E) obtain a waiver of an acceleration clause contained in a promissory note or contract secured by a deed of trust or mortgage on a residence in foreclosure or contained in the deed of trust or mortgage;

(F) assist the homeowner to obtain a loan or advance of funds to prevent foreclosure;

(G) avoid or ameliorate the impairment of the homeowner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale;

(H) save the homeowner's residence from foreclosure; or

(I) assist the homeowner in obtaining excess proceeds from a foreclosure sale of the homeowner's residence.

(2) "Homeowner" means a person that holds record title to a residence in foreclosure at the time the foreclosure action has been commenced.

(3) "Mortgage servicer" has the meaning assigned by Section 51.0001, Property Code.

(4) "Residence in foreclosure" means residential real property consisting of not more than four single-family dwelling units, at least one of which is occupied as the property owner's principal place of residence, and against which a foreclosure action has been commenced.

(b) For purposes of Subsections (a)(2) and (4), a foreclosure action has been commenced if:

(1) notice of sale has been filed under Section 51.002(b), Property Code; or

(2) a judicial foreclosure action has been commenced.

Added by Acts 2011, 82nd Leg., R.S., Ch. 902 (S.B. 767), Sec. 1, eff. September 1, 2011.

Sec. 21.002. EXCEPTION FROM APPLICABILITY OF CHAPTER. (a) Except as provided by Subsection (b), this chapter does not apply to the following persons that perform foreclosure consulting services:

(1) an attorney admitted to practice in this state who performs those services in relation to the attorney's attorney-client relationship with a homeowner or the beneficiary of the lien being foreclosed;

(2) a person that holds or is owed an obligation secured by a lien on a residence in foreclosure if the person performs those services in connection with the obligation or lien;

(3) a mortgage servicer of an obligation secured by a lien on a residence in foreclosure if the servicer performs those services in connection with the obligation or lien;

(4) a person that regulates banks, trust companies, savings and loan associations, credit unions, or insurance companies under the laws of this state or the United States if the person performs those services as part of the person's normal business activities;

(5) an affiliate of a person described by Subdivision (4) if the affiliate performs those services as part of the affiliate's normal business activities;

(6) a judgment creditor of the homeowner of the residence in foreclosure, if:

(A) the legal action giving rise to the judgment was commenced before the notice of default required under Section 5.064, 5.066, or 51.002(d), Property Code; and

(B) the judgment is recorded in the real property records of the clerk of the county where the residence in foreclosure is located;

(7) a licensed title insurer, title insurance agent, or escrow officer authorized to transact business in this state if the person is performing those services in conjunction with title insurance or settlement services;

(8) a licensed real estate broker or real estate salesperson if the person is engaging in an activity for which the person is licensed;

(9) a person licensed or registered under Chapter 156, Finance Code, if the person is engaging in an activity for which the person is licensed or registered under that chapter;

(10) a person licensed or registered under Chapter 157, Finance Code, if the person is engaging in an activity for which the person is licensed or registered under that chapter;

(11) a nonprofit organization that provides solely counseling or advice to homeowners who have a residence in foreclosure or have defaulted on their home loans, unless the organization is an associate of the foreclosure consultant;

(12) a depository institution, as defined by Section 31.002, Finance Code, subject to regulation or supervision by a state

or federal regulatory agency; or

(13) an affiliate or subsidiary of a depository institution described by Subdivision (12).

(b) This chapter applies to a person described by Subsection (a) if the person is providing foreclosure consulting services to a homeowner designed or intended to transfer title, directly or indirectly, to a residence in foreclosure to that person or the person's associate, unless the person is a mortgagee or mortgage servicer that negotiates with or accepts from the mortgagor a deed in lieu of foreclosure for the benefit of the mortgagee.

Added by Acts 2011, 82nd Leg., R.S., Ch. 902 (S.B. 767), Sec. 1, eff. September 1, 2011.

Sec. 21.003. CONFLICT WITH OTHER LAW. To the extent of a conflict between this chapter and Chapter 393, Finance Code, this chapter controls.

Added by Acts 2011, 82nd Leg., R.S., Ch. 902 (S.B. 767), Sec. 1, eff. September 1, 2011.

SUBCHAPTER B. CONTRACT FOR SERVICES

Sec. 21.051. FORM AND TERMS OF CONTRACT. Each contract for the purchase of the services of a foreclosure consultant by a homeowner of a residence in foreclosure must be in writing, dated, and signed by each homeowner and the foreclosure consultant.

Added by Acts 2011, 82nd Leg., R.S., Ch. 902 (S.B. 767), Sec. 1, eff. September 1, 2011.

Sec. 21.052. REQUIRED DISCLOSURE. Before entering into a contract with a homeowner of a residence in foreclosure for the purchase of the services of a foreclosure consultant, the foreclosure consultant shall provide the homeowner written notice stating the following, in at least 14-point boldfaced type:

NOTICE REQUIRED BY TEXAS LAW

_____ (Name) or an associate of _____ (Name) cannot ask you to sign or have you sign any document that transfers any interest in

your home or property to _____ (Name) or _____ (Name's) associate.

_____ (Name) or _____ (Name's) associate cannot guarantee you that they will be able to refinance your home or arrange for you to keep your home.

You may, at any time, cancel or rescind this contract, without penalty of any kind.

If you want to cancel this contract, mail or deliver a signed and dated copy of this notice of cancellation or rescission, or any other written notice, indicating your intent to cancel or rescind to _____ (Name and address of foreclosure consultant) at _____ (Address of foreclosure consultant, including facsimile and electronic mail address).

As part of any cancellation or rescission, you (the homeowner) must repay any money spent on your behalf by _____ (Name of foreclosure consultant) prior to receipt of this notice and as a result of this agreement, within 60 days, along with interest calculated at the rate of eight percent per year.

Added by Acts 2011, 82nd Leg., R.S., Ch. 902 (S.B. 767), Sec. 1, eff. September 1, 2011.

SUBCHAPTER C. LIMITATIONS, PROHIBITIONS, AND DUTIES REGARDING SERVICES

Sec. 21.101. RESTRICTIONS ON CHARGE OR RECEIPT OF CONSIDERATION. A foreclosure consultant may not:

(1) charge or receive compensation until the foreclosure consultant has fully performed each service the foreclosure consultant has contracted to perform or has represented the foreclosure consultant can or will perform unless the foreclosure consultant has obtained a surety bond or established and maintained a surety account for each location at which the foreclosure consultant conducts business in the manner that Subchapter E, Chapter 393, Finance Code, provides for credit services organizations; or

(2) receive any consideration from a third party in connection with foreclosure consulting services provided to the homeowner of a residence in foreclosure unless the consideration is fully disclosed in writing to the homeowner.

Added by Acts 2011, 82nd Leg., R.S., Ch. 902 (S.B. 767), Sec. 1, eff.

September 1, 2011.

Sec. 21.102. PROHIBITED CONDUCT. A foreclosure consultant may not:

(1) take any power of attorney from a homeowner for any purpose other than to inspect documents;

(2) for purposes of securing payment of compensation, acquire an interest, directly or indirectly, in the real or personal property of the homeowner of a residence in foreclosure with whom the foreclosure consultant has contracted to perform services; or

(3) take an assignment of wages to secure payment of compensation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 902 (S.B. 767), Sec. 1, eff. September 1, 2011.

Sec. 21.103. RETENTION OF RECORDS. (a) A foreclosure consultant shall keep each record and document, including the foreclosure consultant contract, related to foreclosure consulting services performed on behalf of a homeowner.

(b) A foreclosure consultant shall retain the records described by Subsection (a) until at least the third anniversary of the day the foreclosure consultant contract entered into by the consultant and the homeowner was terminated or concluded.

Added by Acts 2011, 82nd Leg., R.S., Ch. 902 (S.B. 767), Sec. 1, eff. September 1, 2011.

SUBCHAPTER D. ENFORCEMENT

Sec. 21.151. CRIMINAL PENALTY. (a) A person commits an offense if the person violates this chapter.

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

Added by Acts 2011, 82nd Leg., R.S., Ch. 902 (S.B. 767), Sec. 1, eff. September 1, 2011.

CHAPTER 21A. EXECUTION OF DEEDS IN CERTAIN TRANSACTIONS INVOLVING RESIDENTIAL REAL ESTATE

Sec. 21A.001. DEFINITION. In this chapter, "residential real estate" means real property on which a dwelling designed for occupancy for one to four families is constructed or intended to be constructed.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1242 (S.B. 1320), Sec. 1, eff. September 1, 2011.
Redesignated from Business and Commerce Code, Chapter 21 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(1), eff. September 1, 2013.

Sec. 21A.002. PROHIBITION OF EXECUTION OF DEEDS CONVEYING RESIDENTIAL REAL ESTATE IN CERTAIN TRANSACTIONS. (a) A seller of residential real estate or a person who makes an extension of credit and takes a security interest or mortgage against residential real estate may not, before or at the time of the conveyance of the residential real estate to the purchaser or the extension of credit to the borrower, request or require the purchaser or borrower to execute and deliver to the seller or person making the extension of credit a deed conveying the residential real estate to the seller or person making the extension of credit.

(b) A deed executed in violation of this section is voidable unless a subsequent purchaser of the residential real estate, for valuable consideration, obtains an interest in the property after the deed was recorded without notice of the violation, including notice provided by actual possession of the property by the grantor of the deed. The residential real estate continues to be subject to the security interest of a creditor who, without notice of the violation, granted an extension of credit to a borrower based on the deed executed in violation of this section.

(c) A purchaser or borrower must bring an action to void a deed executed in violation of this section not later than the fourth anniversary of the date the deed was recorded.

(d) A purchaser or borrower who is a prevailing party in an action to void a deed under this section may recover reasonable and necessary attorney's fees.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1242 (S.B. 1320), Sec. 1, eff. September 1, 2011.
Redesignated from Business and Commerce Code, Chapter 21 by Acts

2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(1), eff. September 1, 2013.

Sec. 21A.003. ACTION BY ATTORNEY GENERAL. (a) The attorney general may bring an action on behalf of the state:

(1) for injunctive relief to require compliance with this chapter;

(2) to recover a civil penalty of $500 for each violation of this chapter; or

(3) for both injunctive relief and to recover the civil penalty.

(b) The attorney general is entitled to recover reasonable expenses incurred in obtaining injunctive relief or a civil penalty, or both, under this section, including court costs and reasonable attorney's fees.

(c) The court may make such additional orders or judgments as are necessary to return to the purchaser a deed conveying residential real estate that the court finds was acquired by means of any violation of this chapter.

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

(e) An action by the attorney general must be brought not later than the fourth anniversary of the date the deed was recorded.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1242 (S.B. 1320), Sec. 1, eff. September 1, 2011.
Redesignated from Business and Commerce Code, Chapter 21 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(1), eff. September 1, 2013.

TITLE 3. INSOLVENCY, FRAUDULENT TRANSFERS, AND FRAUD

CHAPTER 23. ASSIGNMENTS FOR THE BENEFIT OF CREDITORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 23.01. DEFINITIONS. In this chapter, unless the context requires a different definition,

(1) "assigned estate" means all the real and personal estate of an assigning debtor passing to the consenting creditors under an assignment by virtue of Section 23.02 or 23.09(b) of this code;

(2) "assignee" means an assignee for the benefit of creditors;

(3) "assigning debtor" means a person executing an assignment;

(4) "assignment" means a general assignment for the benefit of creditors made under this chapter;

(5) "consenting creditor" means a creditor who has consented to an assignment in one of the ways provided by Section 23.30 of this code; and

(6) "real and personal estate" does not include property exempt by law from execution.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.02. NATURE AND EFFECT OF ASSIGNMENT. (a) A debtor may assign his real and personal estate under this chapter to an assignee for the benefit of the debtor's creditors.

(b) An assigning debtor shall provide in the assignment for distribution of all his real and personal estate to each consenting creditor in proportion to each consenting creditor's claim.

(c) Regardless of an expression to the contrary, an assignment passes all an assigning debtor's real and personal estate to each consenting creditor in proportion to each consenting creditor's claim.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

SUBCHAPTER B. THE ASSIGNMENT

Sec. 23.08. FORM AND CONTENT OF ASSIGNMENT. (a) For an assignment to be valid,

(1) the assigning debtor must make the assignment in writing; and

(2) it must be proved or acknowledged and recorded in the manner provided by law for the conveyance of real estate.

(b) The assigning debtor shall attach to his assignment an

inventory containing the following information:

(1) a list naming each creditor of the assigning debtor;

(2) the resident address, if known, of each creditor;

(3) the amount owed each creditor and the type of debt;

(4) the consideration for the debt and the place where the debt arose;

(5) a description of each existing judgment or security for the payment of the debt;

(6) a schedule of all the assigning debtor's real and personal estate at the date of the assignment;

(7) a description of

(A) each encumbrance on the real and personal estate; and

(B) each voucher and security relating to the estate; and

(8) the value of the estate.

(c) The assigning debtor shall sign the inventory required by Subsection (b) of this section and swear that it is just and true.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.09. FRAUD DOES NOT DEFEAT ASSIGNMENT. (a) An assignment is not affected and a consenting creditor is not deprived of his proportionate share of the assigned estate by the fraudulent act or intent of the assigning debtor or assignee. A consenting creditor is a proper party to a suit filed to enforce a right under an assignment, or to protect an interest in an assigned estate.

(b) Except as to an innocent purchaser for value, a transfer of property made in contemplation of an assignment with an intent to defeat, delay, defraud, or give preference to a creditor is void and the property passes under the assignment rather than by the transfer.

(c) An assignee may sue to recover property transferred with an intent described in Subsection (b) of this section, and when the property is recovered, the assignee shall apply it for the benefit of the assigning debtor's creditors along with property belonging to the assigned estate already in the assignee's possession. If an assignee neglects or refuses to sue to recover property transferred with an intent described in Subsection (b) of this section, a creditor, after securing the assignee against cost or liability, may sue in the

assignee's name to recover the property.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.10. ASSIGNMENT DISCHARGES DEBTOR. If an assigning debtor makes an assignment, he is discharged from liability on the claim of a consenting creditor unless the consenting creditor does not receive at least one-third of the amount allowed on his claim against the assigned estate.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

SUBCHAPTER C. DUTIES AND RIGHTS OF ASSIGNEE

Sec. 23.16. ASSIGNEE'S QUALIFICATIONS, DUTY TO RECORD ASSIGNMENT, AND BOND. (a) An assignee shall be a resident of this state and a resident of the county in which the assigning debtor resides, or in which the assigning debtor's principal business was conducted.

(b) Immediately after the assignment instrument is executed and delivered to him, the assignee shall record it in the county of his residence and in each county in which there is real property conveyed to the assignee by the assignment.

(c) Within five days after delivery to him of the assignment instrument, the assignee shall execute a bond

(1) with a surety who must be approved by the judge of either the county or district court in the county of the assignee's residence;

(2) conditioned that he will perform faithfully his duties as assignee and distribute proportionately the net proceeds of the assigned estate to the consenting creditors entitled to it under the assignment;

(3) in an amount fixed by the county or district judge;

(4) payable to the state; and

(5) which inures to the benefit of the assigning debtor and each of the creditors.

(d) The assignee shall file the bond with the county clerk of the county in which the assigning debtor resides and then the assignee shall take possession of the assigned estate and carry out the assignment.

(e) An assignment is valid as against an assigning debtor or his creditors even though the assignee fails to execute and file a bond as required by Subsections (c) and (d) of this section.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.17. NOTICE OF ASSIGNEE'S APPOINTMENT. (a) Within 30 days after an assignment is executed, the assignee shall publish notice of his appointment as assignee in a newspaper published in the county

(1) where the assigning debtor resides or where he operated his principal business before the assignment; or

(2) nearest the assigning debtor's residence or principal business if a newspaper is not published in the county of the assigning debtor's residence or principal business.

(b) The assignee shall publish notice of his appointment as assignee once each week for three consecutive weeks.

(c) The assignee shall notify by mail each of the assigning debtor's listed creditors of his appointment as assignee.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.18. REPLACEMENT OF ASSIGNEE. (a) A county or district court of the county in which the assignee resides shall remove or replace the assignee on application of the assigning debtor or a creditor, or on its own motion,

(1) if the court is satisfied that the assignee has not executed and filed the bond required by Sections 23.16(c) and (d) of this code;

(2) if the assignee refuses or fails to serve for any reason; or

(3) for good cause.

(b) On removal, resignation, or death of the assignee, the court shall appoint in writing a new assignee in term time or vacation.

(c) As soon as the new assignee executes and files a bond as required by Sections 23.16(c) and (d) of this code, he shall take possession of the assigned estate and carry out the assignment.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.19. ASSIGNEE'S DUTY TO DISTRIBUTE ASSIGNED ESTATE. Each time an assignee has enough money to pay 10 percent of the assigning debtor's debts, he shall distribute the money among the creditors entitled to receive it in proportion to their claims allowed under Section 23.31(b) of this code.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.20. DISCOUNT OF CLAIM NOT DUE AND ALLOWANCE OF SECURED CLAIM. (a) The assignee may allow a claim which is not due at its present value by discounting it at the legal rate.

(b) If a creditor holds collateral to secure his claim worth less than his claim, the assignee may estimate the value of the collateral and allow the creditor as a claim against the assigned estate only the difference between the value of the collateral and the amount of the claim.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.21. ASSIGNEE'S ENTITLEMENT TO COMPENSATION. An assignee is entitled to reasonable compensation for his services and reimbursement for his necessary expenses, including an attorney's fee, all of which shall be fixed by the county or district court who approved his bond. The compensation, expenses, and attorney's fee fixed by the county or district court shall be paid out of the assigned estate.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.22. EXAMINATION OF DEBTOR OR OTHER PERSON. (a) The court in which a proceeding involving an assigned estate has been filed may, after reasonable notice to each person concerned, compel any person to answer questions under oath on

(1) application of a creditor of the assigning debtor; or

(2) its own motion.

(b) The court may compel attendance and an answer to any question concerning the assigned estate by writ or order as in other cases. Questions asked and answers given during the examination shall be in writing, the person examined shall swear to and sign his answers before the clerk, and the questions and answers shall be filed with the clerk for use by anyone interested in the proceeding.

(c) The court shall charge the cost of the examination against the applicant or the assigned estate, as the court deems proper.

(d) The assigning debtor may not be prosecuted or punished for an answer given by him during the examination.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.23. ASSIGNEE'S FINAL REPORT AND DISCHARGE. (a) An assignee wishing to be discharged from his appointment shall prepare and file for record with the county clerk of the county in which his assignment is recorded a sworn report describing

(1) all property which came into his possession under the assignment; and

(2) how and to whom he distributed the property.

(b) The assignee shall also deposit in the registry of the court who approved his bond money belonging to the assigned estate still in his possession at the time he files his report under Subsection (a) of this section. The court shall distribute the money under this chapter to the consenting creditors and assignee and, in the case of surplus, to the nonconsenting creditors and assigning debtor.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.24. TIME LIMIT ON BRINGING ACTION AGAINST ASSIGNEE. An action against an assignee based on his conduct in carrying out the assignment, as shown in his report filed under Section 23.23(a) of this code, must be brought within 12 months after the report is filed or the action is barred.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

SUBCHAPTER D. DUTIES AND RIGHTS OF CREDITORS

Sec. 23.30. CREDITOR'S CONSENT TO ASSIGNMENT. (a) A creditor must inform the assignee in writing of his consent to the assignment within four months after the assignee gives the notice required by Section 23.17 of this code.

(b) If a creditor is not given actual notice of an assignment, but subsequently learns of the assignment, he may consent to the assignment at any time before the first distribution of the assigned estate is begun.

(c) Receipt by a creditor of payment for part of his claim from the assignee is conclusive evidence of the creditor's consent to the assignment.

(d) If a creditor does not consent to an assignment, he is not entitled to receive any of the assigned estate under the assignment.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.31. CREDITOR'S PROOF AND ASSIGNEE'S ALLOWANCE OF CLAIM. (a) Within six months after the first publication of notice of appointment required by Section 23.17 of this code, a consenting creditor must file with the assignee a statement, sworn to by the creditor, his agent, or attorney,

(1) describing the nature and amount of the creditor's claim against the assigning debtor; and

(2) stating that

(A) the claim is true;

(B) the debt is just; and

(C) all proper credits or offsets have been allowed against the claim.

(b) The assignee shall allow a claim filed under Subsection (a) of this section against the assigned estate unless he has good reason to believe the claim is not just and true.

(c) If a creditor does not file a statement in the time required by Subsection (a) of this section, he is not entitled to receive any of the assigned estate.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.32. CREDITOR'S SUIT ON DISPUTED CLAIM. (a) The

assignee shall give any creditor a copy of any statement of claim filed under Section 23.31(a) of this code if the creditor requests a copy.

(b) Within eight months after the first publication of notice required by Section 23.17 of this code, an assigning debtor or creditor may sue to

(1) set aside an allowance made on a claim by the assignee; and

(2) restrain payment of the claim by the assignee.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

Sec. 23.33. NONCONSENTING CREDITOR'S RIGHT TO SURPLUS. If a creditor does not consent to an assignment, he may garnishee the assignee for the excess of the assigned estate remaining in the assignee's possession after the assignee has paid

(1) each consenting creditor the amount of his claim allowed under Section 23.31(b) of this code; and

(2) the expense of carrying out the assignment.

Acts 1967, 60th Leg., p. 2343, ch. 785, Sec. 1.

CHAPTER 24. UNIFORM FRAUDULENT TRANSFER ACT

Sec. 24.001. SHORT TITLE. This chapter may be cited as the Uniform Fraudulent Transfer Act.

Amended by Acts 1987, 70th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 1987.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 2428, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 24.002. DEFINITIONS. In this chapter:

(1) "Affiliate" means:

(A) a person who directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(i) as a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) solely to secure a debt, if the person has not exercised the power to vote;

(B) a corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds, with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities:

(i) as a fiduciary or agent without sole power to vote the securities; or

(ii) solely to secure a debt, if the person has not in fact exercised the power to vote;

(C) a person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(D) a person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) "Asset" means property of a debtor, but the term does not include:

(A) property to the extent it is encumbered by a valid lien;

(B) property to the extent it is generally exempt under nonbankruptcy law; or

(C) an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant, under the law of another jurisdiction.

(3) "Claim" means a right to payment or property, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) "Creditor" means a person, including a spouse, minor, person entitled to receive court or administratively ordered child support for the benefit of a child, or ward, who has a claim.

(5) "Debt" means a liability on a claim.

(6) "Debtor" means a person who is liable on a claim.

(7) "Insider" includes:

(A) if the debtor is an individual:

(i) a relative of the debtor or of a general partner of the debtor;

(ii) a partnership in which the debtor is a general partner;

(iii) a general partner in a partnership described in Subparagraph (ii) of this paragraph; or

(iv) a corporation of which the debtor is a director, officer, or person in control;

(B) if the debtor is a corporation:

(i) a director of the debtor;

(ii) an officer of the debtor;

(iii) a person in control of the debtor;

(iv) a partnership in which the debtor is a general partner;

(v) a general partner in a partnership described in Subparagraph (iv) of this paragraph; or

(vi) a relative of a general partner, director, officer, or person in control of the debtor;

(C) if the debtor is a partnership:

(i) a general partner in the debtor;

(ii) a relative of a general partner in, a general partner of, or a person in control of the debtor;

(iii) another partnership in which the debtor is a general partner;

(iv) a general partner in a partnership described in Subparagraph (iii) of this paragraph; or

(v) a person in control of the debtor;

(D) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(E) a managing agent of the debtor.

(8) "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(9) "Person" means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(10) "Property" means anything that may be the subject of ownership.

(11) "Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(12) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance. The term does not include a transfer under a disclaimer filed under Section 37A, Texas Probate Code, or Section 112.010, Property Code.

(13) "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

Amended by Acts 1987, 70th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 846, Sec. 2, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 911, Sec. 95, eff. Sept. 1, 1997.

Sec. 24.003. INSOLVENCY. (a) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.

(b) A debtor who is generally not paying the debtor's debts as they become due is presumed to be insolvent.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 9, Sec. 11, eff. September 1, 2013.

(d) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter.

(e) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

Amended by Acts 1987, 70th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 570, Sec. 8, eff. Sept. 1, 1993.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 9 (S.B. 847), Sec. 11, eff. September 1, 2013.

Sec. 24.004. VALUE. (a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) For the purposes of Sections 24.005(a)(2) and 24.006 of this code, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

(d) "Reasonably equivalent value" includes without limitation, a transfer or obligation that is within the range of values for which the transferor would have sold the assets in an arm's length transaction.

Amended by Acts 1987, 70th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 570, Sec. 9, eff. Sept. 1, 1993.

Sec. 24.005. TRANSFERS FRAUDULENT AS TO PRESENT AND FUTURE CREDITORS. (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or within a reasonable time after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or

(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(A) was engaged or was about to engage in a business or

a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(B) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(b) In determining actual intent under Subsection (a)(1) of this section, consideration may be given, among other factors, to whether:

(1) the transfer or obligation was to an insider;

(2) the debtor retained possession or control of the property transferred after the transfer;

(3) the transfer or obligation was concealed;

(4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) the transfer was of substantially all the debtor's assets;

(6) the debtor absconded;

(7) the debtor removed or concealed assets;

(8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) the transfer occurred shortly before or shortly after a substantial debt was incurred; and

(11) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

Amended by Acts 1987, 70th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 570, Sec. 10, eff. Sept. 1, 1993.

Sec. 24.006. TRANSFERS FRAUDULENT AS TO PRESENT CREDITORS. (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the

transfer or obligation.

(b) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

Amended by Acts 1987, 70th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 1987.

Sec. 24.007. WHEN TRANSFER IS MADE OR OBLIGATION IS INCURRED. For the purposes of this chapter:

(1) a transfer is made:

(A) with respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and

(B) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this chapter that is superior to the interest of the transferee;

(2) if applicable law permits the transfer to be perfected as provided in Subdivision (1) of this section and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is deemed made immediately before the commencement of the action;

(3) if applicable law does not permit the transfer to be perfected as provided in Subdivision (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee;

(4) a transfer is not made until the debtor has acquired rights in the asset transferred; and

(5) an obligation is incurred:

(A) if oral, when it becomes effective between the parties; or

(B) if evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

Amended by Acts 1987, 70th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 1987.

Sec. 24.008. REMEDIES OF CREDITORS. (a) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in Section 24.009 of this code, may obtain:

(1) avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) an attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the applicable Texas Rules of Civil Procedure and the Civil Practice and Remedies Code relating to ancillary proceedings; or

(3) subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

(A) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(B) appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(C) any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

Amended by Acts 1987, 70th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 1987.

Sec. 24.009. DEFENSES, LIABILITY, AND PROTECTION OF TRANSFEREE. (a) A transfer or obligation is not voidable under Section 24.005(a)(1) of this code against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under Section

24.008(a)(1) of this code, the creditor may recover judgment for the value of the asset transferred, as adjusted under Subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

(1) the first transferee of the asset or the person for whose benefit the transfer was made; or

(2) any subsequent transferee other than a good faith transferee who took for value or from any subsequent transferee.

(c)(1) Except as provided by Subdivision (2) of this subsection, if the judgment under Subsection (b) of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(2) The value of the asset transferred is not to be adjusted to include the value of improvements made by a good faith transferee, including:

(A) physical additions or changes to the asset transferred;

(B) repairs to the asset;

(C) payment of any tax on the asset;

(D) payment of any debt secured by a lien on the asset that is superior or equal to the rights of a voiding creditor under this chapter; and

(E) preservation of the asset.

(d)(1) Notwithstanding voidability of a transfer or an obligation under this chapter, a good faith transferee or obligee is entitled, at the transferee's or obligee's election, to the extent of the value given the debtor for the transfer or obligation, to:

(A) a lien, prior to the rights of a voiding creditor under this chapter, or a right to retain any interest in the asset transferred;

(B) enforcement of any obligation incurred; or

(C) a reduction in the amount of the liability on the judgment.

(2) Notwithstanding voidability of a transfer under this chapter, to the extent of the value of any improvements made by a good faith transferee, the good faith transferee is entitled to a lien on the asset transferred prior to the rights of a voiding creditor under this chapter

(e) A transfer is not voidable under Section 24.005(a)(2) or

Section 24.006 of this code if the transfer results from:

(1) termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(2) enforcement of a security interest in compliance with Chapter 9 of this code.

(f) A transfer is not voidable under Section 24.006(b) of this code:

(1) to the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;

(2) if made in the ordinary course of business or financial affairs of the debtor and the insider; or

(3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

Amended by Acts 1987, 70th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 570, Sec. 11, eff. Sept. 1, 1993.

Sec. 24.010. EXTINGUISHMENT OF CAUSE OF ACTION. (a) Except as provided by Subsection (b) of this section, a cause of action with respect to a fraudulent transfer or obligation under this chapter is extinguished unless action is brought:

(1) under Section 24.005(a)(1) of this code, within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) under Section 24.005(a)(2) or 24.006(a) of this code, within four years after the transfer was made or the obligation was incurred; or

(3) under Section 24.006(b) of this code, within one year after the transfer was made.

(b) A cause of action on behalf of a spouse, minor, or ward with respect to a fraudulent transfer or obligation under this chapter is extinguished unless the action is brought:

(1) under Section 24.005(a) or 24.006(a) of this code, within two years after the cause of action accrues, or if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant; or

(2) under Section 24.006(b) of this code within one year after the date the transfer was made.

(c) If a creditor entitled to bring an action under this chapter is under a legal disability when a time period prescribed by this section starts, the time of the disability is not included in the period. A disability that arises after the period starts does not suspend the running of the period. A creditor may not tack one legal disability to another to extend the period. For the purposes of this subsection, a creditor is under a legal disability if the creditor is:

(1) younger than 18 years of age, regardless of whether the person is married; or

(2) of unsound mind.

Amended by Acts 1987, 70th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 570, Sec. 12, eff. Sept. 1, 1993.

Sec. 24.011. SUPPLEMENTARY PROVISIONS. Unless displaced by the provisions of this chapter, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions.

Amended by Acts 1987, 70th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 1987.

Sec. 24.012. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

Amended by Acts 1987, 70th Leg., ch. 1004, Sec. 1, eff. Sept. 1, 1987.

Sec. 24.013. COSTS. In any proceeding under this chapter, the court may award costs and reasonable attorney's fees as are equitable and just.

Added by Acts 2003, 78th Leg., ch. 420, Sec. 1, eff. Sept. 1, 2003.

CHAPTER 26. STATUTE OF FRAUDS

Sec. 26.01. PROMISE OR AGREEMENT MUST BE IN WRITING. (a) A promise or agreement described in Subsection (b) of this section is not enforceable unless the promise or agreement, or a memorandum of it, is

(1) in writing; and

(2) signed by the person to be charged with the promise or agreement or by someone lawfully authorized to sign for him.

(b) Subsection (a) of this section applies to:

(1) a promise by an executor or administrator to answer out of his own estate for any debt or damage due from his testator or intestate;

(2) a promise by one person to answer for the debt, default, or miscarriage of another person;

(3) an agreement made on consideration of marriage or on consideration of nonmarital conjugal cohabitation;

(4) a contract for the sale of real estate;

(5) a lease of real estate for a term longer than one year;

(6) an agreement which is not to be performed within one year from the date of making the agreement;

(7) a promise or agreement to pay a commission for the sale or purchase of:

(A) an oil or gas mining lease;

(B) an oil or gas royalty;

(C) minerals; or

(D) a mineral interest; and

(8) an agreement, promise, contract, or warranty of cure relating to medical care or results thereof made by a physician or health care provider as defined in Section 74.001, Civil Practice and Remedies Code. This section shall not apply to pharmacists.

Acts 1967, 60th Leg., vol. 2, p. 2343, ch. 785, Sec. 1. Amended by Acts 1977, 65th Leg., p. 2053, ch. 817, Sec. 21.01, eff. Aug. 29, 1977; Acts 1987, 70th Leg., ch. 551, Sec. 1, eff. Aug. 31, 1987. Amended by:

Acts 2005, 79th Leg., Ch. 187 (H.B. 735), Sec. 1, eff. September 1, 2005.

Sec. 26.02. LOAN AGREEMENT MUST BE IN WRITING. (a) In this section:

(1) "Financial institution" means a state or federally chartered bank, savings bank, savings and loan association, or credit union, a holding company, subsidiary, or affiliate of such an institution, or a lender approved by the United States Secretary of Housing and Urban Development for participation in a mortgage insurance program under the National Housing Act (12 U.S.C. Section 1701 et seq.).

(2) "Loan agreement" means one or more promises, promissory notes, agreements, undertakings, security agreements, deeds of trust or other documents, or commitments, or any combination of those actions or documents, pursuant to which a financial institution loans or delays repayment of or agrees to loan or delay repayment of money, goods, or another thing of value or to otherwise extend credit or make a financial accommodation. The term does not include a promise, promissory note, agreement, undertaking, document, or commitment relating to:

(A) a credit card or charge card; or

(B) an open-end account, as that term is defined by Section 301.002, Finance Code, intended or used primarily for personal, family, or household use.

(b) A loan agreement in which the amount involved in the loan agreement exceeds $50,000 in value is not enforceable unless the agreement is in writing and signed by the party to be bound or by that party's authorized representative.

(c) The rights and obligations of the parties to an agreement subject to Subsection (b) of this section shall be determined solely from the written loan agreement, and any prior oral agreements between the parties are superseded by and merged into the loan agreement.

(d) An agreement subject to Subsection (b) of this section may not be varied by any oral agreements or discussions that occur before or contemporaneously with the execution of the agreement.

(e) In a loan agreement subject to Subsection (b) of this section, the financial institution shall give notice to the debtor or obligor of the provisions of Subsections (b) and (c) of this section. The notice must be in a separate document signed by the debtor or

obligor or incorporated into one or more of the documents constituting the loan agreement. The notice must be in type that is boldface, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous. The notice must state substantially the following:

"This written loan agreement represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties.

"There are no unwritten oral agreements between the parties.

_____ _____

"Debtor or Obligor Financial Institution"

(f) If the notice required by Subsection (e) of this section is not given on or before execution of the loan agreement or is not conspicuous, this section does not apply to the loan agreement, but the validity and enforceability of the loan agreement and the rights and obligations of the parties are not impaired or affected.

(g) All financial institutions shall conspicuously post notices that inform borrowers of the provisions of this section. The notices shall be located in such a manner and in places in the institutions so as to fully inform borrowers of the provisions of this section. The Finance Commission of Texas shall prescribe the language of the notice.

Added by Acts 1989, 71st Leg., ch. 831, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1396, Sec. 34, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 7.47, eff. Sept. 1, 1999.

CHAPTER 27. FRAUD

Sec. 27.01. FRAUD IN REAL ESTATE AND STOCK TRANSACTIONS. (a) Fraud in a transaction involving real estate or stock in a corporation or joint stock company consists of a

(1) false representation of a past or existing material fact, when the false representation is

(A) made to a person for the purpose of inducing that person to enter into a contract; and

(B) relied on by that person in entering into that contract; or

(2) false promise to do an act, when the false promise is

(A) material;

(B) made with the intention of not fulfilling it;

(C) made to a person for the purpose of inducing that person to enter into a contract; and

(D) relied on by that person in entering into that contract.

(b) A person who makes a false representation or false promise commits the fraud described in Subsection (a) of this section and is liable to the person defrauded for actual damages.

(c) A person who makes a false representation or false promise with actual awareness of the falsity thereof commits the fraud described in Subsection (a) of this section and is liable to the person defrauded for exemplary damages. Actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

(d) A person who (1) has actual awareness of the falsity of a representation or promise made by another person and (2) fails to disclose the falsity of the representation or promise to the person defrauded, and (3) benefits from the false representation or promise commits the fraud described in Subsection (a) of this section and is liable to the person defrauded for exemplary damages. Actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.

(e) Any person who violates the provisions of this section shall be liable to the person defrauded for reasonable and necessary attorney's fees, expert witness fees, costs for copies of depositions, and costs of court.

Acts 1967, 60th Leg., vol. 2, p. 2343, ch. 785, Sec. 1. Amended by Acts 1983, 68th Leg., p. 5208, ch. 949, Sec. 1, 2, eff. Sept. 1, 1983.

Sec. 27.02. CERTAIN INSURANCE CLAIMS FOR EXCESSIVE CHARGES. (a) A person who sells goods or services commits an offense if:

(1) the person advertises or promises to provide the good or service and to pay:

(A) all or part of any applicable insurance deductible; or

(B) a rebate in an amount equal to all or part of any applicable insurance deductible;

(2) the good or service is paid for by the consumer from proceeds of a property or casualty insurance policy; and

(3) the person knowingly charges an amount for the good or service that exceeds the usual and customary charge by the person for the good or service by an amount equal to or greater than all or part of the applicable insurance deductible paid by the person to an insurer on behalf of an insured or remitted to an insured by the person as a rebate.

(b) A person who is insured under a property or casualty insurance policy commits an offense if the person:

(1) submits a claim under the policy based on charges that are in violation of Subsection (a) of this section; or

(2) knowingly allows a claim in violation of Subsection (a) of this section to be submitted, unless the person promptly notifies the insurer of the excessive charges.

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

Added by Acts 1989, 71st Leg., ch. 898, Sec. 1, eff. Sept. 1, 1989.

TITLE 4. BUSINESS OPPORTUNITIES AND AGREEMENTS

CHAPTER 51. BUSINESS OPPORTUNITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 51.001. SHORT TITLE. This chapter may be cited as the Business Opportunity Act.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.002. GENERAL DEFINITIONS. In this chapter:

(1) "Business opportunity contract" means an agreement that obligates or is intended to obligate a purchaser to a seller.

(2) "Buy-back" or "secured investment" means a representation that implies a purchaser's payment is protected from loss.

(3) "Equipment" includes electrical devices, video and audio devices, molds, display units, including display racks, and

machines, including coin-operated game machines and vending and other machines that dispense products.

(4) "Initial consideration" means the total amount a purchaser is obligated to pay under a business opportunity contract before or at the time products, equipment, supplies, or services are delivered or within six months after the date the purchaser begins operation of the business opportunity plan. The term means the total sale price if the contract states a specific total sale price for purchase of the business opportunity plan and the total sale price is to be paid as a down payment and one or more additional payments. The term does not include the not-for-profit sale of sales demonstration materials, samples, or equipment for not more than $500.

(5) "Marketing program" means advice or training that a seller or a person recommended by a seller gives to a purchaser regarding the sale of products, equipment, supplies, or services. The term includes the preparation or provision of:

(A) a brochure, pamphlet, or advertising material, including promotional literature;

(B) training regarding the promotion, operation, or management of a business opportunity; or

(C) operational, managerial, technical, or financial guidelines or assistance.

(6) "Product" includes tangible personal property.

(7) "Purchaser" means a person who becomes or is solicited to become obligated under a business opportunity contract.

(8) "Seller" means a principal or agent who sells or leases or offers to sell or lease a business opportunity.

(9) "Services" includes any assistance, guidance, direction, work, labor, or other services provided by a seller to initiate or maintain a business opportunity.

(10) "Supplies" includes materials used to make, produce, grow, or breed a product or item.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.003. DEFINITION OF BUSINESS OPPORTUNITY. (a) In this

chapter, "business opportunity" means a sale or lease for an initial consideration of more than $500 of products, equipment, supplies, or services that will be used by or for the purchaser to begin a business in which the seller represents that:

(1) the purchaser will earn or is likely to earn a profit in excess of the amount of the initial consideration the purchaser paid; and

(2) the seller will:

(A) provide a location or assist the purchaser in finding a location for the use or operation of the products, equipment, supplies, or services on premises that are not owned or leased by the purchaser or seller;

(B) provide a sales, production, or marketing program; or

(C) buy back or is likely to buy back products, equipment, or supplies purchased or products made, produced, grown, or bred by the purchaser using wholly or partly the products, equipment, supplies, or services that the seller initially sold or leased or offered for sale or lease to the purchaser.

(b) In this chapter, "business opportunity" does not include:

(1) the sale or lease of an established and ongoing business or enterprise that has actively conducted business before the sale or lease, whether composed of one or more than one component business or enterprise, if the sale or lease represents an isolated transaction or series of transactions involving a bona fide change of ownership or control of the business or enterprise or liquidation of the business or enterprise;

(2) a sale by a retailer of goods or services under a contract or other agreement to sell the inventory of one or more ongoing leased departments to a purchaser who is granted the right to sell the goods or services within or adjoining a retail business establishment as a department or division of the retail business establishment;

(3) a transaction that is:

(A) regulated by the Texas Department of Licensing and Regulation, the Texas Department of Insurance, the Texas Real Estate Commission, or the director of the Motor Vehicle Division of the Texas Department of Motor Vehicles; and

(B) engaged in by a person licensed by one of those agencies;

(4) a real estate syndication;

(5) a sale or lease to a business enterprise that also sells or leases products, equipment, or supplies or performs services:

(A) that are not supplied by the seller; and

(B) that the purchaser does not use with the seller's products, equipment, supplies, or services;

(6) the offer or sale of a franchise as described by the Petroleum Marketing Practices Act (15 U.S.C. Section 2801 et seq.) and its subsequent amendments;

(7) the offer or sale of a business opportunity if the seller:

(A) has a net worth of $25 million or more according to the seller's audited balance sheet as of a date not earlier than the 13th month before the date of the transaction; or

(B) is at least 80 percent owned by another person who:

(i) in writing unconditionally guarantees performance by the person offering the business opportunity plan; and

(ii) has a net worth of more than $25 million according to the person's most recent audited balance sheet as of a date not earlier than the 13th month before the date of the transaction; or

(8) an arrangement defined as a franchise by 16 C.F.R. Part 436 and its subsequent amendments if:

(A) the franchisor complies in all material respects in this state with 16 C.F.R. Part 436 and each order or other action of the Federal Trade Commission; and

(B) before offering for sale or selling a franchise in this state, a person files with the secretary of state a notice containing:

(i) the name of the franchisor;

(ii) the name under which the franchisor intends to transact business; and

(iii) the franchisor's principal business address.

(c) The secretary of state shall prescribe the form of the notice described by Subsection (b)(8)(B).

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 548 (S.B. 1701), Sec. 1, eff. September 1, 2009.
Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3A.01, eff. September 1, 2009.

Sec. 51.004. LIBERAL CONSTRUCTION AND APPLICATION. (a) This chapter shall be liberally construed and applied to:

(1) protect persons against false, misleading, or deceptive practices in the advertising, offering for sale or lease, or sale or lease of business opportunities; and

(2) provide efficient and economical procedures to secure that protection.

(b) In construing this chapter, a court to the extent possible shall follow the interpretations given by the Federal Trade Commission and the federal courts to Section 5(a)(1), Federal Trade Commission Act (15 U.S.C. Section 45(a)(1)), and 16 C.F.R. Part 436 and their subsequent amendments.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.005. BURDEN OF PROOF. A person who claims to be exempt from this chapter has the burden of proving the exemption.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.006. WAIVER. A waiver of this chapter is contrary to public policy and void.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.007. MAINTENANCE OF RECORDS. (a) A seller shall

maintain a complete set of books, records, and accounts of business opportunity sales made by the seller.

(b) A document relating to a business opportunity sold or leased shall be maintained until the fourth anniversary of the date of the business opportunity contract.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.008. FILING FEE. The secretary of state may charge a reasonable fee to cover the costs incurred as a result of a filing required by Subchapter B or Section 51.003 or 51.251.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.009. RULES. The secretary of state may adopt rules to administer and enforce this chapter.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER B. REGISTRATION OF BUSINESS OPPORTUNITY

Sec. 51.051. FILING OF DISCLOSURE STATEMENTS AND LIST OF SELLERS. Before a sale or offer for sale, including advertising, of a business opportunity, the principal seller must register the business opportunity with the secretary of state by filing:

(1) a copy of the disclosure statement required by Subchapter D, except as provided by Section 51.053; and

(2) a list of the name and resident address of any individual who sells or will sell the business opportunity for the principal seller.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff.

April 1, 2009.

Sec. 51.052. UPDATING OF INFORMATION ON FILE. (a) A copy of a disclosure statement filed under Section 51.051 must be updated through a new filing:

(1) annually; and

(2) when a material change occurs.

(b) The list filed under Section 51.051(2) must be updated through a new filing every six months.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.053. FILING OF DISCLOSURE DOCUMENT FROM OTHER REGULATORY AGENCY. Instead of filing with the secretary of state a copy of a disclosure statement, a seller may file a copy of a similar document required by the State Securities Board, Securities and Exchange Commission, or Federal Trade Commission that contains all the information required to be disclosed by this chapter.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.054. FILING OF COPY OF BOND OR NOTIFICATION OF ACCOUNT. A principal seller who is required to obtain a bond or establish a trust account under Subchapter C shall contemporaneously file with the secretary of state a copy of:

(1) the bond; or

(2) the formal notification by the depository that the trust account is established.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER C. BOND, TRUST ACCOUNT, OR LETTER OF CREDIT

Sec. 51.101. BOND, TRUST ACCOUNT, OR LETTER OF CREDIT REQUIRED. (a) Before a seller makes a representation described by Section 51.003(a)(1) or otherwise represents that the purchaser is assured of making a profit from a business opportunity, the principal seller must:

(1) obtain a surety bond from a surety company authorized to transact business in this state;

(2) establish a trust account; or

(3) obtain an irrevocable letter of credit.

(b) The bond, trust account, or irrevocable letter of credit must be:

(1) in an amount of $25,000 or more; and

(2) in favor of this state.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.102. ACTION AGAINST BOND, TRUST ACCOUNT, OR LETTER OF CREDIT. (a) A person may bring an action against the bond, trust account, or irrevocable letter of credit obtained or established under Section 51.101 to recover actual damages for:

(1) a violation of this chapter; or

(2) the seller's breach of:

(A) the business opportunity contract; or

(B) an obligation arising from a business opportunity sale.

(b) The aggregate liability of the surety, trustee, or issuer in an action under Subsection (a) may not exceed the amount of the bond, trust account, or irrevocable letter of credit.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER D. DISCLOSURE STATEMENT

Sec. 51.151. DISCLOSURE TO PURCHASER OF BUSINESS OPPORTUNITY. (a) Except as provided by Section 51.164, a seller must provide a

purchaser with a written disclosure statement that meets the requirements of this subchapter.

(b) The seller must provide the disclosure statement at least 10 business days before the earlier of the date:

(1) the purchaser signs a business opportunity contract; or

(2) the seller receives any consideration.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.152. COVER SHEET OF DISCLOSURE STATEMENT. (a) A disclosure statement must have a cover sheet titled, in at least 12-point boldface capital letters, "DISCLOSURES REQUIRED BY TEXAS LAW." The following statement must appear below the title in at least 10-point boldface type: "The State of Texas has not reviewed and does not endorse, approve, recommend, or sponsor any business opportunity. The information contained in this disclosure has not been verified by the state. If you have any questions about this investment, see an attorney before you sign a contract or agreement."

(b) Only the title and required statement may appear on the cover sheet.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.153. CONTENTS: NAMES AND ADDRESSES. A disclosure statement must contain:

(1) the name of the seller;

(2) each name under which the seller has transacted, is transacting, or intends to transact business;

(3) the name of any parent or affiliated company that will engage in a business transaction with the purchaser or that takes responsibility for statements made by the seller; and

(4) the names, addresses, and titles of:

(A) the seller's officers, directors, trustees, general partners, general managers, and principal executives;

(B) shareholders owning more than 20 percent of the

shares of the seller; and

(C) any other persons responsible for the seller's business activities relating to the sale of business opportunities.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.154. CONTENTS: SALES PERIODS. A disclosure statement must:

(1) specify the period during which the seller has sold business opportunities; and

(2) specify the period during which the seller has sold business opportunities involving the products, equipment, supplies, or services the seller is offering to the purchaser.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.155. CONTENTS: SERVICES DESCRIPTION. A disclosure statement must contain:

(1) a detailed description of the actual services the seller undertakes to perform for the purchaser; and

(2) if the seller promises to perform services in connection with the placement of products, equipment, or supplies at a location:

(A) the full nature of those services; and

(B) the nature of any agreements to be made with the owners or managers of that location.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.156. CONTENTS: UPDATED FINANCIAL STATEMENT. A disclosure statement must contain a copy of a financial statement of the seller that:

(1) was prepared according to generally accepted accounting principles within the previous 13 months; and

(2) has been updated to reflect any material change in the seller's financial condition.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.157. CONTENTS: TRAINING DESCRIPTION. If the seller promises training, the disclosure statement must contain a complete description of the training, including:

(1) the length of the training; and

(2) any costs of the training that the purchaser will be required to incur, including travel and lodging expenses.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.158. CONTENTS: SECURITY DESCRIPTION. If the seller is required to obtain a bond or establish a trust account, the disclosure statement must contain one of the following statements, as applicable:

(1) "As required by Texas law, the seller has secured a bond issued by _____, a surety company authorized to do business in this state. Before signing a contract to purchase this business opportunity, you should confirm the bond's status with the surety company."; or

(2) "As required by Texas law, the seller has established a trust account with _____. Before signing a contract to purchase this business opportunity, you should confirm with the bank or savings institution the current status of the trust account."

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.159. CONTENTS: DELIVERY DATE; CANCELLATION OF CONTRACT. If the seller is required to deliver to the purchaser the product, equipment, or supplies necessary to begin substantial operation of the business and states a definite or approximate delivery date for the product, equipment, or supplies, the disclosure statement must contain the following statement: "If the seller fails to deliver the product, equipment, or supplies necessary to begin substantial operation of the business within 45 days of the delivery date stated in your contract, you may notify the seller in writing and cancel your contract."

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.160. CONTENTS: SALES OR EARNINGS REPRESENTATION. If the seller makes a statement concerning sales or earnings that may be made through the business opportunity, the disclosure statement must contain a statement disclosing:

(1) the total number of purchasers of business opportunities involving the product, equipment, supplies, or services being offered who to the seller's knowledge have, not earlier than the third year before the date of the disclosure statement, actually achieved sales of or received earnings in the amount or range specified; and

(2) the total number of purchasers who, not earlier than the third year before the date of the disclosure statement, purchased business opportunities involving the product, equipment, supplies, or services being offered.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.161. CONTENTS: LEGAL ACTION HISTORY. (a) A disclosure statement must contain a statement disclosing any person described by Section 51.153 who:

(1) has, during the previous seven fiscal years:

(A) been convicted of a felony, or pleaded nolo

contendere to a felony charge, involving fraud, embezzlement, fraudulent conversion, or misappropriation of property; or

(B) been held liable in a civil action resulting in a final judgment, or has settled out of court a civil action, involving:

(i) allegations of fraud, embezzlement, fraudulent conversion, or misappropriation of property;

(ii) the use of untrue or misleading representations in an attempt to sell or dispose of property; or

(iii) the use of unfair, unlawful, or deceptive business practices;

(2) is a party to a civil action involving:

(A) allegations of fraud, embezzlement, fraudulent conversion, or misappropriation of property;

(B) the use of untrue or misleading representations in an attempt to sell or dispose of property; or

(C) the use of unfair, unlawful, or deceptive business practices; or

(3) is subject to an injunction or restrictive order relating to business activity as a result of an action brought by a public agency or department.

(b) A statement required by Subsection (a) must include:

(1) the identity and location of any court or agency;

(2) the date of any entry of a plea of nolo contendere, conviction, judgment, or decision;

(3) any penalty imposed;

(4) any damages assessed;

(5) the terms of any settlement or order; and

(6) the date, nature, and issuer of any order or ruling.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.162. CONTENTS: BANKRUPTCY OR REORGANIZATION. (a) A disclosure statement must contain a statement disclosing any person described by Section 51.153 who has, during the previous seven fiscal years:

(1) filed in bankruptcy;

(2) been adjudged bankrupt;

(3) been reorganized because of insolvency; or

(4) been a principal, director, executive officer, or partner of any other person that, during or not later than the first anniversary of the end of the period the person held the position in relation to the other person, filed in bankruptcy, was adjudged bankrupt, or was reorganized because of insolvency.

(b) A statement required by Subsection (a)(4) must include:

(1) the name and location of the person who filed in bankruptcy, was adjudged bankrupt, or was reorganized;

(2) the date of the filing, adjudication, or reorganization; and

(3) any other material fact relating to the filing, adjudication, or reorganization.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.163. CONTENTS: CONTRACT COPY. A disclosure statement must contain a copy of the business opportunity contract that the seller uses as a matter of course and that will be presented to the purchaser at closing.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.164. USE OF DISCLOSURE DOCUMENT FROM OTHER REGULATORY AGENCY. Instead of providing a disclosure statement to a purchaser under this subchapter, a seller may provide a copy of a similar document required by the State Securities Board, Securities and Exchange Commission, or Federal Trade Commission that contains all the information required to be disclosed by this chapter.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER E. BUSINESS OPPORTUNITY CONTRACT

Sec. 51.201. FORM OF BUSINESS OPPORTUNITY CONTRACT. A business opportunity contract must be in writing and include, in 10-point type or in handwriting of an equivalent size, the following:

(1) the terms of payment, including the initial consideration, down payment, and additional payments required;

(2) a detailed description of the acts or services the seller undertakes to perform for the purchaser;

(3) the seller's principal business address;

(4) the name and address of the seller's agent in this state authorized to receive service of process;

(5) the delivery date or, if the contract provides for staggered delivery times to the purchaser, the approximate delivery date of the products, equipment, or supplies the seller is to:

(A) deliver to the purchaser's home or business address; or

(B) place at a location owned or managed by a person other than the purchaser; and

(6) a complete description of the nature of the buy-back or security arrangement if the seller has represented orally or in writing when selling, leasing, soliciting, or offering a business opportunity that there is a buy-back or that the initial consideration is secured.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.202. DELIVERY OF COPIES OF DOCUMENTS TO PURCHASER. A copy of the completed business opportunity contract and any other document the seller requires the purchaser to sign shall be given to the purchaser at the time the purchaser signs the contract.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.203. EFFECT OF ASSIGNMENT OF BUSINESS OPPORTUNITY CONTRACT. An assignee of a business opportunity contract or of the

seller's rights under the contract is subject to all equities, rights, and defenses of the purchaser against the seller.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER F. TERMINATION OF BUSINESS OPPORTUNITY REGISTRATION

Sec. 51.251. VOLUNTARY TERMINATION OF BUSINESS OPPORTUNITY REGISTRATION. The principal seller of a registered business opportunity may voluntarily terminate the business opportunity's registration with the secretary of state if:

(1) the registered business opportunity will no longer be offered in this state;

(2) the registered business opportunity has changed to the extent that it no longer meets the definition of a business opportunity under Section 51.003(a);

(3) the registered business opportunity has become exempt under Section 51.003(b); or

(4) the principal seller offering the registered business opportunity ceases to exist as a legal entity.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.252. INVOLUNTARY TERMINATION OF BUSINESS OPPORTUNITY REGISTRATION. (a) The secretary of state may terminate the registration of a business opportunity registered under Section 51.051 if the seller does not comply with Section 51.052.

(b) The secretary of state must give the business opportunity registrant notice of the delinquency not later than the 31st day before the date of termination of the business opportunity registration under Subsection (a).

(c) The notice of delinquency must be given by certified mail addressed to the registered agent or the principal place of business of the business opportunity registrant noted in the latest filing made under this chapter.

(d) The secretary of state may adopt rules governing:

(1) the termination of a delinquent registration;
(2) the effective date of the termination; and
(3) the grace period, if any.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER G. ENFORCEMENT

Sec. 51.301. PROHIBITED ACTS. A seller may not:
(1) employ a representation, device, scheme, or artifice to deceive a purchaser;
(2) make an untrue statement of a material fact or omit to state a material fact in connection with the documents and information required to be provided to the secretary of state or purchaser;
(3) represent that the business opportunity provides or will provide income or earning potential unless the seller:
(A) has documented data to substantiate the representation of income or earning potential; and
(B) discloses the data to the purchaser when the representation is made; or
(4) make a claim or representation that is inconsistent with the information required to be disclosed by this chapter in:
(A) advertising or other promotional material; or
(B) an oral sales presentation, solicitation, or discussion between the seller and the purchaser.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.302. DECEPTIVE TRADE PRACTICE; REMEDIES. (a) A violation of this chapter is a false, misleading, or deceptive act or practice under Section 17.46.
(b) A public or private right or remedy prescribed by Chapter 17 may be used to enforce this chapter.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 51.303. REVIEW AND SUIT BY ATTORNEY GENERAL. (a) The attorney general may review the copy of a disclosure statement filed with the secretary of state under Subchapter B.

(b) If the disclosure statement fails to comply with this chapter, the attorney general may:

(1) notify the secretary of state and the seller in writing of the deficiency; and

(2) file suit to enjoin the seller from transacting business until the failure to comply has been corrected.

(c) If the attorney general notifies the secretary of state under Subsection (b), the secretary of state shall:

(1) attach a copy of the notice to the front of the disclosure statement; and

(2) on inquiry of the status of the disclosure statement, disclose that a statement has been filed but that the attorney general has questioned the correctness of the statement.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 52. INVENTION DEVELOPMENT SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 52.001. SHORT TITLE. This chapter may be cited as the Regulation of Invention Development Services Act.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 52.002. DEFINITIONS. In this chapter:

(1) "Customer" means:

(A) an individual who enters into a contract with an invention developer for invention development services; or

(B) a firm, partnership, corporation, or other entity

that enters into a contract with an invention developer for invention development services and is not purchasing those services as an adjunct to the traditional commercial enterprises in which the entity engages as a business.

(2) "Invention" means a discovery, process, machine, design, formulation, product, concept, idea, or any combination of these, regardless of whether patentable.

(3) "Invention developer" means an individual, firm, partnership, or corporation, or an agent, employee, officer, partner, or independent contractor of one of those entities, who:

(A) performs or offers to perform invention development services for a customer; and

(B) is not:

(i) a federal, state, or local government department or agency;

(ii) a nonprofit, charitable, scientific, or educational organization organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) or formed under Title 1 and Chapter 22, Business Organizations Code, or described by Section 170(b)(1)(A), Internal Revenue Code of 1986, as amended;

(iii) an attorney acting within the scope of the attorney's professional license;

(iv) a person registered to practice before the United States Patent and Trademark Office and acting within the scope of that person's professional license; or

(v) a person, firm, corporation, association, or other entity that does not charge a fee, including reimbursement for expenditures made or costs incurred by the entity, for invention development services other than payment made from a portion of the income a customer received by virtue of an act performed by the entity.

(4) "Invention development services" means an act done by or for an invention developer for the invention developer's procurement or attempted procurement of a licensee or buyer of an intellectual property right in an invention, including:

(A) evaluating, perfecting, marketing, or brokering an invention;

(B) performing a patent search; and

(C) preparing or prosecuting a patent application by a

person not registered to practice before the United States Patent and Trademark Office.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 52.003. APPLICABILITY OF CHAPTER TO CONTRACT FOR INVENTION DEVELOPMENT SERVICES. This chapter applies to each contract under which an invention developer agrees to perform invention development services for a customer.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 52.004. WAIVER BY CUSTOMER PROHIBITED. A waiver by a customer of a provision of this chapter is void.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER B. FINANCIAL REQUIREMENTS OF INVENTION DEVELOPERS

Sec. 52.051. BOND REQUIRED. (a) Except as provided by Section 52.053, an invention developer performing or offering to perform invention development services in this state shall maintain a bond issued by a surety company authorized to transact business in this state.

(b) The principal amount of the bond must equal at least the greater of:

(1) five percent of the invention developer's gross income from the invention development business in this state during the invention developer's last fiscal year; or

(2) $25,000.

(c) The invention developer must file a copy of the bond with the secretary of state before the date the invention developer begins business in this state.

(d) Before the 91st day after the last day of the invention developer's fiscal year, the invention developer shall change the amount of the bond if necessary to conform with this section and Section 52.052.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 52.052. BENEFICIARY OF BOND; CLAIM AGAINST BOND. (a) The bond required by Section 52.051 must be:

(1) in favor of this state; and

(2) for the benefit of any person who, after entering into a contract for invention development services with the invention developer, is damaged by fraud, dishonesty, or failure to provide the invention developer's services in performance of the contract.

(b) A person making a claim against the bond may bring an action against the invention developer and the surety. The aggregate liability of the surety to all persons for all breaches of conditions of the bond required by this section is limited to the amount of the bond.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 52.053. CASH DEPOSIT INSTEAD OF BOND. Instead of furnishing the bond required by Section 52.051, the invention developer may provide for, in an amount equal to the amount of the bond required:

(1) cash deposited with the secretary of state;

(2) a certificate of deposit payable to the secretary of state and issued by a bank that is:

(A) transacting business in this state; and

(B) insured by the Federal Deposit Insurance Corporation;

(3) an investment certificate of a share account assigned to the secretary of state and issued by a savings and loan association that is:

(A) transacting business in this state; and

(B) insured by the Federal Deposit Insurance Corporation; or

(4) a bearer bond issued by the United States government or this state.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER C. INVENTION DEVELOPMENT SERVICES CONTRACT

Sec. 52.101. WRITTEN CONTRACT REQUIRED; CUSTOMER COPY. (a) A contract for invention development services must be in writing.

(b) The invention developer shall give a copy of the contract to the customer at the time the customer signs the contract.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 52.102. MANDATORY CONTRACT TERMS. (a) A contract for invention development services must contain in boldfaced type of not less than 10-point size:

(1) the payment terms;

(2) the contract termination rights required by Section 52.104;

(3) a full, clear, and concise description of the specific acts or services that the invention developer agrees to perform for the customer;

(4) a statement of whether the invention developer agrees to construct, sell, or distribute one or more prototypes, models, or devices embodying the customer's invention;

(5) the full name and principal place of business of the invention developer;

(6) the name and principal place of business of any parent, subsidiary, or affiliated company that may engage in performing any of the invention development services;

(7) if the invention developer makes an oral or written representation of estimated or projected customer earnings, a

statement of estimated or projected customer earnings and a description of the data on which the estimation or projection is based;

(8) the name and address of the custodian of all records and correspondence pertaining to the invention development services described by the contract;

(9) a statement that the invention developer:

(A) is required to maintain all records and correspondence relating to performance of the invention development services for the customer until the second anniversary of the date the contract expires; and

(B) on seven days' written notice will make the invention development services records and correspondence available to the customer or the customer's representative for review and copying at the customer's reasonable expense on the invention developer's premises during normal business hours; and

(10) a time schedule for performance of the invention development services, including an estimated date by which performance is expected to be completed.

(b) An invention developer is a fiduciary to the extent that the description of specific acts or services required by Subsection (a)(3) gives the invention developer discretion in determining which acts or services will be performed.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 52.103. MULTIPLE CONTRACTS. If it is the invention developer's normal practice to seek more than one contract in connection with an invention or if the invention developer normally seeks to perform services in connection with an invention in more than one phase with the performance of each phase covered in one or more subsequent contracts, the invention developer shall give to the customer at the time the customer signs the first contract:

(1) a written statement describing that practice; and

(2) a written summary of the developer's normal terms, if any, for subsequent contracts, including the approximate amount of the developer's normal fees or other consideration that the developer

may require from the customer.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 52.104. PAYMENT FOR SERVICES; OPTION TO TERMINATE CONTRACT. (a) For purposes of this section, delivery of a promissory note, bill of exchange, or negotiable instrument of any kind to the invention developer or to a third party for the benefit of the invention developer is payment, regardless of the date or dates appearing on the instrument.

(b) Notwithstanding any contractual provision to the contrary, payment for invention development services may not be required, made, or received before the fourth working day after the date the customer receives a copy of the contract for invention development services signed by the invention developer and the customer.

(c) Until the payment for invention development services is made, the parties to the contract have the option to terminate the contract. The customer may exercise the option to terminate by refraining from making payment to the invention developer. The invention developer may exercise the option to terminate by giving to the customer a written notice of the invention developer's exercise of the option. The written notice becomes effective when the customer receives the notice.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 52.105. COVER NOTICE REQUIRED. (a) A contract for invention development services must have attached a conspicuous and legible cover sheet that contains:

(1) the name, home address, office address, and local office address of the invention developer; and

(2) the following notice in boldfaced type of not less than 10-point size:

THIS CONTRACT BETWEEN YOU AND AN INVENTION DEVELOPER IS REGULATED BY THE STATE OF TEXAS' REGULATION OF INVENTION DEVELOPMENT

SERVICES ACT. YOU ARE NOT PERMITTED OR REQUIRED TO MAKE ANY PAYMENTS UNDER THIS CONTRACT UNTIL FOUR (4) WORKING DAYS AFTER YOU SIGN THIS CONTRACT AND RECEIVE A COMPLETED COPY OF IT.

IF YOU ASSIGN EVEN A PARTIAL INTEREST IN THE INVENTION TO THE INVENTION DEVELOPER, THE INVENTION DEVELOPER MAY HAVE THE RIGHT TO SELL OR DISPOSE OF THE INVENTION WITHOUT YOUR CONSENT AND MAY NOT HAVE TO SHARE THE PROFITS WITH YOU.

THE TOTAL NUMBER OF CUSTOMERS WHO HAVE CONTRACTED WITH THE INVENTION DEVELOPER SINCE (year) IS (number). THE TOTAL NUMBER OF CUSTOMERS KNOWN BY THIS INVENTION DEVELOPER TO HAVE RECEIVED, BY VIRTUE OF THIS INVENTION DEVELOPER'S PERFORMANCE, AN AMOUNT OF MONEY IN EXCESS OF THE AMOUNT PAID BY THE CUSTOMER TO THIS INVENTION DEVELOPER IS (number).

YOU ARE ENCOURAGED TO CONSULT WITH A QUALIFIED ATTORNEY BEFORE SIGNING THIS CONTRACT. BY PROCEEDING WITHOUT THE ADVICE OF A QUALIFIED ATTORNEY, YOU COULD LOSE ANY RIGHTS YOU MIGHT HAVE IN YOUR IDEA OR INVENTION.

(b) The invention developer shall complete the cover sheet by providing the proper information in the blanks of the cover sheet. In the first blank the invention developer shall enter the later of the year that the invention developer began to transact business or May 7, 1981. The invention developer may round the numbers the invention developer enters in the last two blanks to the nearest 100 and, in computing the numbers, may exclude persons who have contracted with the invention developer during the three calendar months preceding the date of the contract. If the number to be inserted in the third blank is zero, the invention developer shall enter a zero in the blank.

(c) The cover sheet may not contain anything other than the information required by Subsection (a).

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 52.106. QUARTERLY REPORTS TO CUSTOMER REQUIRED. At least once each calendar quarter during the term of a contract for invention development services, the invention developer shall deliver to the customer at the address specified in the contract a written

report that identifies the contract and contains:

(1) a full, clear, and concise description of the services performed up to the date of the report and of the services to be performed; and

(2) the name and address of each person to whom the subject matter of the contract has been disclosed, the reason for each disclosure, the nature of the disclosure, and copies of all responses received as a result of those disclosures.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER D. ENFORCEMENT

Sec. 52.151. CONTRACT VOIDABLE. A contract for invention development services is voidable at the option of the customer if the contract:

(1) does not substantially comply with this chapter; or

(2) was entered into in reliance on any false, fraudulent, or misleading information, representation, notice, or advertisement of the invention developer.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 52.152. PRIVATE CAUSE OF ACTION. (a) This section applies only to a customer who is injured by an invention developer's:

(1) violation of this chapter;

(2) false or fraudulent statement, representation, or omission of material fact; or

(3) failure to make all disclosures required by this chapter.

(b) A customer to whom this section applies may recover in a civil action against the invention developer:

(1) the greater of:

(A) the amount of any actual damages sustained by the customer; or

(B) $1,000;

(2) court costs; and

(3) attorney's fees.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 52.153. DECEPTIVE TRADE PRACTICE. The following acts, omissions, or failures by an invention developer constitute a deceptive trade practice under Chapter 17:

(1) a violation of this chapter;

(2) an omission of material fact; or

(3) a failure to make a disclosure required by this chapter.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 52.154. MUTUALLY EXCLUSIVE REMEDIES. Remedies available under Sections 52.152 and 52.153 are mutually exclusive.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 52.155. PRESUMPTION OF INJURY. For purposes of Sections 52.152 and 52.153, a rebuttable presumption of injury is established by:

(1) a substantial violation of this chapter by an invention developer; or

(2) a customer's execution of a contract for invention development services in reliance on a false or fraudulent statement, representation, or an omission of material fact.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff.

April 1, 2009.

Sec. 52.156. ENFORCEMENT BY ATTORNEY GENERAL. (a) The attorney general shall enforce this chapter.

(b) The attorney general may:

(1) recover a civil penalty not to exceed $2,000 for each violation of this chapter; and

(2) seek equitable relief to restrain a violation of this chapter.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 52.157. APPLICATION OF OTHER LAWS. This chapter does not nullify or limit any obligation, right, or remedy that is applicable or available under the law of this state.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 53. STORE LEASES

Sec. 53.001. STORE LEASE CONTRACT. (a) A provision of a lease contract that requires a store to be open when another store located in the same shopping center is open does not apply on Sunday unless the provision specifically states that it applies on Sunday.

(b) This section applies to a contract executed before or after September 1, 1985.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 54. COMPENSATION AGREEMENTS FOR SALES REPRESENTATIVES

Sec. 54.001. DEFINITIONS. In this chapter:

(1) "Commission" means compensation paid a sales

representative by a principal in an amount based on a percentage of the dollar amount of certain orders for or sales of the principal's product.

(2) "Principal" means a person who:

(A) manufactures, produces, imports, or distributes a product for sale;

(B) uses a sales representative to solicit orders for the product; and

(C) compensates the sales representative wholly or partly by commission.

(3) "Sales representative" means an independent contractor who solicits, on behalf of a principal, orders for the purchase at wholesale of the principal's product.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 54.002. CONTRACT. (a) A contract between a principal and a sales representative under which the sales representative is to solicit wholesale orders within this state must:

(1) be in writing or in a computer-based medium; and

(2) state the method by which the sales representative's commission is to be computed and paid.

(b) The principal shall provide the sales representative with a copy of the contract.

(c) A provision in the contract establishing venue for an action arising under the contract in a state other than this state is void.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 54.003. PAYMENT ON TERMINATION OF CERTAIN COMPENSATION AGREEMENTS. If a compensation agreement between a sales representative and a principal that does not comply with Section 54.002 is terminated, the principal shall pay all commissions due the sales representative not later than the 30th working day after the

date of the termination.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 54.004. DAMAGES. A principal who fails to comply with a provision of a contract under Section 54.002 relating to payment of a commission or who fails to pay a commission as required by Section 54.003 is liable to the sales representative in a civil action for:

(1) three times the unpaid commission due the sales representative; and

(2) reasonable attorney's fees and costs.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 54.005. PERSONAL JURISDICTION. A principal who is not a resident of this state and who enters into a contract subject to this chapter is considered to be transacting business in this state for purposes of the exercise of personal jurisdiction over the principal.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 54.006. WAIVER. A provision of this chapter may not be waived, whether by an express waiver or by an attempt to make a contract or agreement subject to the laws of another state. A waiver of a provision of this chapter is void.

Amended by:
Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 56. AGREEMENT FOR PAYMENT OF CONSTRUCTION SUBCONTRACTOR

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 56.001. DEFINITIONS. In this chapter:

(1) "Contingent payee" means a party to a contract with a contingent payment clause, other than an architect or engineer, whose receipt of payment is conditioned on the contingent payor's receipt of payment from another person.

(2) "Contingent payment clause" means a provision in a contract for construction management, or for the construction of improvements to real property or the furnishing of materials for the construction, that provides that the contingent payor's receipt of payment from another is a condition precedent to the obligation of the contingent payor to make payment to the contingent payee for work performed or materials furnished.

(3) "Contingent payor" means a party to a contract with a contingent payment clause that conditions payment by the party on the receipt of payment from another person.

(4) "Improvement" includes new construction, remodeling, or repair.

(5) "Obligor" means the person obligated to make payment to the contingent payor for an improvement.

(6) "Primary obligor" means the owner of the real property to be improved or repaired under the contract, or the contracting authority if the contract is for a public project. A primary obligor may be an obligor.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.001(a), eff. September 1, 2009.

Sec. 56.002. INAPPLICABILITY OF CHAPTER TO CERTAIN CONTRACTS. This chapter does not apply to a contract that is solely for:

(1) design services;

(2) the construction or maintenance of a road, highway, street, bridge, utility, water supply project, water plant, wastewater plant, water and wastewater distribution or conveyance facility, wharf, dock, airport runway or taxiway, drainage project, or related type of project associated with civil engineering construction; or

(3) improvements to or the construction of a structure that is a:

(A) detached single-family residence;
(B) duplex;
(C) triplex; or
(D) quadruplex.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.001(a), eff. September 1, 2009.

Sec. 56.003. EFFECT OF CHAPTER ON TIMING OF PAYMENT PROVISIONS. This chapter does not affect a provision that affects the timing of a payment in a contract for construction management or for the construction of improvements to real property if the payment is to be made within a reasonable period.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.001(a), eff. September 1, 2009.

Sec. 56.004. WAIVER OF CHAPTER PROHIBITED. A person may not waive this chapter by contract or other means. A purported waiver of this chapter is void.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.001(a), eff. September 1, 2009.

SUBCHAPTER B. CONTINGENT PAYMENT CLAUSE

Sec. 56.051. ENFORCEMENT OF CLAUSE PROHIBITED TO EXTENT CERTAIN CONTRACTUAL OBLIGATIONS NOT MET. A contingent payor or its surety may not enforce a contingent payment clause to the extent that the obligor's nonpayment to the contingent payor is the result of the contractual obligations of the contingent payor not being met, unless the nonpayment is the result of the contingent payee's failure to meet the contingent payee's contractual requirements.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.001(a), eff. September 1, 2009.

Sec. 56.052. ENFORCEMENT OF CLAUSE PROHIBITED FOLLOWING NOTICE

FROM CONTINGENT PAYEE. (a) Except as provided by Subsection (d), a contingent payor or its surety may not enforce a contingent payment clause as to work performed or materials delivered after the contingent payor receives written notice from the contingent payee objecting to the further enforceability of the contingent payment clause as provided by this chapter and the notice becomes effective as provided by Subsection (b). The contingent payee may send written notice only after the 45th day after the date the contingent payee submits a written request for payment to the contingent payor that is in a form substantially in accordance with the contingent payee's contract requirements for the contents of a regular progress payment request or an invoice.

(b) For purposes of Subsection (a), the written notice becomes effective on the latest of:

(1) the 10th day after the date the contingent payor receives the notice;

(2) the eighth day after the date interest begins to accrue against the obligor under:

(A) Section 28.004, Property Code, under a contract for a private project governed by Chapter 28, Property Code; or

(B) 31 U.S.C. Section 3903(a)(6), under a contract for a public project governed by 40 U.S.C. Section 3131; or

(3) the 11th day after the date interest begins to accrue against the obligor under Section 2251.025, Government Code, under a contract for a public project governed by Chapter 2251, Government Code.

(c) A notice given by a contingent payee under Subsection (a) does not prevent enforcement of a contingent payment clause if:

(1) the obligor has a dispute under Chapter 28, Property Code, Chapter 2251, Government Code, or 31 U.S.C. Chapter 39 as a result of the contingent payee's failure to meet the contingent payee's contractual requirements; and

(2) the contingent payor gives notice in writing to the contingent payee that the written notice given under Subsection (a) does not prevent enforcement of the contingent payment clause under this subsection and the contingent payee receives the notice under this subdivision not later than the later of:

(A) the fifth day before the date the written notice from the contingent payee under Subsection (a) becomes effective under Subsection (b); or

(B) the fifth day after the date the contingent payor receives the written notice from the contingent payee under Subsection (a).

(d) A written notice given by a contingent payee under Subsection (a) does not prevent the enforcement of a contingent payment clause to the extent that the funds are not collectible as a result of a primary obligor's successful assertion of a defense of sovereign immunity, if the contingent payor has exhausted all of its rights and remedies under its contract with the primary obligor and under Chapter 2251, Government Code. This subsection does not:

(1) create or validate a defense of sovereign immunity; or

(2) extend to a primary obligor a defense or right that did not exist before September 1, 2007.

(e) On receipt of payment by the contingent payee of the unpaid indebtedness giving rise to the written notice provided by the contingent payee under Subsection (a), the contingent payment clause is reinstated as to work performed or materials furnished after the receipt of the payment, subject to the provisions of this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.001(a), eff. September 1, 2009.

Sec. 56.053. ENFORCEMENT OF CLAUSE PROHIBITED IF EXISTENCE OF SHAM RELATIONSHIP. A contingent payor or its surety may not enforce a contingent payment clause if the contingent payor is in a sham relationship with the obligor, as described by the sham relationships in Section 53.026, Property Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.001(a), eff. September 1, 2009.

Sec. 56.054. ENFORCEMENT OF CLAUSE PROHIBITED IF UNCONSCIONABLE. (a) A contingent payor or its surety may not enforce a contingent payment clause if the enforcement would be unconscionable. The party asserting that a contingent payment clause is unconscionable has the burden of proving that the clause is unconscionable.

(b) The enforcement of a contingent payment clause is not unconscionable if the contingent payor:

(1) proves that the contingent payor has exercised diligence in ascertaining and communicating in writing to the contingent payee, before the contract in which the contingent payment clause has been asserted becomes enforceable against the contingent payee, the financial viability of the primary obligor and the existence of adequate financial arrangements to pay for the improvements; and

(2) has done the following:

(A) made reasonable efforts to collect the amount owed to the contingent payor; or

(B) made or offered to make, at a reasonable time, an assignment by the contingent payor to the contingent payee of a cause of action against the obligor for the amounts owed to the contingent payee by the contingent payor and offered reasonable cooperation to the contingent payee's collection efforts, if the assigned cause of action is not subject to defenses caused by the contingent payor's action or failure to act.

(c) A cause of action brought on an assignment made under Subsection (b)(2)(B) is enforceable by a contingent payee against an obligor or a primary obligor.

(d) A contingent payor is considered to have exercised diligence for purposes of Subsection (b)(1) under a contract for a private project governed by Chapter 53, Property Code, if the contingent payee receives in writing from the contingent payor:

(1) the name, address, and business telephone number of the primary obligor;

(2) a description, legally sufficient for identification, of the property on which the improvements are being constructed;

(3) the name and address of the surety on any payment bond provided under Subchapter I, Chapter 53, Property Code, to which any notice of claim should be sent;

(4) if a loan has been obtained for the construction of improvements:

(A) a statement, furnished by the primary obligor and supported by reasonable and credible evidence from all applicable lenders, of the amount of the loan;

(B) a summary of the terms of the loan;

(C) a statement of whether there is foreseeable default of the primary obligor; and

(D) the name, address, and business telephone number of

the borrowers and lenders; and

(5) a statement, furnished by the primary obligor and supported by reasonable and credible evidence from all applicable banks or other depository institutions, of the amount, source, and location of funds available to pay the balance of the contract amount if there is no loan or the loan is not sufficient to pay for all of the construction of the improvements.

(e) A contingent payor is considered to have exercised diligence for purposes of Subsection (b)(1) under a contract for a public project governed by Chapter 2253, Government Code, if the contingent payee receives in writing from the contingent payor:

(1) the name, address, and primary business telephone number of the primary obligor;

(2) the name and address of the surety on the payment bond provided to the primary obligor to which any notice of claim should be sent; and

(3) a statement from the primary obligor that funds are available and have been authorized for the full contract amount for the construction of the improvements.

(f) A contingent payor is considered to have exercised diligence for purposes of Subsection (b)(1) under a contract for a public project governed by 40 U.S.C. Section 3131 if the contingent payee receives in writing from the contingent payor:

(1) the name, address, and primary business telephone number of the primary obligor;

(2) the name and address of the surety on the payment bond provided to the primary obligor; and

(3) the name of the contracting officer, if known at the time of the execution of the contract.

(g) A primary obligor shall furnish the information described by Subsection (d) or (e), as applicable, to the contingent payor not later than the 30th day after the date the primary obligor receives a written request for the information. If the primary obligor fails to provide the information under the written request, the contingent payor, the contingent payee, and their sureties are relieved of the obligation to initiate or continue performance of the construction contracts of the contingent payor and contingent payee.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.001(a), eff. September 1, 2009.

Sec. 56.055. USE OF CLAUSE TO INVALIDATE ENFORCEABILITY OR PERFECTION OF MECHANIC'S LIEN PROHIBITED. A contingent payment clause may not be used as a basis for invalidation of the enforceability or perfection of a mechanic's lien under Chapter 53, Property Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.001(a), eff. September 1, 2009.

Sec. 56.056. ASSERTION OF CLAUSE AS AFFIRMATIVE DEFENSE. The assertion of a contingent payment clause is an affirmative defense to a civil action for payment under a contract.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.001(a), eff. September 1, 2009.

Sec. 56.057. ALLOCATION OF RISK PERMITTED. An obligor or a primary obligor may not prohibit a contingent payor from allocating risk by means of a contingent payment clause.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.001(a), eff. September 1, 2009.

CHAPTER 57. AGRICULTURAL, CONSTRUCTION, INDUSTRIAL, MINING, FORESTRY, LANDSCAPING, AND OUTDOOR POWER EQUIPMENT DEALER AGREEMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 57.001. SHORT TITLE. This chapter may be cited as the Fair Practices of Equipment Manufacturers, Distributors, Wholesalers, and Dealers Act.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.002. DEFINITIONS. In this chapter:

(1) "Current net parts cost" means an amount equal to the

current net parts price of a repair part, less any trade or cash discount typically given to a dealer in the normal, ordinary course of ordering a repair part.

(2) "Current net parts price" means:

(A) with respect to a repair part in current stock, the price for the repair part listed in the supplier's price list or catalog in effect:

(i) when a dealer agreement is terminated or discontinued; or

(ii) for purposes of Subchapter F, when the repair part is ordered; and

(B) with respect to a repair part that has been superseded, the price for a repair part listed in the supplier's price list or catalog in effect when a dealer agreement is terminated or discontinued that:

(i) performs the same function and is for the same purpose as the superseded part; and

(ii) is listed under a different part number than the superseded part.

(3) "Dealer" means a person who is primarily engaged in the business of:

(A) selling or leasing equipment or repair parts for equipment to end users of the equipment; and

(B) repairing or servicing equipment.

(4) "Dealer agreement" means an oral or written agreement or arrangement, of definite or indefinite duration, between a dealer and a supplier that provides for the rights and obligations of the parties with respect to the purchase or sale of equipment or repair parts.

(5) "Dealership" means the retail sale business engaged in by a dealer under a dealer agreement.

(6) "Demonstrator" means equipment in a dealer's inventory that:

(A) has never been sold at retail; and

(B) is or has been made available to a potential customer, as authorized by the supplier, without charge or under a short-term rental agreement for purposes of demonstrating its use and with the intent of encouraging the customer to purchase the equipment.

(7) "Equipment":

(A) means machinery, equipment, or implements or attachments to the machinery, equipment, or implements used for, or in connection with, any of the following purposes:

(i) lawn, garden, golf course, landscaping, or grounds maintenance;

(ii) planting, cultivating, irrigating, harvesting, or producing agricultural or forestry products;

(iii) raising, feeding, or tending to livestock or harvesting products from livestock or any other activity in connection with those activities; or

(iv) industrial, construction, maintenance, mining, or utility activities or applications; and

(B) does not mean:

(i) trailers or self-propelled vehicles designed primarily for the transportation of persons or property on a street or highway; or

(ii) all-terrain vehicles, utility task vehicles, or recreational off-highway vehicles.

(8) "Family member" means a child or other lineal descendant, a son-in-law, a daughter-in-law, or the spouse of an individual.

(9) "Index" means the producer price index for construction machinery series identification number pcu333120333120 published by the Bureau of Labor Statistics of the United States Department of Labor or a successor index measuring substantially similar information.

(10) "Inventory" means equipment, repair parts, data processing hardware or software, or specialized service or repair tools.

(11) "Net equipment cost" means an amount equal to the sum of the price the dealer actually paid to the supplier for equipment, and:

(A) any freight paid by the dealer from the supplier's location to the dealer's location, payable at the cost stated on the invoice, or, if there is no invoice, at the truckload rate in effect when a dealer agreement is terminated; and

(B) the set-up cost of labor incurred in preparing the equipment for retail sale or lease, reimbursable at the dealer's standard labor rate charged by the dealer to its customers for non-warranty repair work, unless a supplier has established a reasonable

set-up time to prepare the equipment for retail sale or lease, in which case the labor will be reimbursable at an amount equal to the reasonable set-up time in effect as of the date of delivery multiplied by the dealer's standard labor rate.

(12) "New equipment" means, for purposes of determining whether a dealer is a single-line dealer, equipment that can be returned to the supplier following termination of a dealer agreement under Subchapter H.

(13) "Person" means:

(A) an individual, corporation, partnership, limited liability company, company, trust, or any other form of business entity, including any other entity in which a person has a majority interest or of which a person has control; or

(B) an officer, director, or other individual who actively controls the activities of an entity described by Paragraph (A).

(14) "Repair parts" means all parts related to the repair of equipment, including superseded parts.

(15) "Single-line dealer" means a dealer that:

(A) has purchased construction, industrial, forestry, or mining equipment from a single supplier constituting 75 percent or more of the dealer's total new equipment that is construction, industrial, forestry, or mining equipment, computed on the basis of net equipment cost; and

(B) has a total annual average sales volume of equipment acquired from the single-line supplier in excess of $25 million for the five calendar years immediately preceding the applicable determination date, provided, however, that the $25 million threshold will be increased as of September 1 of each year by an amount equal to the threshold on the date the determination is made multiplied by the percentage increase in the index from January of the immediately preceding year to January of the year the determination is made.

(16) "Single-line dealer agreement" means a dealer agreement between a single-line dealer and a single-line supplier that only provides for the rights and obligations of the parties with respect to the purchase and sale of construction, forestry, industrial, or mining equipment.

(17) "Single-line supplier" means the supplier that is selling to a single-line dealer construction, industrial, forestry,

or mining equipment constituting 75 percent of the single-line dealer's new equipment that consists of construction, industrial, forestry, and mining equipment.

(18) "Specialty agricultural equipment" means equipment that is designed for and used in:

(A) planting, cultivating, irrigating, harvesting, and producing agricultural products; or

(B) raising, feeding, or tending to livestock or harvesting products from livestock.

(19) "Specialty agricultural equipment supplier" means a supplier of specialty agricultural equipment whose:

(A) gross sales revenue to the dealer is less than the threshold amount;

(B) product line does not include farm tractors or combines;

(C) sales of outdoor power equipment to the dealer do not exceed 10 percent of the supplier's total sales to the dealer during the one-year period ending on the last day of the calendar month immediately preceding the effective date of the termination of the dealer agreement; and

(D) qualification for that status is determined on a case-by-case basis depending on the sales of the applicable dealer and the sales to the applicable dealer by the specialty agricultural equipment supplier.

(20) "Supplier" means a person engaged in the business of the manufacture, assembly, or wholesale distribution of equipment or repair parts. The term includes any successor in interest of a supplier, including:

(A) a receiver, trustee, liquidator, assignee, purchaser of assets or stock, or surviving corporation resulting from a merger, liquidation, or reorganization of an original supplier; and

(B) a purchaser of all or substantially all of a supplier's assets, such as a purchaser of all or substantially all of the inventory of the supplier or any division or product line of the supplier.

(21) "Terminate" or "termination" means to terminate, cancel, fail to renew, or substantially change the competitive circumstances of a dealer agreement.

(22) "Threshold amount" means the lesser of 10 percent of the dealer's gross sales revenue or $350,000, in each case based on

net sales of the dealership during the one-year period ending on the last day of the calendar month immediately preceding the effective date of the termination of the dealer agreement, provided, however, that the $350,000 amount must be increased each year by an amount equal to the amount on the year in which the determination is made multiplied by the percentage increase in the index from January of the immediately preceding year to January of the year in which the determination is made.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.003. WAIVER OF CHAPTER VOID. An attempted waiver of a provision of this chapter or of the application of this chapter is void.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

SUBCHAPTER B. PROVISIONS REGARDING DEALER AGREEMENT OR DEALERSHIP

Sec. 57.051. CERTAIN PROVISIONS VOID. The following provisions contained in a dealer agreement are void:

(1) any provision that purports to elect the application of a law of another state instead of the law of this state; and

(2) any provision that requires a dealer to pay attorney's fees incurred by the supplier.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.052. CHANGE IN OWNERSHIP OR FINANCIAL STRUCTURE. A supplier may not prevent, by contract or otherwise, a dealer from changing its capital structure or the means by or through which the dealer finances its operations, if:

(1) the dealer gives prior notice of the change to the supplier; and

(2) the dealer at all times meets any reasonable capital standards required by the supplier pursuant to a right granted in the

dealer agreement and imposed on similarly situated dealers.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.053. RELEASE OF LIABILITY PROHIBITED. A supplier may not require a dealer to assent to a release, assignment, novation, waiver, or estoppel that would release any person from liability imposed by this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

SUBCHAPTER C. SALE, TRANSFER, OR OWNERSHIP OF DEALERSHIP

Sec. 57.101. TRANSFER OF INTEREST IN DEALERSHIP BY SUCCESSION; SINGLE-LINE DEALER AGREEMENTS. (a) This section applies only to single-line dealer agreements.

(b) If a dealer dies, a supplier has 90 days in which to consider and make a determination on a request by a family member to enter into a new dealer agreement to operate the dealership. If the supplier determines that the requesting family member is not acceptable, the supplier shall provide the family member with a written notice of its determination with the stated reasons for nonacceptance. This section does not entitle an heir, personal representative, or family member of the dealer to operate a dealership without the specific written consent of the supplier.

(c) Notwithstanding Subsection (b), if a supplier and dealer have previously executed an agreement concerning succession rights before the dealer's death, and if that agreement is still in effect, the agreement shall be observed even if it designates someone other than the surviving spouse or an heir of the decedent as the successor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.102. APPROVAL OF SALE OR TRANSFER OF BUSINESS AT DEALER'S REQUEST. (a) This section applies only to a dealer

agreement that is not a single-line dealer agreement.

(b) If a supplier has contractual authority to approve or deny a request for the sale or transfer of a dealer's business or an equity ownership interest in the dealer's business, a dealer may request that the supplier approve or deny a request for the sale or transfer of a dealer's business or an equity ownership interest in the dealer's business to a proposed buyer or transferee. The dealer's request must be in writing and must include character references and reasonable financial, personal background, and work history information with respect to the proposed buyer or transferee.

(c) Not later than the 60th day after receipt of a request under Subsection (b), the supplier shall either approve the sale or transfer or send a written response to the dealer stating the supplier's denial of the request and the specific reasons for the denial. The request is considered approved if the supplier does not approve or deny the request by the deadline.

(d) A supplier may deny a request made under this section only if the proposed buyer or transferee fails to meet the reasonable requirements consistently imposed by the supplier for purposes of determining whether to approve a new dealer or a request for approval of a sale or transfer of a dealer's business or equity ownership in the dealer's business.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.103. APPROVAL OF SALE OR TRANSFER OF BUSINESS AT REQUEST OF PERSONAL REPRESENTATIVE. (a) This section applies only to a dealer agreement that is not a single-line dealer agreement.

(b) If a dealer dies and the supplier has contractual authority to approve or deny a request for the sale or transfer of a dealer's business or an equity ownership interest in the dealer's business, the personal representative of the dealer's estate, or any other person with authority to transfer the dealer's assets, must submit to the supplier a written request for approval of the sale or transfer of the business or ownership interest not later than the 180th day after the date of the dealer's death.

(c) If a timely request for approval of a sale or transfer is made as provided by Subsection (b), the supplier must approve or deny

the request in accordance with the procedures prescribed by Sections 57.102(c) and (d) for a supplier's approval or denial of a request for a sale or transfer made under Section 57.102.

(d) Notwithstanding any other provision of this chapter to the contrary, any attempt by the supplier to terminate the dealer agreement as a result of the death of a dealer will be delayed until there has been compliance with the terms of this section or the 180-day period has expired, as applicable.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

SUBCHAPTER D. TERMINATION OF AGREEMENTS OTHER THAN SINGLE-LINE DEALER AGREEMENTS

Sec. 57.151. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a dealer agreement that is not a single-line dealer agreement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.152. TERMINATION BY DEALER; WRITTEN NOTICE. A dealer must give the supplier at least 30 days' prior written notice of termination.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.153. TERMINATION BY SUPPLIER; GOOD CAUSE REQUIRED. A supplier may not terminate a dealer agreement without good cause.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.154. GOOD CAUSE DETERMINATION. (a) Except as specifically provided otherwise by this chapter, good cause for termination of a dealer agreement exists for purposes of this

subchapter if:

(1) the dealer fails to substantially comply with essential and reasonable requirements imposed on the dealer under the terms of the dealer agreement, provided that such requirements are not different from requirements imposed on other similarly situated dealers either by their terms or by the manner in which they are enforced;

(2) the dealer or dealership has transferred a controlling ownership interest in its business without the supplier's consent;

(3) the dealer has filed a voluntary petition in bankruptcy or an involuntary petition in bankruptcy has been filed against the dealer and has not been discharged earlier than the 31st day after the date the petition was filed;

(4) there has been a sale or other closeout of a substantial part of the dealer's assets related to the business;

(5) there has been commencement of an action or proceeding for the dissolution or liquidation of the dealership;

(6) there has been a change in dealer or dealership locations without the prior written approval of the supplier;

(7) the dealer has defaulted under the terms of any chattel mortgage or other security agreement between the dealer and the supplier;

(8) there has been a revocation of any guarantee of the dealer's present or future obligations to the supplier, except as provided by Subsection (b);

(9) the dealer has failed to operate in the normal course of business for seven consecutive days or has otherwise abandoned the dealer's business;

(10) the dealer has been convicted of or pleaded nolo contendere to a felony affecting the relationship between the dealer and supplier;

(11) the dealer has engaged in conduct that is injurious or otherwise detrimental to:

(A) the dealer's customers;

(B) the public welfare; or

(C) the representation or reputation of the supplier's product; or

(12) the dealer has consistently failed to meet and maintain the supplier's requirements for reasonable standards and performance objectives, so long as the supplier has provided the

dealer with reasonable standards and performance objectives based on the supplier's experience in other comparable market areas.

(b) Good cause is not considered to exist for purposes of Subsection (a)(8) if:

(1) a person revokes any guarantee of the dealer's obligations to the supplier in connection with or following the transfer of the person's entire ownership interest in the dealership; and

(2) the supplier does not require the person to execute a new guarantee of the dealer's present or future obligations to the supplier in connection with the transfer of the person's ownership interest in the dealership.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.155. NOTICE OF TERMINATION; CORRECTION OF DEFICIENCY. (a) Except as otherwise provided by this section, a supplier must provide a dealer written notice of termination of a dealer agreement at least 180 days before the effective date of termination. The notice must state all reasons constituting good cause for the termination and that the dealer has 60 days in which to cure any claimed deficiency. If the deficiency is cured within 60 days, the notice will be void.

(b) A supplier, other than a specialty agricultural equipment supplier, may not terminate a dealer agreement for the reason stated in Section 57.154(a)(12) unless the supplier gives the dealer notice of the action at least two years before the effective date of the termination. If the dealer achieves the supplier's requirements for reasonable standards or performance objectives before the expiration of the two-year notice period, the notice will be void and the dealer agreement will continue in effect.

(c) The notice and right to cure provisions in this section do not apply if the reason for termination is for any reason stated in Sections 57.154(a)(2)-(11).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 482 (S.B. 1415), Sec. 1, eff.

September 1, 2013.

SUBCHAPTER E. TERMINATION OF SINGLE-LINE DEALER AGREEMENTS

Sec. 57.201. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a single-line dealer agreement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.202. TERMINATION BY SUPPLIER; GOOD CAUSE REQUIRED. No supplier may terminate a dealer agreement without good cause.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.203. GOOD CAUSE DETERMINATION. (a) For purposes of this subchapter, "good cause" means failure by a dealer to comply with requirements imposed on the dealer by the dealer agreement if the requirements are not different from those requirements imposed on other similarly situated dealers.

(b) In addition to the good cause reason for termination stated in Subsection (a), good cause for termination of a dealer agreement exists when:

(1) there has been a closeout or sale of a substantial part of the dealer's assets related to the equipment business;

(2) there has been commencement of a dissolution or liquidation of the dealer;

(3) the dealer has changed its principal place of business or has added additional locations without the supplier's prior approval, which shall not be unreasonably withheld;

(4) the dealer has substantially defaulted under a chattel mortgage or other security agreement between the dealer and the supplier or there has been a revocation or discontinuance of a guarantee of a present or future obligation of the dealer to the supplier;

(5) the dealer has failed to operate in the normal course of business for seven consecutive days or has otherwise abandoned its business;

(6) the dealer has been convicted of or pleaded guilty to a felony affecting the relationship between the dealer and supplier; or

(7) the dealer transfers an interest in the dealership or a person with a substantial interest in the ownership or control of the dealership, including an individual proprietor, partner, or major shareholder, withdraws from the dealership or dies, or a substantial reduction occurs in the interest of a partner or major shareholder in the dealership, provided, however, good cause does not exist if the supplier consents to an action described by this subdivision.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.204. NOTICE OF TERMINATION; CORRECTION OF DEFICIENCY. (a) Except as provided by Subsection (b) and Section 57.205, a supplier shall provide a dealer with at least 90 days' written notice of termination. The notice must state all reasons constituting good cause for the termination and state that the dealer has 60 days in which to cure any claimed deficiency. If the deficiency is cured within 60 days, the notice will be void.

(b) Notwithstanding Subsection (a), if the good cause reason for termination is due to the dealer's failure to meet or maintain the supplier's requirements for market penetration, a reasonable period of time has existed where the supplier has worked with the dealer to gain the desired market share.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.205. NOTICE OF TERMINATION NOT REQUIRED UNDER CERTAIN CIRCUMSTANCES. The notice and right to cure provisions under Section 57.204 do not apply if the reason for termination is contained in Sections 57.203(b)(1)-(7).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

SUBCHAPTER F. WARRANTY CLAIMS

Sec. 57.251. DEFINITION OF TERMINATE AND TERMINATION. For purposes of this subchapter, "terminate" and "termination" do not include the phrase substantially change the competitive circumstances of a dealer agreement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.252. APPLICABILITY OF SUBCHAPTER; CONFLICT WITH SUBCHAPTER. (a) Sections 57.253, 57.254, and 57.255 apply to a warranty claim submitted by a dealer who has complied with the supplier's reasonable policies and procedures for reimbursement of the warranty claim and the claim is a warranted claim under the supplier's warranty policy.

(b) A supplier's warranty reimbursement policies and procedures are considered unreasonable to the extent of any conflict with this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.253. WARRANTY CLAIM. (a) This section applies to a warranty claim submitted by a dealer to the supplier:

(1) while the dealer agreement is in effect; or

(2) not later than the 60th day after the termination or expiration date of the dealer agreement, if the claim is for work performed before the effective date of the termination or expiration.

(b) Not later than the 45th day after the date a supplier receives a warranty claim from a dealer, the supplier shall accept or reject the claim by providing written notice to the dealer. A claim not rejected before that deadline is considered accepted.

(c) If the warranty claim is accepted, the supplier shall pay or credit to the dealer's account all amounts owed to the dealer with respect to the accepted claim not later than the 30th day after the date the claim is accepted.

(d) If the supplier rejects the warranty claim, the supplier shall give the dealer written or electronic notice of the grounds for rejection of a rejected claim, which must be consistent with the supplier's grounds for rejection of warranty claims of other dealers,

both in the terms and manner of enforcement.

(e) If no grounds for rejection of a rejected claim are given to the dealer, the claim is considered accepted.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.254. RESUBMISSION OF WARRANTY CLAIM. If a warranty claim was rejected on the ground that the dealer failed to properly follow the procedural or technical requirements for submission of a warranty claim, the dealer may resubmit the claim in proper form not later than the 30th day after the date the dealer receives notice of the claim's rejection.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.255. PAYMENT OF WARRANTY CLAIM. Warranty work performed by the dealer shall be compensated in accordance with the reasonable and customary amount of time required to complete the work, expressed in hours and fractions of hours, multiplied by the dealer's established customer hourly retail labor rate for non-warranty repair work, which must have previously been made known to the supplier. Parts used in warranty repair work shall be reimbursed at the current net parts cost plus 15 percent.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.256. WARRANTY CLAIM FOR CERTAIN REPAIR WORK OR INSTALLATION OF REPLACEMENT PARTS. Any repair work or installation of replacement parts performed with respect to inventory equipment of a dealer or with respect to equipment of a dealer's customers, at the request of a supplier, including work performed under a product improvement program, constitutes a warranty claim for which the dealer must be paid under this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2,

eff. September 1, 2011.

Sec. 57.257. AUDIT OF WARRANTY CLAIMS. (a) Except as provided by Subsection (b), a supplier may audit a warranty claim submitted by a dealer until the first anniversary of the date the claim was paid and may charge back the amount of any claim that is shown by audit to have been misrepresented.

(b) If an audit conducted under this section shows that a warranty claim has been misrepresented, the supplier may audit any other warranty claims submitted by the affected dealer within the three-year period ending on a date a claim is shown by audit to be misrepresented.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.258. ALTERNATE REIMBURSEMENT TERMS ENFORCEABLE. (a) Sections 57.253, 57.254, and 57.255 do not apply if the terms of a written dealer agreement between the parties require the supplier to compensate the dealer for warranty labor costs either as:

(1) a discount in the price of the equipment to the dealer, subject to Subsection (b); or

(2) a lump-sum payment made to the dealer not later than the 90th day after the date the supplier's new equipment is sold to the dealer, subject to Subsection (b).

(b) The discount or lump-sum payment under Subsection (a) must be or result in an amount that is not less than five percent of the suggested retail price of the equipment.

(c) The alternate reimbursement terms of a dealer agreement that comply with Subsections (a) and (b) are enforceable.

(d) This section does not affect the supplier's obligation to reimburse the dealer for parts in accordance with Section 57.255.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

SUBCHAPTER G. DELIVERY, SALE, AND RETURN OF EQUIPMENT

Sec. 57.301. COERCED ORDERS, DELIVERIES, OR REFUSALS TO

PURCHASE. (a) A supplier may not coerce, compel, or require a dealer to accept delivery of equipment or a repair part that has not been voluntarily ordered by the dealer, unless:

(1) the equipment or repair part is a safety feature required by the supplier or applicable law; or

(2) the dealer is otherwise required by applicable law to accept the delivery.

(b) A supplier may not coerce a dealer to refuse purchase of equipment manufactured by another supplier.

(c) It shall not be considered a violation of this section if the supplier requires a dealer to have or provide separate facilities, financial statements, or sales staff for major competing product lines if the supplier gives the dealer at least three years' notice of such a requirement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.302. CONDITIONAL PURCHASES OF GOODS AND SERVICES. (a) A supplier may not condition the sale of equipment, repair parts, or goods or services to a dealer on the purchase of other goods or services.

(b) This section does not prohibit a supplier from requiring a dealer to purchase all repair parts, special tools, or training reasonably necessary to maintain the safe operation or quality of operation in the field of any equipment offered for sale by the dealer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.303. EQUIPMENT REPRESENTED AS AVAILABLE FOR IMMEDIATE DELIVERY. A supplier may not refuse to deliver, in reasonable quantities and within a reasonable time after receipt of a dealer's order, to any dealer having a dealer agreement for the retail sale of new equipment sold or distributed by the supplier, equipment covered by the dealer agreement and specifically advertised or represented by the supplier as available for immediate delivery, unless the refusal is due to:

(1) the supplier's prudent and reasonable restrictions on extensions of credit to the dealer;

(2) a business decision by the supplier to limit the production volume of the equipment; or

(3) an act of nature, work stoppage or delay due to a strike or labor difficulty, a bona fide shortage of materials, freight embargo, or other cause over which the supplier has no control.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.304. DISCRIMINATION IN ORDERS. A supplier may not discriminate, directly or indirectly, in filling an order placed by a dealer for retail sale or lease of new equipment under a dealer agreement as between dealers of the same product line.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.305. DISCRIMINATION IN PRICES OF NEW EQUIPMENT. (a) Except as provided by Subsection (b), a supplier may not discriminate, directly or indirectly, in the price among different dealers with respect to a purchase of equipment or a repair part of like grade and quality and identical brand, where the effect of such discrimination may be to:

(1) substantially lessen competition;

(2) tend to create a monopoly in any line of commerce; or

(3) injure, destroy, or prevent competition with any dealer who either grants or knowingly receives the benefit of such discrimination.

(b) A supplier may charge a different price among dealers for purchases described by Subsection (a) if:

(1) the price difference is due to differences in the cost of manufacture, sale, or delivery of the equipment or repair part;

(2) the supplier can show that the lower price was made in good faith to meet an equally low price of a competitor; or

(3) the price difference is related to the volume of equipment purchased by dealers or market share obtained by dealers.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

SUBCHAPTER H. REPURCHASE OR OTHER OBLIGATIONS FOLLOWING CANCELLATION OR NONRENEWAL OF AGREEMENT

Sec. 57.351. DEFINITION OF TERMINATE AND TERMINATION. For purposes of this subchapter, "terminate" and "termination" do not include the phrase substantially change the competitive circumstances of a dealer agreement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.352. APPLICABILITY OF SUBCHAPTER TO SEVERAL BUSINESS LOCATIONS COVERED BY SAME AGREEMENT. If a dealer has more than one of its business locations covered by the same dealer agreement, this subchapter applies to the repurchase of the dealer's inventory at the particular business location being closed unless the closing occurs without the permission of the supplier.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.353. PAYMENTS OR CREDITS. (a) When a supplier or dealer terminates or otherwise discontinues the dealer agreement entered into between the two parties, the supplier shall pay to the dealer, or credit to the dealer's account, if the dealer has outstanding any sums owing the supplier:

(1) an amount equal to 100 percent of the net equipment cost of all new, unsold, and undamaged equipment, less a downward adjustment for new, unsold, and undamaged equipment between 24 and 36 months old to reflect a reasonable allowance for refurbishment and the price another dealer will pay for the equipment;

(2) an amount equal to 100 percent of the net equipment cost of all unsold, undamaged demonstrators, less a downward adjustment to reflect a reasonable allowance for refurbishment and the price another dealer will pay for the equipment;

(3) an amount equal to 90 percent of the current net parts

cost of new, unsold, and undamaged repair parts previously purchased from the supplier and held by the dealer on the date that the dealer agreement is terminated or expires;

(4) an amount equal to five percent of the current net parts price of all repair parts returned to the supplier to compensate the dealer for the handling, packing, and loading of those repair parts for return to the supplier, unless the supplier elects to perform the handling, packing, and loading of the repair parts itself;

(5) an amount equal to the fair market value of any specific data processing hardware or software that the supplier required the dealer to acquire or purchase to satisfy the requirements of the supplier, including computer equipment required and approved by the supplier to communicate with the supplier; and

(6) an amount equal to 75 percent of the net cost, including shipping, handling, and set-up fees, of all specialized service or repair tools that:

(A) were previously purchased pursuant to the requirements of the supplier within 15 years before the date of the applicable notification of termination of the dealer agreement; and

(B) are unique to the supplier's product line and are complete and in good operating condition.

(b) Fair market value of property subject to repurchase under Subsection (a)(5) is considered to be the acquisition cost of the property, including any shipping, handling, and set-up fees, less straight line depreciation of the acquisition cost over a three-year period. If the dealer purchased data processing hardware or software that exceeded the supplier's minimum requirements, the acquisition cost of the data processing hardware or software for purposes of this section is considered to be the acquisition cost of hardware or software of similar quality that did not exceed the minimum requirements of the supplier.

(c) Notwithstanding any other provision of this chapter, with respect to machines with hour meters, demonstrators with less than 50 hours of use will be considered new, unsold, undamaged equipment subject to repurchase under this section.

(d) On payment of the amount due under this section or on credit to the dealer's account of the amount required by this section, title to all inventory repurchased under this subchapter is transferred to the supplier, and the supplier is entitled to

possession of the inventory.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.354. LATE PAYMENT OR CREDIT. (a) All payments or allowances of credit due to a dealer shall be paid or credited within 90 days after receipt by the supplier of property required to be repurchased under this subchapter.

(b) Any payment or allowance of credit due a dealer that is not paid within the 90-day period will accrue interest at the maximum rate allowed by law.

(c) The supplier may withhold payments due under this subchapter during the period in which the dealer fails to comply with its contractual obligation to remove any signage indicating that the dealer is an authorized dealer of the supplier.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.355. LIABILITY. (a) A supplier who refuses to repurchase any inventory covered under this chapter after termination or discontinuation of the dealer agreement is liable to the dealer for:

(1) 110 percent of the amount that would have been due for the inventory had the supplier timely complied with the requirements of this chapter;

(2) any freight charges paid by the dealer;

(3) any accrued interest; and

(4) the actual costs of any court or arbitration proceeding incurred by the dealer, including attorney's fees or arbitrator fees.

(b) The supplier and dealer will each pay 50 percent of the costs of freight, at truckload rates, to ship any equipment or repair parts returned to the supplier pursuant to this chapter.

(c) Notwithstanding any provision to the contrary in the Uniform Commercial Code, the dealer retains title to and has a first and prior lien against all inventory returned by the dealer to the supplier under this chapter until the dealer is paid all amounts owed by the supplier under this subchapter for the repurchase of the

inventory required under this chapter, and the supplier must hold the proceeds of the inventory in trust for the dealer's benefit.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.356. CONSTRUCTION OF SUBCHAPTER; CREDITOR'S CLAIMS. This subchapter may not be construed to affect any security interest the supplier may have in the inventory of the dealer, and any repurchase of the dealer's inventory under this subchapter may not be subject to the claims of any secured or unsecured creditor of the supplier or any assignee of the supplier until the dealer has received full payment or credit, as applicable, under this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.357. AGREEMENT TERMINATED BY DEALER; INAPPLICABILITY OF SUBCHAPTER TO CERTAIN SPECIALTY SUPPLIERS. (a) This subchapter does not apply to a specialty agricultural equipment supplier if the dealer terminates the dealer agreement without good reason. A dealer has good reason to terminate the dealer agreement for any of the following reasons:

(1) the death or disability of a majority owner of the dealership;

(2) the dealership terminates the dealer agreement and:

(A) substantially all of the dealership assets or all shares of stock of the dealership are sold to a new owner; and

(B) no owner of the terminated dealership continues to own an interest in the continuing dealership;

(3) the filing of bankruptcy by or against the dealership that has not been discharged within 30 days after the date of the filing, the appointment of a receiver, or an assignment for the benefit of creditors; or

(4) the specialty agricultural equipment supplier:

(A) abandons the market or withdraws from the market by no longer selling to the dealer a type of equipment previously sold to the dealer that constituted a material part of the specialty

agricultural equipment sold by the supplier;

(B) consistently sells products to the dealer that are defective or breach the implied warranty of merchantability;

(C) consistently fails to:

(i) provide adequate product support for the type and use of the product, including technical assistance, operator and repair manuals, and part lists and diagrams;

(ii) provide adequate training required by the supplier for maintenance, repair, or use of the supplier's products; or

(iii) provide marketing and marketing support for the supplier's product if marketing is a requirement of the dealer agreement;

(D) consistently fails to meet the supplier's warranty obligations to the dealer as required by contract or law, including obligations under this chapter;

(E) has engaged in conduct that is injurious or detrimental to the dealer's customers, the public welfare, or the dealer's reputation;

(F) has made material misrepresentations to the dealer or has falsified a record;

(G) has breached the dealer agreement; or

(H) has violated this chapter.

(b) This subchapter may not be construed to limit a specialty agricultural equipment supplier's obligation to repurchase a dealer's inventory as provided by this section if the supplier terminates or otherwise discontinues the dealer agreement.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.358. EXCEPTIONS. (a) A supplier is not required to repurchase from a dealer:

(1) a repair part that, except as provided by Subsection (b), is in a broken or damaged package;

(2) a repair part that because of its condition cannot be resold as a new part without repackaging or reconditioning;

(3) any inventory for which the dealer is unable to furnish evidence, satisfactory to the supplier, of clear title, free and

clear of all claims, liens, and encumbrances unless the inventory will be free and clear of all claims, liens, and encumbrances immediately on payment by the supplier of amounts due in this subchapter to the lienholders;

(4) any inventory that the dealer wants to keep, provided the dealer has a contractual right to keep the inventory;

(5) equipment delivered to the dealer before the beginning of the 36-month period preceding the date of notification of termination; and

(6) equipment or a repair part that:

(A) is ordered by the dealer on or after the date of notification of termination;

(B) is acquired by the dealer from a source other than the supplier, unless the equipment or repair part was ordered from, or invoiced to the dealer by, the supplier;

(C) is not in new, unsold, undamaged, or complete condition, subject to the provisions of this chapter relating to demonstrators; and

(D) is not returned to the supplier before the 90th day after the later of:

(i) the effective date of termination of a dealer agreement; or

(ii) the date the dealer receives from the supplier all information, including documents or supporting materials, required by the supplier to comply with the supplier's return policy.

(b) The supplier will be required to repurchase a repair part in a broken or damaged package for a repurchase price that is equal to 85 percent of the current net parts cost for the repair part if the aggregate current net parts cost for the entire package of repair parts is $75 or more.

(c) Subsection (a)(6)(D) does not apply to a dealer if the supplier did not give the dealer notice of the 90-day deadline at the time the applicable notice of termination was sent to the dealer.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

SUBCHAPTER I. ACTIONS AND REMEDIES

Sec. 57.401. CIVIL ACTION; INJUNCTIVE RELIEF. (a) If a

supplier violates any provision of this chapter, a dealer may bring an action against the supplier in a court of competent jurisdiction for damages sustained by the dealer as a consequence of the supplier's violation, including damages for lost profits, together with the actual costs of the action, including the dealer's attorney's fees and paralegal fees and the costs of arbitrators. The dealer may also be granted injunctive relief for unlawful termination.

(b) A remedy provided by this section is not exclusive and is in addition to any other remedy permitted by law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

Sec. 57.402. CHOICE OF REMEDIES. The provisions of this chapter are supplemental to any dealer agreement between the dealer and the supplier that provides the dealer with greater protection. A dealer may elect to pursue its contract remedy or the remedy provided by state law, or both. An election by the dealer to pursue those remedies does not bar the dealer's right to exercise any other remedies that may be granted at law or in equity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1039 (H.B. 3079), Sec. 2, eff. September 1, 2011.

CHAPTER 58. DISASTER REMEDIATION CONTRACTS

Sec. 58.001. DEFINITIONS. In this chapter:

(1) "Disaster remediation" means the removal, cleaning, sanitizing, demolition, reconstruction, or other treatment of improvements to real property performed because of damage or destruction to that property caused by a natural disaster.

(2) "Disaster remediation contractor" means a person who engages in disaster remediation for compensation, other than a person who has a permit, license, registration, or other authorization from the Texas Commission on Environmental Quality for the collection, transportation, treatment, storage, processing, or disposal of solid waste.

(3) "Natural disaster" means the occurrence of widespread or severe damage, injury, or loss of life or property related to any

natural cause, including fire, flood, earthquake, wind, storm, or wave action, that results in a disaster declaration by the governor or a local disaster declaration by a county judge under Chapter 418, Government Code.

(4) "Person" means an individual, corporation, trust, partnership, association, or other private legal entity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 979 (H.B. 1711), Sec. 1, eff. September 1, 2011.
Redesignated from Business and Commerce Code, Chapter 57 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(2), eff. September 1, 2013.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 270 (H.B. 762), Sec. 1, eff. September 1, 2013.

Sec. 58.002. APPLICABILITY OF CHAPTER. (a) Except as provided by Subsection (b), this chapter applies to a contract between a person and a disaster remediation contractor for the performance of disaster remediation services on property owned or leased by the person.

(b) This chapter does not apply to a contract between a person and a disaster remediation contractor for the performance of disaster remediation services on property owned or leased by the person if the contractor maintains for at least one year preceding the date of the contract a physical business address in:

(1) the county in which the property is located; or

(2) a county adjacent to the county in which the property is located.

Added by Acts 2011, 82nd Leg., R.S., Ch. 979 (H.B. 1711), Sec. 1, eff. September 1, 2011.
Redesignated from Business and Commerce Code, Chapter 57 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(2), eff. September 1, 2013.

Sec. 58.003. DISASTER REMEDIATION CONTRACT REQUIREMENTS; CERTAIN CONDUCT PROHIBITED. (a) A contract subject to this chapter must be in writing.

(b) A disaster remediation contractor:

(1) may not require a person to make a full or partial payment under a contract before the contractor begins work;

(2) may not require that the amount of any partial payment under the contract exceed an amount reasonably proportionate to the work performed, including any materials delivered; and

(3) shall include in any contract for disaster remediation services the following statement in conspicuous, boldfaced type of at least 10 points in size: "This contract is subject to Chapter 58, Business & Commerce Code. A contractor may not require a full or partial payment before the contractor begins work and may not require partial payments in an amount that exceeds an amount reasonably proportionate to the work performed, including any materials delivered."

Added by Acts 2011, 82nd Leg., R.S., Ch. 979 (H.B. 1711), Sec. 1, eff. September 1, 2011.
Redesignated from Business and Commerce Code, Chapter 57 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(2), eff. September 1, 2013.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(1), eff. September 1, 2013.

Sec. 58.004. DECEPTIVE TRADE PRACTICE. A violation of this chapter by a disaster remediation contractor is a false, misleading, or deceptive act or practice as defined by Section 17.46(b), and any remedy under Subchapter E, Chapter 17, is available for a violation of this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 979 (H.B. 1711), Sec. 1, eff. September 1, 2011.
Redesignated from Business and Commerce Code, Chapter 57 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(2), eff. September 1, 2013.

Sec. 58.005. WAIVER OF CHAPTER PROHIBITED. A person may not waive this chapter by contract or other means. A purported waiver of this chapter is void.

Added by Acts 2011, 82nd Leg., R.S., Ch. 979 (H.B. 1711), Sec. 1, eff. September 1, 2011.
Redesignated from Business and Commerce Code, Chapter 57 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(2), eff. September 1, 2013.

TITLE 5. REGULATION OF BUSINESSES AND SERVICES

SUBTITLE A. GENERAL PRACTICES

CHAPTER 71. ASSUMED BUSINESS OR PROFESSIONAL NAME

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 71.001. SHORT TITLE. This chapter may be cited as the Assumed Business or Professional Name Act.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 71.002. DEFINITIONS. In this chapter:

(1) "Address" means:

(A) a post office address; and

(B) a street address, if the street address is not the same as the post office address.

(2) "Assumed name" means:

(A) for an individual, a name that does not include the surname of the individual;

(B) for a partnership, a name that does not include the surname or other legal name of each joint venturer or general partner;

(C) for an individual or a partnership, a name, including a surname, that suggests the existence of additional owners by including words such as "Company," "& Company," "& Son," "& Sons," "& Associates," "Brothers," and similar words, but not words that merely describe the business being conducted or the professional service being rendered;

(D) for a limited partnership, a name other than the name stated in its certificate of formation;

(E) for a company, a name used by the company;

(F) for a corporation, a name other than the name stated in its certificate of formation or a comparable document;

(G) for a limited liability partnership, a name other than the name stated in its application filed with the office of the secretary of state or a comparable document; and

(H) for a limited liability company, a name other than the name stated in its certificate of formation or a comparable document, including the name of any series of the limited liability company established by its company agreement.

(3) "Certificate" means an assumed name certificate.

(4) "Company" means a real estate investment trust, a joint-stock company, or any other business, professional, or other association or legal entity that is not incorporated, other than a partnership, limited partnership, limited liability company, limited liability partnership, or foreign filing entity.

(5) "Corporation" means:

(A) a domestic or foreign corporation, professional corporation, professional association, or other corporation; or

(B) any other business, professional, or other association or legal entity that is incorporated.

(6) "Estate" means a person's property that is administered by a representative.

(6-a) "Foreign filing entity" means an entity formed under the laws of a jurisdiction other than this state that registers or is required by law to register with the secretary of state to conduct business or render professional services in this state under Chapter 9, Business Organizations Code.

(7) "Office" means:

(A) for a person that is not an individual or that is a corporation that is not required to or does not maintain a registered office in this state, the person's:

(i) principal office; and

(ii) principal place of business if not the same as the person's principal office; and

(B) for a corporation, limited partnership, limited liability partnership, limited liability company, or foreign filing entity that is required to maintain a registered office in this state, the entity's:

(i) registered office; and

(ii) principal office if not the same as the entity's registered office.

(8) "Partnership" means a joint venture or general

partnership other than a limited partnership or a limited liability partnership.

(9) "Person" includes an individual, partnership, limited partnership, limited liability company, limited liability partnership, company, corporation, or foreign filing entity.

(10) "Registrant" means a person who has filed, or on whose behalf there has been filed, a certificate under this chapter or other law.

(11) "Representative" means a trustee, administrator, executor, independent executor, guardian, conservator, trustee in bankruptcy, receiver, or other person appointed by a court or by trust or will to have custody of, take possession of, have title to, or otherwise be empowered to control the person or property of any person.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 62, eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 312 (H.B. 1624), Sec. 1, eff. September 1, 2013.

Sec. 71.003. APPLICABILITY OF CHAPTER. (a) This chapter does not apply to an insurer authorized to engage in business in this state and described in Subchapter A, Chapter 805, Insurance Code, except as specifically provided by the Insurance Code.

(b) This chapter does not require a corporation, limited partnership, limited liability partnership, limited liability company, or foreign filing entity or its shareholders, associates, partners, or members to file a certificate to conduct business or render a professional service in this state under the name of the entity as stated in the certificate of formation, application filed with the office of the secretary of state, or other comparable document of the entity.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 63, eff.

September 1, 2009.

SUBCHAPTER B. REQUIREMENTS APPLICABLE TO CERTAIN UNINCORPORATED PERSONS

Sec. 71.051. CERTIFICATE FOR CERTAIN UNINCORPORATED PERSONS. A person must file a certificate under this subchapter if the person regularly conducts business or renders a professional service in this state under an assumed name other than as a corporation, limited partnership, limited liability partnership, limited liability company, or foreign filing entity.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 64, eff. September 1, 2009.

Sec. 71.052. CONTENTS OF CERTIFICATE. The certificate must state:

(1) the assumed name under which the business is or is to be conducted or the professional service is or is to be rendered;

(2) if the registrant is:

(A) an individual, the individual's full name and residence address;

(B) a partnership:

(i) the venture or partnership name;

(ii) the venture or partnership office address;

(iii) the full name of each joint venturer or general partner; and

(iv) each joint venturer's or general partner's residence address if the venturer or partner is an individual or the joint venturer's or general partner's office address if the venturer or partner is not an individual;

(C) an estate:

(i) the name of the estate;

(ii) the estate's office address, if any;

(iii) the full name of each representative of the estate; and

(iv) each representative's residence address if the representative is an individual or the representative's office address if the representative is not an individual;

(D) a real estate investment trust:

(i) the name of the trust;

(ii) the address of the trust;

(iii) the full name of each trustee manager; and

(iv) each trustee manager's residence address if the trustee manager is an individual or the trustee manager's office address if the trustee manager is not an individual; or

(E) a company, other than a real estate investment trust:

(i) the name of the company;

(ii) the state, country, or other jurisdiction under the laws of which the company was organized; and

(iii) the company's office address;

(3) the period, not to exceed 10 years, during which the registrant will use the assumed name; and

(4) a statement specifying that the business that is or will be conducted or the professional service that is or will be rendered in the county under the assumed name is being or will be conducted or rendered as a proprietorship, sole practitioner, partnership, real estate investment trust, joint-stock company, or other form of unincorporated business or professional association or entity other than a limited partnership, limited liability company, limited liability partnership, or foreign filing entity.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 65, eff. September 1, 2009.

Sec. 71.053. EXECUTION OF CERTIFICATE. (a) The certificate must be executed and acknowledged:

(1) by each individual whose name is required to be stated in the certificate or the individual's representative or attorney-in-fact; and

(2) under oath on behalf of each person whose name is

required to be stated in the certificate and who is not an individual, by:

(A) the person's representative or attorney-in-fact; or

(B) a joint venturer, general partner, trustee manager, officer, or other person having authority regarding the person comparable to the person's representative or attorney-in-fact.

(b) A certificate executed and acknowledged by an attorney-in-fact must include a statement that the attorney has been authorized in writing by the attorney's principal to execute and acknowledge the certificate.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 71.054. PLACE OF FILING. A person shall file the certificate in the office of the county clerk in each county in which the person:

(1) has or will maintain business or professional premises; or

(2) conducts business or renders a professional service, if the person does not or will not maintain business or professional premises in any county.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER C. REQUIREMENTS APPLICABLE TO INCORPORATED BUSINESS OR PROFESSION AND CERTAIN OTHER ENTITIES

Sec. 71.101. CERTIFICATE FOR INCORPORATED BUSINESS OR PROFESSION, LIMITED PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, LIMITED LIABILITY COMPANY, OR FOREIGN FILING ENTITY. A corporation, limited partnership, limited liability partnership, limited liability company, or foreign filing entity must file a certificate under this subchapter if the entity:

(1) regularly conducts business or renders professional services in this state under an assumed name; or

(2) is required by law to use an assumed name in this state to conduct business or render professional services.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 66, eff. September 1, 2009.

Sec. 71.102. CONTENTS OF CERTIFICATE. The certificate must state:

(1) the assumed name under which the business is or is to be conducted or the professional service is or is to be rendered;

(2) the registrant's name as stated in the registrant's certificate of formation or application filed with the office of the secretary of state or other comparable document;

(3) the state, country, or other jurisdiction under the laws of which the registrant was incorporated or organized;

(4) the period, not to exceed 10 years, during which the registrant will use the assumed name;

(5) a statement specifying that the registrant is:

(A) a for-profit corporation, nonprofit corporation, professional corporation, professional association, or other type of corporation;

(B) a limited partnership, limited liability partnership, or limited liability company; or

(C) another type of incorporated business, professional or other association, or legal entity, foreign or domestic;

(6) the street or mailing address of the registrant's principal office in this state or outside this state, as applicable; and

(7) the county or counties in this state where the registrant is or will be conducting business or rendering professional services under the assumed name.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 67, eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 563 (S.B. 699), Sec. 1, eff. September 1, 2013.

Sec. 71.103. PLACE OF FILING. (a) The corporation, limited partnership, limited liability partnership, limited liability company, or foreign filing entity shall file the certificate in the office of the secretary of state and in the office or offices of each county clerk as specified by Subsection (b) or (c).

(b) An entity that maintains a registered office in this state shall file the certificate in the office of the county clerk of the county in which the entity's:

(1) registered office is located, if the entity's principal office is not located in this state; or

(2) principal office is located, if the entity's principal office is located in this state.

(c) An entity that does not maintain a registered office in this state shall file the certificate:

(1) in the office of the county clerk of the county in which the entity's office in this state is located; or

(2) in the office of the county clerk of the county in which the entity's principal place of business in this state is located, if:

(A) the entity is not incorporated or organized under the laws of this state; and

(B) the county in which the entity's principal place of business in this state is located is not the same county where the entity's office is located.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 68, eff. September 1, 2009.

Sec. 71.104. EXECUTION OF CERTIFICATE. (a) A certificate filed in the secretary of state's office must be executed by an officer, general partner, member, manager, or representative of or attorney-in-fact for the registrant.

(b) A certificate filed in a county clerk's office must be executed and acknowledged in the manner provided by Section 71.053

for a certificate filed under that section.

(c) A certificate executed by an attorney-in-fact must include a statement that the attorney has been authorized in writing by the attorney's principal to execute the certificate.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER D. GENERAL PROVISIONS REGARDING ASSUMED NAME CERTIFICATE

Sec. 71.151. DURATION AND RENEWAL OF CERTIFICATE. (a) A certificate is effective for a term not to exceed 10 years from the date the certificate is filed.

(b) A certificate is void at the end of the certificate's stated term, unless within six months preceding the certificate's expiration date the registrant files in the office of a county clerk and the secretary of state, if applicable, a renewal certificate complying with the requirements of this chapter for an original certificate.

(c) A registrant may renew a certificate under this section for any number of successive terms, but each term may not exceed 10 years.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 71.152. MATERIAL CHANGE IN INFORMATION; NEW CERTIFICATE. (a) Not later than the 60th day after an event occurs that causes the information in a certificate to become materially misleading, a registrant must file a new certificate complying with this chapter in the office in which the original or renewal certificate was filed.

(b) An event that causes the information in a certificate to become materially misleading includes:

(1) a change in the name, identity, entity, form of business or professional organization, or location of a registrant;

(2) for a proprietorship or sole practitioner, a change in ownership; or

(3) for a partnership:

(A) the admission of a new partner or joint venturer; or

(B) the end of a general partner's or joint venturer's association with the partnership.

(c) A new certificate filed under this section is effective for a term not to exceed 10 years from the date the certificate is filed.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 69, eff. September 1, 2009.

Sec. 71.153. ABANDONMENT OF USE OF BUSINESS OR PROFESSIONAL NAME. (a) A registrant who has filed a certificate under this chapter and who ceases to conduct business or render professional services in this state under the assumed name stated in the certificate may file a statement of abandonment of use of the assumed name in the office in which the registrant's certificate was filed.

(b) The statement of abandonment of use of an assumed name must state:

(1) the assumed name being abandoned;

(2) the date on which the certificate was filed in the office in which the statement of abandonment is being filed and in any other office in which the certificate was filed; and

(3) the registrant's name and residence or office address as required for a certificate filed under this chapter.

(c) A statement of abandonment must be executed and acknowledged in the same manner as if the registrant were filing a certificate under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 71.154. INDEX OF CERTIFICATES. (a) The secretary of state and each county clerk shall keep an alphabetical index of:

(1) all assumed names that have been filed in the office of the respective officer; and

(2) the persons filing the certificates.

(b) A copy of a certificate or statement is presumptive evidence in any court in this state of the facts contained in the

copy if the copy is certified to by:

(1) the county clerk in whose office the certificate or statement was filed; or

(2) the secretary of state.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 71.155. FILING FEES. (a) The county clerk shall collect a fee of:

(1) $2 for filing each certificate or statement required or permitted to be filed under this chapter; and

(2) 50 cents for each name to be indexed.

(b) The secretary of state shall collect for the use of this state a fee of:

(1) $25 for indexing and filing each certificate or statement required or permitted to be filed under this chapter; and

(2) $10 for filing each statement of abandonment of use of an assumed name.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 71.156. PRESCRIBED FORMS. (a) The secretary of state may prescribe a form to be used for filing a certificate or statement that complies with this chapter in the secretary's office or in the office of any county clerk in this state.

(b) Unless otherwise specifically provided by law, the use of a form prescribed under this section is not mandatory.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 71.157. EFFECT OF FILING. (a) This chapter does not give a registrant a right to use the assumed name in violation of the common or statutory law of unfair competition or unfair trade practices, common law copyright, or similar law.

(b) The filing of a certificate under this chapter does not in

itself constitute actual use of the assumed name stated in the certificate for purposes of determining priority of rights.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 71.158. FILING OF REPRODUCTION. (a) The secretary of state may accept for filing a photographic, photostatic, or similar reproduction of a signed original document required or authorized to be filed in the secretary's office under this chapter.

(b) A signature on a document required or authorized to be filed in the secretary of state's office under this chapter may be a facsimile.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER E. PENALTIES

Sec. 71.201. CIVIL ACTION; SANCTION. (a) A person's failure to comply with this chapter does not impair the validity of any contract or act by the person or prevent the person from defending any action or proceeding in any court of this state, but the person may not maintain in a court of this state an action or proceeding arising out of a contract or act in which an assumed name was used until an original, new, or renewed certificate has been filed as required by this chapter.

(b) In an action or proceeding brought against a person who has not complied with this chapter, the court may award the plaintiff or other party bringing the action or proceeding expenses incurred, including attorney's fees, in locating and effecting service of process on the defendant.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 71.202. CRIMINAL PENALTY: GENERAL VIOLATION. (a) A person commits an offense if the person:

(1) conducts business or renders a professional service in

this state under an assumed name; and

(2) intentionally violates this chapter.

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

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 71.203. CRIMINAL PENALTY: FRAUDULENT FILING. (a) A person may not knowingly or intentionally sign and present for filing or cause to be presented for filing a document authorized or required to be filed under this chapter that:

(1) indicates that the person signing the document has the authority to act on behalf of the entity for which the document is presented and the person does not have that authority;

(2) contains a material false statement; or

(3) is forged.

(b) A person commits an offense if the person violates Subsection (a). An offense under this subsection is punishable as if it were an offense under Section 37.10, Penal Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 72. BUSINESS RECORDS

SUBCHAPTER A. DISPOSAL OF CERTAIN BUSINESS RECORDS

Sec. 72.001. DEFINITIONS. In this subchapter:

(1) "Business record" means letters, words, sounds, or numbers, or the equivalent of letters, words, sounds, or numbers, recorded in the operation of a business by:

(A) handwriting;

(B) typewriting;

(C) printing;

(D) photostat;

(E) photograph;

(F) magnetic impulse;

(G) mechanical or electronic recording;

(H) digitized optical image; or

(I) another form of data compilation.

(2) "Personal identifying information" means an

individual's first name or initial and last name in combination with one or more of the following:

(A) date of birth;

(B) social security number or other government-issued identification number;

(C) mother's maiden name;

(D) unique biometric data, including the individual's fingerprint, voice data, or retina or iris image;

(E) unique electronic identification number, address, or routing code;

(F) telecommunication access device as defined by Section 32.51, Penal Code, including debit or credit card information; or

(G) financial institution account number or any other financial information.

(3) "Reproduction" means a counterpart of an original business record produced by:

(A) production from the same impression or the same matrix as the original;

(B) photography, including an enlargement or miniature;

(C) mechanical or electronic rerecording;

(D) chemical reproduction;

(E) digitized optical imaging; or

(F) another technique that accurately reproduces the original.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 72.002. DESTRUCTION OF CERTAIN BUSINESS RECORDS. (a) A business record required to be retained by a law of this state may be destroyed at any time after the third anniversary of the date the business record was created.

(b) Subsection (a) does not apply if a law or rule applicable to the business record prescribes a different retention period or procedure for disposal.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 72.003. RETENTION OF REPRODUCTION OF BUSINESS RECORDS. A law of this state that requires retention of a business record is satisfied by retention of a reproduction of the original record.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 72.004. DISPOSAL OF BUSINESS RECORDS CONTAINING PERSONAL IDENTIFYING INFORMATION. (a) This section does not apply to:

(1) a financial institution as defined by 15 U.S.C. Section 6809; or

(2) a covered entity as defined by Section 601.001 or 602.001, Insurance Code.

(b) When a business disposes of a business record that contains personal identifying information of a customer of the business, the business shall modify, by shredding, erasing, or other means, the personal identifying information so as to make the information unreadable or undecipherable.

(c) A business is considered to comply with Subsection (b) if the business contracts with a person engaged in the business of disposing of records for the modification of personal identifying information on behalf of the business in accordance with that subsection.

(d) A business that disposes of a business record without complying with Subsection (b) is liable for a civil penalty in an amount not to exceed $500 for each business record. The attorney general may bring an action against the business to:

(1) recover the civil penalty;

(2) obtain any other remedy, including injunctive relief; and

(3) recover costs and reasonable attorney's fees incurred in bringing the action.

(e) A business that in good faith modifies a business record as required by Subsection (b) is not liable for a civil penalty under Subsection (d) if the business record is reconstructed, wholly or partly, through extraordinary means.

(f) Subsection (b) does not require a business to modify a business record if:

(1) the business is required to retain the business record

under another law; or

(2) the business record is historically significant and:

(A) there is no potential for identity theft or fraud while the business retains custody of the business record; or

(B) the business record is transferred to a professionally managed historical repository.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER B. DELETION OF CERTAIN RECORDS OR INFORMATION RELATING TO CUSTOMERS' CHECKS

Sec. 72.051. REQUIRED DELETION OF CERTAIN ELECTRONIC RECORDS. (a) In this section, "law enforcement agency" has the meaning assigned by Article 59.01, Code of Criminal Procedure.

(b) This section applies only to a business that accepts checks from customers in the ordinary course of business. This section does not apply to a financial institution as defined by 31 U.S.C. Section 5312(a)(2), as amended.

(c) A business shall delete any electronic record indicating that a customer has issued a dishonored check or any other information except for a checking account number or bank routing transit number on which the business bases a refusal to accept a check from a customer. The record must be deleted not later than the 30th day after the date:

(1) the customer and the business agree that the information contained in the electronic record is incorrect; or

(2) the customer presents to the business:

(A) a copy of a report filed by the customer with a law enforcement agency stating that the dishonored check was unauthorized; and

(B) a written statement of the customer indicating that the dishonored check was unauthorized.

(d) A business that violates Subsection (c) is liable to this state for a civil penalty in an amount not to exceed $1,000. The attorney general may:

(1) bring an action to recover the civil penalty; and

(2) recover reasonable expenses incurred in recovering the penalty, including court costs, reasonable attorney's fees,

investigative costs, witness fees, and deposition expenses.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBTITLE B. RENTAL PRACTICES

CHAPTER 91. PRIVATE PASSENGER VEHICLE RENTAL COMPANIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 91.001. DEFINITIONS. In this chapter:

(1) "Authorized driver" means:

(A) the renter;

(B) a person whom the rental company expressly designates on the rental agreement as an authorized driver;

(C) the renter's spouse if the spouse:

(i) holds a driver's license; and

(ii) satisfies any minimum age requirement established by the rental company;

(D) an employer, employee, or coworker of the renter if the person:

(i) holds a driver's license;

(ii) satisfies any minimum age requirement established by the rental company; and

(iii) is engaged in a business activity with the renter at the time of the rental; or

(E) a person who:

(i) holds a driver's license; and

(ii) is driving directly to a medical or police facility under circumstances reasonably believed to constitute an emergency.

(2) "Damage" means damage to or loss of a rented vehicle, regardless of fault involved in the damage or loss. The term includes:

(A) theft and loss of use; and

(B) any cost incident to the damage or loss, including storage, impound, towing, and administrative charges.

(3) "Damage waiver" means a rental company's agreement not to hold an authorized driver liable for all or part of any damage to a rented vehicle.

(4) "Mandatory charge" means a charge for an item or

service provided in connection with a rental transaction, other than a charge imposed by law:

(A) that is in addition to the base rental rate; and

(B) that the renter may not avoid or decline.

(5) "Private passenger vehicle" means a motor vehicle of the private passenger type, including a passenger van, primarily intended for private use.

(6) "Rental agreement" means an agreement for 30 days or less that states the terms governing the use of a private passenger vehicle rented by a rental company.

(7) "Rental company" means a person in the business of renting private passenger vehicles to the public for 30 days or less. The term does not include a person who holds a license under Chapter 2301, Occupations Code, and whose primary business activity is not renting private passenger vehicles.

(8) "Renter" means a person who obtains use of a private passenger vehicle from a rental company under a rental agreement.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER B. DAMAGE WAIVERS AND MANDATORY CHARGES

Sec. 91.051. WRITTEN AGREEMENT REQUIRED FOR DAMAGE WAIVER. A rental company may not sell a damage waiver unless the renter agrees to the damage waiver in writing at or before the time the rental agreement is executed.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 91.052. NOTICE TO RENTER. (a) A rental company shall provide each renter who purchases a damage waiver, the charge for which is not included in the base rental rate, the following notice:

NOTICE: Your rental agreement offers, for an additional charge, an optional waiver to cover all or a part of your responsibility for damage to or loss of the vehicle. Before deciding whether to purchase the waiver, you may wish to determine whether your own automobile insurance or credit card agreement provides you coverage

for rental vehicle damage or loss and determine the amount of the deductible under your own insurance coverage. The purchase of the waiver is not mandatory. The waiver is not insurance.

(b) The notice under Subsection (a) must be in at least 10-point type.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 91.053. POSTED NOTICE. In addition to providing the notice required by Section 91.052, a rental company shall post in a conspicuous location where the damage waiver is offered the following notice:

Notice to Texas Residents Regarding Damage Waivers

Your personal automobile insurance policy may or may not provide coverage for your responsibility for the loss of or damage to a rented vehicle during the rental term. Before deciding whether to purchase a damage waiver, you may wish to determine whether your automobile insurance policy provides you coverage for rental vehicle damage or loss. If you file a claim under your personal automobile insurance policy, your insurance company may choose to nonrenew your policy at your renewal date, but may do so only if you are at fault for the claim.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 91.054. PROHIBITED REPRESENTATIONS AND COERCION. (a) An employee or agent of a rental company may not:

(1) make an oral or written representation that contradicts this chapter; or

(2) use coercive language or a coercive act in an attempt to persuade a renter to purchase a damage waiver.

(b) For purposes of this section, if the renter has declined the damage waiver, a further statement or question by the employee or agent that refers to the damage waiver, other than a statement made in conjunction with review of the rental agreement that the waiver

has been declined, is considered coercive.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 91.055. MANDATORY CHARGE. (a) A rental company that includes a mandatory charge in a rental agreement shall prominently display and fully disclose the charge:

(1) separately on the face of the agreement; and

(2) in all of the rental company's price advertising, price quotes, price offers, and price displays, including displays in computerized reservation systems.

(b) A rental company may not impose or require the purchase of a damage waiver as a mandatory charge.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 91.056. VOIDING OF DAMAGE WAIVER. A rental company may not void a damage waiver unless:

(1) an authorized driver causes the damage intentionally or by wilful and wanton misconduct;

(2) the damage arises out of use of the vehicle:

(A) by a person:

(i) who is not an authorized driver;

(ii) while under the influence of an intoxicant that impairs driving ability, including alcohol, an illegal drug, or a controlled substance; or

(iii) while engaged in commission of a crime other than a traffic infraction;

(B) to carry persons or property for hire;

(C) to push or tow anything;

(D) for driver's training;

(E) to engage in a speed contest; or

(F) outside the continental United States, unless the rental agreement specifically authorizes the use; or

(3) the rental company entered into the rental transaction based on fraudulent information supplied by the renter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER C. ENFORCEMENT PROVISIONS

Sec. 91.101. CIVIL PENALTY. A rental company that violates this chapter is liable for a civil penalty in an amount of not less than $500 or more than $1,000 for each act of violation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 91.102. INJUNCTION. A person injured or threatened with injury by a violation of this chapter may seek injunctive relief against the person committing or threatening to commit the violation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 91.103. SUIT FOR CIVIL PENALTY OR INJUNCTIVE RELIEF. The attorney general or a county or district attorney may bring an action in the name of the state for a civil penalty under Section 91.101, injunctive relief under Section 91.102, or both.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 92. RENTAL-PURCHASE AGREEMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 92.001. DEFINITIONS. In this chapter:

(1) "Advertisement" means a commercial message in any medium that directly or indirectly promotes or assists a rental-purchase agreement.

(2) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 516, Sec. 2, eff. September 1, 2013.

(3) "Consumer" means an individual who leases personal property under a rental-purchase agreement.

(4) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 516, Sec.

2, eff. September 1, 2013.

(5) "Loss damage waiver" means a merchant's agreement to not hold a consumer liable for loss from all or part of any damage to merchandise.

(6) "Merchandise" means the personal property that is the subject of a rental-purchase agreement.

(7) "Merchant" means a person who, in the ordinary course of business, regularly leases, offers to lease, or arranges for the leasing of merchandise under a rental-purchase agreement. The term includes a person who is assigned an interest in a rental-purchase agreement.

(8) "Rental-purchase agreement" means an agreement under which a consumer may use merchandise for personal, family, or household purposes for an initial period of four months or less, and that:

(A) is automatically renewable with each payment after the initial period; and

(B) permits the consumer to become the owner of the merchandise.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 516 (S.B. 289), Sec. 2, eff. September 1, 2013.

Sec. 92.002. ADVERTISEMENT REQUIREMENTS. An advertisement for a rental-purchase agreement that refers to or states the amount of a payment or the right to acquire ownership of any one particular item under the agreement must clearly and conspicuously state:

(1) that the transaction advertised is a rental-purchase agreement;

(2) the total amount and number of payments necessary to acquire ownership; and

(3) that the consumer does not acquire ownership rights unless the merchandise is rented for a specified number of payment periods.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER B. FORM AND CONTENT OF AGREEMENTS

Sec. 92.051. FORM OF AGREEMENT. (a) A rental-purchase agreement must be written in:

(1) plain English; and

(2) any other language used by the merchant in an advertisement related to the agreement.

(b) A numerical amount included in a rental-purchase agreement must be stated in figures.

(c) A disclosure required by this chapter must be printed or typed in each rental-purchase agreement in a size equal to at least 10-point boldfaced type.

(d) The attorney general shall provide a form agreement that may be used to satisfy the requirements of a rental-purchase agreement under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 92.052. REQUIRED DISCLOSURES. (a) A rental-purchase agreement must disclose:

(1) whether the merchandise is new or used;

(2) the price for which the merchant would have sold the merchandise to the consumer for cash on the date of the agreement;

(3) the amount and timing of payments;

(4) the total number of payments necessary and the total amount to be paid to acquire ownership of the merchandise;

(5) that the consumer does not acquire ownership rights unless the consumer complies with the ownership terms of the agreement;

(6) the amount and purpose of any payment, charge, or fee in addition to the regular periodic payments; and

(7) whether the consumer is liable for loss or damage to the merchandise and, if so, the maximum amount for which the consumer may be liable.

(b) Notice of the right to reinstate the agreement must be disclosed in the agreement.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01,

eff. April 1, 2009.

Sec. 92.053. OTHER REQUIRED PROVISIONS. A rental-purchase agreement must provide that:

(1) any charge in addition to periodic payments must be reasonably related to the service performed; and

(2) a consumer who fails to make a timely payment may reinstate an agreement, without losing any right or option previously acquired, by taking the required action before the later of:

(A) one week after the due date of the payment; or

(B) the number of days after the due date of the payment that is equal to half the number of days in a regular payment period.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 92.054. PROHIBITED PROVISIONS. (a) A rental-purchase agreement may not:

(1) require a consumer to:

(A) pay a late charge or reinstatement fee except as provided by Section 92.055(b);

(B) make a payment at the end of the scheduled rental-purchase term in excess of or in addition to a regular periodic payment to acquire ownership of the merchandise; or

(C) purchase insurance or a loss damage waiver from the merchant to cover the merchandise;

(2) require a confession of judgment;

(3) authorize a merchant or an agent of the merchant to commit a breach of the peace in repossessing merchandise; or

(4) waive a defense, counterclaim, or right the consumer may have against the merchant or an agent of the merchant.

(b) A consumer may not in any event be required to pay a sum greater than the total amount to be paid to acquire ownership of the merchandise as disclosed under Section 92.052(a)(4).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 92.055. RESTRICTIONS ON LATE CHARGES AND REINSTATEMENT FEES. (a) Only one late charge or reinstatement fee may be collected on a payment regardless of the period during which the payment remains in default.

(b) A rental-purchase agreement may require the consumer to pay a late charge or reinstatement fee only if:

(1) a periodic payment is delinquent for more than:

(A) seven days, if the payment is due monthly; or

(B) three days, if the payment is due more frequently than monthly; and

(2) the charge or fee is in an amount not less than $5 and not more than the lesser of:

(A) $10; or

(B) 10 percent of the delinquent payment.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER C. REPOSSESSION AND REINSTATEMENT

Sec. 92.101. MERCHANT'S REPOSSESSION RIGHT. This chapter does not prevent a merchant from attempting repossession of merchandise during the reinstatement period.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 92.102. EFFECT OF REPOSSESSION DURING REINSTATEMENT PERIOD. A consumer's right to reinstate a rental-purchase agreement is not affected by the merchant's repossession of the merchandise during the reinstatement period.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 92.103. EFFECT ON REINSTATEMENT PERIOD OF MERCHANDISE RETURN. If merchandise is returned during the applicable reinstatement period, other than through judicial process, the right to reinstate the rental-purchase agreement is extended for a period

of not less than 30 days after the date of return.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 92.104. MERCHANT'S DUTIES ON REINSTATEMENT. (a) On reinstatement, the merchant shall provide the consumer with:

(1) the same merchandise; or

(2) substitute merchandise of comparable quality and condition.

(b) A merchant who provides the consumer with substitute merchandise shall also provide the consumer with the disclosures required by Section 92.052(a).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER D. LOSS DAMAGE WAIVERS

Sec. 92.151. CONTRACT FOR WAIVER. In addition to other charges permitted by this chapter, a consumer may contract for a loss damage waiver.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 92.152. CHARGE FOR WAIVER. A merchant may charge a periodic fee for a loss damage waiver in an amount not to exceed 10 percent of the periodic rental payment.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 92.153. RESTRICTIONS ON MERCHANT CONCERNING WAIVER. A merchant may not:

(1) sell a loss damage waiver unless:

(A) the contract containing the waiver complies with this chapter; and

(B) the consumer agrees to the waiver in writing; or

(2) impose or require the purchase of a loss damage waiver as a mandatory charge.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 516 (S.B. 289), Sec. 1, eff. September 1, 2013.

Sec. 92.154. REQUIRED NOTICE IN WAIVER. A contract that offers a loss damage waiver must include the following notice:

"This contract offers an optional loss damage waiver for an additional charge to cover your responsibility for loss of or damage to the merchandise. You do not have to purchase this coverage. Before deciding whether or not to purchase this loss damage waiver, you may consider whether your homeowners' or casualty insurance policy affords you coverage for loss of or damage to rental merchandise and the amount of the deductible you would pay under your policy."

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 92.155. STATEMENT OF TOTAL CHARGE. A loss damage waiver agreement must include a statement of the total charge for the loss damage waiver.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 92.156. AUTHORIZED EXCLUSIONS. A loss damage waiver may exclude:

(1) loss or damage to the merchandise that is caused by an unexplained disappearance or abandonment of the merchandise;

(2) damage that is intentionally caused by the consumer; or

(3) damage that results from the consumer's wilful or wanton misconduct.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 92.157. RELATIONSHIP TO INSURANCE. A loss damage waiver is not insurance.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER E. CIVIL ENFORCEMENT

Sec. 92.201. ACTION FOR VIOLATION OF CHAPTER. (a) A consumer damaged by a merchant's violation of this chapter is entitled to recover from the merchant:

(1) actual damages;

(2) an amount equal to 25 percent of the total amount of payments required to obtain ownership of the merchandise, except that the amount recovered under this subdivision may not be less than $250 or more than $1,000; and

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

(b) A merchant is not liable under this section for a violation of this chapter caused by the merchant's error if, subject to Subsection (c), the merchant:

(1) provides the consumer written notice of the error; and

(2) makes adjustments in the consumer's account as necessary to ensure:

(A) the consumer will not be required to pay an amount in excess of the amount disclosed; and

(B) the agreement otherwise complies with this chapter.

(c) A merchant must take action under Subsection (b) before:

(1) the 31st day after the date the merchant discovers the error; and

(2) the merchant receives written notice of the error from the consumer or an action under this section is filed.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 92.202. DECEPTIVE TRADE PRACTICE. A violation of this

chapter is a deceptive trade practice under Subchapter E, Chapter 17.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBTITLE C. BUSINESS OPERATIONS

CHAPTER 101. INTERNATIONAL MATCHMAKING ORGANIZATIONS

Sec. 101.001. DEFINITIONS. In this chapter:

(1) "Basic rights information" means information applicable to a noncitizen, including information about human rights, immigration, and emergency assistance and resources.

(2) "Client" means a person who is a resident of the United States and who contracts with an international matchmaking organization to meet recruits.

(3) "Criminal history record information" means criminal history record information obtained from the Department of Public Safety under Subchapter F, Chapter 411, Government Code, and from the Federal Bureau of Investigation under Section 411.087, Government Code.

(4) "International matchmaking organization" means a corporation, partnership, sole proprietorship, or other legal entity that does business in the United States and offers to residents of this state dating, matrimonial, or social referral services involving recruits by:

(A) exchanging names, telephone numbers, addresses, or statistics;

(B) selecting photographs; or

(C) providing a social environment for introducing clients to recruits in a country other than the United States.

(5) "Marital history information" means a declaration of a person's current marital status, the number of times the person has been married, and whether any marriage occurred as a result of receiving services from an international matchmaking organization.

(6) "Recruit" means a person who:

(A) is not a citizen or resident of the United States; and

(B) is recruited by an international matchmaking organization for the purpose of providing dating, matrimonial, or social referral services.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 101.002. PROVIDING CRIMINAL HISTORY, MARITAL HISTORY, AND BASIC RIGHTS INFORMATION. (a) An international matchmaking organization shall provide each recruit with the criminal history record information and marital history information of the organization's clients and with basic rights information.

(b) The information under Subsection (a) must:

(1) be in the recruit's native language; and

(2) be displayed in a manner that:

(A) separates the criminal history record information, the marital history information, and the basic rights information from any other information; and

(B) is highly noticeable.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 101.003. PROVIDING ADDITIONAL CRIMINAL HISTORY, MARITAL HISTORY, AND BASIC RIGHTS INFORMATION. (a) An international matchmaking organization shall disseminate to a recruit the criminal history record information and marital history information of a client and the basic rights information not later than the 30th day after the date the organization receives the criminal history record information and the marital history information from the client.

(b) The international matchmaking organization shall provide the information to the recruit in the recruit's native language. The organization shall pay the costs incurred to translate the information.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 101.004. OBTAINING CRIMINAL HISTORY RECORD INFORMATION AND MARITAL HISTORY INFORMATION. (a) A client shall:

(1) obtain a copy of the client's own criminal history record information;

(2) provide the criminal history record information to the international matchmaking organization; and

(3) provide the client's own marital history information to the international matchmaking organization.

(b) The international matchmaking organization shall require the client to affirm that the marital history information is complete and accurate and includes information regarding marriages, annulments, and dissolutions that occurred in another state or a foreign country.

(c) The international matchmaking organization may not provide any further services to the client or the recruit until the organization has:

(1) obtained the requested criminal history record information and marital history information; and

(2) provided the information to the recruit.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 101.005. CIVIL PENALTY. (a) An international matchmaking organization that violates this chapter is subject to a civil penalty not to exceed $20,000 for each violation.

(b) In determining the amount of the civil penalty, the court shall consider:

(1) any previous violations of this chapter by the international matchmaking organization;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(3) the demonstrated good faith of the international matchmaking organization; and

(4) the amount necessary to deter future violations.

(c) The attorney general or the appropriate district or county attorney may bring an action under this section in the name of the state in a district court in:

(1) Travis County; or

(2) a county in which any part of the violation occurs.

(d) A penalty collected under this section by the attorney general or a district or county attorney shall be deposited in the state treasury to the credit of the compensation to victims of crime

fund under Article 56.54, Code of Criminal Procedure.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 102. SEXUALLY ORIENTED BUSINESSES
SUBCHAPTER A. RESTRICTION ON OWNERS, OPERATORS, MANAGERS, OR EMPLOYEES OF SEXUALLY ORIENTED BUSINESSES

Sec. 102.001. DEFINITIONS. In this subchapter:

(1) "Sex offender" means a person who has been convicted of or placed on deferred adjudication for an offense for which a person is subject to registration under Chapter 62, Code of Criminal Procedure.

(2) "Sexually oriented business" has the meaning assigned by Section 243.002, Local Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.003(a), eff. September 1, 2009.

Sec. 102.002. PROHIBITION ON CERTAIN ACTIVITIES BY SEX OFFENDER IN RELATION TO BUSINESS. A sex offender may not:

(1) wholly or partly own a sexually oriented business; or

(2) serve as a director, officer, operator, manager, or employee of a sexually oriented business.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 102.003. PROHIBITION ON CERTAIN ACTIVITIES BY BUSINESS IN RELATION TO SEX OFFENDER. If a sexually oriented business knows that a person is a sex offender, the business may not:

(1) contract with that person to operate or manage the business as an independent contractor; or

(2) employ that person as an officer, operator, manager, or other employee.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 102.004. INJUNCTION OR OTHER RELIEF. (a) The attorney general or appropriate district or county attorney, in the name of the state, may bring an action for an injunction or other process against a person who violates or threatens to violate Section 102.002 or 102.003.

(b) The action may be brought in a district court in:

(1) Travis County; or

(2) a county in which any part of the violation or threatened violation occurs.

(c) The court may grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 102.005. CRIMINAL PENALTIES. (a) A sex offender commits an offense if the sex offender violates Section 102.002.

(b) A sexually oriented business commits an offense if the business violates Section 102.003.

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

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER B. FEE IMPOSED ON CERTAIN SEXUALLY ORIENTED BUSINESSES

Sec. 102.051. DEFINITIONS. In this subchapter:

(1) "Nude" means:

(A) entirely unclothed; or

(B) clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of the breasts below the top of the areola of the breasts, if the person is female, or any portion of the genitals or buttocks.

(2) "Sexually oriented business" means a nightclub, bar, restaurant, or similar commercial enterprise that:

(A) provides for an audience of two or more individuals live nude entertainment or live nude performances; and

(B) authorizes on-premises consumption of alcoholic beverages, regardless of whether the consumption of alcoholic beverages is under a license or permit issued under the Alcoholic Beverage Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 1206 (H.B. 1751), Sec. 3, eff. January 1, 2008.
Renumbered from Business and Commerce Code, Section 47.051 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.004, eff. September 1, 2009.

Sec. 102.052. FEE BASED ON ADMISSIONS; RECORDS. (a) A fee is imposed on a sexually oriented business in an amount equal to $5 for each entry by each customer admitted to the business.

(b) A sexually oriented business shall record daily in the manner required by the comptroller the number of customers admitted to the business. The business shall maintain the records for the period required by the comptroller and make the records available for inspection and audit on request by the comptroller.

(c) This section does not require a sexually oriented business to impose a fee on a customer of the business. A business has discretion to determine the manner in which the business derives the money required to pay the fee imposed under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1206 (H.B. 1751), Sec. 3, eff. January 1, 2008.
Renumbered from Business and Commerce Code, Section 47.052 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.004, eff. September 1, 2009.

Sec. 102.053. REMISSION OF FEE; SUBMISSION OF REPORTS. Each quarter, a sexually oriented business shall:

(1) remit the fee imposed by Section 47.052 to the comptroller in the manner prescribed by the comptroller; and

(2) file a report with the comptroller in the manner and containing the information required by the comptroller.

Added by Acts 2007, 80th Leg., R.S., Ch. 1206 (H.B. 1751), Sec. 3, eff. January 1, 2008.
Renumbered from Business and Commerce Code, Section 47.053 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.004, eff. September 1, 2009.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 7, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 102.054. ALLOCATION OF CERTAIN REVENUE FOR SEXUAL ASSAULT PROGRAMS. The comptroller shall deposit the first $25 million received from the fee imposed under this subchapter in a state fiscal biennium to the credit of the sexual assault program fund.

Added by Acts 2007, 80th Leg., R.S., Ch. 1206 (H.B. 1751), Sec. 3, eff. January 1, 2008.
Renumbered from Business and Commerce Code, Section 47.054 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.004, eff. September 1, 2009.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 7, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 102.055. ALLOCATION OF ADDITIONAL REVENUE. (a) The comptroller shall deposit all amounts received from the fee imposed under this subchapter after the first $25 million in a state fiscal biennium in the Texas health opportunity pool established under Subchapter N, Chapter 531, Government Code. Money deposited in the pool under this section may be used only to provide health benefits coverage premium payment assistance to low-income persons through a premium payment assistance program developed under that subchapter.

(b) This section takes effect only if Senate Bill No. 10, Acts of the 80th Legislature, Regular Session, 2007, becomes law and the Texas health opportunity pool is established under that Act. If that Act does not become law, or that Act becomes law but the pool is not established, this section has no effect, and the revenue is deposited as provided by Section 47.0551.

Added by Acts 2007, 80th Leg., R.S., Ch. 1206 (H.B. 1751), Sec. 3, eff. January 1, 2008.
Renumbered from Business and Commerce Code, Section 47.055 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.004, eff. September 1, 2009.

Sec. 102.056. ADMINISTRATION, COLLECTION, AND ENFORCEMENT. The provisions of Subtitle B, Title 2, Tax Code, apply to the administration, payment, collection, and enforcement of the fee imposed by this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1206 (H.B. 1751), Sec. 3, eff. January 1, 2008.
Renumbered from Business and Commerce Code, Section 47.056 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.004, eff. September 1, 2009.

CHAPTER 103. APPRAISALS IMPROPERLY INDUCED BY MORTGAGE LENDERS

Sec. 103.001. DEFINITIONS. In this chapter:

(1) "Lender" means a person who lends money for or invests money in mortgage loans.

(2) "Mortgage loan" means a loan secured by a deed of trust, security deed, or other lien on real property.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 103.002. CRIMINAL PENALTY. (a) A lender commits an offense if in connection with a mortgage loan transaction the lender pays or offers to pay a person, including an individual licensed or certified by the Texas Appraiser Licensing and Certification Board or the Texas Real Estate Commission, a fee or other consideration for appraisal services and the payment:

(1) is contingent on a minimum, maximum, or pre-agreed estimate of value of property securing the loan; and

(2) interferes with the person's ability or obligation to provide an independent and impartial opinion of the property's value.

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

(c) An instruction a lender gives to a real estate appraiser regarding a legal or other regulatory requirement for the appraisal of property, or any other communication between a lender or real estate appraiser necessary or appropriate under a law, regulation, or underwriting standard applicable to a real estate appraisal, does not constitute interference by a lender for purposes of Subsection (a)(2).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 104. RESTRICTIONS ON CHARGES BY MOTOR FUEL FRANCHISORS

Sec. 104.001. DEFINITIONS. In this chapter:

(1) "Franchise":

(A) includes:

(i) a contract under which a distributor or retailer is authorized to occupy marketing premises in connection with the sale, consignment, or distribution of motor fuel under a trademark owned or controlled by a franchisor-refiner or by a refiner who supplies motor fuel to a distributor who authorizes the occupancy;

(ii) a contract relating to the supply of motor fuel to be sold, consigned, or distributed under a trademark owned or controlled by a refiner; and

(iii) the unexpired portion of any franchise transferred or assigned under the franchise provisions or any applicable provision of state or federal law authorizing the transfer or assignment regardless of the franchise provisions; and

(B) does not include a contract:

(i) that is made in the distribution of motor fuels through a card-lock or key-operated pumping system; and

(ii) to which a refiner or producer of the motor fuel is not a party.

(2) "Franchisee" means a distributor or retailer who is authorized under a franchise to use a trademark in connection with the sale, consignment, or distribution of motor fuel.

(3) "Franchisor" means a refiner or distributor who authorizes under a franchise the use of a trademark in connection with the sale, consignment, or distribution of motor fuel.

(4) "Motor fuel" includes diesel fuel and gasoline:

(A) delivered to a service station by a franchisor; and

(B) usable as a propellant of a motor vehicle.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 104.002. PROHIBITED FEES, CHARGES, AND DISCOUNTS. (a) For purposes of this section, wholesale price is computed by adding to the invoice price or purchase price per gallon charged to a franchisee who buys motor fuel any excise tax paid by the buyer and any reasonable freight charges paid by the buyer, and subtracting that portion of any refund, rebate, or subsidy not designed to offset the fee, charge, or discount described by this section.

(b) Except as provided by Subsection (c), a franchisor may not require a franchisee to pay to the franchisor a fee, charge, or discount for:

(1) honoring a credit card issued by the franchisor; or

(2) submitting to the franchisor, for payment or credit to the franchisee's account, documents or other evidence of indebtedness of the holder of a credit card issued by the franchisor.

(c) A franchisor may require a franchisee to pay the fee, charge, or discount if the franchisor, in consideration of competitive prices in the relevant market, has adjusted the wholesale prices charged or rebates credited to franchisees for motor fuel by amounts that on average for franchisees in this state substantially offset the fee, charge, or discount.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 104.003. CIVIL ACTION. (a) A franchisee may bring a civil action against a franchisor who violates Section 104.002, without regard to the amount in controversy, in the district court in any county in which the franchisor or franchisee transacts business. An action under this section must be commenced and prosecuted not later than the second anniversary of the date the cause of action accrues against the franchisor.

(b) The court shall award to a franchisee who prevails in an

action under this section:

(1) the amount of actual damages;

(2) equitable relief as determined by the court to be necessary to remedy the effects of the franchisor's violation of Section 104.002, including a declaratory judgment, permanent injunctive relief, and temporary injunctive relief; and

(3) court costs and attorney's fees that are reasonable in relation to the amount of work expended.

(c) In addition to the remedies provided under Subsection (b), on finding that the defendant wilfully and knowingly committed the violation, the trier of fact shall award not more than three times the amount of actual damages.

(d) In an action under this section, the franchisor has the burden of establishing the offset described by Section 104.002 as an affirmative defense.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 105. REFUELING SERVICES FOR PERSONS WITH DISABILITIES

Sec. 105.001. DEFINITIONS. (a) In this chapter:

(1) "Refueling service" means the service of pumping motor vehicle fuel into the fuel tank of a motor vehicle.

(2) "Service station" means a gasoline service station or other facility that offers gasoline or other motor vehicle fuel for sale to the public from the facility.

(b) In this chapter, with respect to the operation of a service station, "person" means an individual, firm, partnership, association, trustee, or corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 105.002. APPLICABILITY OF CHAPTER. (a) This chapter applies to a service station that ordinarily provides pump island service, except that such a service station is not required to provide refueling service under this chapter during any regularly scheduled hours during which, for security reasons, the service station does not provide pump island service.

(b) This chapter does not apply to:

(1) a service station or other facility that:

(A) never provides pump island service; and

(B) has only remotely controlled pumps; or

(2) a refueling service used to provide liquefied gas, as defined by Section 162.001, Tax Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 105.003. REFUELING SERVICES. (a) A person who operates a service station shall provide, on request, refueling service to a person with a disability who is the driver of a vehicle and displays:

(1) a license plate issued under Section 504.201 or 504.203, Transportation Code; or

(2) a disabled parking placard issued under Section 681.004, Transportation Code.

(b) The price charged for motor vehicle fuel provided under Subsection (a) may not exceed the price the service station would otherwise generally charge the public for the purchase of motor vehicle fuel without refueling service.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 105.004. NOTICE. (a) The Department of Agriculture shall provide a notice that states the provisions of this chapter to each person who operates a service station.

(b) The Texas Department of Motor Vehicles shall provide a notice that states the provisions of this chapter to each person with a disability who is issued:

(1) license plates under Section 504.201, Transportation Code; or

(2) a disabled parking placard under Section 681.004, Transportation Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. 3097), Sec. 3A.02, eff. September 1, 2009.

Sec. 105.005. OFFENSE; PENALTY. (a) A person commits an offense if the person violates Section 105.003 and the person is:

(1) a manager responsible for setting the service policy of a service station subject to this chapter; or

(2) an employee acting independently against the established service policy of the service station.

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

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 105.006. ENFORCEMENT. In addition to enforcement by the prosecuting attorney who represents the state, this chapter may be enforced by the attorney general.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 106. INTERNET DATING SAFETY ACT

Sec. 106.001. DEFINITIONS. In this chapter:

(1) "Member" means a person who submits to an online dating service provider the information required by the provider to access the provider's service for the purpose of engaging in dating or participating in a compatibility evaluation with other persons.

(2) "Online dating service provider" means a person engaged in the business of offering or providing to its members access to dating or compatibility evaluations between persons through the Internet to arrange or facilitate the social introduction of two or more persons for the purpose of promoting the meeting of individuals.

(3) "Texas member" means a member who provides a billing address or zip code in this state when registering with the online dating service provider.

Added by Acts 2011, 82nd Leg., R.S., Ch. 27 (S.B. 488), Sec. 1, eff. September 1, 2011.

Sec. 106.002. APPLICABILITY OF CHAPTER. This chapter does not apply to an Internet service provider serving as an intermediary for the transmission of electronic messages between members of an online dating service provider.

Added by Acts 2011, 82nd Leg., R.S., Ch. 27 (S.B. 488), Sec. 1, eff. September 1, 2011.

Sec. 106.003. CONDUCT OF CRIMINAL BACKGROUND CHECK. (a) For purposes of this chapter, an online dating service provider conducts a criminal background check on a person if the provider initiates a name search for the person's convictions for any:

(1) felony offense;

(2) offense the conviction or adjudication of which requires registration as a sex offender under Chapter 62, Code of Criminal Procedure; and

(3) offense for which an affirmative finding of family violence was made under Article 42.013, Code of Criminal Procedure.

(b) The name search described by Subsection (a) must be conducted by searching:

(1) available and regularly updated government public record databases for criminal conviction records described by Subsections (a)(1)-(3) that in the aggregate provide substantially national coverage of those records; or

(2) regularly updated databases that contain at least the same or substantially similar coverage as would be accessible through searching databases described by Subdivision (1).

Added by Acts 2011, 82nd Leg., R.S., Ch. 27 (S.B. 488), Sec. 1, eff. September 1, 2011.

Sec. 106.004. DISCLOSURE BY PROVIDER THAT DOES NOT CONDUCT CRIMINAL BACKGROUND CHECK. (a) An online dating service provider that offers services to residents of this state and does not conduct a criminal background check on each member before permitting a Texas member to communicate through the provider with another member shall clearly and conspicuously disclose to all Texas members that the

provider does not conduct criminal background checks, as described by Section 106.003.

(b) The disclosure required by this section must be stated in bold, capital letters, in at least 12-point type on the online dating service provider's Internet website.

Added by Acts 2011, 82nd Leg., R.S., Ch. 27 (S.B. 488), Sec. 1, eff. September 1, 2011.

Sec. 106.005. DISCLOSURES BY PROVIDER THAT CONDUCTS CRIMINAL BACKGROUND CHECKS. (a) An online dating service provider that offers services to residents of this state and conducts a criminal background check on each member before permitting a Texas member to communicate through the provider with another member shall clearly and conspicuously disclose to all Texas members that the provider conducts a criminal background check, as described by Section 106.003, on each member before permitting a Texas member to communicate through the provider with another member.

(b) An online dating service provider that offers services to residents of this state and conducts a criminal background check on each member shall include on the provider's Internet website:

(1) a statement of whether the provider excludes from its online dating service all persons identified as having been convicted of:

(A) a felony offense;

(B) an offense the conviction or adjudication of which requires registration as a sex offender under Chapter 62, Code of Criminal Procedure; or

(C) an offense for which an affirmative finding of family violence was made under Article 42.013, Code of Criminal Procedure;

(2) a statement of the number of years of a member's criminal history that is included in a criminal background check; and

(3) a statement that:

(A) criminal background checks are not foolproof;

(B) criminal background checks may give members a false sense of security;

(C) criminal background checks are not a perfect safety solution;

(D) criminals may circumvent even the most sophisticated search technology;

(E) not all criminal records are public in all states and not all databases are up to date;

(F) only publicly available convictions are included in the criminal background check; and

(G) the criminal background check does not cover other types of convictions than convictions for offenses described by Section 106.003(a) or any convictions from foreign countries.

(c) A disclosure required by Subsection (a) must be stated in bold, capital letters in at least 12-point type on the online dating service provider's Internet website.

Added by Acts 2011, 82nd Leg., R.S., Ch. 27 (S.B. 488), Sec. 1, eff. September 1, 2011.

Sec. 106.006. SAFETY AWARENESS DISCLOSURE BY ALL PROVIDERS. An online dating service provider that offers services to residents of this state shall clearly and conspicuously provide a safety awareness notification on the provider's Internet website that includes a list and description of safety measures reasonably designed to increase awareness of safer online dating practices. Examples of the safety awareness notification include the following statements or substantially similar statements:

(1) "Anyone who is able to commit identity theft can also falsify a dating profile.";

(2) "There is no substitute for acting with caution when communicating with any stranger who wants to meet you.";

(3) "Never include your last name, e-mail address, home address, phone number, place of work, or any other identifying information in your Internet profile or initial e-mail messages. Stop communicating with anyone who pressures you for personal or financial information or attempts in any way to trick you into revealing it."; and

(4) "If you choose to have a face-to-face meeting with another member, always tell someone in your family or a friend where you are going and when you will return. Never agree to be picked up at your home. Always provide your own transportation to and from your date and meet in a public place with many people around."

Added by Acts 2011, 82nd Leg., R.S., Ch. 27 (S.B. 488), Sec. 1, eff. September 1, 2011.

Sec. 106.007. CIVIL PENALTY; INJUNCTION. (a) An online dating service provider who violates this chapter is liable to the state for a civil penalty in an amount not to exceed $250 for each Texas member registered with the online dating service provider during the time of the violation.

(b) The attorney general may:

(1) seek an injunction to prevent or restrain a violation of this chapter; or

(2) bring suit to recover the civil penalty imposed under Subsection (a).

(c) The attorney general may recover reasonable expenses incurred in obtaining an injunction or civil penalty under this section, including court costs and reasonable attorney's fees.

Added by Acts 2011, 82nd Leg., R.S., Ch. 27 (S.B. 488), Sec. 1, eff. September 1, 2011.

Sec. 106.008. NO PRIVATE RIGHT OF ACTION. This chapter does not create a private right of action.

Added by Acts 2011, 82nd Leg., R.S., Ch. 27 (S.B. 488), Sec. 1, eff. September 1, 2011.

CHAPTER 107. PAY-TO-PARK AND VALET PARKING SERVICES

Sec. 107.001. DEFINITIONS. In this chapter:

(1) "Pay-to-park service" means a business that provides a place to park the motor vehicles of patrons of a public accommodation in a garage, lot, or other facility for a fee.

(2) "Public accommodation" means any:

(A) inn, hotel, or motel;

(B) restaurant, cafeteria, or other facility principally engaged in selling food for consumption on the premises;

(C) bar, nightclub, or other facility engaged in selling alcoholic beverages for consumption on the premises;

(D) motion picture house, theater, concert hall,

stadium, or other place of exhibition or entertainment; or

(E) other facility used by or open to members of the public.

(3) "Valet parking service" means a parking service through which the motor vehicles of patrons of a public accommodation are parked for a fee by a third party who is not an employee of the public accommodation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 164 (H.B. 2468), Sec. 1, eff. September 1, 2011.
Redesignated from Business and Commerce Code, Chapter 106 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(3), eff. September 1, 2013.

Sec. 107.002. APPLICABILITY OF CHAPTER. This chapter does not apply to a pay-to-park or valet parking service:

(1) operated by the owner of:

(A) a restaurant, cafeteria, or other facility principally engaged in selling food for consumption on the premises; or

(B) an inn, hotel, or motel; and

(2) provided exclusively to patrons of the public accommodation described by Subdivision (1).

Added by Acts 2011, 82nd Leg., R.S., Ch. 164 (H.B. 2468), Sec. 1, eff. September 1, 2011.
Redesignated from Business and Commerce Code, Chapter 106 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(3), eff. September 1, 2013.

Sec. 107.003. REQUIREMENT OF CONTACT INFORMATION. (a) The receipt or claim ticket that an operator of a pay-to-park or valet parking service provides to a patron must state the name, address, and telephone number of the owner of the pay-to-park or valet parking service.

(b) If a pay-to-park service does not provide a patron with a receipt or claim ticket, the operator shall prominently display the name, address, and telephone number of the owner of the pay-to-park service on a sign on or immediately adjacent to the payment

receptacle or other device for making payment for the service.

(c) For purposes of this section, "owner" does not include the owner of the property on which the pay-to-park or valet parking service is provided unless the service is also owned by the owner of the property.

Added by Acts 2011, 82nd Leg., R.S., Ch. 164 (H.B. 2468), Sec. 1, eff. September 1, 2011.
Redesignated from Business and Commerce Code, Chapter 106 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(3), eff. September 1, 2013.

Sec. 107.004. CIVIL PENALTY. A pay-to-park or valet parking service that violates this chapter is subject to a civil penalty not to exceed $200 for each violation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 164 (H.B. 2468), Sec. 1, eff. September 1, 2011.
Redesignated from Business and Commerce Code, Chapter 106 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(3), eff. September 1, 2013.

Sec. 107.005. SUIT FOR CIVIL PENALTY. The attorney general or a county or district attorney may bring an action to recover a civil penalty imposed under Section 107.004.

Added by Acts 2011, 82nd Leg., R.S., Ch. 164 (H.B. 2468), Sec. 1, eff. September 1, 2011.
Assigned by Acts 2013, 83rd Leg., R.S., Ch. 64 (S.B. 60), Sec. 5, eff. January 1, 2014.
Redesignated from Business and Commerce Code, Chapter 106 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(3), eff. September 1, 2013.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(2), eff. September 1, 2013.

CHAPTER 108. CERTAIN CHARGES OR SECURITY DEPOSITS FOR CANINE

HANDLERS PROHIBITED

Sec. 108.001. DEFINITIONS. In this chapter:

(1) "Canine unit" means a canine handler who is a peace officer or firefighter and a service canine trained to assist a peace officer or firefighter in the performance of the individual's official duties.

(2) "Commercial lodging establishment" means a hotel, motel, inn, or similar entity that offers lodging to the public in exchange for compensation.

(3) "Declared disaster" means:

(A) a disaster declared by the president of the United States;

(B) a state of disaster declared by the governor under Chapter 418, Government Code; or

(C) a local state of disaster declared by the governing body of a political subdivision under Section 418.108, Government Code.

(4) "Firefighter" means an individual who is defined as fire protection personnel under Section 419.021, Government Code.

(5) "Mutual aid" has the meaning assigned by Section 418.004, Government Code.

(6) "Peace officer" means a person elected, employed, or appointed as a peace officer under Article 2.12, Code of Criminal Procedure, or other law.

(7) "Service canine" means a canine trained to assist in search and rescue or law enforcement activities.

Added by Acts 2011, 82nd Leg., R.S., Ch. 579 (H.B. 3487), Sec. 1, eff. September 1, 2011.
Redesignated from Business and Commerce Code, Chapter 106 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(4), eff. September 1, 2013.

Sec. 108.002. CERTAIN CHARGES OR SECURITY DEPOSITS PROHIBITED. A commercial lodging establishment or restaurant may not require the payment of an extra fee or charge or a security deposit for a service canine that accompanies an individual to the establishment or restaurant if:

(1) the individual is:

(A) a peace officer or firefighter assigned to a canine unit; or

(B) a handler of a search and rescue canine participating in a search and rescue operation under the authority or direction of a law enforcement agency or search and rescue agency; and

(2) the individual is away from the individual's home jurisdiction while in the course and scope of duty because of:

(A) a declared disaster; or

(B) a mutual aid request or mutual aid training.

Added by Acts 2011, 82nd Leg., R.S., Ch. 579 (H.B. 3487), Sec. 1, eff. September 1, 2011.
Redesignated from Business and Commerce Code, Chapter 106 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(4), eff. September 1, 2013.

Sec. 108.003. LIABILITY FOR PROPERTY DAMAGES. (a) Governmental immunity from suit and from liability is waived and the department or agency of a canine unit may be held liable to the owner or operator of a commercial lodging establishment or restaurant for any damages to the premises caused by the service canine.

(b) The handler of a search and rescue canine is liable to the owner or operator of a commercial lodging establishment or restaurant for any damages to the premises caused by the service canine.

Added by Acts 2011, 82nd Leg., R.S., Ch. 579 (H.B. 3487), Sec. 1, eff. September 1, 2011.
Redesignated from Business and Commerce Code, Chapter 106 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(4), eff. September 1, 2013.

Sec. 108.004. CIVIL PENALTY. The owner or operator of a commercial lodging establishment or restaurant that violates Section 108.002 is liable for a civil penalty in an amount not to exceed $200 for each violation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 579 (H.B. 3487), Sec. 1, eff. September 1, 2011.

Redesignated from Business and Commerce Code, Chapter 106 by Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(4), eff. September 1, 2013.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.002(3), eff. September 1, 2013.

Chapter 109, consisting of Secs. 109.001 to 109.003, was added by Acts 2013, 83rd Leg., R.S., Ch. 1013 (H.B. 2539), Sec. 1.

For another Chapter 109, consisting of Secs. 109.001 to 109.008, added by Acts 2013, 83rd Leg., R.S., Ch. 1200 (S.B. 1289), Sec. 1, see Sec. 109.001 et seq., post.

CHAPTER 109. COMPUTER TECHNICIANS REQUIRED TO REPORT CHILD PORNOGRAPHY

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 1491 and S.B. 1296, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 109.001. DEFINITIONS. In this chapter:

(1) "Child pornography" means an image of a child engaging in sexual conduct or sexual performance.

(2) "Commercial mobile service provider" has the meaning assigned by Section 64.201, Utilities Code.

(3) "Computer technician" means an individual who in the course and scope of employment or business installs, repairs, or otherwise services a computer for a fee.

(4) "Information service provider" includes an Internet service provider and hosting service provider.

(5) "Sexual conduct" and "sexual performance" have the meanings assigned by Section 43.25, Penal Code.

(6) "Telecommunications provider" has the meaning assigned by Section 51.002, Utilities Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1013 (H.B. 2539), Sec. 1, eff. September 1, 2013.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 1491 and S.B. 1296, 84th

Legislature, Regular Session, for amendments affecting this section.

Sec. 109.002. REPORTING OF IMAGES OF CHILD PORNOGRAPHY. (a) A computer technician who, in the course and scope of employment or business, views an image on a computer that is or appears to be child pornography shall immediately report the discovery of the image to a local or state law enforcement agency or the Cyber Tipline at the National Center for Missing and Exploited Children. The report must include the name and address of the owner or person claiming a right to possession of the computer, if known, and as permitted by federal law.

(b) Except in a case of wilful or wanton misconduct, a computer technician may not be held liable in a civil action for reporting or failing to report the discovery of an image under Subsection (a).

(c) A telecommunications provider, commercial mobile service provider, or information service provider may not be held liable under this chapter for the failure to report child pornography that is transmitted or stored by a user of the service.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1013 (H.B. 2539), Sec. 1, eff. September 1, 2013.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 1296, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 109.003. CRIMINAL PENALTY. (a) A person who intentionally fails to report an image in violation of this chapter commits an offense. An offense under this subsection is a Class B misdemeanor.

(b) It is a defense to prosecution under this section that the actor did not report the discovery of an image of child pornography because the child in the image appeared to be at least 18 years of age.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1013 (H.B. 2539), Sec. 1, eff. September 1, 2013.

Chapter 109, consisting of Secs. 109.001 to 109.008, was added by Acts 2013, 83rd Leg., R.S., Ch. 1200 (S.B. 1289), Sec. 1.

For another Chapter 109, consisting of Secs. 109.001 to 109.003, added by Acts 2013, 83rd Leg., R.S., Ch. 1013 (H.B. 2539), Sec. 1, see Sec. 109.001 et seq., post.

CHAPTER 109. BUSINESS ENTITIES ENGAGED IN PUBLICATION OF CRIMINAL RECORD INFORMATION

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 1491 and S.B. 1296, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 109.001. DEFINITIONS. In this chapter:

(1) "Criminal justice agency" has the meaning assigned by Section 411.082, Government Code.

(2) "Criminal record information" means information about a person's involvement in the criminal justice system. The term includes:

(A) a description or notation of any arrests, any formal criminal charges, and the dispositions of those criminal charges;

(B) a photograph of the person taken pursuant to an arrest or other involvement in the criminal justice system; and

(C) personal identifying information of a person displayed in conjunction with any other record of the person's involvement in the criminal justice system.

(3) "Personal identifying information" means information that alone or in conjunction with other information identifies a person, including a person's name, address, date of birth, photograph, and social security number or other government-issued identification number.

(4) "Publish" means to communicate or make information available to another person in writing or by means of telecommunications and includes communicating information on a computer bulletin board or similar system.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1200 (S.B. 1289), Sec. 1, eff. September 1, 2013.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 1491 and S.B. 1296, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 109.002. APPLICABILITY OF CHAPTER. This chapter applies

to a business entity that:

(1) publishes criminal record information, including information:

(A) originally obtained pursuant to a request for public information under Chapter 552, Government Code; or

(B) purchased or otherwise obtained by the entity or an affiliated business entity from the Department of Public Safety under Subchapter F, Chapter 411, Government Code; and

(2) requires the payment:

(A) of a fee in an amount of $150 or more or other consideration of comparable value to remove criminal record information; or

(B) of a fee or other consideration to correct or modify criminal record information.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1200 (S.B. 1289), Sec. 1, eff. September 1, 2013.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 1296, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 109.003. DUTY TO PUBLISH COMPLETE AND ACCURATE CRIMINAL RECORD INFORMATION. (a) A business entity must ensure that criminal record information the entity publishes is complete and accurate.

(b) For purposes of this chapter, criminal record information published by a business entity is considered:

(1) complete if the information reflects the notations of arrest and the filing and disposition of criminal charges, as applicable; and

(2) accurate if the information:

(A) reflects the most recent information received by the entity from the Department of Public Safety in accordance with Section 411.0851(b)(1)(B), Government Code; or

(B) was obtained by the entity from a law enforcement agency or criminal justice agency, including the Department of Public Safety, or any other governmental agency or entity within the 60-day period preceding the date of publication.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1200 (S.B. 1289), Sec. 1,

eff. September 1, 2013.

Sec. 109.004. DISPUTING COMPLETENESS OR ACCURACY OF INFORMATION. (a) A business entity shall clearly and conspicuously publish an e-mail address, fax number, or mailing address to enable a person who is the subject of criminal record information published by the entity to dispute the completeness or accuracy of the information.

(b) If a business entity receives a dispute regarding the completeness or accuracy of criminal record information from a person who is the subject of the information, the business entity shall:

(1) verify with the appropriate law enforcement agency or criminal justice agency, including the Department of Public Safety, or any other governmental agency or entity, free of charge the disputed information; and

(2) complete the investigation described by Subdivision (1) not later than the 45th business day after the date the entity receives notice of the dispute.

(c) If a business entity finds incomplete or inaccurate criminal record information after conducting an investigation prescribed by this section, the entity shall promptly remove the inaccurate information from the website or other publication or shall promptly correct the information, as applicable. The entity may not:

(1) charge a fee to remove, correct, or modify incomplete or inaccurate information; or

(2) continue to publish incomplete or inaccurate information.

(d) A business entity shall provide written notice to the person who disputed the completeness or accuracy of information of the results of an investigation conducted under this section not later than the fifth business day after the date on which the investigation is completed.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1200 (S.B. 1289), Sec. 1, eff. September 1, 2013.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 1491, H.B. 2286, H.B. 3579 and S.B.

1902, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 109.005. PUBLICATION OF CERTAIN CRIMINAL RECORD INFORMATION PROHIBITED; CIVIL LIABILITY. (a) A business entity may not publish any criminal record information in the business entity's possession with respect to which the business entity has knowledge or has received notice that:

(1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or

(2) an order of nondisclosure has been issued under Section 411.081(d), Government Code.

(b) A business entity that publishes information in violation of Subsection (a) is liable to the individual who is the subject of the information in an amount not to exceed $500 for each separate violation and, in the case of a continuing violation, an amount not to exceed $500 for each subsequent day on which the violation occurs.

(c) In an action brought under this section, the court may grant injunctive relief to prevent or restrain a violation of this section.

(d) An individual who prevails in an action brought under this section is also entitled to recover court costs and reasonable attorney's fees.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1200 (S.B. 1289), Sec. 1, eff. September 1, 2013.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 1491, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 109.006. CIVIL PENALTY; INJUNCTION. (a) A business entity that publishes criminal record information in violation of this chapter is liable to the state for a civil penalty in an amount not to exceed $500 for each separate violation and, in the case of a continuing violation, an amount not to exceed $500 for each subsequent day on which the violation occurs. For purposes of this subsection, each criminal record published in violation of this chapter constitutes a separate violation.

(b) The attorney general or an appropriate prosecuting attorney may sue to collect a civil penalty under this section.

(c) A civil penalty collected under this section shall be deposited in the state treasury to the credit of the general revenue fund.

(d) The attorney general may bring an action in the name of the state to restrain or enjoin a violation or threatened violation of this chapter.

(e) The attorney general or an appropriate prosecuting attorney is entitled to recover reasonable expenses incurred in obtaining injunctive relief or a civil penalty, or both, under this chapter, including court costs and reasonable attorney's fees.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1200 (S.B. 1289), Sec. 1, eff. September 1, 2013.

This section was amended by the 84th Legislature. Pending publication of the current statutes, see H.B. 1491, 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 109.007. VENUE. An action under this chapter must be brought in a district court:

(1) in Travis County if the action is brought by the attorney general;

(2) in the county in which the person who is the subject of the criminal record information resides; or

(3) in the county in which the business entity is located.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1200 (S.B. 1289), Sec. 1, eff. September 1, 2013.

Sec. 109.008. CUMULATIVE REMEDIES. The actions and remedies provided by this chapter are not exclusive and are in addition to any other action or remedy provided by law.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1200 (S.B. 1289), Sec. 1, eff. September 1, 2013.

TITLE 6. SALE OR TRANSFER OF GOODS

CHAPTER 201. SALE OF ITEMS AT FLEA MARKETS

Sec. 201.001. DEFINITION. In this chapter, "flea market" means

a location at which booths or similar spaces are rented or otherwise made temporarily available to two or more persons and at which the persons offer tangible personal property for sale.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 201.002. INAPPLICABILITY OF CHAPTER TO CERTAIN ITEMS. This chapter does not apply to the sale or offer for sale of a nutritional supplement or vitamin.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 201.003. SALE OF CERTAIN ITEMS PROHIBITED. (a) A person commits an offense if the person sells or offers for sale at a flea market:

(1) infant formula or baby food of a type usually consumed by children younger than two years of age;

(2) a drug, as defined by Section 431.002, Health and Safety Code; or

(3) contact lenses, including disposable contact lenses.

(b) It is a defense to prosecution under this section that the person selling the item:

(1) is authorized in writing to sell the item at retail by the manufacturer of the item or the manufacturer's authorized distributor and the authorization states the person's name; and

(2) provides the authorization for examination by any person at the flea market who requests to see the authorization.

(c) It is a defense to prosecution under this section that only a sample of the item or a catalog or brochure displaying the item was available at the flea market and the item sold was not delivered to the buyer at the flea market.

(d) An offense under this section is a misdemeanor punishable by a fine not to exceed $100.

(e) The penalty provided by this section is in addition to any other sanction provided by law.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01,

eff. April 1, 2009.

Sec. 201.004. FRAUDULENT AUTHORIZATION FOR SALE OF CERTAIN ITEMS AT RETAIL. (a) A person commits an offense if the person provides to another person an authorization under Section 201.003(b) and:

(1) the authorization is forged or contains a false statement; or

(2) the person displaying the authorization obtained the authorization by fraud.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed $100.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 201.005. PROVISION OF BOOTH OR SIMILAR SPACE NOT AN OFFENSE. A person does not commit an offense under this chapter solely because the person provides booths or similar spaces at a flea market.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 201.006. INVESTIGATION RECORDS REQUIRED. A law enforcement agency investigating a violation of this chapter shall maintain a record of the investigation. The record is public information.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 202. SALES OF MOTOR VEHICLES WITH STOPLAMP COVERINGS

Sec. 202.001. SALE OF MOTOR VEHICLE WITH CERTAIN STOPLAMP COVERING PROHIBITED. (a) In this section, "motor vehicle" has the meaning assigned by Section 541.201, Transportation Code.

(b) A person in the business of selling motor vehicles may not

sell a motor vehicle with a transparent or semitransparent covering:

(1) placed over a stoplamp that is mounted on the rear center line of the vehicle either in or on the rear window or within six inches from the rear window of the vehicle for the purpose of emitting light when the vehicle's brakes are applied; and

(2) on which is impressed or imprinted a name, trade name, logotype, or other message that a person behind the vehicle can read when the stoplamp is illuminated.

(c) A person who violates this section commits an offense. An offense under this section is a Class C misdemeanor.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 203. EXPORTING ARTICLES WITHOUT INSPECTION

Sec. 203.001. CRIMINAL PENALTY FOR EXPORTING ARTICLES WITHOUT REQUIRED INSPECTION. (a) A person commits an offense if the person:

(1) exports from this state, or ships for the purpose of exportation to a state other than this state or to a foreign port, an article of commerce that by law of this state is required to be inspected by a public inspector; and

(2) does not have the article inspected as required by law.

(b) An offense under this section is a misdemeanor punishable by a fine not to exceed $100.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 204. SALE OF PLASTIC BULK MERCHANDISE CONTAINER

Sec. 204.001. DEFINITIONS. In this chapter:

(1) "Plastic bulk merchandise container" means a plastic crate or shell used by a product producer, distributor, or retailer for the bulk transportation or storage of retail containers of milk, eggs, or bottled beverage products.

(2) "Proof of ownership" includes a bill of sale or other evidence showing that an item has been sold to the person possessing the item.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec.

4.005(a), eff. September 1, 2009.

Sec. 204.002. REQUIREMENTS APPLICABLE TO SALE OF PLASTIC BULK MERCHANDISE CONTAINER. (a) A person who is in the business of recycling, shredding, or destroying plastic bulk merchandise containers, before purchasing five or more plastic bulk merchandise containers from the same person, shall:

(1) obtain from that person:

(A) proof of ownership for the containers; and

(B) a record that contains:

(i) the name, address, and telephone number of the person or the person's authorized representative;

(ii) the name and address of the buyer of the containers or any consignee of the containers;

(iii) a description of the containers, including the number of the containers to be sold; and

(iv) the date of the transaction; and

(2) verify:

(A) the identity of the individual selling the containers or representing the seller from a driver's license or other government-issued identification card that includes the individual's photograph, and record the verification; or

(B) in a manner determined by the purchaser that the individual is acting on behalf of a corporation, business, government, or governmental subdivision or agency.

(b) A person shall retain a record obtained or made under this chapter until the first anniversary of the later of the date the containers are purchased or delivered.

(c) A person who is in the business of recycling, shredding, or destroying plastic bulk merchandise containers and who purchases a plastic bulk merchandise container from an individual, unless the person verifies in a manner determined by the purchaser that the individual is acting on behalf of a corporation, business, government, or governmental subdivision or agency:

(1) may not pay for the purchase of any plastic bulk merchandise container with cash; and

(2) shall, for each transaction in which the person purchases one or more plastic bulk merchandise containers, record the method of payment used to purchase the containers.

(d) A record made under Subsection (c)(2) shall be attached to a record made or obtained under Subsection (a) if a record is required under that subsection.

(e) A person who violates Subsection (a) or (b) is liable to this state for a civil penalty of $10,000 for each violation.

(f) A person who violates Subsection (c) is liable to this state for a civil penalty in an amount not to exceed $5,000 for each violation. Each cash transaction made in violation of Subsection (c)(1) is a separate violation for purposes of imposing a penalty under this subsection. In determining the amount of the civil penalty imposed under this subsection, the court shall consider the amount necessary to deter future violations.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.005(a), eff. September 1, 2009.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 584 (S.B. 875), Sec. 1, eff. September 1, 2013.

Sec. 204.003. USE OF ARTIFICE TO AVOID APPLICABILITY OF CHAPTER PROHIBITED. (a) A person who is in the business of recycling, shredding, or destroying plastic bulk merchandise containers may not use an artifice to avoid the application of Section 204.002, including documenting purchases from the same person on the same day as multiple transactions.

(b) A person who violates this section is liable to this state for a civil penalty of $30,000 for each violation.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.005(a), eff. September 1, 2009.

Sec. 204.004. INVESTIGATIVE AND ENFORCEMENT AUTHORITY. (a) The attorney general or appropriate prosecuting attorney may:

(1) inspect a record retained by a person under Section 204.002;

(2) investigate an alleged violation of this chapter; and

(3) sue to collect a civil penalty under this chapter.

(b) The attorney general or appropriate prosecuting attorney may recover reasonable expenses, including court costs, attorney's

fees, investigative costs, witness fees, and deposition expenses, incurred in recovering a civil penalty under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.005(a), eff. September 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 430 (H.B. 2128), Sec. 2, eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 584 (S.B. 875), Sec. 2, eff. September 1, 2013.

Sec. 204.005. CRIMINAL PENALTY. (a) A person who is in the business of recycling, shredding, or destroying plastic bulk merchandise containers who violates this chapter commits an offense.

(b) Except as provided by Subsection (c), an offense under this section is a Class C misdemeanor punishable by:

(1) a fine not to exceed $350, if the total purchase price of the plastic bulk merchandise containers to which the offense relates is less than $1,000; or

(2) a fine not to exceed $700, if the total purchase price of the plastic bulk merchandise containers to which the offense relates is $1,000 or more.

(c) If it is shown on the trial of an offense under this section that the defendant has been previously convicted of an offense under this section based on the same type of violation, the offense is punishable by a fine not to exceed twice the maximum amount of the fine prescribed for a first offense under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.005(a), eff. September 1, 2009.
Added by Acts 2009, 81st Leg., R.S., Ch. 912 (H.B. 2127), Sec. 2, eff. September 1, 2009.

TITLE 7. RECEIPTS, DOCUMENTS OF TITLE, AND OTHER INSTRUMENTS

CHAPTER 251. WAREHOUSE RECEIPTS

Sec. 251.001. DEFINITIONS. In this chapter:

(1) "Goods" means all things treated as movable for purposes of a contract of storage or transportation.

(2) "Issue" includes aiding in the issuance of a warehouse

receipt.

(3) "Warehouse receipt" means a receipt issued by a warehouseman.

(4) "Warehouseman" means a person engaged in the business of storing goods for hire. The term includes an officer, agent, or employee of a warehouseman.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 251.002. WAREHOUSEMAN ISSUING FRAUDULENT WAREHOUSE RECEIPT. (a) A warehouseman may not, with intent to defraud, issue a warehouse receipt that contains a false statement.

(b) A warehouseman who violates this section commits an offense. An offense under this section is a misdemeanor punishable by:

(1) confinement in the county jail for a term of not more than one year;

(2) a fine not to exceed $1,000; or

(3) both the fine and confinement.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 251.003. WAREHOUSEMAN FAILING TO STATE WAREHOUSEMAN'S OWNERSHIP OF GOODS ON RECEIPT. (a) A warehouseman may not knowingly issue a negotiable warehouse receipt describing goods the warehouseman owns, whether solely, jointly, or in common, and is storing, unless the warehouseman states the warehouseman's ownership of the goods on the receipt.

(b) A warehouseman who violates this section commits an offense. An offense under this section is a misdemeanor punishable by:

(1) confinement in the county jail for a term of not more than one year; or

(2) a fine not to exceed $1,000.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 251.004. WAREHOUSEMAN ISSUING WAREHOUSE RECEIPT WITHOUT CONTROL OF GOODS. (a) A warehouseman may not issue a warehouse receipt for goods if the warehouseman knows at the time of issuance that the goods described in the receipt are not under the warehouseman's control.

(b) A warehouseman who violates this section commits an offense. An offense under this section is a felony punishable by:

(1) imprisonment in the Texas Department of Criminal Justice for a term of not more than five years;

(2) a fine not to exceed $5,000; or

(3) both the fine and imprisonment.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 251.005. WAREHOUSEMAN ISSUING DUPLICATE OR ADDITIONAL WAREHOUSE RECEIPT. (a) A warehouseman may not issue a duplicate or additional negotiable warehouse receipt for goods if the warehouseman knows at the time of issuance that a previously issued negotiable warehouse receipt describing the goods is outstanding and uncanceled.

(b) This section does not apply if:

(1) the word "duplicate" is plainly placed on the duplicate or additional negotiable warehouse receipt; or

(2) goods described in the outstanding and uncanceled negotiable warehouse receipt were delivered under a court order on proof that the receipt was lost or destroyed.

(c) A warehouseman who violates this section commits an offense. An offense under this section is a felony punishable by:

(1) imprisonment in the Texas Department of Criminal Justice for a term of not more than five years;

(2) a fine not to exceed $5,000; or

(3) both the fine and imprisonment.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 251.006. WAREHOUSEMAN WRONGFULLY DELIVERING GOODS. (a) A

warehouseman may not knowingly deliver goods that are described in a negotiable warehouse receipt and stored with the warehouseman, unless the receipt is surrendered to the warehouseman at or before the time the warehouseman delivers the goods.

(b) This section does not apply if the goods are:

(1) delivered under a court order on proof that the negotiable warehouse receipt describing the goods was lost or destroyed;

(2) lawfully sold to satisfy a warehouseman's lien; or

(3) disposed of because of the perishable or hazardous nature of the goods.

(c) A warehouseman who violates this section commits an offense. An offense under this section is a misdemeanor punishable by:

(1) confinement in the county jail for a term of not more than one year;

(2) a fine not to exceed $1,000; or

(3) both the fine and confinement.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 251.007. FAILURE TO DISCLOSE LACK OF OWNERSHIP OF GOODS. (a) A person who obtains a negotiable warehouse receipt describing goods the person does not own may not, with intent to defraud, negotiate the receipt for value without disclosing the person's lack of ownership.

(b) A person who violates this section commits an offense. An offense under this section is a misdemeanor punishable by:

(1) confinement in the county jail for a term of not more than one year;

(2) a fine not to exceed $1,000; or

(3) both the fine and confinement.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 251.008. FAILURE TO DISCLOSE EXISTENCE OF LIEN ON GOODS. (a) A person who obtains a negotiable warehouse receipt describing

goods subject to a lien may not, with intent to defraud, negotiate the receipt for value without disclosing the lien's existence.

(b) A person who violates this section commits an offense. An offense under this section is a misdemeanor punishable by:

(1) confinement in the county jail for a term of not more than one year;

(2) a fine not to exceed $1,000; or

(3) both the fine and confinement.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 252. BILLS OF LADING

Sec. 252.001. DEFINITIONS. In this chapter:

(1) "Agent" includes an officer, employee, or receiver.

(2) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods. The term includes an air consignment note, air waybill, or other document for air transportation comparable to a bill of lading for marine or rail transportation.

(3) "Goods" means all things treated as movable for purposes of a contract of storage or transportation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 252.002. DUTIES OF RAILROAD COMMISSION. (a) In this section, "common carrier" does not include a pipeline company or express company.

(b) The Railroad Commission of Texas shall:

(1) prescribe forms, terms, and conditions for authenticating, certifying, or validating bills of lading issued by a common carrier;

(2) regulate the manner by which a common carrier issues bills of lading; and

(3) take other action necessary to carry out the purposes of Chapter 7.

(c) After giving reasonable notice to interested common

carriers and to the public, the railroad commission may amend a rule adopted under Subsection (b).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 252.003. AGENT WRONGFULLY FAILING OR REFUSING TO ISSUE BILL OF LADING. (a) In this section, "common carrier" does not include a pipeline company or express company.

(b) An agent of a common carrier may not after lawful demand fail or refuse to issue a bill of lading in accordance with Chapter 7 or a rule of the railroad commission.

(c) An agent who violates this section commits an offense. An offense under this section is a misdemeanor punishable by:

(1) confinement in the county jail for a term of not more than six months;

(2) a fine not to exceed $200; or

(3) both the fine and confinement.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 252.004. AGENT ISSUING FRAUDULENT BILL OF LADING. (a) In this section, "common carrier" does not include a pipeline company or express company.

(b) An agent of a common carrier may not with intent to defraud a person:

(1) issue a bill of lading;

(2) incorrectly describe goods or the quantity of goods in a bill of lading; or

(3) issue a bill of lading without authority.

(c) An agent who violates this section commits an offense. An offense under this section is a felony punishable by imprisonment in the Texas Department of Criminal Justice for a term of not more than 10 years or less than two years.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 252.005. AGENT ISSUING ORDER BILL OF LADING IN DUPLICATE OR SET OF PARTS. (a) Except where customary in overseas transportation, an agent of a common carrier may not knowingly issue or aid in issuing an order bill of lading in duplicate or in a set of parts.

(b) An agent who violates this section commits an offense. An offense under this section is a felony punishable by:

(1) imprisonment in the Texas Department of Criminal Justice for a term of not more than five years; and

(2) a fine not to exceed $5,000.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 252.006. FRAUDULENTLY INDUCING ISSUANCE OF BILL OF LADING. (a) A person may not, with intent to defraud, induce an agent of a common carrier to:

(1) issue to the person a bill of lading; or

(2) materially misrepresent in a bill of lading issued on behalf of the common carrier the quantity of goods described in the bill of lading.

(b) A person who violates this section commits an offense. An offense under this section is a felony punishable by imprisonment in the Texas Department of Criminal Justice for a term of not more than five years or less than two years.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 252.007. FRAUDULENTLY NEGOTIATING OR TRANSFERRING BILL OF LADING. (a) A person may not, with intent to defraud, negotiate or transfer a bill of lading that:

(1) is issued in violation of Chapter 7; or

(2) contains a false, material statement of fact.

(b) A person who violates this section commits an offense. An offense under this section is a felony punishable by imprisonment in the Texas Department of Criminal Justice for a term of not more than 10 years.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 253. PROTESTED OUT-OF-STATE DRAFTS

Sec. 253.001. DAMAGES ON PROTESTED OUT-OF-STATE DRAFTS. The holder of a protested draft is entitled to damages in an amount equal to 10 percent of the amount of the draft, plus interest and the costs of suit, if:

(1) the draft was drawn by a merchant in this state on the merchant's agent or factor outside this state; and

(2) the drawer's or indorser's liability on the draft has been fixed.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 254. NOTE OR LIEN IDENTIFYING A PATENT RIGHT

Sec. 254.001. IDENTIFICATION OF PATENT RIGHT. (a) A note or lien evidencing or securing the purchase price for a patent right or patent right territory must contain on the face of the note or lien a statement that the note or lien was given for a patent right or patent right territory.

(b) The statement required by Subsection (a):

(1) is notice to a subsequent purchaser of the note or lien of all equities between the original parties to the note or lien; and

(2) subjects a subsequent holder of the note or lien to all defenses available against the original parties to the note or lien.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 254.002. FAILURE TO IDENTIFY PATENT RIGHT; CRIMINAL PENALTY. (a) A person selling a patent right or patent right territory may not take a note or lien evidencing or securing the purchase price for the patent right or patent right territory without placing on the face of the note or lien the statement required by Section 254.001(a).

(b) A person who violates this section commits an offense. An offense under this section is a misdemeanor punishable by a fine of not less than $25 or more than $200.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

TITLE 8. SECURITY INSTRUMENTS

CHAPTER 261. UTILITY SECURITY INSTRUMENTS

Sec. 261.001. DEFINITIONS. (a) In this chapter:

(1) "Utility" means a person engaged in this state in:

(A) generating, transmitting, or distributing and selling electric power;

(B) transporting, distributing, and selling, through a local distribution system, natural or other gas for domestic, commercial, industrial, or other use;

(C) owning or operating a pipeline to transmit or sell natural or other gas, natural gas liquids, crude oil, or petroleum products to another pipeline company or to a refinery, local distribution system, municipality, or industrial consumer;

(D) providing telephone or telegraph service to others;

(E) producing, transmitting, or distributing and selling steam or water;

(F) operating a railroad; or

(G) providing sewer service to others.

(2) "Utility security instrument" means:

(A) a mortgage, deed of trust, security agreement, or other instrument executed to secure payment of a bond, note, or other obligation of a utility; or

(B) an instrument that supplements or amends an instrument described by Paragraph (A), including a signed copy of the instrument.

(b) The definitions in Chapters 1 and 9 apply to this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 261.002. ACT CONSTITUTING FILING. For purposes of this chapter, a utility security instrument is filed when it is deposited

for filing with the secretary of state.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 261.003. APPLICABILITY OF CHAPTER. A utility is subject to the requirements and entitled to the benefits of this chapter:

(1) only if the utility files with the secretary of state a utility security instrument that states conspicuously on its title page: "This Instrument Grants A Security Interest By A Utility"; and

(2) only with respect to collateral covered by a utility security instrument filed by the utility in accordance with Subdivision (1).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 261.004. FILING UTILITY SECURITY INSTRUMENT WITH SECRETARY OF STATE: PERFECTION AND NOTICE. (a) Subject to Subsection (b), the filing with the secretary of state of a utility security instrument executed by a utility and described by Section 261.003(1) and payment of the filing fee prescribed by Section 261.008:

(1) constitute perfection of a security interest created by the instrument in any personal property:

(A) in which a security interest may be perfected by filing under Chapter 9, including any goods that are or will become a fixture;

(B) that is located in this state; and

(C) that was owned by the utility when the instrument was executed or is to be acquired by the utility after the instrument is executed;

(2) if the instrument is proven, acknowledged, or certified as otherwise required by law for the recording of real property mortgages, serve as notice to all persons of the existence of the instrument and the security interest granted by the instrument in any real property, or in any fixture on or to be placed on the property, that:

(A) is located in this state; and

(B) was owned by the utility when the instrument was

executed or is to be acquired by the utility after the instrument is executed; and

(3) result in priority of the secured party reflected on the utility security instrument and assignees under Section 261.012 over the rights of a lien creditor, as defined by Section 9.102, for so long as the lien is recorded on the utility security instrument.

(b) For perfection or notice under Subsection (a) to be effective as to a particular item of property, the filed utility security instrument must:

(1) identify the property by type, character, or description if the property is presently owned personal property, including a fixture, and for that purpose any description of personal property or real property is sufficient, regardless of whether specific, if it reasonably identifies what is described;

(2) provide a description of the property if the property is presently owned real property; or

(3) if the property is to be acquired after the instrument is executed, state conspicuously on its title page: "This Instrument Contains After-Acquired Property Provisions."

(c) A filing under this section satisfies any requirement of:

(1) a filing of the utility security instrument or a financing statement in the office of a county clerk if that filing would otherwise be necessary to perfect a security interest; and

(2) a recording of the utility security instrument in the office of a county clerk if that recording would otherwise make the instrument effective as to all creditors and subsequent purchasers for valuable consideration without notice.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 814 (S.B. 1592), Sec. 1, eff. June 19, 2009.

Sec. 261.005. DURATION OF PERFECTION AND NOTICE. The perfection and notice provided by the filing of a utility security instrument under Section 261.004 take effect on the date of filing and remain in effect without any renewal, refiling, or continuation statement until the interest granted as security is released by the

filing of a termination statement, or a release of all or a part of the property, signed by the secured party.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 261.006. PRIORITIES AND REMEDIES APPLICABLE TO CERTAIN PERFECTED SECURITY INTERESTS. The provisions of Chapter 9 relating to priorities and remedies apply to security interests in personal property, including fixtures, perfected under Section 261.004.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 261.007. NOTICE OF NAME CHANGE, MERGER, OR CONSOLIDATION. (a) A utility that changes its name or merges or consolidates after filing a utility security instrument under Section 261.004 shall promptly file with the secretary of state a written statement of the name change, merger, or consolidation. The written statement must:

(1) be signed by the secured party and the utility;

(2) identify the appropriate utility security instrument by file number; and

(3) state the name of the utility after the name change, merger, or consolidation.

(b) Unless a written statement is filed under Subsection (a) not later than four months after the effective date of the name change, merger, or consolidations, the filing of a utility security instrument before the name change, merger, or consolidation does not constitute perfection or serve as notice under Section 261.004 of a security interest in property acquired by the utility more than four months after the name change, merger, or consolidation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 261.008. ENDORSEMENT AND FILING BY SECRETARY OF STATE; FEES. (a) The secretary of state shall endorse on a utility security instrument and any statement of name change, merger, or

consolidation filed with the secretary of state:

(1) the day and hour of receipt; and

(2) the assigned file number.

(b) In the absence of other evidence, an endorsement under Subsection (a) is conclusive proof of the time and fact of filing.

(c) The secretary of state shall file in adequate filing devices and retain in the secretary of state's office all utility security instruments and statements of name change, merger, or consolidation filed with the secretary of state.

(d) The secretary of state shall charge a $25 fee to:

(1) file and index:

(A) a utility security instrument;

(B) an instrument that supplements or amends a utility security instrument; or

(C) a statement of name change, merger, or consolidation; and

(2) stamp a copy of a document described by Subdivision (1), provided by the secured party or the utility, to indicate the date and place of filing.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 261.009. CERTIFICATE OF FILING; FEE. (a) On request of any person, the secretary of state shall issue a certificate that:

(1) indicates whether on the date and hour stated in the request, there is on file any presently effective utility security instrument naming a particular utility; and

(2) if there is, states:

(A) the date and hour the utility security instrument was filed; and

(B) the names and addresses of each secured party.

(b) The amount of the fee for a certificate under this section is the same as the amount of the fee provided by Section 9.525(d).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 547 (S.B. 1699), Sec. 4, eff. September 1, 2009.

Sec. 261.010. COPY OF FILED UTILITY SECURITY INSTRUMENT; FEE. (a) On request and payment of the fee prescribed by Subsection (b), the secretary of state shall provide a person with a copy of any filed utility security instrument.

(b) The fee for a copy under this section is in the amount provided by Section 405.031, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 547 (S.B. 1699), Sec. 5, eff. September 1, 2009.

Sec. 261.011. NOTICE OF UTILITY SECURITY INSTRUMENT AFFECTING REAL PROPERTY. (a) If a utility security instrument filed with the secretary of state under Section 261.004 grants a security interest in real property owned by the utility, a notice of utility security instrument affecting real property must be recorded in the office of the county clerk in the county in which the real property is located. The notice must state:

(1) the name of the utility that executed the utility security instrument;

(2) that a utility security instrument affecting real property in the county has been executed by the utility; and

(3) that the utility security instrument was filed, and other security instruments may be on file, with the secretary of state.

(b) A notice recorded under Subsection (a) is sufficient to provide notice of any other security instrument filed with the secretary of state that:

(1) was executed by the utility; and

(2) grants a security interest in any real property located in the county in which the notice was recorded or in any fixture on the property.

(c) The county clerk shall record and index a notice described by Subsection (a) in the same records and indices as the clerk records and indexes mortgages on real property.

(d) The county clerk shall maintain a separate index of utility security instruments and continuation statements recorded under prior law.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 261.012. ASSIGNMENT OF SECURITY INTEREST. (a) A secured party may assign a security interest recorded under Section 261.004 without making any filing or giving any notice under this chapter. The security interest assigned remains valid and perfected and retains its priority, securing the obligation assigned to the assignee, against transferees from and creditors of the debtor utility, including lien creditors, as defined by Section 9.102.

(b) An assignee or assignor may, but need not to retain the validity, perfection, and priority of the security interest assigned, as evidence of the assignment of the security interest recorded under Section 261.004, apply to the secretary of state for the assignee to be reflected as secured party on the utility security instrument and notify the debtor utility of the assignment. Failure to make application under this section or notify a debtor utility of an assignment does not create a cause of action against the secured party reflected on the utility security instrument, the assignor, or the assignee or affect the continuation of the perfected status of the assigned security interest in favor of the assignee against transferees from and creditors of the debtor utility, including lien creditors, as defined by Section 9.102.

Added by Acts 2009, 81st Leg., R.S., Ch. 814 (S.B. 1592), Sec. 2, eff. June 19, 2009.

TITLE 9. APPLICABILITY OF LAW TO COMMERCIAL TRANSACTIONS

CHAPTER 271. RIGHTS OF PARTIES TO CHOOSE LAW APPLICABLE TO CERTAIN TRANSACTIONS

Sec. 271.001. DEFINITION. In this chapter, "qualified transaction" means a transaction under which a party:

(1) pays or receives, or is obligated to pay or is entitled to receive, consideration with an aggregate value of at least $1 million; or

(2) lends, advances, borrows, or receives, or is obligated to lend or advance or is entitled to borrow or receive, money or credit with an aggregate value of at least $1 million.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 271.002. SUBSTANTIALLY SIMILAR OR RELATED TRANSACTIONS. For purposes of this chapter, two or more substantially similar or related transactions are considered a single transaction if the transactions:

(1) are entered into contemporaneously; and

(2) have at least one common party.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 271.003. CONFLICT-OF-LAWS RULES. For purposes of this chapter, a reference to the law of a particular jurisdiction does not include that jurisdiction's conflict-of-laws rules.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 271.004. DETERMINATION OF REASONABLE RELATION OF TRANSACTION TO PARTICULAR JURISDICTION. (a) For purposes of this chapter, a transaction bears a reasonable relation to a particular jurisdiction if the transaction, the subject matter of the transaction, or a party to the transaction is reasonably related to that jurisdiction.

(b) A transaction bearing a reasonable relation to a particular jurisdiction includes:

(1) a transaction in which:

(A) a party to the transaction is a resident of that jurisdiction;

(B) a party to the transaction has the party's place of business or, if that party has more than one place of business, the party's chief executive office or an office from which the party

conducts a substantial part of the negotiations relating to the transaction, in that jurisdiction;

(C) all or part of the subject matter of the transaction is located in that jurisdiction;

(D) a party to the transaction is required to perform in that jurisdiction a substantial part of the party's obligations relating to the transaction, such as delivering payments;

(E) a substantial part of the negotiations relating to the transaction occurred in or from that jurisdiction and an agreement relating to the transaction was signed in that jurisdiction by a party to the transaction; or

(F) all or part of the subject matter of the transaction is related to the governing documents or internal affairs of an entity formed under the laws of that jurisdiction, such as:

(i) an agreement among members or owners of the entity, an agreement or option to acquire a membership or ownership interest in the entity, and the conversion of debt or other securities into an ownership interest in the entity; and

(ii) any other matter relating to rights or obligations with respect to the entity's membership or ownership interests; and

(2) a transaction in which:

(A) all or part of the subject matter of the transaction is a loan or other extension of credit in which a party lends, advances, borrows, or receives, or is obligated to lend or advance or entitled to borrow or receive, money or credit with an aggregate value of at least $25 million;

(B) at least three financial institutions or other lenders or providers of credit are parties to the transaction;

(C) the particular jurisdiction is in the United States; and

(D) a party to the transaction has more than one place of business and has an office in that particular jurisdiction.

(c) If a transaction bears a reasonable relation to a particular jurisdiction at the time the parties enter into the transaction, the transaction shall continue to bear a reasonable relation to that jurisdiction regardless of:

(1) any subsequent change in facts or circumstances with respect to the transaction, the subject matter of the transaction, or any party to the transaction; or

(2) any modification, amendment, renewal, extension, or restatement of any agreement relating to the transaction.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 132 (H.B. 2991), Sec. 1, eff. September 1, 2011.

Sec. 271.005. LAW GOVERNING ISSUE RELATING TO QUALIFIED TRANSACTION. (a) Except as provided by Section 271.007, 271.008(b), 271.009, 271.010, or 271.011 or by Chapter 272, the law of a particular jurisdiction governs an issue relating to a qualified transaction if:

(1) the parties to the transaction agree in writing that the law of that jurisdiction governs the issue, including the validity or enforceability of an agreement relating to the transaction or a provision of the agreement; and

(2) the transaction bears a reasonable relation to that jurisdiction.

(b) The law of a particular jurisdiction governs an issue described by this section regardless of whether the application of that law is contrary to a fundamental or public policy of this state or of any other jurisdiction.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 271.006. LAW GOVERNING INTERPRETATION OR CONSTRUCTION OF AGREEMENT RELATING TO QUALIFIED TRANSACTION. Except as provided by Section 271.008(b), 271.009, 271.010, or 271.011 and by Chapter 272, if the parties to a qualified transaction agree in writing that the law of a particular jurisdiction governs the interpretation or construction of an agreement relating to the transaction or a provision of the agreement, the law of that jurisdiction governs that issue regardless of whether the transaction bears a reasonable relation to that jurisdiction.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01,

eff. April 1, 2009.

Sec. 271.007. LAW GOVERNING VALIDITY OR ENFORCEABILITY OF TERM OF AGREEMENT RELATING TO QUALIFIED TRANSACTION. (a) Except as provided by Section 271.008(b), 271.009, 271.010, or 271.011 or by Chapter 272, this section applies if:

(1) the parties to a qualified transaction agree in writing that the law of a particular jurisdiction governs the validity or enforceability of an agreement relating to the transaction or a provision of the agreement;

(2) the transaction bears a reasonable relation to that jurisdiction; and

(3) a term of the agreement or of that provision is invalid or unenforceable under the law of that jurisdiction but is valid or enforceable under the law of the jurisdiction that has the most significant relation to the transaction, the subject matter of the transaction, and the parties.

(b) If this section applies:

(1) the law of the jurisdiction that has the most significant relation to the transaction, the subject matter of the transaction, and the parties governs the validity or enforceability of a term described by Subsection (a)(3); and

(2) the law of the jurisdiction that the parties agree would govern the validity or enforceability of the agreement or provision governs the validity or enforceability of the other terms of the agreement or provision.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 271.008. APPLICABILITY TO CERTAIN REAL PROPERTY TRANSACTIONS; EXCEPTIONS. (a) Sections 271.004-271.007 apply to the determination of the law that governs an issue relating to a transaction involving real property other than a matter described by Subsection (b), including the validity or enforceability of an indebtedness incurred in consideration for the transfer of, or the payment of which is secured by a lien on, real property.

(b) Sections 271.004-271.007 do not apply to the determination

of the law that governs:

(1) whether a transaction transfers or creates an interest in real property for security purposes or otherwise;

(2) the nature of an interest in real property that is transferred or created by a transaction;

(3) the method for foreclosure of a lien on real property;

(4) the nature of an interest in real property that results from foreclosure; or

(5) the manner and effect of recording or failing to record evidence of a transaction that transfers or creates an interest in real property.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 271.009. EXCEPTION: MARRIAGE OR ADOPTION. Sections 271.004-271.007 do not apply to the determination of the law that governs:

(1) the validity of a marriage or an adoption;

(2) whether a marriage has been terminated; or

(3) the effect of a marriage on property owned by a spouse at the time of the marriage or acquired by either spouse during the marriage.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 271.010. EXCEPTION: DECEDENT'S ESTATE. Sections 271.004-271.007 do not apply to the determination of the law that governs:

(1) whether an instrument is a will;

(2) the rights of persons under a will; or

(3) the rights of persons in the absence of a will.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 271.011. EXCEPTION: OTHER STATUTE SPECIFYING GOVERNING LAW. Sections 271.004-271.007 do not apply to the determination of

the law that governs an issue that another statute of this state or a statute of the United States provides is governed by the law of a particular jurisdiction.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 272. LAW APPLICABLE TO CERTAIN CONTRACTS FOR CONSTRUCTION OR REPAIR OF REAL PROPERTY IMPROVEMENTS

Sec. 272.001. VOIDABLE CONTRACT PROVISION. (a) This section applies only to a contract that is principally for the construction or repair of an improvement to real property located in this state.

(b) If a contract contains a provision making the contract or any conflict arising under the contract subject to another state's law, litigation in the courts of another state, or arbitration in another state, that provision is voidable by the party obligated by the contract to perform the construction or repair.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 272.002. CONTRACT PRINCIPALLY FOR CONSTRUCTION OR REPAIR OF REAL PROPERTY IMPROVEMENTS. (a) For purposes of this chapter, a contract is principally for the construction or repair of an improvement to real property located in this state if the contract obligates a party, as the party's principal obligation under the contract, to provide labor or labor and materials as a general contractor or subcontractor for the construction or repair of an improvement to real property located in this state.

(b) For purposes of this chapter, a contract is not principally for the construction or repair of an improvement to real property located in this state if the contract:

(1) is a partnership agreement or other agreement governing an entity or trust;

(2) provides for a loan or other extension of credit and the party promising to construct or repair the improvement is doing so as part of the party's agreements with the lender or other person who extends credit; or

(3) is for the management of real property or improvements

and the obligation to construct or repair the improvement is part of that management.

(c) Subsections (a) and (b) do not provide an exclusive list of the situations in which a contract is or is not principally for the construction or repair of an improvement to real property located in this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 273. LAW OR FORUM APPLICABLE TO CERTAIN CONTRACTS FOR DISPOSITION OF GOODS

Sec. 273.001. CONTRACTS SUBJECT TO CHAPTER. This chapter applies to a contract only if:

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

(2) any element of the contract's execution occurred in this state;

(3) a party to the contract is:

(A) an individual resident of this state; or

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

(4) Section 1.301 does not apply to the contract.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 273.002. NOTICE OF APPLICABLE LAW OR FORUM. If a contract contains a provision making the contract or any conflict arising under the contract subject to another state's laws, litigation in the courts of another state, or arbitration in another state, that provision must be set out conspicuously in print, type, or other form of writing that is boldfaced, capitalized, underlined, or otherwise set out in such a manner that a reasonable person against whom the provision may operate would notice the provision.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01,

eff. April 1, 2009.

Sec. 273.003. FAILURE TO PROVIDE NOTICE. A contract provision that does not comply with Section 273.002 is voidable by a party against whom the provision is sought to be enforced.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 274. LAW APPLICABLE TO CONTRACT MADE OVER INTERNET

Sec. 274.001. DEFINITION. In this chapter, "Internet" means the largest nonproprietary nonprofit cooperative public computer network, popularly known as the Internet.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 274.002. APPLICABILITY OF CHAPTER; EXCEPTION. (a) Except as provided by Subsection (b), this chapter applies only to a contract made solely over the Internet between a person located in this state and a person located outside this state who does not maintain an office or agent in this state for transacting business in this state.

(b) This chapter does not apply to a contract to which Chapter 271 applies.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 274.003. STATE LAW GOVERNING CONTRACT; BURDEN OF PROOF. (a) A contract is governed by the law of this state unless each party to the contract who is located in this state:

(1) is given notice that the law of the state in which another party to the contract is located applies to the contract; and

(2) agrees to the application of that state's law.

(b) A person asserting that the law of another state governs a contract has the burden of proving that notice was given and

agreement was obtained as specified by Subsection (a).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 274.004. APPLICABILITY OF OTHER LAW TO CONTRACT. Section 1.031 and Chapter 273 do not apply to a contract to which this chapter applies.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

TITLE 10. USE OF TELECOMMUNICATIONS
SUBTITLE A. TELEPHONES
CHAPTER 301. TELEPHONE SOLICITATION PRACTICES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 301.001. DEFINITIONS. In this chapter:

(1) "Automated dial announcing device" means automated equipment used for telephone solicitation or collection that can:

(A) store telephone numbers to be called or produce numbers to be called through use of a random or sequential number generator; and

(B) convey, alone or in conjunction with other equipment, a prerecorded or synthesized voice message to the number called without the use of a live operator.

(2) "Consumer" means a person who is solicited to purchase, lease, or receive a consumer good or service.

(3) "Consumer good or service" means:

(A) real property or tangible or intangible personal property that is normally used for personal, family, or household purposes, including:

(i) personal property intended to be attached to or installed in any real property;

(ii) a cemetery lot; and

(iii) a time-share estate; or

(B) a service related to real or personal property.

(4) "Consumer telephone call" means an unsolicited call made to a residential telephone number by a telephone solicitor to:

(A) solicit a sale of a consumer good or service;

(B) solicit an extension of credit for a consumer good or service; or

(C) obtain information that will or may be used to directly solicit a sale of a consumer good or service or to extend credit for the sale.

(5) "Telephone solicitor" means a person who makes or causes to be made a consumer telephone call, including a call made by an automated dial announcing device.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER B. PERMITTED AND PROHIBITED PRACTICES

Sec. 301.051. TELEPHONE SOLICITATION REQUIREMENTS. (a) This section does not apply to a consumer telephone call made:

(1) in response to the express request of the consumer;

(2) primarily in connection with an existing debt or contract for which payment or performance has not been completed at the time of the call; or

(3) to a consumer with whom the telephone solicitor has a prior or existing business relationship.

(b) A telephone solicitor may not make a consumer telephone call to a consumer unless:

(1) the telephone solicitor, immediately after making contact with the consumer to whom the call is made, identifies:

(A) himself or herself by name;

(B) the business on whose behalf the telephone solicitor is calling; and

(C) the purpose of the call;

(2) the telephone solicitor makes the call after 12 noon and before 9 p.m. on a Sunday or after 9 a.m. and before 9 p.m. on a weekday or a Saturday; and

(3) for those calls in which an automated dial announcing device is used, the device disconnects the consumer's telephone line within the period specified by Section 55.126, Utilities Code, after either the telephone solicitor or the consumer terminates the call.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 301.052. CHARGES TO CONSUMER'S CREDIT CARD ACCOUNT. A person who sells consumer goods or services through the use of a telephone solicitor may not make or submit a charge to a consumer's credit card account unless the seller:

(1) provides that:

(A) the consumer may receive a full refund for returning undamaged and unused goods or canceling services by providing notice to the seller not later than the seventh day after the date the consumer receives the goods or services; and

(B) the seller will process:

(i) a refund not later than the 30th day after the date the seller receives the returned goods from the consumer; or

(ii) a full refund not later than the 30th day after the date the consumer cancels an order for the purchase of services not performed or a pro rata refund for any services not yet performed for the consumer;

(2) provides to the consumer a written contract fully describing the goods or services being offered, the total price to be charged, the name, address, and business telephone number of the seller, and any terms affecting the sale and receives from the consumer a signed copy of the contract; or

(3) is an organization that qualifies for an exemption from federal income taxation under Section 501(c)(3), Internal Revenue Code of 1986, and has obtained that exemption from the Internal Revenue Service.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER C. ENFORCEMENT

Sec. 301.101. INVESTIGATION BY ATTORNEY GENERAL'S OFFICE. The attorney general's office shall investigate a complaint relating to a violation of this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 301.102. INJUNCTIVE RELIEF. (a) The attorney general's office may petition a district court for a temporary restraining

order to restrain a continuing violation of this chapter.

(b) A district court, on petition of the attorney general's office and on finding that a person is violating this chapter, may:

(1) issue an injunction prohibiting the person from continuing the violation; or

(2) grant any other injunctive relief warranted by the facts.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 301.103. CIVIL PENALTY; RESTITUTION. (a) A person who knowingly violates this chapter is liable for a civil penalty of not more than $10,000 for each violation.

(b) In addition to bringing an action for injunctive relief under Section 301.102, the attorney general's office may seek restitution and petition a district court for the assessment of a civil penalty as provided by this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 301.104. CIVIL ACTION. A consumer injured by a violation of this chapter may bring an action for recovery of damages. The damages awarded may not be less than the amount the consumer paid the person who sold the consumer goods or services through the use of the telephone solicitor, plus reasonable attorney's fees and court costs.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 301.105. VENUE. Venue for an action brought under this chapter is in:

(1) the county in which the consumer telephone call originated;

(2) the county in which the consumer telephone call was received; or

(3) Travis County.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 302. REGULATION OF TELEPHONE SOLICITATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 302.001. DEFINITIONS. In this chapter:

(1) "Item" means property or a service. The term includes a coupon book to be used with a business.

(2) "Owner" means a person who has control of or is entitled to, by ownership or other claim, at least 10 percent of a seller's net income.

(3) "Purchaser" means a person who:

(A) is solicited to become or becomes obligated for the purchase or rental of an item; or

(B) is offered an opportunity to claim or receive an item.

(4) "Salesperson" means a person who is employed or authorized by a seller to make a telephone solicitation.

(5) "Seller" means a person who makes a telephone solicitation on the person's own behalf.

(6) "Supervised financial institution" means a bank, trust company, savings and loan association, credit union, industrial loan company, personal property broker, consumer finance lender, commercial finance lender, insurer, or other financial institution that is subject to supervision by an official or agency of this state or the United States.

(7) "Telephone solicitation" means a telephone call a seller or salesperson initiates to induce a person to purchase, rent, claim, or receive an item. The term includes a telephone call a purchaser makes in response to a solicitation sent by mail or made by any other means.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 302.002. MAKING TELEPHONE SOLICITATION. For purposes of this chapter, a person makes a telephone solicitation if the person effects or attempts to effect a telephone solicitation, including a

solicitation initiated by an automatic dialing machine or a recorded message device.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 302.003. LIBERAL CONSTRUCTION AND APPLICATION. This chapter shall be liberally construed and applied to promote its underlying purpose to protect persons against false, misleading, or deceptive practices in the telephone solicitation business.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 302.004. ATTEMPTED WAIVER VOID. An attempted waiver of a provision of this chapter is void.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER B. EXEMPTIONS

Sec. 302.051. BURDEN OF PROOF. (a) In a civil proceeding in which a violation of this chapter is alleged, a person who claims an exemption from the application of this chapter has the burden of proving the exemption.

(b) In a criminal proceeding in which a violation of this chapter is alleged, a person who claims an exemption from the application of this chapter as a defense to prosecution has the burden of producing evidence to support the defense.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 302.052. EXEMPTIONS APPLY ONLY TO SELLERS; EXCEPTION. Except as provided by Section 302.060, an exemption from the application of this chapter applies only to a seller.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 302.053. EXEMPTION: PERSONS REGULATED BY OTHER LAW. This chapter does not apply to:

(1) a person offering or selling a security that has been qualified for sale under Section 7, The Securities Act (Article 581-7, Vernon's Texas Civil Statutes), or that is subject to an exemption under Section 5 or 6 of that Act;

(2) a publicly traded corporation registered with the Securities and Exchange Commission or the State Securities Board, or a subsidiary or agent of the corporation;

(3) a person who holds a license issued under the Insurance Code if the solicited transaction is governed by that code;

(4) a supervised financial institution or a parent, a subsidiary, or an affiliate of a supervised financial institution;

(5) a person whose business is regulated by the Public Utility Commission of Texas or an affiliate of that person, except that this chapter applies to such a person or affiliate only with respect to one or more automated dial announcing devices;

(6) a person subject to the control or licensing regulations of the Federal Communications Commission;

(7) a person selling a contractual plan regulated by the Federal Trade Commission trade regulation on use of negative option plans by sellers in commerce under 16 C.F.R. Part 425;

(8) a person subject to filing requirements under Chapter 1803, Occupations Code; or

(9) a person who:

(A) is soliciting a transaction regulated by the Commodity Futures Trading Commission; and

(B) is registered or holds a temporary license for the activity described by Paragraph (A) with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. Section 1 et seq.), if the registration or license has not expired or been suspended or revoked.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 302.054. EXEMPTION: PERSONS SELLING MEDIA SUBSCRIPTIONS, CERTAIN MERCHANDISE, OR ITEMS FROM CERTAIN CATALOGS. This chapter does not apply to:

(1) a person soliciting the sale of a subscription to:

(A) a daily or weekly newspaper of general circulation;

(B) a magazine or other periodical of general circulation; or

(C) a cable television service;

(2) a person selling merchandise under an arrangement in which the seller periodically ships the merchandise to a consumer who has consented in advance to receive the merchandise periodically; or

(3) a person periodically issuing and delivering to purchasers catalogs that each:

(A) include a written description or illustration and the sales price of each item offered for sale;

(B) include at least 24 full pages of written material or illustrations;

(C) are distributed in more than one state; and

(D) have an annual circulation of at least 250,000 customers.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 302.055. EXEMPTION: EDUCATIONAL AND NONPROFIT ORGANIZATIONS. This chapter does not apply to an educational institution or organization or a nonprofit organization exempt from taxation under Section 501(c)(3), Internal Revenue Code of 1986.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 302.056. EXEMPTION: CERTAIN COMMERCIAL SALES. This chapter does not apply to a sale in which the purchaser is a business that intends to:

(1) resell the item purchased; or

(2) use the item purchased in a recycling, reuse, remanufacturing, or manufacturing process.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 302.057. EXEMPTION: PERSON SOLICITING FOOD SALES. This chapter does not apply to a person soliciting the sale of food.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 302.058. EXEMPTION: SOLICITATION OF FORMER OR CURRENT CUSTOMERS. This chapter does not apply to:

(1) the solicitation of a contract for the maintenance or repair of an item previously purchased from the person making the solicitation or on whose behalf the solicitation is made; or

(2) a person who:

(A) is soliciting business from a former or current customer; and

(B) has operated under the same business name for at least two years.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 302.059. EXEMPTION: PERSONS WHO MAKE CERTAIN SALES PRESENTATIONS OR MAKE SALES AT ESTABLISHED RETAIL LOCATIONS. This chapter does not apply to:

(1) a person conducting a telephone solicitation who:

(A) does not intend to complete or obtain provisional acceptance of a sale during the telephone solicitation;

(B) does not make a major sales presentation during the telephone solicitation but arranges for a major sales presentation to be made face-to-face at a later meeting between the salesperson and the purchaser; and

(C) does not cause an individual to go to the purchaser to collect payment for the purchase or to deliver an item purchased directly following the telephone solicitation; or

(2) a person who for at least two years, under the same name as that used in connection with the person's telemarketing

operations, has operated a retail establishment where consumer goods are displayed and offered for sale continuously, if a majority of the person's business involves buyers obtaining services or products at the retail establishment.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 302.060. EXEMPTION: CERTAIN PERSONS PROVIDING TELEPHONE SOLICITATION SERVICES PREDOMINANTLY FOR EXEMPT PERSONS. This chapter does not apply to a person:

(1) who provides telephone solicitation services under contract to a seller;

(2) who has been operating continuously for at least three years under the same business name; and

(3) for whom at least 75 percent of the person's contracts are performed on behalf of other persons exempt from the application of this chapter under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 302.061. EXEMPTION: PERSONS CONDUCTING CERTAIN ISOLATED TELEPHONE SOLICITATIONS. This chapter does not apply to a person engaging in a telephone solicitation that:

(1) is an isolated transaction; and

(2) is not done in the course of a pattern of repeated transactions of a similar nature.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER C. REGISTRATION

Sec. 302.101. REGISTRATION CERTIFICATE REQUIRED. (a) A seller may not make a telephone solicitation from a location in this state or to a purchaser located in this state unless the seller holds a registration certificate for the business location from which the telephone solicitation is made.

(b) A separate registration certificate is required for each business location from which a telephone solicitation is made.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 302.102. FILING OF REGISTRATION STATEMENT; PUBLIC INFORMATION. (a) To obtain a registration certificate, a seller must file with the secretary of state a registration statement that:

(1) is in the form prescribed by the secretary of state;

(2) contains the information required by Subchapter D;

(3) is verified by each principal of the seller; and

(4) specifies the date and location of verification.

(b) Information included in or attached to a registration statement is public information.

(c) In this section, "principal" means an owner, an executive officer of a corporation, a general partner of a partnership, a sole proprietor, a trustee of a trust, or another individual with similar supervisory functions with respect to any person.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 302.103. ISSUANCE OF REGISTRATION CERTIFICATE. (a) The secretary of state shall issue a registration certificate and mail the certificate to the seller when the secretary of state receives:

(1) a completed registration statement required by Section 302.102;

(2) the filing fee prescribed by Section 302.106;

(3) the security required by Section 302.107; and

(4) the consent regarding service of process required by Section 302.108.

(b) If the seller uses a single registration statement to register more than one business location, the secretary of state shall:

(1) issue a registration certificate for each business location; and

(2) mail all the certificates to the principal business location shown on the registration statement.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 302.104. EFFECTIVE DATE OF REGISTRATION STATEMENT; RENEWAL. (a) A registration statement takes effect on the date the secretary of state issues the registration certificate and is effective for one year.

(b) A registration statement may be renewed annually by:

(1) filing a renewal registration statement containing the information required by Subchapter D; and

(2) paying the filing fee prescribed by Section 302.106.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 302.105. ADDENDA REQUIREMENTS. (a) For each quarter after the effective date of a registration statement, the seller shall file with the secretary of state an addendum providing the required registration information for each salesperson who is soliciting or has solicited on behalf of the seller during the preceding quarter.

(b) A seller may comply with Subsection (a) by filing with the secretary of state a copy of the "Employer's Quarterly Report" for employee wages that the seller files with the Texas Workforce Commission.

(c) In addition to filing the quarterly addendum, if a material change in information submitted in a registration statement, other than the information described by Subsection (a), occurs before the date for renewal, a seller shall submit that information to the secretary of state by filing an addendum.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 302.106. FILING FEE. The filing fee for a registration statement is $200.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01,

eff. April 1, 2009.

Sec. 302.107. SECURITY REQUIREMENTS. A registration statement must be accompanied by security that:

(1) is in the amount of $10,000;

(2) is in the form of:

(A) a bond executed by a corporate security that:

(i) is approved by the secretary of state; and

(ii) holds a license to transact business in this state;

(B) an irrevocable letter of credit issued for the benefit of the registrant by a supervised financial institution whose deposits are insured by an agency of the federal government; or

(C) a certificate of deposit in a supervised financial institution whose deposits are insured by an agency of the federal government, the principal of which may be withdrawn only on the order of the secretary of state; and

(3) is conditioned on the seller's compliance with this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 302.108. APPOINTMENT OF SECRETARY OF STATE AS AGENT FOR SERVICE. (a) A seller shall file with the secretary of state, in the form prescribed by the secretary of state, an irrevocable consent appointing the secretary of state to act as the seller's agent to receive service of process in a noncriminal action or proceeding that may arise under this chapter against the seller or the seller's successor, executor, or administrator if:

(1) an agent has not been named under Section 302.151(15);

(2) the agent named under Section 302.151(15) has resigned or died and the name of a successor agent has not been submitted under Section 302.105; or

(3) the agent named under Section 302.151(15) cannot with reasonable diligence be found at the disclosed address.

(b) Service on the secretary of state under this section has the same effect as service on the seller. Service on the secretary

of state may be made by:

(1) leaving a copy of the process in the office of the secretary of state;

(2) promptly sending by first class mail a notice of the service and a copy of the process to the seller's principal business location at the last address on file with the secretary of state; and

(3) filing the plaintiff's affidavit of compliance with this section in the action or proceeding on or before the return date of any process or within an additional period that the court allows.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER D. DISCLOSURES REQUIRED IN REGISTRATION STATEMENT

Sec. 302.151. DISCLOSURE OF CERTAIN NAMES, ADDRESSES, TELEPHONE NUMBERS, AND ORGANIZATIONAL INFORMATION. A registration statement must contain:

(1) the seller's name and, if different from the seller's name, the name under which the seller is transacting or intends to transact business;

(2) the name of each parent and affiliated organization of the seller that:

(A) will transact business with a purchaser relating to sales solicited by the seller; or

(B) accepts responsibility for statements made by, or acts of, the seller relating to sales solicited by the seller;

(3) the seller's:

(A) form of business; and

(B) place of organization;

(4) for a seller who is a corporation, a copy of the seller's certificate of formation and bylaws;

(5) for a seller who is a partnership, a copy of the partnership agreement;

(6) for a seller who is operating under an assumed business name, the location where the assumed name has been registered;

(7) for any parent or affiliated organization disclosed under Subdivision (2), the applicable information that is required of a seller under Subdivisions (3) through (6);

(8) the complete street address of each location of the seller, designating the principal location from which the seller will be transacting business;

(9) if the principal business location of the seller is not in this state, a designation of the seller's main location in this state;

(10) a listing of each telephone number to be used by the seller and the address where each telephone using the number is located;

(11) the name and title of each of the seller's officers, directors, trustees, general and limited partners, and owners, as applicable, and the name of each of those persons who has management responsibilities in connection with the seller's business activities;

(12) for each person whose name is disclosed under Subdivision (11) and for each seller who is a sole proprietor:

(A) the complete address of the person's principal residence;

(B) the person's date of birth; and

(C) the number of and state that issued the person's driver's license;

(13) the name and principal residence address of each person the seller leaves in charge at each location from which the seller transacts business in this state and the business location at which each of those persons is or will be in charge;

(14) the name and principal residence address of each salesperson who solicits on the seller's behalf or a copy of the "Employer's Quarterly Report" for employee wages the seller files with the Texas Workforce Commission and the name the salesperson uses while soliciting;

(15) the name and address of the seller's agent in this state, other than the secretary of state, who is authorized to receive service of process; and

(16) the name and address of each financial institution with which the seller makes banking or similar monetary transactions and the identification number of each of the seller's accounts in each institution.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 302.152. DISCLOSURE OF CERTAIN CONVICTIONS, PLEAS, JUDGMENTS, ORDERS, BANKRUPTCIES, AND REORGANIZATIONS. (a) With respect to the seller and each person identified under Section 302.151(11) or (13), a registration statement must identify each person:

(1) who has been convicted of or pleaded nolo contendere to:

(A) an offense involving an alleged violation of this chapter; or

(B) fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property;

(2) against whom a final judgment or order has been entered in a civil or administrative action, including a stipulated judgment or order, in which the complaint or petition alleged:

(A) acts constituting:

(i) a violation of this chapter; or

(ii) fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property;

(B) the use of false or misleading representations in an attempt to sell or otherwise dispose of property; or

(C) the use of unfair, unlawful, or deceptive business practices;

(3) who is subject to an injunction or restrictive court order relating to business activity as the result of an action brought by a federal, state, or local public agency, including an action affecting a vocational license; or

(4) who, during the previous seven tax years:

(A) has filed in bankruptcy;

(B) has been adjudged a bankrupt;

(C) has been reorganized because of insolvency; or

(D) has been a principal, director, officer, trustee, or general or limited partner of, or had management responsibilities for, a corporation, partnership, joint venture, or other business entity that has filed in bankruptcy, been adjudged a bankrupt, or been reorganized because of insolvency while the person held that position or on or before the first anniversary of the date on which the person last held that position.

(b) For each person identified under Subsection (a)(1), (2), or (3), the statement must disclose:

(1) the court that received the plea of nolo contendere or

the court or administrative agency that rendered the conviction, judgment, or order;

(2) the docket number of the matter;

(3) the date the plea of nolo contendere was received or the date of the conviction, judgment, or order; and

(4) the name of any government agency that brought the action resulting in the plea or the conviction, judgment, or order.

(c) For each person identified under Subsection (a)(4), the statement must disclose:

(1) the name and location of the person filing in bankruptcy, adjudged a bankrupt, or reorganized because of insolvency;

(2) the date of the filing, judgment, or reorganization order;

(3) the court having jurisdiction; and

(4) the docket number of the matter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 302.153. DISCLOSURE OF CERTAIN SALES INFORMATION. (a) A registration statement must be accompanied by:

(1) a description of the items the seller is offering for sale;

(2) a copy of all sales information and literature, including scripts, outlines, instructions, and information regarding the conduct of telephone solicitations, sample introductions, sample closings, product information, and contest or premium-award information, that the seller provides to salespersons or about which the seller informs salespersons;

(3) a copy of all written material the seller sends to any purchaser; and

(4) as applicable, the information and documents specified by Subsections (b) through (h).

(b) If the seller represents or implies, or directs a salesperson to represent or imply, to a purchaser that the purchaser will receive a specific item, including a certificate that the purchaser must redeem to obtain the item described in the certificate, or one or more items from among designated items,

regardless of whether the items are designated as gifts, premiums, bonuses, or prizes or otherwise, the registration statement must be accompanied by:

(1) a list of the items described;

(2) the value of each item and the basis for the valuation;

(3) the price the seller paid for each item to the seller's supplier and the name, address, and telephone number of each item's supplier;

(4) all rules and terms a purchaser must meet to receive the item; and

(5) if the purchaser will not receive all of the items described by the seller:

(A) the manner in which the seller decides which item a particular purchaser is to receive;

(B) for each item, the odds of a single purchaser receiving the item; and

(C) the name and address of each purchaser who has received, during the preceding 12 months, the item with the greatest value and the item with the lowest odds of being received.

(c) If the seller is offering an item that the seller does not manufacture or supply, the registration statement must be accompanied by:

(1) the name, address, and telephone number of each of the seller's suppliers;

(2) a description of each item provided by each supplier named in Subdivision (1); and

(3) as applicable, the information and documents specified by Subsections (d) through (g).

(d) If the seller is offering an item that the seller does not manufacture or supply and the possession of the item is to be retained by the seller or will not be transferred to the purchaser until the purchaser has paid in full, the registration statement must be accompanied by:

(1) the address of each location where the item will be kept;

(2) if the item is not kept on premises owned by the seller or at an address registered under Section 302.151(8) or (9), the name of the owner of the business at which the item will be kept; and

(3) a copy of any contract or other document that evidences the seller's right to store the item at the address designated under

Subdivision (2).

(e) If the seller is offering an item that the seller does not manufacture or supply and the seller is not selling the item from the seller's own inventory but purchases the item to fill an order previously taken from a purchaser, the registration statement must be accompanied by a copy of each contract or other document that evidences the seller's ability to call on suppliers to fill the seller's orders.

(f) If the seller is offering an item that the seller does not manufacture or supply and the seller represents to purchasers that the seller has insurance or a surety bond relating to a purchaser's purchase of an item, the registration statement must be accompanied by a copy of each insurance policy or bond.

(g) If the seller is offering an item that the seller does not manufacture or supply and the seller makes a representation regarding the post-purchase earning or profit potential of an item, the registration statement must be accompanied by:

(1) data to substantiate the claims made; and

(2) if the representation relates to previous sales made by the seller or a related entity, substantiating data based on the experiences of at least 50 percent of purchasers of that particular type of item from the seller or related entity during the preceding six months, including:

(A) the period the seller or related entity has been selling the particular type of item being offered;

(B) the number of purchasers of the item known to the seller or related entity to have made at least the same earnings or profit as those represented; and

(C) the percentage that the number disclosed under Paragraph (B) represents of the total number of purchasers from the seller or related entity of the particular type of item offered.

(h) If the seller is offering to sell an interest in an oil, gas, or mineral field, well, or exploration site, the registration statement must be accompanied by:

(1) any ownership interest of the seller in each field, well, or site being offered for sale;

(2) the total number of interests to be sold in each field, well, or site being offered for sale; and

(3) if, in selling an interest in any particular field, well, or site, reference is made to an investigation of the field,

well, or site by the seller or anyone else:

(A) the name, business address, telephone number, and professional credentials of the person who conducted the investigation; and

(B) a copy of the report and other documents relating to the investigation prepared by the person who conducted the investigation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER E. ADDITIONAL INFORMATION FROM SELLER

Sec. 302.201. INFORMATION REQUIRED TO BE POSTED OR AVAILABLE AT SELLER'S BUSINESS LOCATION. (a) A seller shall post the registration certificate in a conspicuous place at the location for which the certificate is issued.

(b) A seller shall post in close proximity to the registration certificate the name of each individual in charge of the location.

(c) A seller shall make available at each of the seller's business locations a copy of the entire registration statement and any addenda for inspection by a purchaser or by a representative of a government agency.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 302.202. DISCLOSURES REQUIRED BEFORE PURCHASE. When a telephone solicitation is made and before consummation of any sales transaction, a seller shall provide to each purchaser:

(1) the complete street address of the location from which the salesperson is calling the purchaser and, if different, the complete street address of the seller's principal location;

(2) if the seller represents or implies that a purchaser will receive without charge a specified item or one item from among designated items, regardless of whether the items are designated as gifts, premiums, bonuses, prizes, or otherwise:

(A) the information required to be filed by Sections 302.153(b)(4) and (5)(A) and (B), as appropriate; and

(B) the total number of individuals who have actually

received from the seller during the preceding 12 months the item having the greatest value and the item with the smallest odds of being received;

(3) if the seller is offering to sell an interest in an oil, gas, or mineral field, well, or exploration site, the information required by Section 302.153(h); and

(4) if the seller represents that an item is being offered at a price below that usually charged for the item, the name of the item's manufacturer.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 302.203. REFERENCE TO COMPLIANCE WITH STATUTE PROHIBITED. A seller may not make or authorize the making of a reference to the seller's compliance with this chapter to a purchaser.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER F. OFFENSES

Sec. 302.251. VIOLATION OF CERTAIN PROVISIONS. (a) A person commits an offense if the person knowingly violates Section 302.101, 302.105, 302.201, 302.202, or 302.203. Each violation constitutes a separate offense.

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

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 302.252. ACTING AS SALESPERSON FOR UNREGISTERED SELLER. (a) A person commits an offense if the person knowingly acts as a salesperson on behalf of a seller who violates the registration requirements of this chapter. Each violation constitutes a separate offense.

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

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01,

eff. April 1, 2009.

Sec. 302.253. REQUEST FOR CREDIT CARD ACCOUNT NUMBER OR CHECKING ACCOUNT NUMBER AFTER OFFER OF FREE ITEM. (a) A seller commits an offense if the seller knowingly:

(1) represents or implies that a purchaser will receive an item without charge, regardless of whether the item is designated as a gift, premium, bonus, or prize or otherwise; and

(2) requests a credit card account number or checking account number from the purchaser to charge to the credit card account or debit from the checking account an amount as a condition precedent to the purchaser's receipt of the item.

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

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER G. ENFORCEMENT

Sec. 302.301. INJUNCTION. (a) The attorney general may bring an action to enjoin a person from violating this chapter.

(b) The attorney general shall notify the defendant of the alleged prohibited conduct not later than the seventh day before the date the action is filed, except that notice is not required if the attorney general intends to request that the court issue a temporary restraining order.

(c) The attorney general is entitled to recover all reasonable costs of prosecuting the action, including court costs and investigation costs, deposition expenses, witness fees, and attorney's fees.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 302.302. CIVIL PENALTIES. (a) A person who violates this chapter is subject to a civil penalty of not more than $5,000 for each violation.

(b) A person who violates an injunction issued under Section 302.301 is liable to this state for a civil penalty of not more than:

(1) $25,000 for each violation of the injunction; and

(2) $50,000 for all violations of the injunction.

(c) The attorney general may bring an action to recover a civil penalty under Subsection (b) in the court that issued the original injunction.

(d) The party bringing the action also is entitled to recover all reasonable costs of prosecuting the action, including court costs and investigation costs, deposition expenses, witness fees, and attorney's fees.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 302.303. DECEPTIVE TRADE PRACTICES. (a) A violation of this chapter is a false, misleading, or deceptive act or practice under Subchapter E, Chapter 17.

(b) A public or private right or remedy prescribed by Subchapter E, Chapter 17, may be used to enforce this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 302.304. ACTION TO RECOVER AGAINST SECURITY. (a) A person injured by a seller's bankruptcy or by a seller's breach of an agreement entered into during a telephone solicitation may bring an action to recover against the security required under Section 302.107.

(b) The liability of the surety on a bond provided under Section 302.107 may not exceed the amount of the bond, regardless of the number of claims filed or the aggregate amount claimed. If the amount claimed exceeds the amount of the bond, the surety shall deposit the amount of the bond with the secretary of state for distribution to claimants entitled to recovery, and the surety is then relieved of all liability under the bond.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 303. TELEPHONE SOLICITATION FOR CERTAIN LAW ENFORCEMENT-RELATED CHARITABLE ORGANIZATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 303.001. DEFINITIONS. In this chapter:

(1) "Commercial telephone solicitor" means a person whom a law enforcement-related charitable organization retains to make a telephone solicitation, directly or through another person under the direction of the person retained. The term does not include a bona fide officer, director, or employee of, or volunteer for, a law enforcement-related charitable organization.

(2) "Contribution" means a promise to give or a gift of money or other property, credit, financial assistance, or another thing of any kind or value. The term does not include:

(A) volunteer services; or

(B) bona fide fees, dues, or assessments a member pays if membership is not conferred solely as consideration for making a contribution in response to a telephone solicitation.

(3) "Law enforcement-related charitable organization" means a person who solicits a contribution and is or purports to be established or operating for a charitable purpose relating to law enforcement. The term includes a nongovernmental law enforcement organization or publication and survivors of law enforcement officers killed in the line of duty. The term does not include a governmental law enforcement agency or organization.

(4) "Telephone solicitation" means the use of a telephone to solicit another person to make a charitable contribution to a law enforcement-related charitable organization.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 303.002. SOLICITATION GOVERNED BY CHAPTER. The telephone solicitation of a contribution from a person in this state is considered to be engaging in telephone solicitation in this state regardless of where the solicitation originates.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 303.003. PUBLIC ACCESS TO CERTAIN DOCUMENTS AND INFORMATION. (a) Except as provided by Subsection (b), a document required to be filed with the attorney general under this chapter is public information available to members of the public under Chapter 552, Government Code.

(b) A document that identifies the donors to a law enforcement-related charitable organization is confidential and not subject to disclosure.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 303.004. RULES; PROCEDURES; FORMS. The attorney general may adopt rules, procedures, and forms necessary to administer and enforce this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER B. REGISTRATION AND BOND REQUIREMENTS

Sec. 303.051. RECORD OF ORGANIZATIONS. The attorney general shall maintain:

(1) a register of law enforcement-related charitable organizations subject to this chapter; and

(2) a registry of law enforcement-related charitable organizations that submit to the attorney general a completed registration statement containing the information required by Section 303.052.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 303.052. FORM AND CONTENT OF REGISTRATION STATEMENT. A registration statement under Section 303.051(2) must be submitted on a form the attorney general prescribes or approves and must contain:

(1) for each of the organization's offices, chapters, local units, branches, and affiliates:

(A) the legal name and each assumed name;

(B) the mailing address and street address; and

(C) each telephone number and facsimile number;

(2) the organization's employer identification number;

(3) the name, title, address, and telephone number of:

(A) the organization's executive director or other chief operating officer; and

(B) each of the organization's officers and directors;

(4) the name of each officer, director, or employee:

(A) whom the organization compensates or who has custody and control of the organization's money; and

(B) who has been convicted of or pleaded nolo contendere to:

(i) a felony; or

(ii) a misdemeanor involving fraud or the theft, misappropriation, misapplication, or misuse of another's property;

(5) for each person listed under Subdivision (4), a statement of:

(A) the offense; and

(B) the state, court, and date of each conviction or plea of nolo contendere;

(6) if the organization is a corporation, the date and state of incorporation;

(7) if the organization is not a corporation, the type of organization and date established;

(8) the date the organization began transacting business in this state;

(9) the name and address of the organization's registered agent in this state;

(10) a statement of the organization's charitable purposes;

(11) a list of the programs for which funds are solicited;

(12) the day and month on which the organization's fiscal year ends;

(13) a statement of whether the organization:

(A) is eligible to receive tax-deductible contributions under Section 170, Internal Revenue Code of 1986; and

(B) has applied for or been granted tax-exempt status by the Internal Revenue Service and, if so:

(i) the Internal Revenue Code of 1986 section on which the application was based;

(ii) the application date;

(iii) the date the exemption was granted or denied; and

(iv) a statement of whether or when the tax exemption has ever been denied, revoked, or modified;

(14) a statement that includes:

(A) the method of accounting used and the name, address, and telephone number of each of the organization's accountants and auditors;

(B) for the preceding 12 months:

(i) the total contributions received;

(ii) the total fund-raising costs, computed according to generally accepted accounting principles;

(iii) if the organization retained a commercial telephone solicitor:

(a) the name and address of each commercial telephone solicitor; and

(b) a written confirmation from each commercial telephone solicitor that it has complied with all state and local registration laws; and

(iv) the amount paid to commercial telephone solicitors; and

(C) a statement that:

(i) the organization has attempted in good faith to comply with each ordinance of a municipality or each order of a county in this state regarding telephone solicitation that has been filed with the attorney general; or

(ii) no ordinance or order described by Subparagraph (i) applies;

(15) if the organization files a federal tax return, a copy of:

(A) the organization's most recently filed Internal Revenue Service Form 990 and other federal tax returns;

(B) each supplement, amendment, and attachment to those returns; and

(C) each request for an extension to file any of those returns;

(16) if the organization does not file a federal tax return:

(A) a statement of the reason a return is not filed; and

(B) the organization's most recent financial statements, including audited financial statements, if any have been prepared; and

(17) a sworn statement verifying that the information contained in the registration statement and each attachment to the registration statement is true, correct, and complete to the best of the affiant's knowledge.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 303.053. INITIAL REGISTRATION STATEMENT. A law enforcement-related charitable organization shall file the organization's initial registration statement before the 10th working day before the date the organization begins telephone solicitation in this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 303.054. EXPIRATION OF REGISTRATION; RENEWAL. (a) A law enforcement-related charitable organization's registration expires on the 15th day of the fifth month after the last day of the organization's fiscal year.

(b) The organization shall file a renewal registration statement on the form required under Section 303.052. The renewal registration statement must include the organization's name and employer identification number and any changes to information previously submitted to the attorney general. For an item on which there is no change from the previous year's registration statement, "no change" may be indicated.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 303.055. FILING FEE. (a) An initial registration statement must be accompanied by a filing fee not to exceed $50.

(b) A renewal registration statement must be accompanied by a

filing fee of $50.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 303.056. EXEMPTION: VOLUNTEER. A volunteer authorized to solicit on behalf of a law enforcement-related charitable organization is not required to register under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 303.057. REGISTRATION DOES NOT IMPLY ENDORSEMENT. (a) Registration under this chapter does not imply endorsement by this state or the attorney general.

(b) A law enforcement-related charitable organization may not state or imply that registration under this chapter is endorsement by this state or the attorney general.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 303.058. BOOKS AND RECORDS. (a) A law enforcement-related charitable organization required to file a registration statement shall maintain books and records of the organization's activities in this state. The books and records must be maintained:

(1) in a form that enables the organization to accurately provide the information required by this chapter; and

(2) until at least the third anniversary of the end of the period to which the registration statement relates.

(b) On written request of authorized personnel of the attorney general, the organization shall make the books and records available for inspection and copying by authorized personnel:

(1) at the organization's principal place of business not later than the 10th working day after the date of the request; or

(2) at another agreed place and time.

(c) The authority provided by this section is in addition to the attorney general's other statutory or common law audit or

investigative authority.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 303.059. BOND. A commercial telephone solicitor shall post with the secretary of state a surety bond that:

(1) is in the amount of $50,000; and

(2) is issued by a surety company authorized to transact business in this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER C. SOLICITATION PRACTICES

Sec. 303.101. DECEPTIVE ACT OR PRACTICE. A person may not commit an unfair or deceptive act or practice in making a telephone solicitation for a law enforcement-related charitable organization.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 303.102. REPRESENTATION OF BENEFIT TO SURVIVORS. A person may not represent to a person solicited that a contribution is to be used to benefit the survivors of a law enforcement officer killed in the line of duty unless:

(1) all of the contributions collected are used to benefit those survivors; or

(2) the person solicited is informed in writing of the percentage of the contribution that will directly benefit those survivors.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 303.103. NOTICE OF DISPOSITION OF MONEY. (a) If less than 90 percent of the contributions collected by a law enforcement-

related charitable organization or commercial telephone solicitor are paid to a law enforcement-related charitable organization, the commercial telephone solicitor shall notify each person solicited by telephone, before accepting a contribution from the person, of:

(1) the percentage of the contributions that will be paid to the organization for which the contributions are being solicited; and

(2) the percentage of the contributions that the solicitor will retain.

(b) Information required to be disclosed under Subsection (a) shall also be included on any written statement mailed to the contributor.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 303.104. HOURS OF SOLICITATION. A law enforcement-related charitable organization or commercial telephone solicitor may not make a telephone solicitation call unless the call is made after 9 a.m. and before 7 p.m., Monday through Friday.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER D. VIOLATION; REMEDIES

Sec. 303.151. NOTIFICATION OF NONCOMPLIANCE. If a law enforcement-related charitable organization does not file a document required by this chapter, files an incomplete or inaccurate document, or otherwise does not comply with this chapter, the attorney general shall notify the organization of the organization's noncompliance by first class mail sent to the organization's last reported address.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 303.152. VIOLATIONS RELATING TO FILING OF DOCUMENTS. (a) A law enforcement-related charitable organization violates this chapter if the organization:

(1) does not file complete documents before the 31st day after the date a notice under Section 303.151 is mailed; or

(2) with actual awareness files materially inaccurate documents.

(b) For purposes of Subsection (a)(2), actual awareness may be inferred from an objective manifestation that indicates that a person acted with actual awareness.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 303.153. REMEDIES. (a) The attorney general may bring an action against a person who violates this chapter to:

(1) cancel or suspend the person's registration;

(2) obtain an injunction to restrain the person from continuing the violation;

(3) restrain the person from transacting business in this state while violating this chapter;

(4) impose a civil penalty of not more than $25,000 for each violation; or

(5) both obtain an injunction and impose a civil penalty.

(b) A person who violates an injunction issued under this section is liable to this state for a civil penalty of not less than $100,000.

(c) In an action that the attorney general successfully prosecutes under this chapter, the court may allow the attorney general to recover civil penalties and the reasonable costs, attorney's fees, and expenses, including investigative costs, witness fees, and deposition expenses, incurred in bringing the action.

(d) A remedy authorized by this chapter is in addition to any other procedure or remedy provided by another statutory law or common law.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 303.154. VENUE. An action under this chapter must be brought in:

(1) Travis County;

(2) the county in which the law enforcement-related charitable organization has its principal place of business or a fixed and established place of business at the time the action is brought; or

(3) the county in which solicitation occurred.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 304. TELEMARKETING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 304.001. SHORT TITLE. This chapter may be cited as the Texas Telemarketing Disclosure and Privacy Act.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.002. DEFINITIONS. In this chapter:

(1) "Caller identification service or device" means a service or device designed to provide the user of the service or device with the telephone number of an incoming telephone call.

(2) "Commission" means the Public Utility Commission of Texas.

(3) "Consumer good or service" means property of any kind that is normally used for personal, family, or household purposes. The term does not include a security, as defined by Section 4, The Securities Act (Article 581-4, Vernon's Texas Civil Statutes).

(4) "Established business relationship" means a relationship that:

(A) is formed by a voluntary two-way communication between a person and a consumer, regardless of whether consideration is exchanged;

(B) pertains to a consumer good or service offered by the person; and

(C) has not been terminated by either party.

(5) "Facsimile recording device" means a device capable of receiving a facsimile transmission.

(6) "Facsimile solicitation" means a telemarketing call made by a transmission to a facsimile recording device.

(7) "State licensee" means a person licensed by a state agency under a law of this state that requires the person to obtain a license as a condition of engaging in a profession or business.

(8) "Telemarketer" means a person who makes or causes to be made a telemarketing call.

(9) "Telemarketing call" means an unsolicited telephone call made to:

(A) solicit a sale of a consumer good or service;

(B) solicit an extension of credit for a consumer good or service; or

(C) obtain information that may be used to solicit a sale of a consumer good or service or to extend credit for the sale.

(10) "Telephone call" means a call or other transmission made to or received at a telephone number, including:

(A) a call made by an automated telephone dialing system;

(B) a transmission to a facsimile recording device; and

(C) a call or other transmission, including a transmission of a text or graphic message or of an image, to a mobile telephone number serviced by a provider of commercial mobile service, as defined by Section 332(d), Communications Act of 1934 (47 U.S.C. Section 151 et seq.), as amended, Federal Communications Commission rules, or the Omnibus Budget Reconciliation Act of 1993 (Pub. L. No. 103-66), as amended, except that the term does not include a transmission made to a mobile telephone number as part of an ad-based telephone service, in connection with which the telephone service customer has agreed with the service provider to receive the transmission.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.006(a), eff. September 1, 2009.

Sec. 304.003. MAKING TELEMARKETING CALL. For purposes of this chapter, a person makes a telemarketing call if the person effects a telemarketing call on the person's own behalf or on behalf of another entity. A person makes a telemarketing call on behalf of another

entity if, as a result of the telemarketing call, the other entity can:

(1) become entitled to receive money or other property of any kind from a sale solicited during the call; or

(2) receive information obtained during the call to:

(A) extend or offer to extend to the person solicited credit for a consumer good or service; or

(B) directly solicit a sale of a consumer good or service or extend credit for the sale.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.004. INAPPLICABILITY OF CHAPTER TO CERTAIN CALLS. This chapter does not apply to a call made:

(1) by a consumer:

(A) as the result of a solicitation by a seller or telemarketer; or

(B) in response to general media advertising by a direct mail solicitation that clearly, conspicuously, and truthfully makes all disclosures required by federal or state law;

(2) in connection with:

(A) an established business relationship; or

(B) a business relationship that has been terminated, if the call is made before the later of:

(i) the publication date of the first Texas no-call list in which the consumer's telephone number appears; or

(ii) the first anniversary of the date of termination;

(3) between a telemarketer and a business, other than by a facsimile solicitation, unless the business has informed the telemarketer that the business does not wish to receive a telemarketing call from the telemarketer;

(4) to collect a debt; or

(5) by a state licensee if:

(A) the call is not made by an automated telephone dialing system;

(B) the solicited transaction is not completed until a face-to-face sales presentation by the seller occurs and the consumer

is not required to pay or authorize payment until after the presentation; and

(C) the consumer has not informed the telemarketer that the consumer does not wish to receive a telemarketing call from the telemarketer.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.005. LIBERAL CONSTRUCTION AND APPLICATION. This chapter shall be liberally construed and applied to promote its underlying purpose to protect the public against false, misleading, abusive, or deceptive practices in the telemarketing business.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.006. ATTEMPTED WAIVER VOID. An attempted waiver of a provision of this chapter is void.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER B. TEXAS NO-CALL LIST

Sec. 304.051. MAINTENANCE OF TEXAS NO-CALL LIST. (a) The commission shall provide for the operation of a database to compile a list of names, zip codes, and telephone numbers of consumers in this state who object to receiving telemarketing calls or other unsolicited telephone calls.

(b) The Texas no-call list is a combined list consisting of the name and telephone numbers of:

(1) each consumer in this state who has requested to be on that list; and

(2) each person in the portion of the national do-not-call registry maintained by the United States government that relates to this state.

(c) The commission shall:

(1) make available an Internet website at which a person

may request that a telephone number be placed on the Texas no-call list; and

(2) provide a toll-free telephone number and mailing address that a person may call or write to obtain a copy of a form to request placement of a telephone number on the Texas no-call list.

(d) The Texas no-call list shall be updated and published on January 1, April 1, July 1, and October 1 of each year.

(e) The commission may contract with a private vendor to maintain the Texas no-call list if the vendor has maintained a no-call list database containing the names and telephone numbers of consumers who have previously requested to be added to a no-call list. A contract under this subsection must require the vendor to publish the Texas portion of the national no-call list in an electronic format for any telemarketer who agrees to use the Texas no-call list only to update the telemarketer's no-call list to include those persons with whom the telemarketer does not have an established business relationship.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.052. TELEMARKETING CALL TO TELEPHONE NUMBER ON LIST PROHIBITED. A telemarketer may not make a telemarketing call to a telephone number published on the Texas no-call list more than 60 days after the date the telephone number appears on the current list.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.053. EXPIRATION, RENEWAL, AND DELETION OF ENTRY. (a) An entry on the Texas no-call list expires on the third anniversary of the date the entry is first published on the list. An entry may be renewed for successive three-year periods.

(b) The telephone number of a consumer on the Texas no-call list may be deleted from the list if:

(1) the consumer makes a written request; or

(2) the telephone number of the consumer is changed.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01,

eff. April 1, 2009.

Sec. 304.054. FEE. (a) Except as provided by Subsection (b), the commission may charge a person a reasonable amount not to exceed $3 for a request to place a telephone number on the Texas no-call list or to renew an entry on the list.

(b) The commission shall provide a method for placement or renewal of an entry by use of the Internet at no charge.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.055. PUBLICATION IN TELEPHONE DIRECTORY. A private for-profit publisher of a residential telephone directory that is distributed to the public at minimal or no cost shall include in the directory a prominently displayed Internet website address, toll-free number, and mailing address established by the commission through which a person may request placement of a telephone number on the Texas no-call list or order a copy of the form to make that request.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.056. PLACEMENT OF ENTRIES ON NATIONAL DO-NOT-CALL REGISTRY. The commission or a person the commission designates may:

(1) provide information on the Texas no-call list to the administrator of the national do-not-call registry; and

(2) allow the names and telephone numbers on the Texas no-call list to be placed on the national do-not-call registry. (Bus.& Com. Code, Sec. 44.101(d).)

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.057. GENERAL RULEMAKING AUTHORITY. The commission may adopt rules to administer this subchapter and Subchapter F, other than Sections 304.254, 304.255, 304.256, and 304.258, as that

subchapter relates to the Texas no-call list.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.058. RULES REGARDING ISOLATED CALLS. The commission shall adopt rules providing that a telemarketing call made to a telephone number on the Texas no-call list is not a violation of Section 304.052 if the telemarketing call:

(1) is an isolated occurrence; and

(2) is made by a person who has in place adequate procedures to comply with this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.059. RULES REGARDING PUBLIC NOTICE. The commission shall adopt rules requiring each local exchange telephone company and each provider of commercial mobile service, as described by Section 304.002(10)(C), that provides commercial mobile service in this state to inform its customers of the requirements of this subchapter and Sections 304.251, 304.252, 304.253, 304.257, and 304.259, as those sections relate to the Texas no-call list, through:

(1) annual inserts in billing statements mailed to customers;

(2) notification:

(A) included in a customer's electronic bill;

(B) printed on a customer's paper bill;

(C) sent free of charge by messaging service to a customer's mobile telephone number; or

(D) conspicuously published in the consumer information pages of local telephone directories; or

(3) other appropriate means of notice.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.060. RULES REGARDING DISSEMINATION OF LIST. The

commission shall adopt rules providing for:

(1) the distribution of the Texas no-call list in formats, including electronic formats, commonly used by persons making telemarketing calls; and

(2) a fee for each distribution, not to exceed $75.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.061. EDUCATIONAL PROGRAMS. In addition to requiring the notice under Section 304.059, the commission may conduct educational programs designed to inform members of the public of their rights and telemarketers of their obligations under this subchapter and Sections 304.251, 304.252, 304.253, 304.257, and 304.259, as those sections relate to the Texas no-call list.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.062. ASSISTANCE OF DEPARTMENT OF INFORMATION RESOURCES. On request of the commission, the Department of Information Resources shall assist the commission in administering this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.063. ONLINE NOTICE. The commission shall include on its Internet website a notice explaining the application of the Texas no-call list to a call or other transmission, including a transmission of a text or graphic message or of an image, to a mobile telephone number.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.007(a), eff. September 1, 2009.

SUBCHAPTER C. FACSIMILE TRANSMISSIONS

Sec. 304.101. NOTICE IN FACSIMILE SOLICITATION. In addition to complying with the technical and procedural standards established by federal statutes or regulations regarding telephone facsimile machines and transmissions, a person in this state who makes or causes to be made a facsimile solicitation shall include in the transmitted document or on a cover page to the document a statement, in at least 12-point type, containing:

(1) the complete name of the person making the facsimile solicitation and street address of the person's place of business; and

(2) a toll-free or local exchange accessible telephone number of the person that:

(A) is answered in the order in which calls are received by an individual capable of responding to inquiries from recipients of facsimile solicitations at all times after 9 a.m. and before 5 p.m. on each day except Saturday and Sunday; or

(B) automatically and immediately deletes the specified telephone number of the recipient.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.102. ACKNOWLEDGMENT REQUIRED; TRANSMISSION PROHIBITED. On receiving oral or written notice from the recipient of a facsimile solicitation not to send any further facsimile transmissions to one or more specified telephone numbers, the person making the solicitation:

(1) shall within 24 hours after receiving the notice send the recipient of the solicitation written acknowledgment of the receipt; and

(2) other than a single transmission to comply with Subdivision (1), may not make or cause to be made a transmission to a telephone number specified by the recipient.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER D. CALLER IDENTIFICATION

Sec. 304.151. INTERFERENCE WITH CALLER IDENTIFICATION SERVICE

OR DEVICE PROHIBITED. (a) In making a telemarketing call, a telemarketer may not block the identity of the telephone number from which the call is made to evade a device designed to identify a telephone caller.

(b) A telemarketer may not:

(1) interfere with or circumvent the capability of a caller identification service or device to access or provide to the recipient of the telemarketing call any information regarding the call that the service or device is capable of providing; or

(2) fail to provide caller identification information in a manner that is accessible by a caller identification service or device, if the telemarketer is capable of providing the information in that manner.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.152. EXCEPTION: USE OF CERTAIN SERVICE OR EQUIPMENT. For purposes of Section 304.151, use of a telecommunications service or telecommunications equipment that is incapable of transmitting caller identification information does not of itself constitute interference with or circumvention of the capability of a caller identification service or device to access or provide the information.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER E. REGULATORY REPORTS

Sec. 304.201. REPORT BY COMMISSION. (a) Before December 31 of each even-numbered year, the commission shall submit a report to the lieutenant governor and the speaker of the house of representatives.

(b) The report must contain for the two-year period ending August 31 of the year of the report:

(1) a statement of:

(A) the number of telephone numbers included on the Texas no-call list;

(B) the number of no-call lists distributed; and

(C) the amount collected for requests to place

telephone numbers and renew entries on the list and for distribution of the list;

(2) a list of complaints the commission received concerning activities regulated by this chapter, itemized by type;

(3) a summary of any enforcement efforts made by the commission; and

(4) the commission's recommendations for any changes to this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.202. REPORT BY ATTORNEY GENERAL. (a) Before December 31 of each even-numbered year, the attorney general shall submit a report to the lieutenant governor and the speaker of the house of representatives.

(b) The report must contain for the two-year period ending August 31 of the year of the report:

(1) a list of complaints the attorney general received concerning activities regulated by this chapter, itemized by type;

(2) a summary of any enforcement efforts made by the attorney general; and

(3) the attorney general's recommendations for any changes to this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER F. ENFORCEMENT

Sec. 304.251. ENFORCEMENT BY COMMISSION. (a) Except as provided by Section 304.253, the commission shall receive and investigate complaints concerning violations of Subchapters B, C, and D and may impose an administrative penalty not to exceed $1,000 for each violation.

(b) Notwithstanding Section 304.252, if a complaint alleges that the person violating Subchapter B, C, or D is a telecommunications provider, as defined by Section 51.002, Utilities Code, the commission has exclusive jurisdiction over the violation alleged in the complaint.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.252. ENFORCEMENT BY ATTORNEY GENERAL. (a) Except as provided by Section 304.253, the attorney general may investigate violations of Subchapters B, C, and D and file civil enforcement actions seeking:

(1) a civil penalty in an amount not to exceed $1,000 for each violation, except as provided by Subsection (b);

(2) injunctive relief; and

(3) attorney's fees.

(b) If the court finds the defendant wilfully or knowingly violated Subchapter B, C, or D, the court may increase the amount of the civil penalty to an amount not to exceed $3,000 for each violation.

(c) A violation of Subchapter B, C, or D is subject to enforcement action by the attorney general's consumer protection division under Sections 17.47, 17.58, 17.60, and 17.61.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.253. ENFORCEMENT BY LICENSING AGENCY. (a) A state agency that issues a license to a state licensee shall:

(1) receive and investigate complaints concerning violations of Subchapters B and C by the state licensee; and

(2) may receive and investigate complaints concerning violations of Subchapter D by the state licensee.

(b) The state agency may:

(1) impose an administrative penalty not to exceed $1,000 for each violation;

(2) order restitution for any monetary damages of the complainant in the case of a violation of Subchapter B or D; and

(3) suspend or revoke the state licensee's license, if the agency finds that the licensee wilfully or knowingly violated Subchapter B, C, or D.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.254. DETERMINATION OF AMOUNT OF ADMINISTRATIVE PENALTY. The amount of an administrative penalty imposed under this subchapter must be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) any history of previous violations;

(3) the amount necessary to deter a future violation;

(4) any effort to correct the violation; and

(5) any other matter that justice may require.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.255. STAY OF ADMINISTRATIVE PENALTY. (a) The enforcement of an administrative penalty imposed under this subchapter may be stayed during the time the order is under judicial review if the person on whom the penalty is imposed pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty.

(b) A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right to contest the affidavit as provided by those rules.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.256. CONTESTED CASE. A proceeding to impose an administrative penalty under this subchapter is a contested case under Chapter 2001, Government Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.257. PRIVATE ACTION: TELEMARKETING CALLS. (a) A

consumer on the Texas no-call list is presumed to be adversely affected by a telemarketer who calls the consumer more than once. The consumer may bring a civil action based on the second or a subsequent violation of Subchapter B if:

(1) the consumer has notified the telemarketer of the alleged violation;

(2) not later than the 30th day after the date of the call, the consumer files with the commission, the attorney general, or a state agency that licenses the person making the call a verified complaint stating the relevant facts surrounding the violation; and

(3) the commission, attorney general, or state agency receiving the complaint does not initiate an administrative action or a civil enforcement action, as appropriate, against the telemarketer named in the complaint before the 121st day after the date the complaint is filed.

(b) If the consumer brings an action based on a violation of Section 304.052 and the court finds that the defendant wilfully or knowingly violated that section, the court may award damages in an amount not to exceed $500 for each violation.

(c) Section 304.251(b) does not affect the right of a consumer to bring an action under Subsection (a).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.258. PRIVATE ACTION: FACSIMILE TRANSMISSION. (a) A person may bring a civil action based on a violation of Subchapter C:

(1) for damages in an amount equal to the greater of:

(A) the person's actual monetary loss from the violation; or

(B) $500 for each violation;

(2) to enjoin the violation; or

(3) for both damages and an injunction.

(b) If the court finds that the defendant wilfully or knowingly violated Subchapter C, the court may increase the amount of the damages awarded to an amount equal to not more than three times the amount available under Subsection (a)(1).

(c) Section 304.251(b) does not affect the right of a consumer to bring an action under Subsection (a).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 304.259. VENUE. (a) Venue for an action based on a violation of Subchapter B or C is in:

(1) the county in which the telemarketing call was made or received; or

(2) Travis County, if the action is brought by the commission, the attorney general, or a state agency.

(b) Venue for an action under Subchapter D is in Travis County.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 305. TELEPHONIC COMMUNICATIONS MADE FOR PURPOSE OF SOLICITATION

SUBCHAPTER A. PROHIBITED COMMUNICATIONS MADE FOR PURPOSE OF SOLICITATION

Sec. 305.001. PROHIBITED TELEPHONE CALLS. A person may not make a telephone call or use an automatic dial announcing device to make a telephone call for the purpose of making a sale if:

(1) the person making the call or using the device knows or should have known that the called number is a mobile telephone for which the called person will be charged for that specific call; and

(2) the called person has not consented to the making of such a call to the person calling or using the device or to the business enterprise for which the person is calling or using the device.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 305.002. PROHIBITED FACSIMILE TRANSMISSIONS: CHARGE TO RECIPIENT. A person may not make or cause to be made a transmission for the purpose of a solicitation or sale to a facsimile recording device or other telecopier for which the person receiving the transmission will be charged for the transmission, unless the person receiving the transmission has, before the transmission, consented to

the making of the transmission.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 305.003. PROHIBITED FACSIMILE TRANSMISSIONS: HOURS OF TRANSMISSION. A person may not make or cause to be made a transmission for the purpose of a solicitation or sale to a facsimile recording device after 11 p.m. and before 7 a.m.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER B. ENFORCEMENT

Sec. 305.051. INVESTIGATION. (a) On complaint of a called person that a person has violated Section 305.001, 305.002, or 305.003, the county or district attorney of the county in which the called person resides shall investigate the complaint and file charges if appropriate.

(b) A telephone company serving the caller or called person is not responsible for investigating a complaint or keeping records relating to this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 305.052. CRIMINAL PENALTY. (a) A person who violates Section 305.001, 305.002, or 305.003 commits an offense.

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

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 305.053. CIVIL ACTION. (a) A person who receives a communication that violates 47 U.S.C. Section 227, a regulation adopted under that provision, or Subchapter A may bring an action in this state against the person who originates the communication for:

(1) an injunction;

(2) damages in the amount provided by this section; or

(3) both an injunction and damages.

(b) A plaintiff who prevails in an action for damages under this section is entitled to the greater of:

(1) $500 for each violation; or

(2) the plaintiff's actual damages.

(c) If the court finds that the defendant committed the violation knowingly or intentionally, the court may increase the amount of the award of damages under Subsection (b) to not more than the greater of:

(1) $1,500 for each violation; or

(2) three times the plaintiff's actual damages.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 306. PROTECTION OF CONSUMER TELEPHONE RECORDS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 306.001. DEFINITIONS. In this chapter:

(1) "Caller identification record" means a record that:

(A) is delivered electronically to the recipient of a telephone call simultaneously with the reception of the call; and

(B) indicates the telephone number from which the telephone call was made or other similar information regarding the call.

(2) "Telephone company" means a provider of commercial telephone services, or a provider that bills for those services, regardless of the technology used to provide that service, including landline, radio, wireless, microwave, satellite, Voice over Internet Protocol (VoIP), or other cable, broadband, or digital technology.

(3) "Telephone record" means a written, electronic, or oral record, other than a caller identification record collected and retained by or on behalf of a customer, created by a telephone company about a customer, that includes:

(A) the telephone number:

(i) dialed by a customer; or

(ii) of an incoming call made to a customer;

(B) the time a call was made to or by a customer;

(C) the duration of a call made to or by a customer; or

(D) the location from which a call was initiated or at which a call was received by a customer.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.008(a), eff. September 1, 2009.

Sec. 306.002. NONAPPLICABILITY TO LAW ENFORCEMENT AGENCIES. This chapter does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a state, or a political subdivision of a state or of an intelligence agency of the United States.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.008(a), eff. September 1, 2009.

Sec. 306.003. CONSTRUCTION OF CHAPTER. This chapter does not apply to expand the obligations or duties of a telephone company under federal or other state law to protect telephone records.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.008(a), eff. September 1, 2009.

Sec. 306.004. CONSISTENCY WITH FEDERAL LAW. This chapter may not be construed in a manner that is inconsistent with 18 U.S.C. Section 1038, 47 U.S.C. Section 222, or any other applicable federal law or rule.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.008(a), eff. September 1, 2009.

SUBCHAPTER B. PROHIBITED CONDUCT OR ACTIVITY

Sec. 306.051. UNAUTHORIZED OR FRAUDULENT PROCUREMENT, SALE, OR RECEIPT OF TELEPHONE RECORDS. (a) A person commits an offense if the person:

(1) obtains, attempts to obtain, or conspires with another to obtain a telephone record of a resident of this state without the

authorization of the resident to whom the record pertains by:

(A) making a statement the person knows to be false to an agent of a telephone company;

(B) making a statement the person knows to be false to a telephone company;

(C) fraudulently accessing the record through the telephone company's Internet website; or

(D) providing to a telephone company a document that the person knows:

(i) is fraudulent;

(ii) has been lost or stolen;

(iii) has been obtained by fraud; or

(iv) contains a false, fictitious, or fraudulent statement or representation;

(2) asks another person to obtain a telephone record of a resident of this state knowing that the record will be obtained in a manner prohibited by this section;

(3) sells, transfers, or attempts to sell or transfer a telephone record of a resident of this state without authorization of the resident to whom the record pertains; or

(4) offers to obtain or offers to sell a telephone record that has been or will be obtained without authorization from the resident to whom the record pertains.

(b) An offense under this section is a Class A misdemeanor, except that a fine shall not exceed $20,000.

(c) In addition to the penalties provided by Subsection (b), a person convicted of an offense under this section may be required to forfeit personal property used or intended to be used in violation of this section.

(d) In addition to the penalties provided by Subsections (b) and (c), a person convicted of an offense under this section shall be ordered to pay to a resident whose telephone record was obtained in a manner prohibited by this section an amount equal to the sum of:

(1) the greater of the resident's financial loss, if proof of the loss is submitted to the satisfaction of the court, or $1,000; and

(2) the amount of any financial gain received by the person as the direct result of the offense.

(e) An offense under this section may be prosecuted in:

(1) the county in which the customer whose telephone record

is the subject of the prosecution resided at the time of the offense; or

(2) any county in which any part of the offense took place regardless of whether the defendant was ever present in the county.

(f) If venue lies in more than one county under Subsection (e), a defendant may be prosecuted in only one county for the same conduct.

(g) If conduct constituting an offense under this section also constitutes an offense under another section of this code or of any other law, including the Penal Code, the actor may be prosecuted under either section or under both sections.

(h) This section does not create a private right of action.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.008(a), eff. September 1, 2009.

Sec. 306.052. EXCEPTIONS. Section 306.051 does not apply to:

(1) a person who acted pursuant to a valid court order, warrant, subpoena, or civil investigative demand;

(2) a telephone company that disclosed a telephone record:

(A) the disclosure of which is otherwise authorized by law;

(B) reasonably believing the disclosure was necessary to:

(i) provide service to a customer;

(ii) protect an individual from fraudulent, abusive, or unlawful use of a telephone record or telephone service; or

(iii) protect the rights or property of the company;

(C) to the National Center for Missing and Exploited Children in connection with a report submitted under 42 U.S.C. Section 13032;

(D) for purposes of testing the company's security procedures or systems for maintaining the confidentiality of customer information;

(E) to a governmental entity, if the company reasonably believed that an emergency involving danger of death or serious physical injury to a person justified disclosure of the information;

(F) in connection with the sale or transfer of all or part of the company's business, the purchase or acquisition of all or part of another company's business, or the migration of a customer from one telephone company to another telephone company;

(G) necessarily incident to the rendition of the service, to initiate, render, bill, and collect the customer's charges, or to protect the customer of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services; or

(H) while acting reasonably and in good faith, notwithstanding a later determination that the action was not authorized; or

(3) a person or a telephone company that acted in connection with the official duties of a 9-1-1 governmental entity or a public agency solely for purposes of delivering or assisting in the delivery of 9-1-1 emergency services and other emergency services.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.008(a), eff. September 1, 2009.

Sec. 306.053. DECEPTIVE TRADE PRACTICE; ENFORCEMENT. A violation of this chapter is a false, misleading, or deceptive act or practice under Section 17.46 and is subject to action only by the consumer protection division of the attorney general's office as provided by Section 17.46(a).

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.008(a), eff. September 1, 2009.

SUBTITLE B. ELECTRONIC COMMUNICATIONS

CHAPTER 321. REGULATION OF CERTAIN ELECTRONIC MAIL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 321.001. DEFINITIONS. In this chapter:

(1) "Commercial electronic mail message" means an electronic mail message that advertises, offers for sale or lease, or promotes any goods, services, business opportunity, property, or other article, commodity, or thing of value.

(2) "Electronic mail" means a message, file, or other information that is transmitted through a local, regional, or global

computer network, regardless of whether the message, file, or information is viewed, stored for retrieval at a later time, printed, or filtered by a computer program that is designed or intended to filter or screen the message, file, or information.

(3) "Electronic mail service provider" means a person who:

(A) is authorized to transact business in this state;

(B) is an intermediary in transmitting or receiving electronic mail; and

(C) provides to an end user of an electronic mail service the ability to transmit or receive electronic mail.

(4) "Established business relationship" means a relationship that:

(A) is formed by a voluntary two-way communication between a person and another person, regardless of whether consideration is exchanged;

(B) pertains to a product or service offered by one of the persons; and

(C) has not been terminated by either person.

(5) "Obscene" has the meaning assigned by Section 43.21, Penal Code.

(6) "Sender" means a person who initiates an electronic mail message.

(7) "Sexual conduct" has the meaning assigned by Section 43.25, Penal Code.

(8) "Unsolicited commercial electronic mail message" means a commercial electronic mail message transmitted without the consent of the recipient by a person with whom the recipient does not have an established business relationship. The term does not include electronic mail transmitted by an organization using electronic mail to communicate exclusively with members, employees, or contractors of the organization.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER B. PROHIBITED AND REQUIRED CONDUCT

Sec. 321.051. TRANSMISSION OF CERTAIN COMMERCIAL ELECTRONIC MAIL MESSAGES PROHIBITED. (a) In this section, "Internet domain name" means a globally unique, hierarchical reference to an Internet

host or service that is:

(1) assigned through a centralized Internet naming authority; and

(2) composed of a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.

(b) A person may not intentionally transmit a commercial electronic mail message that:

(1) is an unsolicited commercial electronic mail message and falsifies the electronic mail transmission or routing information;

(2) contains false, deceptive, or misleading information in the subject line; or

(3) uses another person's Internet domain name without the other person's consent.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 321.052. REQUIREMENT FOR TRANSMISSION OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGES. (a) A person may not intentionally take an action to transmit an unsolicited commercial electronic mail message unless:

(1) "ADV:" appears first in the subject line of the message or, if the message contains obscene material or material depicting sexual conduct, "ADV: ADULT ADVERTISEMENT" appears first in the subject line; and

(2) the sender or a person acting on behalf of the sender provides a functioning return electronic mail address to which a recipient of the message may, at no cost to the recipient, send a reply requesting the removal of the recipient's electronic mail address from the sender's electronic mail list.

(b) A sender shall remove a person's electronic mail address from the sender's electronic mail list not later than the third day after the date the sender receives a request for removal of that address under Subsection (a)(2).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 321.053. SELLING OR PROVIDING CERTAIN ELECTRONIC MAIL ADDRESSES PROHIBITED. A sender or a person acting on behalf of a sender may not sell or otherwise provide to another the electronic mail address of a person who requests the removal of that address from the sender's electronic mail list as provided by Section 321.052(a)(2), except as required by other law.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER C. ENFORCEMENT

Sec. 321.101. TRANSMISSION OF MESSAGE CONTAINING OBSCENE MATERIAL OR MATERIAL DEPICTING SEXUAL CONDUCT; CRIMINAL PENALTY. (a) A person commits an offense if the person intentionally takes an action to transmit a message that contains obscene material or material depicting sexual conduct in violation of Section 321.052(a)(1).

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

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 321.102. VIOLATION OF CHAPTER: GENERAL CIVIL PENALTY AND INJUNCTIVE RELIEF. (a) A person who violates this chapter is liable to this state for a civil penalty in an amount not to exceed the lesser of:

(1) $10 for each unlawful message or unlawful action; or

(2) $25,000 for each day an unlawful message is received or each day an unlawful action is taken.

(b) The attorney general or a prosecuting attorney in the county in which the violation occurs may:

(1) bring an action to recover the civil penalty; and

(2) obtain an injunction to prevent or restrain a violation of this chapter.

(c) The attorney general or prosecuting attorney may recover reasonable expenses incurred in recovering the civil penalty, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

(d) Subsection (a) does not apply to a violation of Section

321.107(a).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 321.103. VIOLATION OF CHAPTER: DECEPTIVE TRADE PRACTICE. A violation of this chapter is a false, misleading, or deceptive act or practice under Subchapter E, Chapter 17, and any public or private right or remedy prescribed by that subchapter may be used to enforce this chapter, except as provided by Section 321.109.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 321.104. VIOLATION OF CHAPTER: CIVIL ACTION FOR DAMAGES. (a) A person injured by a violation of this chapter may bring an action to recover:

(1) actual damages, including lost profits; or

(2) an amount described by Section 321.105 or 321.106, as applicable.

(b) A person who prevails in the action is entitled to recover reasonable attorney's fees and court costs.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 321.105. ALTERNATIVE RECOVERY FOR PERSONS OTHER THAN ELECTRONIC MAIL SERVICE PROVIDERS. (a) In lieu of actual damages, a person injured by a violation of this chapter arising from the transmission of an unsolicited or commercial electronic mail message may recover an amount equal to the lesser of:

(1) $10 for each unlawful message; or

(2) $25,000 for each day the unlawful message is received.

(b) Subsection (a) does not apply to a person who is an electronic mail service provider.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 321.106. ALTERNATIVE RECOVERY FOR ELECTRONIC MAIL SERVICE PROVIDERS. In lieu of actual damages, an electronic mail service provider injured by a violation of this chapter arising from the transmission of an unsolicited or commercial electronic mail message may recover an amount equal to the greater of:

(1) $10 for each unlawful message; or

(2) $25,000 for each day the unlawful message is received.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 321.107. REQUIRED NOTICE OF CIVIL ACTION TO ATTORNEY GENERAL; CIVIL PENALTY. (a) A person who brings an action under Section 321.104 shall notify the attorney general of the action by mailing a copy of the petition by registered or certified mail not later than the 30th day after the date the petition is filed and at least 10 days before the date set for a hearing on the action.

(b) A person who violates Subsection (a) is liable to this state for a civil penalty in an amount not to exceed $200 for each violation. The attorney general may bring an action to recover the civil penalty in the court in which the action under Section 321.104 was brought.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 321.108. INTERVENTION IN CIVIL ACTION BY ATTORNEY GENERAL. The attorney general may intervene in an action brought under Section 321.104 by:

(1) filing a notice of intervention with the court in which the action is pending; and

(2) serving each party to the action with a copy of the notice of intervention.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 321.109. CERTIFICATION AS CLASS ACTION PROHIBITED. A court may not certify an action brought under this chapter as a class action.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 321.110. PROTECTION OF SECRECY OR SECURITY. At the request of a party to an action brought under this chapter, the court, in the court's discretion, may conduct a legal proceeding in a manner that protects:

(1) the secrecy and security of the computer, computer network, computer data, computer program, and computer software involved so as to prevent a possible recurrence of the same or a similar act by another person; or

(2) any trade secret of a party to the action.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 321.111. IMMUNITY FROM LIABILITY: COMMERCIAL ELECTRONIC MAIL MESSAGE TRANSMITTED BY ERROR OR ACCIDENT. A person may not be held liable under this chapter for a commercial electronic mail message that is transmitted as a result of an error or accident.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 321.112. IMMUNITY FROM LIABILITY: TELECOMMUNICATIONS UTILITIES AND ELECTRONIC MAIL SERVICE PROVIDERS. (a) In this section, "telecommunications utility" has the meaning assigned by Section 51.002, Utilities Code.

(b) A telecommunications utility or an electronic mail service provider may not be held liable under Section 321.051 or 321.052 and is not subject to a penalty provided by this chapter.

(c) A person injured by a violation of this chapter does not have a cause of action against a telecommunications utility or an electronic mail service provider under this chapter solely because

the utility or service provider:

(1) is an intermediary between the sender, or a person acting on behalf of the sender, and the recipient in the transmission of electronic mail that violates this chapter;

(2) provides transmission, routing, relaying, handling, or storing, through an automatic technical process, of an unsolicited commercial electronic mail message through the utility's or service provider's computer network or facilities; or

(3) provides telecommunications services, information services, or other services used in the transmission of an electronic mail message that violates this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 321.113. QUALIFIED IMMUNITY FROM LIABILITY OF SENDERS. A sender may not be held liable for the transmission of an electronic mail message that violates this chapter if the sender:

(1) contracts in good faith with an electronic mail service provider to transmit electronic mail messages for the sender; and

(2) has no reason to believe the electronic mail service provider will transmit any of the sender's electronic mail messages in violation of this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 321.114. AUTHORITY TO BLOCK CERTAIN COMMERCIAL ELECTRONIC MAIL MESSAGES; QUALIFIED IMMUNITY. (a) An electronic mail service provider may on its own initiative block the receipt or transmission through its service of any commercial electronic mail message that the service provider reasonably believes is or will be transmitted in violation of this chapter, if the service provider:

(1) provides a process for the prompt, good faith resolution of a dispute related to the blocking with the sender of the commercial electronic mail message; and

(2) makes contact information for the resolution of the dispute accessible to the public on the service provider's Internet website.

(b) An electronic mail service provider who complies with Subsection (a) may not be held liable for blocking the receipt or transmission through its service of any commercial electronic mail message that the service provider reasonably believes is or will be transmitted in violation of this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 322. UNIFORM ELECTRONIC TRANSACTIONS ACT

Sec. 322.001. SHORT TITLE. This chapter may be cited as the Uniform Electronic Transactions Act.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 322.002. DEFINITIONS. In this chapter:

(1) "Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

(2) "Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

(3) "Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

(4) "Contract" means the total legal obligation resulting from the parties' agreement as affected by this chapter and other applicable law.

(5) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(6) "Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an

action or respond to electronic records or performances in whole or in part, without review or action by an individual.

(7) "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

(8) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(9) "Governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.

(10) "Information" means data, text, images, sounds, codes, computer programs, software, databases, or the like.

(11) "Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

(14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, which is recognized by federal law or formally acknowledged by a state.

(15) "Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 322.003. SCOPE. (a) Except as otherwise provided in Subsection (b), this chapter applies to electronic records and electronic signatures relating to a transaction.

(b) This chapter does not apply to a transaction to the extent it is governed by:

(1) a law governing the creation and execution of wills, codicils, or testamentary trusts; or

(2) the Uniform Commercial Code, other than Sections 1.107 and 1.206 and Chapters 2 and 2A.

(c) This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under Subsection (b) when used for a transaction subject to a law other than those specified in Subsection (b).

(d) A transaction subject to this chapter is also subject to other applicable substantive law.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 322.004. PROSPECTIVE APPLICATION. This chapter applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after January 1, 2002.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 322.005. USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES; VARIATION BY AGREEMENT. (a) This chapter does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(b) This chapter applies only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

(c) A party that agrees to conduct a transaction by electronic

means may refuse to conduct other transactions by electronic means. The right granted by this subsection may not be waived by agreement.

(d) Except as otherwise provided in this chapter, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this chapter of the words "unless otherwise agreed," or words of similar import, does not imply that the effect of other provisions may not be varied by agreement.

(e) Whether an electronic record or electronic signature has legal consequences is determined by this chapter and other applicable law.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 322.006. CONSTRUCTION AND APPLICATION. This chapter must be construed and applied:

(1) to facilitate electronic transactions consistent with other applicable law;

(2) to be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

(3) to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 322.007. LEGAL RECOGNITION OF ELECTRONIC RECORDS, ELECTRONIC SIGNATURES, AND ELECTRONIC CONTRACTS. (a) A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.

(b) A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(c) If a law requires a record to be in writing, an electronic record satisfies the law.

(d) If a law requires a signature, an electronic signature satisfies the law.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 322.008. PROVISION OF INFORMATION IN WRITING; PRESENTATION OF RECORDS. (a) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

(b) If a law other than this chapter requires a record (i) to be posted or displayed in a certain manner, (ii) to be sent, communicated, or transmitted by a specified method, or (iii) to contain information that is formatted in a certain manner, the following rules apply:

(1) the record must be posted or displayed in the manner specified in the other law;

(2) except as otherwise provided in Subsection (d)(2), the record must be sent, communicated, or transmitted by the method specified in the other law; and

(3) the record must contain the information formatted in the manner specified in the other law.

(c) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record is not enforceable against the recipient.

(d) The requirements of this section may not be varied by agreement, but:

(1) to the extent a law other than this chapter requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under Subsection (a) that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(2) a requirement under a law other than this chapter to send, communicate, or transmit a record by first class mail may be varied by agreement to the extent permitted by the other law.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 322.009. ATTRIBUTION AND EFFECT OF ELECTRONIC RECORD AND ELECTRONIC SIGNATURE. (a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of an electronic record or electronic signature attributed to a person under Subsection (a) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 322.010. EFFECT OF CHANGE OR ERROR. (a) If a change or error in an electronic record occurs in a transmission between parties to a transaction, the rules provided by this section apply.

(b) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may avoid the effect of the changed or erroneous electronic record.

(c) In an automated transaction involving an individual, the individual may avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(1) promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(2) takes reasonable steps, including steps that conform to

the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(3) has not used or received any benefit or value from the consideration, if any, received from the other person.

(d) If neither Subsection (b) nor Subsection (c) applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any.

(e) Subsections (c) and (d) may not be varied by agreement.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 322.011. NOTARIZATION AND ACKNOWLEDGMENT. If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 322.012. RETENTION OF ELECTRONIC RECORDS; ORIGINALS. (a) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:

(1) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(2) remains accessible for later reference.

(b) A requirement to retain a record in accordance with Subsection (a) does not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

(c) A person may satisfy Subsection (a) by using the services of another person if the requirements of that subsection are satisfied.

(d) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with Subsection (a).

(e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with Subsection (a).

(f) A record retained as an electronic record in accordance with Subsection (a) satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after January 1, 2002, specifically prohibits the use of an electronic record for the specified purpose.

(g) This section does not preclude a governmental agency of this state from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 322.013. ADMISSIBILITY IN EVIDENCE. In a proceeding, evidence of a record or signature may not be excluded solely because it is in electronic form.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 322.014. AUTOMATED TRANSACTION. (a) In an automated transaction, the rules provided by this section apply.

(b) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements.

(c) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance.

(d) The terms of the contract are determined by the substantive

law applicable to it.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 322.015. TIME AND PLACE OF SENDING AND RECEIPT. (a) Unless otherwise agreed between the sender and the recipient, an electronic record is sent when it:

(1) is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(2) is in a form capable of being processed by that system; and

(3) enters an information processing system outside the control of the sender or of a person that sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

(b) Unless otherwise agreed between the sender and the recipient, an electronic record is received when:

(1) it enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(2) it is in a form capable of being processed by that system.

(c) Subsection (b) applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under Subsection (d).

(d) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules apply:

(1) if the sender or the recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction; and

(2) if the sender or the recipient does not have a place of business, the place of business is the sender's or the recipient's residence, as the case may be.

(e) An electronic record is received under Subsection (b) even if no individual is aware of its receipt.

(f) Receipt of an electronic acknowledgment from an information processing system described in Subsection (b) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(g) If a person is aware that an electronic record purportedly sent under Subsection (a), or purportedly received under Subsection (b), was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 322.016. TRANSFERABLE RECORDS. (a) In this section, "transferable record" means an electronic record that:

(1) would be a note under Chapter 3, or a document under Chapter 7, if the electronic record were in writing; and

(2) the issuer of the electronic record expressly has agreed is a transferable record.

(b) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) A system satisfies Subsection (b), and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in Subdivisions (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the person asserting control as:

(A) the person to which the transferable record was issued; or

(B) if the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(3) the authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in Section 1.201, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under Section 3.302(a), 7.501, or 9.330 are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under the Uniform Commercial Code.

(f) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 322.017. ACCEPTANCE AND DISTRIBUTION OF ELECTRONIC RECORDS BY GOVERNMENTAL AGENCIES. (a) Except as otherwise provided by Section 322.012(f), each state agency shall determine whether, and the extent to which, the agency will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

(b) To the extent that a state agency uses electronic records and electronic signatures under Subsection (a), the Department of Information Resources and Texas State Library and Archives Commission, pursuant to their rulemaking authority under other law and giving due consideration to security, may specify:

(1) the manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;

(2) if electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, any third party used by a person filing a document to facilitate the process;

(3) control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and

(4) any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

(c) Except as otherwise provided in Section 322.012(f), this chapter does not require a governmental agency of this state to use or permit the use of electronic records or electronic signatures.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 322.018. INTEROPERABILITY. The Department of Information Resources may encourage and promote consistency and interoperability with similar requirements adopted by other governmental agencies of this and other states and the federal government and nongovernmental persons interacting with governmental agencies of this state. If

appropriate, those standards may specify differing levels of standards from which governmental agencies of this state may choose in implementing the most appropriate standard for a particular application.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 322.019. EXEMPTION TO PREEMPTION BY FEDERAL ELECTRONIC SIGNATURES ACT. This chapter modifies, limits, or supersedes the provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) as authorized by Section 102 of that Act (15 U.S.C. Section 7002).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 322.020. APPLICABILITY OF PENAL CODE. This chapter does not authorize any activity that is prohibited by the Penal Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 322.021. CERTAIN REQUIREMENTS CONSIDERED TO BE RECOMMENDATIONS. Any requirement of the Department of Information Resources or the Texas State Library and Archives Commission under this chapter that generally applies to one or more state agencies using electronic records or electronic signatures is considered to be a recommendation to the comptroller concerning the electronic records or electronic signatures used by the comptroller. The comptroller may adopt or decline to adopt the recommendation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 323. PROVISION OF SOFTWARE OR SERVICES TO BLOCK OR SCREEN INTERNET MATERIAL

Sec. 323.001. DEFINITIONS. In this chapter:

(1) "Freeware" means software distributed to a person free of charge, regardless of whether use of the software is subject to certain restrictions.

(2) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(3) "Interactive computer service" means any information service or system that provides or enables computer access to the Internet by multiple users.

(4) "Internet" means the largest nonproprietary nonprofit cooperative public computer network, popularly known as the Internet.

(5) "Shareware" means copyrighted software for which the copyright owner sets certain conditions for the software's distribution and use, including requiring payment to the copyright owner after a person who has secured a copy of the software decides to use the software, regardless of whether the payment is for additional support or functionality of the software.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 323.002. SOFTWARE OR SERVICES THAT RESTRICT ACCESS TO CERTAIN INTERNET MATERIAL. (a) This section does not apply to:

(1) the Department of Information Resources, in the department's capacity as the telecommunications provider for this state; or

(2) an institution of higher education that provides interactive computer service.

(b) A person who charges a fee to provide an interactive computer service shall provide free of charge to each subscriber of the service in this state a link leading to fully functional shareware, freeware, or a demonstration version of software or to a service that, for at least one operating system, enables the subscriber to automatically block or screen material on the Internet.

(c) A person who charges a fee to provide an interactive computer service is in compliance with this section if the person places, on the person's first page of world wide web text information accessible to a subscriber, a link leading to the software or service described by Subsection (b). The identity of the link or other on-

screen depiction of the link must appear set out from surrounding written or graphical material so as to be conspicuous.

(d) A person who provides a link that complies with this section is not liable to a subscriber for any temporary inoperability of the link or for the effectiveness of the software or service to which the person links.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 323.003. CIVIL PENALTY. (a) A person is liable to this state for a civil penalty of $2,000 for each day the person violates Section 323.002. The aggregate civil penalty may not exceed $60,000.

(b) The attorney general may bring an action against a person who violates Section 323.002 to recover the civil penalty. Before bringing the action, the attorney general shall give the person notice of the person's noncompliance and liability for a civil penalty. If the person complies with Section 323.002 not later than the 30th day after the date of the notice, the violation is cured and the person is not liable for the civil penalty.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 324. CONSUMER PROTECTION AGAINST COMPUTER SPYWARE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 324.001. SHORT TITLE. This chapter may be cited as the Consumer Protection Against Computer Spyware Act.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 324.002. DEFINITIONS. In this chapter:

(1) "Advertisement" means a communication that includes the promotion of a commercial product or service, including communication on an Internet website operated for a commercial purpose.

(1-a) "Botnet" means a collection of two or more zombies.

(2) "Computer software" means a sequence of instructions

written in a programming language that is executed on a computer. The term does not include:

(A) a web page; or

(B) a data component of a web page that cannot be executed independently of that page.

(3) "Damage," with respect to a computer, means significant impairment to the integrity or availability of data, computer software, a system, or information.

(4) "Execute," with respect to computer software, means to perform a function or carry out instructions.

(5) "Keystroke-logging function" means a function of a computer software program that:

(A) records all keystrokes made by a person using a computer; and

(B) transfers that information from the computer to another person.

(6) "Owner or operator of a computer" means the owner or lessee of a computer or an individual using a computer with the authorization of the owner or lessee of the computer. The phrase "owner of a computer," with respect to a computer sold at retail, does not include a person who owned the computer before the date on which the computer was sold.

(7) "Person" means an individual, partnership, corporation, limited liability company, or other organization, or a combination of those organizations.

(8) "Personally identifiable information," with respect to an individual who is the owner or operator of a computer, means:

(A) a first name or first initial in combination with a last name;

(B) a home or other physical address, including street name;

(C) an electronic mail address;

(D) a credit or debit card number;

(E) a bank account number;

(F) a password or access code associated with a credit or debit card or bank account;

(G) a social security number, tax identification number, driver's license number, passport number, or other government-issued identification number; or

(H) any of the following information if the information

alone or in combination with other information personally identifies the individual:

(i) account balances;

(ii) overdraft history; or

(iii) payment history.

(9) "Zombie" means a computer that, without the knowledge and consent of the computer's owner or operator, has been compromised to give access or control to a program or person other than the computer's owner or operator.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 718 (S.B. 28), Sec. 1, eff. September 1, 2009.

Sec. 324.003. EXCEPTIONS TO APPLICABILITY OF CHAPTER. (a) Section 324.052, other than Subdivision (1) of that section, and Sections 324.053(4), 324.054, and 324.055 do not apply to a telecommunications carrier, cable operator, computer hardware or software provider, or provider of information service or interactive computer service that monitors or has interaction with a subscriber's Internet or other network connection or service or a protected computer for:

(1) a network or computer security purpose;

(2) diagnostics, technical support, or a repair purpose;

(3) an authorized update of computer software or system firmware;

(4) authorized remote system management; or

(5) detection or prevention of unauthorized use of or fraudulent or other illegal activity in connection with a network, service, or computer software, including scanning for and removing software proscribed under this chapter.

(b) This chapter does not apply to:

(1) the use of a navigation device, any interaction with a navigation device, or the installation or use of computer software on a navigation device by a multichannel video programming distributor, as defined by 47 U.S.C. Section 522(13), or video programmer in connection with the provision of multichannel video programming or

other services offered over a multichannel video programming system if the provision of the programming or other service is subject to 47 U.S.C. Section 338(i) or 551; or

(2) the collection or disclosure of subscriber information by a multichannel video programming distributor, as defined by 47 U.S.C. Section 522(13), or video programmer in connection with the provision of multichannel video programming or other services offered over a multichannel video programming system if the collection or disclosure of the information is subject to 47 U.S.C. Section 338(i) or 551.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 718 (S.B. 28), Sec. 2, eff. September 1, 2009.

Sec. 324.004. CAUSING COMPUTER SOFTWARE TO BE COPIED. For purposes of this chapter, a person causes computer software to be copied if the person distributes or transfers computer software or a component of computer software. Causing computer software to be copied does not include:

(1) transmitting or routing computer software or a component of the software;

(2) providing intermediate temporary storage or caching of software;

(3) providing a storage medium such as a compact disk;

(4) a website;

(5) the distribution of computer software by a third party through a computer server; or

(6) providing an information location tool, such as a directory, index, reference, pointer, or hypertext link, through which the user of a computer is able to locate computer software.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 324.005. KNOWING VIOLATION. A person knowingly violates Section 324.051, 324.052, 324.053, or 324.055 if the person:

(1) acts with actual knowledge of the facts that constitute the violation; or

(2) consciously avoids information that would establish actual knowledge of those facts.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 718 (S.B. 28), Sec. 3, eff. September 1, 2009.

Sec. 324.006. INTENTIONALLY DECEPTIVE MEANS. For purposes of this chapter, a person is considered to have acted through intentionally deceptive means if the person, with the intent to deceive the owner or operator of a computer:

(1) intentionally makes a materially false or fraudulent statement;

(2) intentionally makes a statement or uses a description that omits or misrepresents material information; or

(3) intentionally and materially fails to provide to the owner or operator any notice regarding the installation or execution of computer software.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER B. PROHIBITED CONDUCT OR ACTIVITIES

Sec. 324.051. UNAUTHORIZED COLLECTION OR CULLING OF PERSONALLY IDENTIFIABLE INFORMATION. A person other than the owner or operator of the computer may not knowingly cause computer software to be copied to a computer in this state and use the software to:

(1) collect personally identifiable information through intentionally deceptive means:

(A) by using a keystroke-logging function; or

(B) in a manner that correlates that information with information regarding all or substantially all of the websites visited by the owner or operator of the computer, other than websites operated by the person collecting the information; or

(2) cull, through intentionally deceptive means, the

following kinds of personally identifiable information from the consumer's computer hard drive for a purpose wholly unrelated to any of the purposes of the software or service described to an owner or operator of the computer:

(A) a credit or debit card number;

(B) a bank account number;

(C) a password or access code associated with a credit or debit card number or a bank account;

(D) a social security number;

(E) account balances; or

(F) overdraft history.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 324.052. UNAUTHORIZED ACCESS TO OR MODIFICATIONS OF COMPUTER SETTINGS; COMPUTER DAMAGE. A person other than the owner or operator of the computer may not knowingly cause computer software to be copied to a computer in this state and use the software to:

(1) modify, through intentionally deceptive means, a setting that controls:

(A) the page that appears when an Internet browser or a similar software program is launched to access and navigate the Internet;

(B) the default provider or web proxy used to access or search the Internet; or

(C) a list of bookmarks used to access web pages;

(2) take control of the computer by:

(A) accessing or using the computer's modem or Internet service to:

(i) cause damage to the computer;

(ii) cause the owner or operator of the computer to incur financial charges for a service the owner or operator did not previously authorize; or

(iii) cause a third party affected by the conduct to incur financial charges for a service the third party did not previously authorize; or

(B) opening, without the consent of the owner or operator of the computer, an advertisement that:

(i) is in the owner's or operator's Internet browser in a multiple, sequential, or stand-alone form; and

(ii) cannot be closed by an ordinarily reasonable person using the computer without closing the browser or shutting down the computer;

(3) modify settings on the computer that relate to access to or use of the Internet and protection of information for purposes of stealing personally identifiable information of the owner or operator of the computer; or

(4) modify security settings on the computer relating to access to or use of the Internet for purposes of causing damage to one or more computers.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 324.053. UNAUTHORIZED INTERFERENCE WITH INSTALLATION OR DISABLING OF COMPUTER SOFTWARE. A person other than the owner or operator of the computer may not knowingly cause computer software to be copied to a computer in this state and use the software to:

(1) prevent, through intentionally deceptive means, reasonable efforts of the owner or operator of the computer to block the installation or execution of or to disable computer software by causing computer software that the owner or operator has properly removed or disabled to automatically reinstall or reactivate on the computer;

(2) intentionally misrepresent to another that computer software will be uninstalled or disabled by the actions of the owner or operator of the computer;

(3) remove, disable, or render inoperative, through intentionally deceptive means, security, antispyware, or antivirus computer software installed on the computer;

(4) prevent reasonable efforts of the owner or operator to block the installation of or to disable computer software by:

(A) presenting the owner or operator with an option to decline the installation of software knowing that, when the option is selected, the installation process will continue to proceed; or

(B) misrepresenting that software has been disabled;

(5) change the name, location, or other designation of

computer software to prevent the owner from locating and removing the software; or

(6) create randomized or intentionally deceptive file names or random or intentionally deceptive directory folders, formats, or registry entries to avoid detection and prevent the owner from removing computer software.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 324.054. OTHER PROHIBITED CONDUCT. A person other than the owner or operator of the computer may not:

(1) induce the owner or operator of a computer in this state to install a computer software component to the computer by intentionally misrepresenting the extent to which the installation is necessary:

(A) for security or privacy reasons;

(B) to open or view text; or

(C) to play a particular type of musical or other content; or

(2) copy and execute or cause the copying and execution of a computer software component to a computer in this state in a deceptive manner with the intent to cause the owner or operator of the computer to use the component in a manner that violates this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 324.055. UNAUTHORIZED CREATION OF, ACCESS TO, OR USE OF ZOMBIES OR BOTNETS; PRIVATE ACTION. (a) In this section:

(1) "Internet service provider" means a person providing connectivity to the Internet or another wide area network.

(2) "Person" has the meaning assigned by Section 311.005, Government Code.

(b) A person who is not the owner or operator of the computer may not knowingly cause or offer to cause a computer to become a zombie or part of a botnet.

(c) A person may not knowingly create, have created, use, or

offer to use a zombie or botnet to:

(1) send an unsolicited commercial electronic mail message, as defined by Section 321.001;

(2) send a signal to a computer system or network that causes a loss of service to users;

(3) send data from a computer without authorization by the owner or operator of the computer;

(4) forward computer software designed to damage or disrupt another computer or system;

(5) collect personally identifiable information; or

(6) perform an act for another purpose not authorized by the owner or operator of the computer.

(d) A person may not:

(1) purchase, rent, or otherwise gain control of a zombie or botnet created by another person; or

(2) sell, lease, offer for sale or lease, or otherwise provide to another person access to or use of a zombie or botnet.

(e) The following persons may bring a civil action against a person who violates this section:

(1) a person who is acting as an Internet service provider and whose network is used to commit a violation under this section; or

(2) a person who has incurred a loss or disruption of the conduct of the person's business, including for-profit or not-for-profit activities, as a result of the violation.

(f) A person bringing an action under this section may, for each violation:

(1) seek injunctive relief to restrain a violator from continuing the violation;

(2) subject to Subsection (g), recover damages in an amount equal to the greater of:

(A) actual damages arising from the violation; or

(B) $100,000 for each zombie used to commit the violation; or

(3) obtain both injunctive relief and damages.

(g) The court may increase an award of damages, statutory or otherwise, in an action brought under this section to an amount not to exceed three times the applicable damages if the court finds that the violations have occurred with such a frequency as to constitute a pattern or practice.

(h) A plaintiff who prevails in an action brought under this section is entitled to recover court costs and reasonable attorney's fees, reasonable fees of experts, and other reasonable costs of litigation.

(i) A remedy authorized by this section is not exclusive but is in addition to any other procedure or remedy provided for by other statutory or common law.

(j) Nothing in this section may be construed to impose liability on the following persons with respect to a violation of this section committed by another person:

(1) an Internet service provider;

(2) a provider of interactive computer service, as defined by Section 230, Communications Act of 1934 (47 U.S.C. Section 230);

(3) a telecommunications provider, as defined by Section 51.002, Utilities Code; or

(4) a video service provider or cable service provider, as defined by Section 66.002, Utilities Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 718 (S.B. 28), Sec. 4, eff. September 1, 2009.

SUBCHAPTER C. CIVIL REMEDIES

Sec. 324.101. PRIVATE ACTION. (a) Any of the following persons, if adversely affected by the violation, may bring a civil action against a person who violates Section 324.051, 324.052, 324.053, or 324.054:

(1) a provider of computer software;

(2) an owner of a web page or trademark;

(3) a telecommunications carrier;

(4) a cable operator; or

(5) an Internet service provider.

(b) Each separate violation of this chapter is an actionable violation.

(c) In addition to any other remedy provided by law and except as provided by Subsection (g), a person who brings an action under this section may obtain:

(1) injunctive relief that restrains the violator from continuing the violation;

(2) subject to Subsection (d), damages in an amount equal

to the greater of:

(A) actual damages arising from the violation; or

(B) $100,000 for each violation of the same nature; or

(3) both injunctive relief and damages.

(d) The court may increase the amount of an award of actual damages in an action brought under Subsection (c) to an amount not to exceed three times the amount of actual damages sustained if the court finds that the violation has reoccurred with sufficient frequency to constitute a pattern or practice.

(e) A plaintiff who prevails in an action brought under Subsection (c) is entitled to recover reasonable attorney's fees and court costs.

(f) For purposes of Subsection (c), violations are of the same nature if the violations consist of the same course of conduct or action, regardless of the number of times the conduct or act occurred.

(g) If a violation of Section 324.052 causes a telecommunications carrier or cable operator to incur costs for the origination, transport, or termination of a call triggered using the modem of a customer of the telecommunications carrier or cable operator as a result of the violation, the telecommunications carrier or cable operator may in addition to any other remedy provided by law:

(1) apply to a court for an order to enjoin the violation;

(2) recover the charges the telecommunications carrier or cable operator is obligated to pay to a telecommunications carrier, a cable operator, another provider of transmission capability, or an information service provider as a result of the violation, including charges for the origination, transport, or termination of the call;

(3) recover the costs of handling customer inquiries or complaints with respect to amounts billed for calls as a result of the violation;

(4) recover other costs, including court costs, and reasonable attorney's fees; or

(5) both apply for injunctive relief and recover charges and other costs as provided by this subsection.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 718 (S.B. 28), Sec. 5, eff. September 1, 2009.

Sec. 324.102. CIVIL PENALTY; INJUNCTIVE RELIEF. (a) A person who violates this chapter is liable to this state for a civil penalty in an amount not to exceed $100,000 for each violation. The attorney general may bring an action to recover the civil penalty imposed by this subsection.

(b) If it appears to the attorney general that a person is engaging in, has engaged in, or is about to engage in conduct that violates this chapter, the attorney general may bring an action in the name of the state against the person to restrain the violation by a temporary restraining order or by a permanent or temporary injunction.

(c) The attorney general is entitled to recover reasonable expenses incurred in obtaining civil penalties or injunctive relief, or both, under this section, including reasonable attorney's fees and court costs.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 325. INTERNET FRAUD

Sec. 325.001. SHORT TITLE. This chapter may be cited as the Anti-Phishing Act.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 325.002. DEFINITIONS. In this chapter:

(1) "Electronic mail" means a message, file, or other information that is transmitted through a local, regional, or global computer network, regardless of whether the message, file, or information is viewed, stored for retrieval at a later time, printed, or filtered by a computer program that is designed or intended to filter or screen the message, file, or information.

(2) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be

sent or delivered.

(3) "Identifying information" has the meaning assigned by Section 32.51, Penal Code.

(4) "Internet domain name" refers to a globally unique, hierarchical reference to an Internet host or service that is:

(A) assigned through a centralized Internet naming authority; and

(B) composed of a series of character strings separated by periods with the right-most string specifying the top of the hierarchy.

(5) "Web page" means:

(A) a location that has a single uniform resource locator with respect to the world wide web; or

(B) another location that can be accessed on the Internet.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 325.003. INAPPLICABILITY OF CHAPTER. This chapter does not apply to a telecommunications provider's or Internet service provider's good faith transmission or routing of, or intermediate temporary storing or caching of, identifying information.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 325.004. CREATION AND USE OF WEB PAGE OR DOMAIN NAME FOR FRAUDULENT PURPOSE PROHIBITED. A person may not, with the intent to engage in conduct involving the fraudulent use or possession of identifying information of another person:

(1) create a web page or Internet domain name that is represented as a legitimate online business without the authorization of the registered owner of that business; and

(2) use that web page or a link to that web page, that domain name, or another site on the Internet to induce, request, or solicit another person to provide identifying information for a purpose that the other person believes is legitimate.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 325.005. TRANSMISSION OF FRAUDULENT ELECTRONIC MAIL PROHIBITED. A person may not, with the intent to engage in conduct involving the fraudulent use or possession of identifying information, send or cause to be sent to an electronic mail address held by a resident of this state an electronic mail message that:

(1) is falsely represented as being sent by a legitimate online business;

(2) refers or links the recipient to a web page that is represented as being associated with the legitimate online business; and

(3) directly or indirectly induces, requests, or solicits the recipient to provide identifying information for a purpose that the recipient believes is legitimate.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 325.006. CIVIL ACTION FOR INJUNCTIVE RELIEF OR DAMAGES. (a) Any of the following persons may bring a civil action against a person who violates this chapter:

(1) a person who is engaged in the business of providing Internet access service to the public and is adversely affected by the violation;

(2) an owner of a web page or trademark who is adversely affected by the violation; or

(3) the attorney general.

(b) A person who brings an action under this section may obtain:

(1) injunctive relief that restrains the violator from continuing the violation;

(2) subject to Subsection (c), damages in an amount equal to the greater of:

(A) actual damages arising from the violation; or

(B) $100,000 for each violation of the same nature; or

(3) both injunctive relief and damages.

(c) The court may increase the amount of an award of actual damages in an action brought under this section to an amount not to exceed three times the actual damages sustained if the court finds that the violation has reoccurred with sufficient frequency to constitute a pattern or practice.

(d) A plaintiff who prevails in an action brought under this section is entitled to recover reasonable attorney's fees and court costs.

(e) For purposes of this section, violations are of the same nature if the violations consist of the same course of conduct or action, regardless of the number of times the conduct or act occurred.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 326. AUTOMATED SALES SUPPRESSION DEVICES; PHANTOM-WARE

Sec. 326.001. DEFINITIONS. In this chapter:

(1) "Automated sales suppression device" means a device or software program that falsifies an electronic record, including transaction data or a transaction report, of an electronic cash register or other point-of-sale system. The term includes a device that carries the software program or an Internet link to the software program.

(2) "Electronic cash register" means a device or point-of-sale system that maintains a register or documentation through an electronic device or computer system that is designed to record transaction data for the purpose of computing, compiling, or processing retail sales transaction data.

(3) "Phantom-ware" means a hidden programming option that is embedded in the operating system of an electronic cash register or hardwired into an electronic cash register and that may be used to create a second set of transaction reports or to eliminate or manipulate an original transaction report, which may or may not be preserved in a digital format, to represent the original or manipulated report of a transaction in the electronic cash register.

(4) "Transaction data" includes data identifying an item purchased by a customer, a price for an item, a taxability determination for an item, a segregated tax amount for an item, an

amount of cash or credit tendered for an item, a net amount of cash returned to a customer who purchased an item, a date or time of a purchase, a receipt or invoice number for a transaction, and a vendor's name, address, or identification number.

(5) "Transaction report" means a report that:

(A) contains documentation of each sale, amount of tax or fee collected, media total, or discount void at an electronic cash register and that is printed on a cash register tape at the end of a day or a shift; or

(B) documents every action at an electronic cash register and is stored electronically.

Added by Acts 2013, 83rd Leg., R.S., Ch. 427 (S.B. 529), Sec. 1, eff. September 1, 2013.

Sec. 326.002. AUTOMATED SALES SUPPRESSION DEVICES AND PHANTOM-WARE PROHIBITED; CRIMINAL OFFENSE. (a) A person commits an offense if the person knowingly sells, purchases, installs, transfers, uses, or possesses an automated sales suppression device or phantom-ware.

(b) An offense under this section is a state jail felony.

Added by Acts 2013, 83rd Leg., R.S., Ch. 427 (S.B. 529), Sec. 1, eff. September 1, 2013.

TITLE 11. PERSONAL IDENTITY INFORMATION

SUBTITLE A. IDENTIFYING INFORMATION

CHAPTER 501. PROTECTION OF DRIVER'S LICENSE AND SOCIAL SECURITY NUMBERS

SUBCHAPTER A. CONFIDENTIALITY OF SOCIAL SECURITY NUMBERS

Sec. 501.001. CERTAIN USES OF SOCIAL SECURITY NUMBER PROHIBITED. (a) A person, other than a government or a governmental subdivision or agency, may not:

(1) intentionally communicate or otherwise make available to the public an individual's social security number;

(2) display an individual's social security number on a card or other device required to access a product or service provided by the person;

(3) require an individual to transmit the individual's social security number over the Internet unless:

(1) the Internet connection is secure; or

(2) the social security number is encrypted;

(4) require an individual's social security number for access to an Internet website unless a password or unique personal identification number or other authentication device is also required for access; or

(5) except as provided by Subsection (f), print an individual's social security number on any material sent by mail, unless state or federal law requires that social security number to be included in the material.

(b) A person using an individual's social security number before January 1, 2005, in a manner prohibited by Subsection (a) may continue that use if:

(1) the use is continuous; and

(2) beginning January 1, 2006, the person provides to the individual an annual disclosure stating that, on written request from the individual, the person will stop using the individual's social security number in a manner prohibited by Subsection (a).

(c) A person, other than a government or a governmental subdivision or agency, may not deny a service to an individual because the individual makes a written request under Subsection (b)(2).

(d) If a person receives a written request from an individual directing the person to stop using the individual's social security number in a manner prohibited by Subsection (a), the person shall comply with the request not later than the 30th day after the date the request is received. The person may not impose a fee for complying with the request.

(e) This section does not apply to:

(1) the collection, use, or release of a social security number required by state or federal law, including Chapter 552, Government Code;

(2) the use of a social security number for internal verification or administrative purposes;

(3) a document that is recorded or required to be open to the public under Chapter 552, Government Code;

(4) a court record; or

(5) an institution of higher education if the use of a social security number by the institution is regulated by Chapter 51, Education Code, or another provision of the Education Code.

(f) Subsection (a)(5) does not apply to an application or form sent by mail, including a document sent:

(1) as part of an application or enrollment process;

(2) to establish, amend, or terminate an account, contract, or policy; or

(3) to confirm the accuracy of a social security number.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 501.002. CERTAIN USES OF SOCIAL SECURITY NUMBER PROHIBITED; REMEDIES. (a) A person may not print an individual's social security number on a card or other device required to access a product or service provided by the person unless the individual has requested in writing that printing. The person may not require a request for that printing as a condition of receipt of or access to a product or service provided by the person.

(b) A person who violates this section is liable to this state for a civil penalty in an amount not to exceed $500 for each violation. The attorney general or the prosecuting attorney in the county in which the violation occurs may bring an action to recover the civil penalty imposed under this section.

(c) The attorney general may bring an action in the name of the state to restrain or enjoin a person from violating this section.

(d) This section does not apply to:

(1) the collection, use, or release of a social security number required by state or federal law, including Chapter 552, Government Code; or

(2) the use of a social security number for internal verification or administrative purposes.

(e) This section applies to a card or other device issued in connection with an insurance policy only if the policy is delivered, issued for delivery, or renewed on or after March 1, 2005.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER B. PRIVACY POLICY TO PROTECT SOCIAL SECURITY NUMBERS

Sec. 501.051. INAPPLICABILITY OF SUBCHAPTER. This subchapter

does not apply to:

(1) a person who is required to maintain and disseminate a privacy policy under:

(A) the Gramm-Leach-Bliley Act (15 U.S.C. Sections 6801 to 6809);

(B) the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g); or

(C) the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.);

(2) a covered entity under rules adopted by the commissioner of insurance relating to insurance consumer health information privacy or insurance consumer financial information privacy;

(3) a governmental body, as defined by Section 552.003, Government Code, other than a municipally owned utility;

(4) a person with respect to a loan transaction, if the person is not engaged in the business of making loans; or

(5) a person subject to Section 901.457, Occupations Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.009(a), eff. September 1, 2009.

Sec. 501.052. PRIVACY POLICY NECESSARY TO REQUIRE DISCLOSURE OF SOCIAL SECURITY NUMBER. (a) A person may not require an individual to disclose the individual's social security number to obtain goods or services from or enter into a business transaction with the person unless the person:

(1) adopts a privacy policy as provided by Subsection (b);

(2) makes the privacy policy available to the individual; and

(3) maintains under the privacy policy the confidentiality and security of the social security number disclosed to the person.

(b) A privacy policy adopted under this section must include:

(1) how personal information is collected;

(2) how and when the personal information is used;

(3) how the personal information is protected;

(4) who has access to the personal information; and

(5) the method of disposal of the personal information.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 501.053. CIVIL PENALTY; INJUNCTION. (a) A person who violates Section 501.052(a) is liable to this state for a civil penalty in an amount not to exceed $500 for each calendar month during which a violation occurs. The civil penalty may not be imposed for more than one violation that occurs in a month. The attorney general or the prosecuting attorney in the county in which the violation occurs may bring an action to recover the civil penalty imposed under this section.

(b) The attorney general may bring an action in the name of the state to restrain or enjoin a person from violating Section 501.052(a).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER C. OTHER RESTRICTIONS TO PROTECT DRIVER'S LICENSE AND SOCIAL SECURITY NUMBERS

Sec. 501.101. USE OF CONSUMER DRIVER'S LICENSE OR SOCIAL SECURITY NUMBER BY MERCHANT OR CERTAIN THIRD PARTY. (a) A merchant or a third party under contract with a merchant who requires a consumer returning merchandise to provide the consumer's driver's license or social security number may use the number or numbers provided by the consumer solely for identification purposes if the consumer does not have a valid receipt for the item being returned and is seeking a cash, credit, or store credit refund.

(b) A merchant or a third party under contract with a merchant may not disclose a consumer's driver's license or social security number to any other third party, including a merchant, not involved in the initial transaction.

(c) A merchant or a third party under contract with a merchant may use a consumer's driver's license or social security number only to monitor, investigate, or prosecute fraudulent return of merchandise.

(d) A merchant or a third party under contract with a merchant shall destroy or arrange for the destruction of records containing the consumer's driver's license or social security number at the expiration of six months from the date of the last transaction.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 501.1011. SALES RECEIPT CONTAINING DRIVER'S LICENSE NUMBER PROHIBITED. A person may not print an individual's driver's license number on a receipt that evidences payment for a sale of goods or services and is provided to the individual.

Added by Acts 2009, 81st Leg., R.S., Ch. 90 (H.B. 523), Sec. 1, eff. January 1, 2010.

Sec. 501.102. CIVIL PENALTY; INJUNCTION. (a) A person who violates Section 501.101 is liable to this state for a civil penalty in an amount not to exceed $500 for each violation. The attorney general or the prosecuting attorney in the county in which the violation occurs may bring an action to recover the civil penalty imposed under this subsection.

(a-1) A person who violates Section 501.1011 is liable to this state for a civil penalty in an amount not to exceed $500 for each calendar month in which a violation occurs. The civil penalty may not be imposed for more than one violation that occurs in a month. The attorney general or the prosecuting attorney in the county in which the violation occurs may bring an action to recover the civil penalty imposed under this subsection.

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

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 90 (H.B. 523), Sec. 2, eff. January 1, 2010.

CHAPTER 502. PROTECTION OF IDENTIFYING FINANCIAL INFORMATION

Sec. 502.001. WARNING SIGN ABOUT IDENTITY THEFT FOR RESTAURANT OR BAR EMPLOYEES. (a) In this section:

(1) "Credit card" means an identification card, plate, coupon, book, or number or any other device authorizing a designated person or bearer to obtain property or service on credit.

(2) "Debit card" means an identification card, plate, coupon, book, or number or any other device authorizing a designated person or bearer to communicate a request to an unmanned teller machine or a customer convenience terminal or to obtain property or services by debit to an account at a financial institution.

(b) This section applies only to a restaurant or bar that accepts credit cards or debit cards from customers in the ordinary course of business.

(c) A restaurant or bar owner shall display in a prominent place on the premises of the restaurant or bar a sign stating in letters at least one-half inch high: "UNDER SECTION 32.51, PENAL CODE, IT IS A STATE JAIL FELONY (PUNISHABLE BY CONFINEMENT IN A STATE JAIL FOR NOT MORE THAN TWO YEARS) TO OBTAIN, POSSESS, TRANSFER, OR USE A CUSTOMER'S DEBIT CARD OR CREDIT CARD NUMBER WITHOUT THE CUSTOMER'S CONSENT."

(d) The restaurant or bar owner shall display the sign in English and in another language spoken by a substantial portion of the employees of the restaurant or bar as their familiar language.

(e) A restaurant or bar owner who fails to comply with this section commits an offense. An offense under this subsection is a misdemeanor punishable by a fine not to exceed $25.

(f) It is a defense to prosecution under Subsection (e) that the restaurant or bar owner charged with the offense produces to the court satisfactory evidence that the person displayed the sign required by Subsection (c) not later than 48 hours after the person received a citation for an offense under Subsection (e). If the court is satisfied with the evidence produced by the person, the court shall dismiss the charge.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 502.002. BUSINESS RECEIPT CONTAINING CREDIT CARD OR DEBIT

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

(b) This section does not apply to a transaction in which the sole means of recording a person's credit card or debit card account number on a receipt or other document evidencing the transaction is by handwriting or an imprint or copy of the credit card or debit card.

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

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

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

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

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 502.003. DELIVERY OF CHECK FORM. (a) In this section:

(1) "Addressee" means a person to whom a check form is sent.

(2) "Check form" means a device for the transmission or payment of money that:

(A) is not a negotiable instrument under Section 3.104;

(B) if completed would be a check as defined by Section 3.104; and

(C) is printed with information relating to the financial institution on which the completed check may be drawn.

(3) "Check form provider" means a business that provides check forms to a customer for a personal or business account.

(4) "Courier" means an entity that delivers parcels for a fee.

(b) If an addressee requests that a check form provider employ courier delivery of a check form with signature required, and that service is available in the delivery area of the addressee, the entity arranging for courier delivery in compliance with the addressee's request must provide the addressee with the option to require that the signature of the addressee, or the representative of the addressee, be obtained on delivery.

(c) The option under Subsection (b) to require the signature of the addressee or representative may be provided:

(1) on a printed check form order form;

(2) on an electronic check form order form where check form orders are offered on the Internet;

(3) by electronic mail to an address established for that purpose by the entity making the offer; or

(4) by another method reasonably designed to effectively communicate the addressee's intent.

(d) An entity that arranges for the courier delivery of a check form to an addressee as requested under Subsection (b) shall notify the courier of the check form that the signature of the addressee or a representative of the addressee is required for delivery under that subsection.

(e) If the addressee suffers a pecuniary loss because of the use of a check form stolen at the time of delivery to the addressee, a civil penalty of not more than $1,000 for each delivery may be imposed on:

(1) an entity that violates Subsection (b), (c), or (d); or

(2) a courier that:

(A) is properly notified under Subsection (d) that a signature is required for delivery; and

(B) delivers the check form without obtaining the signature of the addressee or a representative of the addressee.

(f) The attorney general may bring an action to recover a civil penalty imposed under Subsection (e). The attorney general may recover reasonable expenses incurred in obtaining the civil penalty,

including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 503. BIOMETRIC IDENTIFIERS

Sec. 503.001. CAPTURE OR USE OF BIOMETRIC IDENTIFIER. (a) In this section, "biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.

(b) A person may not capture a biometric identifier of an individual for a commercial purpose unless the person:

(1) informs the individual before capturing the biometric identifier; and

(2) receives the individual's consent to capture the biometric identifier.

(c) A person who possesses a biometric identifier of an individual that is captured for a commercial purpose:

(1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:

(A) the individual consents to the disclosure for identification purposes in the event of the individual's disappearance or death;

(B) the disclosure completes a financial transaction that the individual requested or authorized;

(C) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552, Government Code; or

(D) the disclosure is made by or to a law enforcement agency for a law enforcement purpose in response to a warrant;

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the person stores, transmits, and protects any other confidential information the person possesses; and

(3) shall destroy the biometric identifier within a reasonable time, but not later than the first anniversary of the date the purpose for collecting the identifier expires, except as provided by Subsection (c-1).

(c-1) If a biometric identifier of an individual captured for a commercial purpose is used in connection with an instrument or document that is required by another law to be maintained for a period longer than the period prescribed by Subsection (c)(3), the person who possesses the biometric identifier shall destroy the biometric identifier within a reasonable time, but not later than the first anniversary of the date the instrument or document is no longer required to be maintained by law.

(c-2) If a biometric identifier captured for a commercial purpose has been collected for security purposes by an employer, the purpose for collecting the identifier under Subsection (c)(3) is presumed to expire on termination of the employment relationship.

(d) A person who violates this section is subject to a civil penalty of not more than $25,000 for each violation. The attorney general may bring an action to recover the civil penalty.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1163 (H.B. 3186), Sec. 1, eff. September 1, 2009.

CHAPTER 504. PROHIBITED USE OF CRIME VICTIM OR MOTOR VEHICLE ACCIDENT INFORMATION

Sec. 504.001. DEFINITIONS. In this chapter:

(1) "Crime victim information" means information that:

(A) is collected or prepared by a law enforcement agency; and

(B) identifies or serves to identify a person who, according to a record of the agency, may have been the victim of a crime in which:

(i) physical injury to the person occurred or was attempted; or

(ii) the offender entered or attempted to enter the dwelling of the person.

(2) "Motor vehicle accident information" means information that:

(A) is collected or prepared by a law enforcement agency; and

(B) identifies or serves to identify a person who, according to a record of the agency, may have been involved in a motor vehicle accident.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 504.002. PROHIBITION ON USE FOR SOLICITATION OR SALE OF INFORMATION. (a) A person who possesses crime victim or motor vehicle accident information that the person obtained or knows was obtained from a law enforcement agency may not:

(1) use the information to contact directly any of the following persons for the purpose of soliciting business from the person:

(A) a crime victim;

(B) a person who was involved in a motor vehicle accident; or

(C) a member of the family of a person described by Paragraph (A) or (B); or

(2) sell the information to another person for financial gain.

(b) The attorney general may bring an action against a person who violates Subsection (a) pursuant to Section 17.47.

(c) A person commits an offense if the person violates Subsection (a). An offense under this subsection is a Class C misdemeanor unless the defendant has been previously convicted under this section three or more times, in which event the offense is a felony of the third degree.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 505. USE OF ZIP CODE TO VERIFY CUSTOMER'S IDENTITY

Sec. 505.001. DEFINITIONS. In this chapter:

(1) "Credit card" means a card or device issued under an agreement by which the issuer gives to a cardholder the right to obtain credit from the issuer or another person.

(2) "Credit card issuer" means a lender, including a financial institution, or a merchant that receives applications and

issues credit cards to individuals.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.010(a), eff. September 1, 2009.

Sec. 505.002. USE OF ZIP CODE TO VERIFY IDENTITY IN CREDIT CARD TRANSACTION. (a) A business may require a customer who purchases a good or service from the business using a credit card to provide the customer's zip code to verify the customer's identity as provided by Subsection (b).

(b) A business that obtains a customer's zip code under Subsection (a) may electronically verify with the credit card issuer that the zip code matches any zip code that the credit card issuer has on file for the credit card.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.010(a), eff. September 1, 2009.

Sec. 505.003. RETENTION OF ZIP CODE PROHIBITED. A business that obtains a customer's zip code under Section 505.002 may not retain the zip code in any form after the purchase of the good or service has been completed.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.010(a), eff. September 1, 2009.

SUBTITLE B. IDENTITY THEFT

CHAPTER 521. UNAUTHORIZED USE OF IDENTIFYING INFORMATION

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 521.001. SHORT TITLE. This chapter may be cited as the Identity Theft Enforcement and Protection Act.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 521.002. DEFINITIONS. (a) In this chapter:

(1) "Personal identifying information" means information

that alone or in conjunction with other information identifies an individual, including an individual's:

(A) name, social security number, date of birth, or government-issued identification number;

(B) mother's maiden name;

(C) unique biometric data, including the individual's fingerprint, voice print, and retina or iris image;

(D) unique electronic identification number, address, or routing code; and

(E) telecommunication access device as defined by Section 32.51, Penal Code.

(2) "Sensitive personal information" means, subject to Subsection (b):

(A) an individual's first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted:

(i) social security number;

(ii) driver's license number or government-issued identification number; or

(iii) account number or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; or

(B) information that identifies an individual and relates to:

(i) the physical or mental health or condition of the individual;

(ii) the provision of health care to the individual; or

(iii) payment for the provision of health care to the individual.

(3) "Victim" means a person whose identifying information is used by an unauthorized person.

(b) For purposes of this chapter, the term "sensitive personal information" does not include publicly available information that is lawfully made available to the public from the federal government or a state or local government.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 419 (H.B. 2004), Sec. 1, eff. September 1, 2009.

SUBCHAPTER B. IDENTITY THEFT

Sec. 521.051. UNAUTHORIZED USE OR POSSESSION OF PERSONAL IDENTIFYING INFORMATION. (a) A person may not obtain, possess, transfer, or use personal identifying information of another person without the other person's consent and with intent to obtain a good, a service, insurance, an extension of credit, or any other thing of value in the other person's name.

(b) It is a defense to an action brought under this section that an act by a person:

(1) is covered by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.); and

(2) is in compliance with that Act and regulations adopted under that Act.

(c) This section does not apply to:

(1) a financial institution as defined by 15 U.S.C. Section 6809; or

(2) a covered entity as defined by Section 601.001 or 602.001, Insurance Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 521.052. BUSINESS DUTY TO PROTECT SENSITIVE PERSONAL INFORMATION. (a) A business shall implement and maintain reasonable procedures, including taking any appropriate corrective action, to protect from unlawful use or disclosure any sensitive personal information collected or maintained by the business in the regular course of business.

(b) A business shall destroy or arrange for the destruction of customer records containing sensitive personal information within the business's custody or control that are not to be retained by the business by:

(1) shredding;

(2) erasing; or

(3) otherwise modifying the sensitive personal information in the records to make the information unreadable or indecipherable through any means.

(c) This section does not apply to a financial institution as defined by 15 U.S.C. Section 6809.

(d) As used in this section, "business" includes a nonprofit athletic or sports association.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 419 (H.B. 2004), Sec. 2, eff. September 1, 2009.

Sec. 521.053. NOTIFICATION REQUIRED FOLLOWING BREACH OF SECURITY OF COMPUTERIZED DATA. (a) In this section, "breach of system security" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of sensitive personal information maintained by a person, including data that is encrypted if the person accessing the data has the key required to decrypt the data. Good faith acquisition of sensitive personal information by an employee or agent of the person for the purposes of the person is not a breach of system security unless the person uses or discloses the sensitive personal information in an unauthorized manner.

(b) A person who conducts business in this state and owns or licenses computerized data that includes sensitive personal information shall disclose any breach of system security, after discovering or receiving notification of the breach, to any individual whose sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made as quickly as possible, except as provided by Subsection (d) or as necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(b-1) If the individual whose sensitive personal information was or is reasonably believed to have been acquired by an unauthorized person is a resident of a state that requires a person described by Subsection (b) to provide notice of a breach of system security, the notice of the breach of system security required under

Subsection (b) may be provided under that state's law or under Subsection (b).

(c) Any person who maintains computerized data that includes sensitive personal information not owned by the person shall notify the owner or license holder of the information of any breach of system security immediately after discovering the breach, if the sensitive personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(d) A person may delay providing notice as required by Subsection (b) or (c) at the request of a law enforcement agency that determines that the notification will impede a criminal investigation. The notification shall be made as soon as the law enforcement agency determines that the notification will not compromise the investigation.

(e) A person may give notice as required by Subsection (b) or (c) by providing:

(1) written notice at the last known address of the individual;

(2) electronic notice, if the notice is provided in accordance with 15 U.S.C. Section 7001; or

(3) notice as provided by Subsection (f).

(f) If the person required to give notice under Subsection (b) or (c) demonstrates that the cost of providing notice would exceed $250,000, the number of affected persons exceeds 500,000, or the person does not have sufficient contact information, the notice may be given by:

(1) electronic mail, if the person has electronic mail addresses for the affected persons;

(2) conspicuous posting of the notice on the person's website; or

(3) notice published in or broadcast on major statewide media.

(g) Notwithstanding Subsection (e), a person who maintains the person's own notification procedures as part of an information security policy for the treatment of sensitive personal information that complies with the timing requirements for notice under this section complies with this section if the person notifies affected persons in accordance with that policy.

(h) If a person is required by this section to notify at one time more than 10,000 persons of a breach of system security, the

person shall also notify each consumer reporting agency, as defined by 15 U.S.C. Section 1681a, that maintains files on consumers on a nationwide basis, of the timing, distribution, and content of the notices. The person shall provide the notice required by this subsection without unreasonable delay.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 419 (H.B. 2004), Sec. 3, eff. September 1, 2009.
Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 14, eff. September 1, 2012.
Acts 2013, 83rd Leg., R.S., Ch. 1368 (S.B. 1610), Sec. 1, eff. June 14, 2013.

SUBCHAPTER C. COURT ORDER DECLARING INDIVIDUAL A VICTIM OF IDENTITY THEFT

Sec. 521.101. APPLICATION FOR COURT ORDER TO DECLARE INDIVIDUAL A VICTIM OF IDENTITY THEFT. (a) A person who is injured by a violation of Section 521.051 or who has filed a criminal complaint alleging commission of an offense under Section 32.51, Penal Code, may file an application with a district court for the issuance of an order declaring that the person is a victim of identity theft.

(b) A person may file an application under this section regardless of whether the person is able to identify each person who allegedly transferred or used the person's identifying information in an unlawful manner.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 521.102. PRESUMPTION OF APPLICANT'S STATUS AS VICTIM. An applicant under Section 521.101 is presumed to be a victim of identity theft under this subchapter if the person charged with an offense under Section 32.51, Penal Code, is convicted of the offense.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 521.103. ISSUANCE OF ORDER; CONTENTS. (a) After notice and hearing, if the court is satisfied by a preponderance of the evidence that an applicant under Section 521.101 has been injured by a violation of Section 521.051 or is the victim of an offense under Section 32.51, Penal Code, the court shall enter an order declaring that the applicant is a victim of identity theft resulting from a violation of Section 521.051 or an offense under Section 32.51, Penal Code, as appropriate.

(b) An order under this section must contain:

(1) any known information identifying the violator or person charged with the offense;

(2) the specific personal identifying information and any related document used to commit the alleged violation or offense; and

(3) information identifying any financial account or transaction affected by the alleged violation or offense, including:

(A) the name of the financial institution in which the account is established or of the merchant involved in the transaction, as appropriate;

(B) any relevant account numbers;

(C) the dollar amount of the account or transaction affected by the alleged violation or offense; and

(D) the date of the alleged violation or offense.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 521.104. CONFIDENTIALITY OF ORDER. (a) An order issued under Section 521.103 must be sealed because of the confidential nature of the information required to be included in the order. The order may be opened and the order or a copy of the order may be released only:

(1) to the proper officials in a civil proceeding brought by or against the victim arising or resulting from a violation of this chapter, including a proceeding to set aside a judgment obtained against the victim;

(2) to the victim for the purpose of submitting the copy of the order to a governmental entity or private business to:

(A) prove that a financial transaction or account of the victim was directly affected by a violation of this chapter or the commission of an offense under Section 32.51, Penal Code; or

(B) correct any record of the entity or business that contains inaccurate or false information as a result of the violation or offense;

(3) on order of the judge; or

(4) as otherwise required or provided by law.

(b) A copy of an order provided to a person under Subsection (a)(1) must remain sealed throughout and after the civil proceeding.

(c) Information contained in a copy of an order provided to a governmental entity or business under Subsection (a)(2) is confidential and may not be released to another person except as otherwise required or provided by law.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 521.105. GROUNDS FOR VACATING ORDER. A court at any time may vacate an order issued under Section 521.103 if the court finds that the application filed under Section 521.101 or any information submitted to the court by the applicant contains a fraudulent misrepresentation or a material misrepresentation of fact.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER D. REMEDIES

Sec. 521.151. CIVIL PENALTY; INJUNCTION. (a) A person who violates this chapter is liable to this state for a civil penalty of at least $2,000 but not more than $50,000 for each violation. The attorney general may bring an action to recover the civil penalty imposed under this subsection.

(a-1) In addition to penalties assessed under Subsection (a), a person who fails to take reasonable action to comply with Section 521.053(b) is liable to this state for a civil penalty of not more than $100 for each individual to whom notification is due under that subsection for each consecutive day that the person fails to take reasonable action to comply with that subsection. Civil penalties

under this section may not exceed $250,000 for all individuals to whom notification is due after a single breach. The attorney general may bring an action to recover the civil penalties imposed under this subsection.

(b) If it appears to the attorney general that a person is engaging in, has engaged in, or is about to engage in conduct that violates this chapter, the attorney general may bring an action in the name of the state against the person to restrain the violation by a temporary restraining order or by a permanent or temporary injunction.

(c) An action brought under Subsection (b) must be filed in a district court in Travis County or:

(1) in any county in which the violation occurred; or

(2) in the county in which the victim resides, regardless of whether the alleged violator has resided, worked, or transacted business in the county in which the victim resides.

(d) The attorney general is not required to give a bond in an action under this section.

(e) In an action under this section, the court may grant any other equitable relief that the court considers appropriate to:

(1) prevent any additional harm to a victim of identity theft or a further violation of this chapter; or

(2) satisfy any judgment entered against the defendant, including issuing an order to appoint a receiver, sequester assets, correct a public or private record, or prevent the dissipation of a victim's assets.

(f) The attorney general is entitled to recover reasonable expenses, including reasonable attorney's fees, court costs, and investigatory costs, incurred in obtaining injunctive relief or civil penalties, or both, under this section. Amounts collected by the attorney general under this section shall be deposited in the general revenue fund and may be appropriated only for the investigation and prosecution of other cases under this chapter.

(g) The fees associated with an action under this section are the same as in a civil case, but the fees may be assessed only against the defendant.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 15, eff. September 1, 2012.

Sec. 521.152. DECEPTIVE TRADE PRACTICE. A violation of Section 521.051 is a deceptive trade practice actionable under Subchapter E, Chapter 17.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 522. IDENTITY THEFT BY ELECTRONIC DEVICE

Sec. 522.001. DEFINITIONS. In this chapter:

(1) "Payment card" means a credit card, debit card, check card, or other card that is issued to an authorized user to purchase or obtain goods, services, money, or any other thing of value.

(2) "Re-encoder" means an electronic device that can be used to transfer encoded information from a magnetic strip on a payment card onto the magnetic strip of a different payment card.

(3) "Scanning device" means an electronic device used to access, read, scan, or store information encoded on the magnetic strip of a payment card.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 522.002. OFFENSE; PENALTY. (a) A person commits an offense if the person uses a scanning device or re-encoder to access, read, scan, store, or transfer information encoded on the magnetic strip of a payment card without the consent of an authorized user of the payment card and with intent to harm or defraud another.

(b) An offense under this section is a Class B misdemeanor, except that the offense is a state jail felony if the information accessed, read, scanned, stored, or transferred was protected health information as defined by the Health Insurance Portability and Accountability Act and Privacy Standards, as defined by Section 181.001, Health and Safety Code.

(c) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be

prosecuted under this section or the other law.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1126 (H.B. 300), Sec. 16, eff. September 1, 2012.

CHAPTER 523. PROVISIONS RELATING TO VICTIMS OF IDENTITY THEFT

SUBCHAPTER A. EXTENSIONS OF CREDIT AND VERIFICATION OF IDENTITY

Sec. 523.001. EXTENSION OF CREDIT TO VICTIM OF IDENTITY THEFT. (a) In this section, "victim of identity theft" means an individual who has filed a criminal complaint alleging the commission of an offense under Section 32.51, Penal Code, other than a person who is convicted of an offense under Section 37.08, Penal Code, with respect to that complaint.

(b) A person who has been notified that an individual has been the victim of identity theft may not deny the individual an extension of credit, including a loan, in the individual's name or restrict or limit the credit extended solely because the individual has been a victim of identity theft. This subsection does not prohibit a person from denying an individual an extension of credit for a reason other than the individual's having been a victim of identity theft, including by reason of the individual's lack of capacity to contract.

(c) A license issued under Subtitle B, Title 4, Finance Code, that is held by a person who violates this section is subject to revocation or suspension under that subtitle.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 523.002. VERIFICATION OF CONSUMER IDENTITY. (a) In this section:

(1) "Consumer report" has the meaning assigned by Section 20.01.

(2) "Extension of credit" does not include:

(A) an increase in the dollar limit of an existing open-end credit plan as defined by federal Regulation Z (12 C.F.R.

Section 226.2), as amended; or

(B) any change to, or review of, an existing credit account.

(3) "Security alert" has the meaning assigned by Section 20.01.

(b) A person who receives notification of a security alert under Section 20.032 in connection with a request for a consumer report for the approval of a credit-based application, including an application for an extension of credit, a purchase, lease, or rental agreement for goods, or for an application for a noncredit-related service, may not lend money, extend credit, or authorize an application without taking reasonable steps to verify the consumer's identity.

(c) If a consumer has included with a security alert a specified telephone number to be used for identity verification purposes, a person who receives that number with a security alert must take reasonable steps to contact the consumer using that number before lending money, extending credit, or completing any purchase, lease, or rental of goods, or approving any noncredit-related services.

(d) If a person uses a consumer report to facilitate the extension of credit or for any other transaction on behalf of a subsidiary, affiliate, agent, assignee, or prospective assignee, that person, rather than the subsidiary, affiliate, agent, assignee, or prospective assignee, may verify the consumer's identity.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER B. DUTIES OF FINANCIAL INSTITUTIONS AND OF VERIFICATION ENTITIES

Sec. 523.051. NOTATION OF FORGED CHECK. (a) In this section, "victim of identity theft" means a person who has filed with an appropriate law enforcement agency a criminal complaint alleging commission of an offense under Section 32.51, Penal Code.

(b) A financial institution, in accordance with its customary procedures, shall process as forgeries checks received on the account of a victim of identity theft if the victim:

(1) closes the account at the financial institution as a

result of the identity theft;

(2) notifies the financial institution that the identity theft is the reason for closing the account;

(3) provides the financial institution with a copy of the criminal complaint described by Subsection (a); and

(4) requests that the financial institution return checks with the notation "forgery."

(c) A victim of identity theft who requests that a financial institution return checks with the notation "forgery" as provided by Subsection (b):

(1) may not assert that the financial institution is liable under Section 4.402 for wrongfully dishonoring a check returned after the victim makes the request; and

(2) shall hold the financial institution harmless for acting in accordance with the victim's request.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Redesignated from Business and Commerce Code, Section 523.003 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.011(b), eff. September 1, 2009.

Sec. 523.052. NOTIFICATION TO CHECK VERIFICATION ENTITIES THAT CUSTOMER IS VICTIM OF IDENTITY THEFT. (a) In this section:

(1) "Check verification entity" means a consumer reporting agency that compiles and maintains, for businesses in this state, files on consumers on a nationwide basis regarding the consumers' check-writing history.

(2) "Financial institution" means a bank, savings association, savings bank, or credit union maintaining an office, branch, or agency office in this state.

(b) A financial institution shall submit the information as required by Subsection (c) if a customer notifies the financial institution that the customer was a victim of an offense under Section 32.51, Penal Code, requests that the financial institution close an account that has been compromised by the alleged offense, and presents to the financial institution:

(1) a copy of a police report of an offense under Section 32.51, Penal Code;

(2) a sworn statement by the person that the person was the victim of an offense under that section; and

(3) written authorization to submit the information required by Subsection (d) to the electronic notification system established under Section 11.309, Finance Code, for secure distribution to check verification entities.

(c) A financial institution that receives the documents required by Subsection (b), not later than the second business day after the date the customer provides the documents to the financial institution, shall submit the information required by Subsection (d) to the electronic notification system established under Section 11.309, Finance Code.

(d) The information submitted by a financial institution under Subsection (c) must include:

(1) the customer's name, address, phone number, date of birth, and driver's license number or government-issued identification number;

(2) the financial institution account number of any account that has been compromised by the alleged offense and has been closed in response to the alleged offense;

(3) the financial institution routing number; and

(4) the number on any check that has been lost, stolen, or compromised.

(e) A check verification entity shall maintain reasonable procedures, in accordance with rules adopted by the finance commission, to prevent the check verification entity from recommending acceptance or approval of a check or similar sight order drawn on an account identified in the notification if:

(1) the check verification entity receives notification through the electronic notification system; or

(2) a customer presents to the check verification entity:

(A) a copy of a police report of an offense under Section 32.51, Penal Code;

(B) a sworn statement by the person that the person was the victim of an offense under that section and that the person has requested that the financial institution close any account that has been compromised by the alleged offense; and

(C) the information described by Subsection (d).

(f) A financial institution or check verification entity, or an officer, director, employee, or agent of the institution or entity,

is not liable for damages resulting from providing the notification required by Subsection (c) or failing to recommend acceptance or approval of a check or similar sight order under Subsection (e).

(g) The Finance Commission of Texas may adopt rules:

(1) to implement this section;

(2) to clarify the duties and responsibilities of a customer, financial institution, or check verification entity under this section; and

(3) to specify how an erroneous notification may be withdrawn, amended, or corrected.

Added by Acts 2007, 80th Leg., R.S., Ch. 1044 (H.B. 2002), Sec. 1, eff. September 1, 2007.
Transferred from Business and Commerce Code, Section 35.595 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.011(c), eff. September 2, 2009.

TITLE 12. RIGHTS AND DUTIES OF CONSUMERS AND MERCHANTS

CHAPTER 601. CANCELLATION OF CERTAIN CONSUMER TRANSACTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 601.001. DEFINITIONS. In this chapter:

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

(2) "Consumer transaction" means a transaction between a merchant and one or more consumers.

(3) "Merchant" means a party to a consumer transaction other than a consumer.

(4) "Merchant's place of business" means a merchant's main or permanent branch office or local address. For a state or national bank or savings and loan association, the term includes an approved branch office and a registered loan production office.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 601.002. APPLICABILITY OF CHAPTER; EXCEPTION. (a) This chapter applies only to a consumer transaction in which:

(1) the merchant or the merchant's agent engages in a

personal solicitation of a sale to the consumer at a place other than the merchant's place of business;

(2) the consumer's agreement or offer to purchase is given to the merchant or the merchant's agent at a place other than the merchant's place of business; and

(3) the agreement or offer is for:

(A) the purchase of goods or services for consideration that exceeds $25, payable in installments or in cash; or

(B) the purchase of real property for consideration that exceeds $100, payable in installments or in cash.

(b) Notwithstanding Subsection (a), this chapter does not apply to:

(1) a purchase of farm equipment;

(2) an insurance sale regulated by the Texas Department of Insurance;

(3) a sale of goods or services made:

(A) under a preexisting revolving charge account or retail charge agreement; or

(B) after negotiations between the parties at a business establishment in a fixed location where goods or services are offered or exhibited for sale; or

(4) a sale of real property if:

(A) the purchaser is represented by a licensed attorney;

(B) the transaction is negotiated by a licensed real estate broker; or

(C) the transaction is negotiated at a place other than the consumer's residence by the person who owns the property.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER B. CONSUMER'S RIGHT TO CANCEL TRANSACTION

Sec. 601.051. CONSUMER'S RIGHT TO CANCEL. In addition to any other rights or remedies available, a consumer may cancel a consumer transaction not later than midnight of the third business day after the date the consumer signs an agreement or offer to purchase.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 601.052. NOTICE OF CONSUMER'S RIGHT TO CANCEL REQUIRED. (a) A merchant must provide a consumer with a complete receipt or copy of a contract pertaining to the consumer transaction at the time of its execution.

(b) The document provided under Subsection (a) must:

(1) be in the same language as that principally used in the oral sales presentation;

(2) contain the date of the transaction;

(3) contain the name and address of the merchant; and

(4) contain a statement:

(A) in immediate proximity to the space reserved in the contract for the signature of the consumer or on the front page of the receipt if a contract is not used; and

(B) in boldfaced type of a minimum size of 10 points in substantially the following form:

"YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 601.053. COMPLETED CANCELLATION FORM REQUIRED. (a) A merchant that provides a document under Section 601.052 must attach to the document a completed notice of cancellation form in duplicate. The form must:

(1) be easily detachable;

(2) be in the same language as the document provided under Section 601.052; and

(3) contain the following information and statements in 10-point boldfaced type:

"NOTICE OF CANCELLATION

(enter date of transaction)

"YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

"IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU

UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE MERCHANT OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

"IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE MERCHANT AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE MERCHANT REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE MERCHANT'S EXPENSE AND RISK.

"IF YOU DO NOT AGREE TO RETURN THE GOODS TO THE MERCHANT OR IF THE MERCHANT DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION.

"TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO (name of merchant), AT (address of merchant's place of business) NOT LATER THAN MIDNIGHT OF (date).

I HEREBY CANCEL THIS TRANSACTION.

(date)

(buyer's signature)"

(b) A merchant may not fail to include on both copies of the form described by Subsection (a):

(1) the name of the merchant;

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

(3) the date of the transaction; and

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

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 601.054. USE OF FORMS AND NOTICES PRESCRIBED BY THE FEDERAL TRADE COMMISSION AUTHORIZED. The use of the forms and notices of the right to cancel prescribed by the Federal Trade Commission's trade-regulation rule providing a cooling-off period for door-to-door sales constitutes compliance with Sections 601.052 and 601.053.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01,

eff. April 1, 2009.

Sec. 601.055. ALTERNATIVE NOTICE AUTHORIZED FOR CERTAIN CONSUMER TRANSACTIONS. A consumer transaction in which the contract price does not exceed $200 complies with the notice requirements of Sections 601.052 and 601.053 if:

(1) the consumer may at any time cancel the order, refuse to accept delivery of the goods without incurring any obligation to pay for the goods, or return the goods to the merchant and receive a full refund of the amount the consumer has paid; and

(2) the consumer's right to cancel the order, refuse delivery, or return the goods without obligation or charge at any time is clearly and conspicuously stated on the face or reverse side of the sales ticket.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER C. RIGHTS AND DUTIES OF CONSUMER AND MERCHANT

Sec. 601.101. MERCHANT'S COMPENSATION. A merchant is not entitled to compensation for services performed under a consumer transaction canceled under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 601.102. CONSUMER'S RETENTION OF GOODS OR TITLE TO REAL PROPERTY AUTHORIZED. Until a merchant has complied with this chapter, a consumer with possession of goods or the right or title to real property delivered by the merchant:

(1) may retain possession of the goods or the right or title to the real property; and

(2) has a lien on the goods or real property to the extent of any recovery to which the consumer is entitled.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 601.103. CONSUMER'S DUTIES WITH RESPECT TO DELIVERED GOODS OR REAL PROPERTY. (a) Within a reasonable time after a cancellation under this chapter, the consumer must, on demand, tender to the merchant any goods or any right or title to real property delivered by the merchant under the consumer transaction.

(b) The consumer is not obligated to tender goods at a place other than the consumer's residence.

(c) If the merchant fails to demand possession of the goods or the right or title to real property within a reasonable time after cancellation, the goods or real property become the property of the consumer without obligation to pay.

(d) Goods or real property in possession of the consumer are at the risk of the merchant, except that the consumer shall take reasonable care of the goods or the real property both before and for a reasonable time after cancellation.

(e) For purposes of this section, 20 days is presumed to be a reasonable time.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER D. PROHIBITED ACTS AND CONDUCT BY MERCHANT

Sec. 601.151. CONFESSION OF JUDGMENT OR WAIVER OF RIGHTS. A merchant may not include in a contract or receipt pertaining to a consumer transaction a confession of judgment or a waiver of any of the rights to which the consumer is entitled under this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 601.152. FAILURE TO INFORM OR MISREPRESENTATION OF RIGHT TO CANCEL. A merchant may not:

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

(2) misrepresent in any manner the consumer's right to cancel.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 601.153. TRANSFER OF INDEBTEDNESS DURING CERTAIN PERIOD. A merchant may not negotiate, transfer, sell, or assign a note or other evidence of indebtedness to a finance company or other third party before midnight of the fifth business day after the date the contract pertaining to a consumer transaction was signed or the goods or services were purchased.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 601.154. FAILURE TO TAKE CERTAIN ACTIONS FOLLOWING RECEIPT OF NOTICE OF CANCELLATION. A merchant may not:

(1) fail to notify the consumer before the end of the 10th business day after the date the merchant receives the notice of cancellation whether the merchant intends to repossess or abandon any shipped or delivered goods;

(2) fail or refuse to honor a valid cancellation under this chapter by a consumer; or

(3) fail before the end of the 10th business day after the date the merchant receives a valid notice of cancellation to:

(A) refund all payments made under the contract or sale;

(B) return any goods or property traded in to the merchant in substantially the same condition as when received by the merchant;

(C) cancel and return a negotiable instrument executed by the consumer in connection with the contract of sale;

(D) take any action appropriate to terminate promptly any security interest created in the transaction; or

(E) restore improvements on real property to the same condition as when the merchant took title to or possession of the real property unless the consumer requests otherwise.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER E. ENFORCEMENT

Sec. 601.201. CERTAIN SALES OR CONTRACTS VOID. A sale or contract entered into under a consumer transaction in violation of Section 601.053(b) or Subchapter D is void.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 601.202. LIABILITY FOR DAMAGES. A merchant who violates this chapter is liable to the consumer for:

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

(2) reasonable attorney's fees; and

(3) court costs.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 601.203. ALTERNATIVE RECOVERY UNDER CERTAIN CIRCUMSTANCES. If the merchant fails to tender goods or property traded to the merchant in substantially the same condition as when received by the merchant, the consumer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 601.204. DECEPTIVE TRADE PRACTICE. A violation of this chapter is a false, misleading, or deceptive act or practice as defined by Section 17.46(b). In addition to any remedy under this chapter, a remedy under Subchapter E, Chapter 17, is also available for a violation of this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 601.205. INJUNCTION. If the attorney general believes

that a person is violating or about to violate this chapter, the attorney general may bring an action in the name of the state to restrain or enjoin the person from violating this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 602. DELIVERY OF UNSOLICITED GOODS

Sec. 602.001. INAPPLICABILITY OF CHAPTER TO SUBSTITUTED GOODS. This chapter does not apply to goods substituted for goods ordered or solicited by the recipient of the goods.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 602.002. ACTIONS AUTHORIZED ON DELIVERY OF UNSOLICITED GOODS. Unless otherwise agreed, a person to whom unsolicited goods are delivered:

(1) is entitled to refuse to accept delivery of the goods; and

(2) is not required to return the goods to the sender.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 602.003. CERTAIN UNSOLICITED GOODS CONSIDERED GIFT. (a) Unsolicited goods that are addressed to or intended for the recipient are considered a gift to the recipient.

(b) The recipient may use or dispose of goods described by Subsection (a) in any manner without obligation to the sender.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 602.004. MISTAKEN DELIVERY. A person who receives unsolicited goods as the result of a bona fide mistake shall return the goods. The sender has the burden of proof as to the mistake.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 603. REGULATION OF CONSUMER CONTRACTS CREATED BY ACCEPTANCE OF CHECK OR OTHER DRAFT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 603.001. DEFINITIONS. Unless the context requires a different definition, the definitions provided by Chapter 3 apply to this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 603.002. APPLICABILITY OF CHAPTER. (a) Except as provided by Subsection (b), this chapter applies only to a person who solicits business in this state by mailing an individual a check or other draft payable to that individual.

(b) This chapter does not apply to a financial institution as defined by Section 201.101, Finance Code, or an authorized lender as defined by Section 341.001 of that code, that sends a check or other draft to an existing or prospective account holder authorizing that person to access an extension of credit.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER B. REQUIRED DISCLOSURES AND NOTICES

Sec. 603.051. REQUIRED DISCLOSURE ON CHECK OR OTHER DRAFT. (a) A person who makes an offer that the recipient may accept by endorsing and negotiating a check or other draft shall disclose on the check or other draft that by signing and negotiating the instrument, the depositor agrees to pay for future goods or services as a result of the contract.

(b) The disclosure required by Subsection (a) must be clear, conspicuous, and located on the check or other draft next to the place for endorsement.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01,

eff. April 1, 2009.

Sec. 603.052. REQUIRED NOTICE OF RIGHT TO TERMINATE ACCEPTANCE OF OFFER. (a) If an offer described by Section 603.051 includes a free membership period, trial period, or other incentive with a time limit, and if the offer results in a contract unless the recipient terminates the acceptance of the offer not later than the end of the time period, the offeror shall send notice to the recipient, at least two weeks before debiting any account, of the recipient's obligation to terminate the recipient's acceptance of the offer.

(b) The notice required by Subsection (a) must be clear and conspicuous. If the offeror bills the recipient by mailing an invoice, the notice may be included with the invoice.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 603.053. EFFECT OF NONCOMPLIANCE. (a) An offer described by Section 603.051 is void if the offeror:

(1) does not make the disclosure required by that section;

(2) does not send notice as required by Section 603.052, if applicable; or

(3) provides an incentive with a time limit, including a free membership period or trial period, that is less than two weeks in length.

(b) A delivery of goods or services to the recipient does not operate to form a contract between the offeror and the recipient if:

(1) the offer does not contain the disclosure required by Section 603.051;

(2) the offer is not followed by a notice required by Section 603.052, if applicable; or

(3) the offeror fails to honor the recipient's cancellation or termination of the acceptance of the offer made under the terms of the offer or as required by Section 603.052.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER C. ENFORCEMENT

Sec. 603.101. DECEPTIVE TRADE PRACTICE. A violation of this chapter is a deceptive trade practice in addition to the practices described by Subchapter E, Chapter 17, and is actionable under that subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 604. SALE OR ISSUANCE OF STORED VALUE CARD

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 604.001. DEFINITION OF STORED VALUE CARD. In this chapter, "stored value card":

(1) means a record, as defined by Section 322.002, including a record that contains a microprocessor chip, magnetic strip, or other means of storing information:

(A) that evidences a promise made for monetary consideration by the seller or issuer of the record that goods or services will be provided to the owner of the record in the value shown in the record;

(B) that is prefunded; and

(C) the value of which is reduced on redemption; and

(2) includes a gift card or gift certificate.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 604.002. INAPPLICABILITY OF CHAPTER. This chapter does not apply to a stored value card that:

(1) is issued by:

(A) a financial institution acting as a financial agent of the United States or this state;

(B) a federally insured financial institution, as defined by Section 201.101, Finance Code, if the financial institution is primarily liable for the card as the issuing principal; or

(C) an air carrier holding a certificate of public convenience and necessity under Title 49, United States Code;

(2) is issued as a prepaid calling card by a prepaid

calling card company regulated under Section 55.253, Utilities Code;

(3) is distributed by the issuer to a person under an awards, rewards, loyalty, incentive, rebate, or promotional program and is not issued or reloaded in exchange for money tendered by the cardholder;

(4) is sold below face value or donated to:

(A) an employee of the seller or issuer;

(B) a nonprofit or charitable organization; or

(C) an educational institution for fund-raising purposes; or

(5) does not expire and for which the seller does not charge a fee other than a fee described in Section 604.051.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 604.003. CAUSE OF ACTION NOT CREATED. This chapter does not create a cause of action against a person who issues or sells a stored value card.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER B. PERMISSIBLE FEES

Sec. 604.051. FEES AND CHARGES RELATED TO ISSUANCE AND HANDLING OF CARD. If disclosed as required by Subchapter C, the issuer of a stored value card may impose and collect a reasonable:

(1) handling fee in connection with the issuance of or adding of value to the card;

(2) access fee for a card transaction conducted at an unmanned teller machine, as defined by Section 59.301, Finance Code; and

(3) reissue or replacement charge if an expired or lost card is reissued or replaced.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 604.052. FEES OR CHARGES THAT DECREASE UNREDEEMED BALANCE OF CARD. The issuer of a stored value card may impose or collect a periodic fee or other charge that causes the unredeemed balance of the card to decrease over time only if the fee:

(1) is reasonable;

(2) is not assessed until after the first anniversary of the date the card is sold or issued; and

(3) is disclosed as required by Subchapter C.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER C. REQUIRED DISCLOSURES

Sec. 604.101. REQUIRED DISCLOSURE OF CERTAIN MATTERS APPLICABLE TO CARD. An expiration date or policy, fee, or other material restriction or contract term applicable to a stored value card must be clearly and conspicuously disclosed at the time the card is sold or issued to a person to enable the person to make an informed decision before purchasing the card.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 604.102. REQUIRED PRINTING OF CERTAIN DISCLOSURES. In addition to the disclosure required under Section 604.101, a disclosure regarding the expiration of a stored value card or a periodic fee that reduces the unredeemed value of a stored value card must be legibly printed on the card.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 604.103. VALIDITY OF CARD SOLD WITHOUT REQUIRED DISCLOSURES. A stored value card sold without the disclosure required by this subchapter of an expiration date or policy, fee, or other material restriction or contract term applicable to the card is valid until redeemed or replaced.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 605. CONSUMER REBATE RESPONSE AND GRACE PERIOD FOR CORRECTIONS

Sec. 605.001. DEFINITIONS. In this chapter:

(1) "Consumer" means a person who obtains a product or service that is to be used primarily for personal, business, family, or household purposes.

(2) "Consumer rebate" means an offer to a consumer of cash, credit, or credit toward future purchases that is made in connection with a sale of a good or service to the consumer, is in an amount of $10 or more, and requires the consumer to mail or electronically submit a rebate request after the sale is completed. The term does not include:

(A) any promotion or incentive that is offered by a manufacturer to another company or organization that is not the consumer to help promote or place the product or service;

(B) a rebate that is redeemed at the time of purchase;

(C) any discount, cash, credit, or credit toward a future purchase that is automatically provided to a consumer without the need to submit a request for redemption;

(D) a rebate that is applied to a bill that the consumer becomes obligated to pay after the date the purchase is made;

(E) any refund that may be given to a consumer in accordance with a manufacturer or retailer's return, guarantee, adjustment, or warranty policies; or

(F) any manufacturer or retailer's frequent shopper customer reward program.

(3) "Properly completed" means that the consumer submitted the required information and documentation in the manner and by the deadline specified in the rebate offer and otherwise satisfied the terms and conditions of the rebate offer.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.012(a), eff. September 1, 2009.

Sec. 605.002. REBATE RESPONSE PERIOD; GRACE PERIOD FOR CORRECTIONS. (a) Except as provided by Subsection (b), a person, including a manufacturer or retailer, who offers a rebate shall mail the amount of the rebate to the consumer or electronically pay the consumer the amount of the rebate within the time period promised in the rebate information provided to the consumer or, if silent, not later than the 30th day after the date the person receives a properly completed rebate request.

(b) If a consumer rebate offer is contingent on the consumer continuing to purchase a service for a minimum length of time, the time period in Subsection (a) begins on the later of:

(1) the date the consumer submits the rebate request; or

(2) the expiration date of the service period.

(c) If the person offering the rebate receives a rebate request that is timely submitted but not properly completed, the person shall:

(1) process the rebate in the manner provided by Subsection (a) as if the rebate request were properly completed; or

(2) notify the consumer, not later than the date specified by Subsection (a), of the reasons that the rebate request is not properly completed and the consumer's right to correct the deficiency within 30 days after the date of the notification.

(d) The notification under Subsection (c)(2) must be by mail, except that notification may be by e-mail if the consumer has agreed to be notified by e-mail.

(e) If the consumer corrects the deficiency stated in the notification under Subsection (c)(2) before the 31st day after the postmark date of the person's mailed notification to the consumer or the date the e-mail is received, if applicable, the person shall process the rebate in the manner provided by Subsection (a) for a properly completed request.

(f) This section does not impose any obligation on a person to pay a rebate to any consumer who is not eligible under the terms and conditions of the rebate offer or has not satisfied all of the terms and conditions of the rebate offer, if the person offering the rebate has complied with Subsections (c) and (d).

(g) A person offering a rebate has the right to reject a rebate request from a consumer who the person determines:

(1) is attempting to commit fraud;

(2) has already received the offered rebate; or

(3) is submitting proof of purchase that is not legitimate.

(h) A person making a determination under Subsection (g) shall notify the consumer within the time period provided by Subsection (c) that the person is considering rejecting, or has rejected, the rebate request and shall instruct the consumer of any actions that the consumer may take to cure the deficiency.

(i) If the person offering a rebate erroneously rejects a properly completed rebate request, the person shall pay the consumer as soon as practicable, but not later than 30 days, after the date the person learns of the error.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.012(a), eff. September 1, 2009.

Sec. 605.003. USE OF INDEPENDENT ENTITY TO PROCESS REBATE. For the purposes of this chapter, if a person who offers a rebate uses an independent entity to process the rebate, an act of the entity is considered to be an act of the person and receipt of a rebate request by the entity is considered receipt of the request by the person.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.012(a), eff. September 1, 2009.

Sec. 605.004. DECEPTIVE TRADE PRACTICE. (a) A violation of this chapter is a deceptive trade practice in addition to the practices described by Subchapter E, Chapter 17, and is actionable by a consumer under that subchapter. Claims related to more than one consumer may not be joined in a single action brought for an alleged violation of this chapter, unless all parties agree.

(b) A violation of this chapter is subject to an action by the office of the attorney general as provided by Section 17.46(a).

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.012(a), eff. September 1, 2009.

Sec. 605.005. CERTIFICATION AS CLASS ACTION PROHIBITED. A court may not certify an action brought under this chapter as a class action.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.012(a), eff. September 1, 2009.

TITLE 13. CONTESTS AND OTHER PROMOTIONS
CHAPTER 621. CONTESTS AND GIFT GIVEAWAYS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 621.001. SHORT TITLE. This chapter may be cited as the Contest and Gift Giveaway Act.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 621.002. CONSTRUCTION OF CHAPTER. This chapter shall be interpreted to provide the maximum disclosure to, and fair treatment of, a person who enters a contest or gift giveaway through which the person is solicited to attend a sales presentation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 621.003. DEFINITIONS. (a) In this chapter:

(1) "Contest" means a promotional device in which:

(A) a person is offered, as an inducement to attend a sales presentation, a chance to win or receive a prize by complying with specified entry requirements;

(B) the winner or recipient of a prize is determined by random selection; and

(C) all offered prizes are awarded.

(2) "Contest period" means the duration of a contest from the beginning date to the ending date.

(3) "Drawing" means a contest in which the recipient of a prize is determined from all of the entries received.

(4) "Entry form" means a card, letter, entry blank, token, or similar device that identifies a contestant by:

(A) name;

(B) number, letter, or symbol; or

(C) both name and number, letter, or symbol.

(5) "Gift" means an item of value that is offered,

transferred, or given to a person as an inducement to attend a sales presentation but that is not offered, transferred, or awarded through a contest. The term does not include a manufacturer's rebate or discount available to the public.

(6) "Major prize" means a prize that has an actual unit cost to the offeror of at least $250.

(7) "Matched contest" means a contest in which:

(A) the winning numbers are preselected, printed on an entry form, and distributed to the public; and

(B) the numbers printed on the entry forms are subsequently matched with the list of winning numbers at a sales location to determine prize eligibility.

(8) "Minor prize" means a prize that:

(A) has an actual unit cost to the offeror of less than $250; and

(B) is transferred to a person who:

(i) attends a sales presentation; and

(ii) is not the winner of a major prize.

(9) "Odds of winning" means a ratio in which:

(A) the numerator equals the actual number of units of an identified prize to be given away during a contest period; and

(B) the denominator equals the number of entry forms distributed or reasonably anticipated to be distributed during the contest period.

(10) "Offeror" means a person who solicits another person to attend a sales presentation.

(11) "Person" includes an individual, a corporation, a firm, and an association.

(12) "Prize" means an item of value that is offered, awarded, or given to a person through a contest. The term does not include a manufacturer's rebate or discount available to the public.

(13) "Sales presentation" means a transaction or occurrence in which a consumer is solicited to execute a contract that obligates the consumer to purchase goods or services as defined by Subchapter E, Chapter 17, including:

(A) a timeshare interest as defined by Section 221.002, Property Code; and

(B) a membership interest as defined by Section 222.003, Property Code.

(14) "Winning number" includes a letter or other

identifying symbol.

(b) For purposes of Subsection (a)(1)(B), a determination made by random selection does not include the method used by an offeror to identify a person who will be notified of an offer to win a prize.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 621.004. INAPPLICABILITY OF CHAPTER TO CERTAIN SALES PRESENTATIONS. This chapter does not apply to a sales presentation that is conducted in conjunction with a business seminar, trade show, convention, or other gathering if only representatives of business entities who attend the seminar, trade show, convention, or gathering are solicited to attend.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 621.005. DETERMINATION OF RETAIL VALUE OF PRIZE OR GIFT. (a) The retail value of an item offered as a prize or gift is the price at which at least two principal retail outlets in this state have made a substantial number of sales of an identical item to members of the public during the six months preceding the offering of the prize or gift. The item sold by the principal retail outlets must be from the same manufacturer, and be of the same brand, model, and type, as the item offered as a prize or gift.

(b) If a substantial number of sales of a particular item offered as a prize or gift have not been made in this state during the six months preceding the offering of the item described in the solicitation or if the offeror elects, the retail value of the item is the actual cost of the item to the offeror, net of any rebates, plus 200 percent.

(c) If a prize or gift involves lodging, airfare, a trip, or a recreational activity, the retail value is the retail sales price of that lodging, airfare, trip, or recreational activity to a member of the public who is not involved in a promotional or other discount transaction.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01,

eff. April 1, 2009.

Sec. 621.006. DEPOSIT REQUIREMENTS. (a) In this section, "refundable deposit" means a deposit that is required to be returned in its entirety to a consumer if:

(1) it is paid by the consumer for a reservation used by the consumer; or

(2) the consumer provides at least five possible reservation dates, none of which can be confirmed.

(b) An offeror may require a refundable deposit for a gift or prize involving lodging, airfare, a trip, or a recreational activity if the deposit requirement is fully, clearly, and conspicuously disclosed.

(c) A condition that restricts the refund of the deposit must be clearly and conspicuously disclosed in at least 10-point type on the solicitation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER B. GIFT OFFERS

Sec. 621.051. APPLICABILITY OF SUBCHAPTER. This subchapter applies to a person who uses a gift as part of an advertising plan or program.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 621.052. REQUIRED DISCLOSURES RELATING TO GIFTS. (a) An offeror who notifies a person that the person will receive a gift shall, at the time of the notification, clearly and conspicuously disclose:

(1) that attendance at a sales presentation is required;

(2) the approximate duration of the sales presentation; and

(3) a description of the product or service being sold.

(b) A person shall disclose:

(1) the retail value of a gift; and

(2) clearly and conspicuously in at least 10-point type

that airfare, lodging, or both are not included as part of a gift that is a trip or recreational activity to the extent that either or both are not included.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 621.053. PROHIBITED ACTS RELATING TO GIFTS. A person may not:

(1) use the term "gift" or a similar term in a false, misleading, or deceptive manner;

(2) directly represent or imply that a gift promotion is a contest;

(3) in a gift promotion, use the term:

(A) "finalist," "major award winner," "grand prize recipient," "winner," "won," "will win," or "will be awarded" or use words or phrases of similar meaning that imply that a person is being solicited to enter or participate in a contest; or

(B) "sweepstakes" or "contest" or use words or phrases of similar meaning that imply that a person is being solicited to enter or has won a contest;

(4) represent that a gift has a sponsor, approval, characteristic, ingredient, use, benefit, quantity, status, affiliation, connection, or identity that the gift does not have;

(5) represent that a gift is of a particular standard, quality, grade, style, or model if the gift is of another; or

(6) use a word or phrase that:

(A) simulates or causes confusion with a document issued by an officer of a court or with the seal or name of a real or fictitious governmental entity; or

(B) implies that the offeror is sending a court document or legal document or that the offeror is a governmental entity.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 621.054. LIMITATIONS ON CONDITIONING GIFT ON PAYMENT OF CONSIDERATION, CHARGE, OR EXPENSE. (a) In this section, "redemption

or shipping fee" means any kind of consideration paid to the offeror. The term does not include a refundable deposit.

(b) Except as provided by Subsection (c), an offeror may notify a person that the person will receive a gift, the receipt of which is conditioned on the person paying consideration of any kind, paying a charge, or incurring an expense, only if the offeror fully, clearly, and conspicuously discloses the consideration, charge, or expense.

(c) An offeror may not charge a redemption or shipping fee for a gift regardless of whether full disclosure of the fee is made.

(d) A gift is not prohibited in a legitimate trade promotion if the advertising regarding the promotion fully discloses any contractual obligation to be assumed to qualify for the gift.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 621.055. LIMITATIONS ON CONDITIONING GIFT ON PURCHASE. (a) An offeror may notify a person that the person will receive a gift, the receipt of which is conditioned on the person purchasing a good or service, only if at the time of notification the offeror clearly and conspicuously discloses that purchase of a good or service is required.

(b) A gift is not prohibited in a legitimate trade promotion if the advertising regarding the promotion fully discloses any requirement of a purchase to be made to qualify for the gift.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER C. MATCHED CONTESTS AND DRAWINGS

Sec. 621.101. APPLICABILITY OF SUBCHAPTER. This subchapter applies to a person who uses a contest as part of an advertising plan or program.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 621.102. REQUIRED DISCLOSURES RELATING TO PRIZES

GENERALLY. An offeror who notifies a person that the person has won a prize, will receive a prize, or has a chance to win or receive a prize shall, at the time of the notification, clearly and conspicuously disclose:

(1) that attendance at a sales presentation is required;

(2) the approximate duration of the sales presentation; and

(3) a description of the product or service being sold.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 621.103. REQUIREMENTS FOR MATCHED CONTEST. (a) The identity and number of the major prizes to be awarded in a matched contest must be:

(1) determined before the contest begins; and

(2) disclosed on each entry form distributed.

(b) Each major prize identified on an entry form for a matched contest shall be awarded.

(c) The contest period for a matched contest may not exceed 12 calendar months.

(d) If, during the contest period for a matched contest, a winning number is not presented or matched for a major prize, the offeror shall conduct a drawing from the names of those individuals who attended a sales presentation during the contest period. The offeror shall conduct the drawing not later than the 60th day after the date the contest period ends. Each major prize identified on the entry forms distributed during the contest period that was not previously awarded shall be awarded at the time of the drawing.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 621.104. REQUIRED DISCLOSURES RELATING TO MATCHED CONTEST. (a) A person who uses a matched contest shall clearly and conspicuously disclose in writing in the offer:

(1) that attendance at a sales presentation is required;

(2) the name and street address of the person who is soliciting attendance at a sales presentation;

(3) a description of the product or service being sold;

(4) each requirement, restriction, qualification, and other condition that must be satisfied for a person to enter the contest, including:

(A) any deadline by which the person must visit the location or attend the sales presentation to qualify to receive a prize; and

(B) the approximate duration of the sales presentation;

(5) a statement of the odds of winning each prize offered, expressed as a ratio in Arabic numerals;

(6) the geographical area or states in which the contest will be conducted;

(7) the beginning and ending dates of the contest period;

(8) the identity and address of each person responsible for awarding prizes;

(9) that all unclaimed prizes will be awarded by a drawing and the date of the drawing; and

(10) all other rules and terms of the contest.

(b) A person engaged in the preparation, promotion, sale, distribution, or use of a matched contest shall disclose:

(1) the retail value of a prize; and

(2) clearly and conspicuously in at least 10-point type that airfare, lodging, or both are not included as part of a prize that is a trip or recreational activity to the extent that either or both are not included.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 621.105. PROHIBITED ACTS RELATING TO MATCHED CONTEST. A person engaged in the preparation, promotion, sale, distribution, or use of a matched contest may not:

(1) use the term "prize" or a similar term in a false, misleading, or deceptive manner;

(2) represent in soliciting a person to enter or participate in the contest that the person is a "finalist," "major award winner," "grand prize recipient," or "winner" or that a person has "won," "will win," or "will be awarded" or use words or phrases of similar meaning unless the representation is true;

(3) represent that a prize has a sponsor, approval,

characteristic, ingredient, use, benefit, quantity, status, affiliation, connection, or identity that the prize does not have;

(4) represent that a prize is of a particular standard, quality, grade, style, or model if the prize is of another;

(5) misrepresent the odds of winning a prize;

(6) misrepresent the rules or terms of participation in the contest;

(7) represent that:

(A) a number, ticket, coupon, symbol, or entry form confers or will confer an advantage on a person that another person does not have or has a value that other entries do not have; or

(B) a person is more likely to win a prize than another person;

(8) fail to obtain a person's express written consent before using that person's name for a promotional purpose;

(9) use or distribute simulated checks or currency or other simulated items of value unless the words "SPECIMEN--NON-NEGOTIABLE" are clearly and conspicuously printed on those items in at least 18-point type; or

(10) use a word or phrase that:

(A) simulates or causes confusion with a document issued by an officer of a court or with the seal or name of a real or fictitious governmental entity; or

(B) implies that the offeror is sending a court document or legal document or that the offeror is a governmental entity.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 621.106. REQUIRED DISCLOSURES RELATING TO DRAWINGS. (a) A person may not use a drawing unless the offeror clearly and conspicuously discloses in writing in the offer:

(1) a statement of the odds of winning each prize offered, expressed as a ratio in Arabic numerals, except as provided by Subsection (c);

(2) the exact prizes to be awarded in the drawing;

(3) the beginning and ending dates of the contest period;

(4) the date the drawing will occur; and

(5) the location at which the drawing will occur.

(b) A person engaged in the preparation, promotion, sale, distribution, or use of a drawing shall disclose:

(1) the retail value of a prize; and

(2) clearly and conspicuously in at least 10-point type that airfare, lodging, or both are not included in a prize that is a trip or recreational activity to the extent that either or both are not included.

(c) If the odds of winning a prize cannot be determined because the total number of entries is not known, the offeror shall make a statement to the effect that the odds of winning depend on the total number of entries received.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 621.107. PROHIBITED ACTS RELATING TO DRAWINGS. A person engaged in the preparation, promotion, sale, distribution, or use of a drawing may not:

(1) use the term "prize" or a similar term in a false, misleading, or deceptive manner;

(2) fail to provide the prize as represented at the conclusion of the drawing;

(3) represent that a prize has a sponsor, approval, characteristic, ingredient, use, benefit, quantity, status, affiliation, connection, or identity that the prize does not have;

(4) represent that a prize is of a particular standard, quality, grade, style, or model if the prize is of another;

(5) misrepresent the odds of winning a prize; or

(6) misrepresent the rules or terms of participation in the drawing.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 621.108. CONDITIONING PRIZE ON PAYMENT OF CONSIDERATION, CHARGE, OR EXPENSE PROHIBITED; EXCEPTIONS. (a) Except as provided by Subsection (b), an offeror may not notify a person that the person has won a prize, will receive a prize, or has a chance to win or

receive a prize if the receipt of the prize is conditioned on the person paying consideration of any kind, paying a charge, or incurring an expense.

(b) An offeror may notify a person that the person has won a prize, will receive a prize, or has a chance to receive a prize that is conditioned on the person paying:

(1) expenses incurred for travel to and from the sales location; or

(2) a refundable deposit authorized under Section 621.006.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 621.109. CONDITIONING PRIZE ON PURCHASE PROHIBITED. An offeror may not notify a person that the person has won a prize, will receive a prize, or has a chance to win or receive a prize if the receipt of the prize is conditioned on the person purchasing a good or service unrelated to the prize.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER D. FULFILLMENT OF GIFT AND PRIZE OFFERS

Sec. 621.151. AVAILABILITY AND AWARDING OF GIFT OR PRIZE. (a) Subject to Sections 621.152-621.154, an offeror shall:

(1) in a gift offer, provide each gift as represented to each person who attends a sales presentation; or

(2) in a matched contest, award each prize as represented on the entry form to each person who presents a winning entry.

(b) An offeror shall have available at the sales location a sufficient quantity of:

(1) each gift to meet the reasonable anticipated response to the offer; or

(2) each prize to meet the reasonable anticipated number of prize winners.

(c) Except as provided by Sections 621.152-621.154, an offeror may not provide a coupon book, a discount book, or a certificate or voucher that entitles the holder to redeem the certificate or voucher for a gift or prize required to be available under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 621.152. RAINCHECK REQUIREMENTS. Subject to Section 621.153(a), if the response to an offer exceeds the number of gifts or major or minor prizes, as applicable, available at the sales location, the offeror, at the time of the visit or, if a sales presentation is required, at the conclusion of the sales presentation, shall tender to the recipient of the offer a raincheck for the gift or prize represented in the offer. Except as provided by Section 621.153(b), the offeror shall send that exact gift or prize to the recipient, without cost to the recipient, not later than the 14th day after the date the recipient visits the sales location or attends the sales presentation. The offeror shall obtain a return receipt from the shipper verifying that the gift or prize was delivered to the recipient.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 621.153. ISSUANCE OF CHECK OR MONEY ORDER IN LIEU OF GIFT OR MINOR PRIZE. (a) An offeror who knows at the time a recipient of an offer visits a sales location or attends a sales presentation that the gift or minor prize will not be available within 14 days of the date of the visit or attendance shall at the time of the visit or at the conclusion of the sales presentation tender to the recipient, by cash or check, the amount of $100.

(b) If, after the expiration of the 14th day after the date the offeror issued a raincheck under Section 621.152 for a gift or minor prize, the offeror has not sent the gift or prize, the offeror shall send by mail to the recipient of the raincheck a check or money order in the amount of $100 payable to the recipient. The offeror shall:

(1) send the check or money order not later than the 15th day after the date the offeror issued the raincheck; and

(2) obtain a return receipt from the United States Postal Service that verifies that the check or money order was delivered to the recipient.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01,

eff. April 1, 2009.

Sec. 621.154. CERTIFICATE PERMITTED FOR LODGING, AIRFARE, TRIP, OR RECREATIONAL ACTIVITY. An offeror may give the recipient of a gift or prize involving lodging, airfare, a trip, or a recreational activity a certificate that evidences the recipient's right to the gift or prize.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER E. CONTEST RECORDS

Sec. 621.201. APPLICABILITY OF SUBCHAPTER. This subchapter applies to a person who uses a contest as part of an advertising plan or program.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 621.202. REQUIRED RECORDS FOR CONTESTS OTHER THAN DRAWINGS. (a) For each contest other than a drawing, the offeror shall maintain until the second anniversary of the date the last prize was awarded:

(1) records of the identity and address of each person who is responsible for developing, creating, sponsoring, or implementing any part of the advertising plan or program;

(2) records that show that the winning numbers have been deposited in the mail or otherwise made available to recipients in accordance with the odds statement provided under Section 621.104(a);

(3) a copy of each contest solicitation;

(4) records adequate to determine:

(A) the name and address of each contestant;

(B) the approximate date each contestant was sent the solicitation used in the contest;

(C) the number of major prizes awarded;

(D) the date each major prize was awarded;

(E) the name, brand, type, model number, and manufacturer of each prize offered;

(F) the method of computing the retail value of each prize;

(G) the method of selecting major prize winners;

(H) the name and address of each major prize winner; and

(I) the facts on which each representation or disclosure made in connection with the contest was based and from which the validity of the representation or disclosure can be determined.

(b) Postal receipt records, affidavits of mailing, and a list of winners or recipients of the major prizes satisfy the requirements of Subsection (a)(2).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 621.203. REQUIRED RECORDS FOR DRAWINGS. (a) For each drawing, the offeror shall maintain until the second anniversary of the date the last major prize was awarded:

(1) records of the identity and address of each person who is responsible for developing, creating, sponsoring, or implementing any part of the advertising plan or program;

(2) records that show that the winning entry for each major prize was selected entirely at random from all of the entries received;

(3) a copy of each contest solicitation; and

(4) records adequate to determine:

(A) the total number of entries;

(B) the number of major prizes awarded;

(C) the date each major prize was awarded;

(D) the name, brand, type, model number, and manufacturer of each prize offered;

(E) the method of computing the retail value of each prize;

(F) the method of selecting winners; and

(G) the names and addresses of the winners.

(b) An affidavit from the person who conducted the drawing and a list of winners or recipients of the major prizes satisfies the requirements of Subsection (a)(2).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 621.204. DISCLOSURE OF MAJOR PRIZES AND WINNERS ON REQUEST. A person who conducts a contest shall, at the end of the contest period, provide to any person who requests the information:

(1) the names of all major prize winners; and

(2) the prizes won by each winner.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 621.205. RECORDS AVAILABLE TO ATTORNEY GENERAL. A person who receives a written request from the attorney general for the records required under this subchapter shall make the records available to the attorney general not later than the 30th day after the date the person received the request.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER F. ENFORCEMENT

Sec. 621.251. CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly violates this chapter.

(b) Except as provided by Subsection (c), an offense under this section is a Class B misdemeanor.

(c) An offense under this section is:

(1) a Class A misdemeanor if it is shown at the trial of the defendant that:

(A) the defendant has previously been convicted of an offense under this section; and

(B) the offense for which the defendant is on trial was committed not later than the fifth anniversary of the date of the previous conviction; or

(2) a third degree felony if it is shown at the trial of the defendant that:

(A) the defendant has previously been twice convicted of an offense under this section; and

(B) the offense for which the defendant is on trial was:

(i) intentional; and

(ii) committed not later than the fifth anniversary of the earlier of the dates of two previous convictions.

(d) Subsection (c)(2) does not apply to a violation of Subchapter D.

(e) A person may not be prosecuted for more than one offense involving the same promotion regardless of whether that promotion is mailed or distributed to more than one person or is used at more than one location.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 621.252. DECEPTIVE TRADE PRACTICE. A violation of this chapter is a deceptive trade practice in addition to the practices described by Subchapter E, Chapter 17, and is actionable under that subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 622. SWEEPSTAKES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 622.001. DEFINITIONS. In this chapter:

(1) "Credit card" means a card that, if covered by the law of this state, would be subject to a lender credit card agreement, as defined by Section 301.002, Finance Code, except that the term does not exclude a card that is subject to an agreement under which:

(A) the obligations are payable in full each month and not deferred; and

(B) no finance charge is assessed when the obligations are paid.

(2) "Debit card" means a card offered by an institution the deposits of which are insured by the Federal Deposit Insurance Corporation or another agency, corporation, or instrumentality chartered by the United States government.

(3) "Imply" means to use any means by which an implication

can be conveyed, including:

(A) a statement, question, or request;

(B) conduct;

(C) a graphic or symbol; and

(D) lettering, coloring, font size, font style, or formatting.

(4) "Sweepstakes" means a contest that awards one or more prizes based on chance or the random selection of entries.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 622.002. ACTS CONSTITUTING CONDUCTING SWEEPSTAKES. For purposes of this chapter, a person conducts a sweepstakes if the person distributes material that:

(1) promotes a sweepstakes;

(2) describes one or more sweepstakes prizes;

(3) states one or more sweepstakes rules;

(4) includes a current or future opportunity to enter a sweepstakes; or

(5) provides a method for the recipient of the material to obtain additional information about a sweepstakes.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER B. APPLICABILITY OF CHAPTER

Sec. 622.051. CHAPTER LIMITED TO SWEEPSTAKES CONDUCTED THROUGH MAIL; EXCEPTION. (a) This chapter applies only to a sweepstakes conducted through the mail.

(b) This chapter does not apply to a sweepstakes for which the only use of the mail is for a consumer to return an entry form to the sweepstakes sponsor.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 622.052. PRIZE VALUE LESS THAN $50,000. (a) This chapter

does not apply to a sweepstakes in which the value of the most valuable prize is less than $50,000.

(b) For purposes of this section, the value of a prize is the greatest of the prize's:

(1) face value;

(2) fair market value; or

(3) present financial value.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 622.053. ADVERTISEMENT OR INSERT IN MAGAZINE, NEWSPAPER, OR CATALOG. This chapter does not apply to a sweepstakes conducted through an advertisement or insert in:

(1) a magazine or newspaper:

(A) that is a publication in which more than 40 percent of the total column inches in each issue consist of advertising space purchased by companies other than:

(i) the publisher;

(ii) an affiliate of the publisher; or

(iii) a vendor for the publisher or an affiliate; and

(B) that is a publication for which more than 50 percent of the total number of copies distributed of each issue are provided to customers who paid for the copy; or

(2) a catalog that is a promotional booklet listing merchandise for sale and that:

(A) is at least 24 pages long;

(B) has a circulation of at least 250,000; and

(C) either:

(i) requires customers to go to a physical location to purchase the advertised items; or

(ii) is published by a company that derives more than 50 percent of the company's total gross revenue from sales occurring at physical locations.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 622.054. CHARITABLE RAFFLE. This chapter does not apply to a charitable raffle regulated by Chapter 2002, Occupations Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 622.055. SWEEPSTAKES REGULATED BY ALCOHOLIC BEVERAGE CODE. This chapter does not apply to a sweepstakes regulated by the Alcoholic Beverage Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 622.056. COMPANY REGULATED UNDER PUBLIC UTILITY REGULATORY ACT. This chapter does not apply to a company regulated under Title 2, Utilities Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 622.057. AIR CARRIER; AIRMAN ASSOCIATION. This chapter does not apply to:

(1) a company that is an air carrier subject to Title 49, United States Code; or

(2) a nonprofit association of airmen who are subject to that title.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 622.058. CERTAIN RECREATIONAL EVENTS. This chapter does not apply to a drawing for the opportunity to participate in a hunting, fishing, or other recreational event conducted by the Parks and Wildlife Department.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 622.059. CERTAIN FOOD PRODUCTS. This chapter does not apply to a sweepstakes promoting one or more food products regulated by the United States Food and Drug Administration or the United States Department of Agriculture.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 622.060. AUDIOVISUAL ENTERTAINMENT WORK, PRODUCT, OR SOUND RECORDING. This chapter does not apply to a company if 75 percent or more of the company's business is:

(1) the systematic development, planning, and execution of creating audiovisual entertainment works, products, or sound recordings; and

(2) the distribution, sale, and marketing of those works, products, or recordings.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 622.061. CABLE SYSTEM. This chapter does not apply to a company that owns or operates a cable system, as defined by 47 U.S.C. Section 522, as amended.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER C. PROHIBITED ACTS OR CONDUCT

Sec. 622.101. CONNECTING SWEEPSTAKES ENTRY OR OPERATION TO ORDER OR PURCHASE. (a) A person conducting a sweepstakes may not use a mechanism for entering the sweepstakes that:

(1) has any connection to ordering or purchasing a good or service;

(2) is not identical for all individuals entering the sweepstakes; and

(3) does not have printed on the entry form, in a font size

at least as large as the largest font size used on the entry form, the following language: "Buying Will Not Help You Win. Your chances of winning without making a purchase are the same as the chances of someone who purchases something. It is illegal to give any advantage to buyers in a sweepstakes."

(b) A person conducting a sweepstakes may not:

(1) require an individual to order, purchase, or promise to purchase a good or service to enter the sweepstakes;

(2) automatically enter an individual in the sweepstakes because the individual ordered, purchased, or promised to order or purchase a good or service; or

(3) solicit business using an order form or purchasing mechanism that has any role in the operation of the sweepstakes.

(c) Subsections (a)(1) and (b)(3) do not apply to a single sheet of paper that contains both a sweepstakes entry form and an order form if:

(1) the order form is perforated or detachable; and

(2) the entry form must be separated from the order form and returned to a different address than the order form.

(d) Subsections (a) and (b)(2) and (3) do not apply to a sweepstakes offered to promote a credit card or debit card if the official rules of the sweepstakes provide that consumers are entered in the sweepstakes based on the number of purchases made or the amount of money spent. The exception provided by this subsection applies only to a person offering a sweepstakes who qualified as an issuer as of January 1, 2001.

(e) Subsections (a) and (b)(2) and (3) do not apply to a company offering a sweepstakes in which the consumer must go to a physical location to obtain or use the goods or services being sold by the company.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 622.102. USING MULTIPLE SWEEPSTAKES ENTRY ADDRESSES OR MULTIPLE PURPOSES FOR ADDRESS. A person conducting a sweepstakes who provides for entering the sweepstakes by mail may not:

(1) accept entries at more than one address; or

(2) use the address for entry in the sweepstakes for any

other purpose.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 622.103. ALLOWING CHOICE OF PRIZE OR INDICATION OF PREFERRED PRIZE CHARACTERISTICS. A person conducting a sweepstakes may not:

(1) solicit an individual to enter the sweepstakes by invitation or other opportunity; and

(2) allow the individual to choose, or indicate the preferred characteristics of, a prize to be awarded in the sweepstakes unless the choice or indication:

(A) is made on the sweepstakes entry form; and

(B) does not appear on, and is not in any way connected to, an order form or other purchasing mechanism.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 622.104. SENDING SWEEPSTAKES MATERIAL THAT INCLUDES CERTAIN STATEMENTS OR IMPLICATIONS. A person conducting a sweepstakes may not send material accompanying or relating to the sweepstakes or an offer to enter the sweepstakes that:

(1) states or implies that:

(A) an individual must comply with a restriction or condition to enter the sweepstakes, unless all individuals entering the sweepstakes are required to comply with the identical restriction or condition;

(B) an individual's chances of winning a prize in the sweepstakes are higher, lower, or different in any way because of a factor or circumstance that does not relate to the manner in which a winner is selected;

(C) a winner will be selected at a time or place or in a manner that is different from the actual time or place at which or manner in which a winner is selected;

(D) an individual who orders or purchases a good or service will receive a benefit or be treated differently in the sweepstakes in comparison to an individual who does not order or

purchase a good or service; or

(E) an individual who does not order or purchase a good or service will be disadvantaged or treated differently in the sweepstakes in comparison to an individual who orders or purchases a good or service;

(2) states or implies falsely that the individual receiving the material has received special treatment or personal attention from the offeror of the sweepstakes or any officer, employee, or agent of the offeror; or

(3) states that the recipient of the material:

(A) is a winner, if the recipient is not a winner;

(B) may be a winner;

(C) will be a winner if certain conditions are met or certain events occur;

(D) may be or will be among the group from which a winner will be selected; or

(E) has in any way a better chance than another individual of being chosen as a winner.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 622.105. USING GAME PIECE TO CONVEY INFORMATION OR OFFER TO ENTER. A person conducting a sweepstakes may not convey information about the sweepstakes or an offer to enter the sweepstakes by using a scratch-off device or any other game piece that suggests an element of chance or luck.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 622.106. PUBLISHING ADVERTISEMENTS OR RULES WITH INCONSISTENT OR INCOMPLETE PRIZE DESCRIPTIONS. A person conducting a sweepstakes may not publish or cause to be published:

(1) different advertisements for the same sweepstakes that contain inconsistent descriptions of the grand prize to be awarded through the sweepstakes; or

(2) official rules of the sweepstakes that do not uniquely identify the prizes to be awarded and the date the prizes will be

awarded.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 622.107. ENGAGING IN CONDUCT THAT FALSELY INDICATES AN INDIVIDUAL HAS WON. A person conducting a sweepstakes may not:

(1) ask an individual to provide any information or take any action consistent with the individual winning a sweepstakes prize, unless the individual has won a sweepstakes prize; or

(2) provide an individual who has not yet won a sweepstakes prize with a document or other item that simulates an event, circumstance, or condition connected with being a sweepstakes winner.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 622.108. AWARDING MULTIPLE PRIZES. A person conducting a sweepstakes may not award multiple prizes in the sweepstakes unless all prizes are awarded on the same date and through the same selection process.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 622.109. MAILING CERTAIN OFFERS DURING PERIOD FOLLOWING SWEEPSTAKES. A person conducting a sweepstakes may not, during the 30-day period immediately following the last date on which the person conducted the sweepstakes through the mail, offer through the mail:

(1) an opportunity to enter a sweepstakes; or

(2) a nonsweepstakes prize, gift, premium, giveaway, or skill contest.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 622.110. PROVIDING NAMES OR ADDRESSES USED IN PROHIBITED

SWEEPSTAKES. A person may not provide names or addresses of residents of this state that are used in conducting a sweepstakes that the person knows violates this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER D. ACTS OR CONDUCT NOT PROHIBITED

Sec. 622.151. DESCRIPTION OF METHOD OF CHOOSING WINNER. This chapter does not prohibit a sweepstakes sponsor from describing in the official sweepstakes rules the method to be used in choosing a winner.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 622.152. NOTIFICATION OF AND AFFIDAVIT FROM WINNER. This chapter does not prohibit a sweepstakes sponsor, after a winner has been chosen, from:

(1) notifying an individual chosen as a winner; or

(2) obtaining from an individual chosen as a winner an affidavit to verify that the individual:

(A) is eligible to win the prize; and

(B) has complied with the sweepstakes rules.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER E. ENFORCEMENT

Sec. 622.201. ACTION BY ATTORNEY GENERAL; VENUE. The attorney general may bring an action under this chapter by filing suit in a district court in Travis County or in any county in which a violation occurred.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 622.202. CIVIL PENALTY. (a) The court shall award the attorney general a civil penalty of not less than $5,000 or more than $50,000 for each violation found.

(b) If the material accompanying or relating to a sweepstakes or an offer to enter a sweepstakes contains multiple statements, implications, representations, or offers that are prohibited by this chapter, each statement, implication, representation, or offer is a separate violation and results in a separate civil penalty. Each individual who receives the material constitutes an additional and separate group of violations of this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 622.203. LIABILITY FOR PROVIDING NAMES OR ADDRESSES USED IN PROHIBITED SWEEPSTAKES. (a) A person who violates Section 622.110 is liable for the cumulative civil penalties that result from the person's conduct.

(b) Liability of a person under Subsection (a) does not reduce the liability of the person who conducted the sweepstakes.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 622.204. INJUNCTIVE AND OTHER RELIEF. The court may also award injunctive relief or other equitable or ancillary relief that is reasonably necessary to prevent violations of this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 622.205. NO PRIVATE RIGHT OF ACTION. This chapter does not create a private right of action.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 622.206. RECOVERY OF EXPENSES BY ATTORNEY GENERAL. If the attorney general substantially prevails, the court shall award the attorney general reasonable expenses incurred in recovering a civil penalty under this subchapter, including court costs, reasonable attorney's fees, reasonable investigative costs, witness fees, and deposition expenses.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

TITLE 14. RECORDINGS

CHAPTER 641. UNAUTHORIZED RECORDINGS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 641.001. DEFINITIONS. In this chapter:

(1) "Fix" means to embody in a recording or other tangible medium of expression, by or under the authority of the author, so that the matter embodied is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.

(2) "Live performance" means a recitation, rendering, or playing of a series, in an audible sequence, of:

(A) images;

(B) musical, spoken, or other sounds; or

(C) a combination of images and sounds.

(3) "Owner" means a person who owns the sounds fixed in a master phonograph record, master disc, master tape, master film, or other recording:

(A) on which sound is recorded; and

(B) from which the transferred recorded sounds are directly or indirectly derived.

(4) "Recording" means a tangible medium on which sounds, images, or both are recorded or otherwise stored, including:

(A) an original phonograph record, disc, tape, audio or video cassette, wire, film, or other medium now existing or later developed; or

(B) a copy or reproduction that wholly or partly duplicates the original.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER B. PROHIBITED PRACTICES; PENALTIES

Sec. 641.051. UNAUTHORIZED DUPLICATION OF CERTAIN RECORDINGS. (a) This section applies only to a recording that was initially fixed before February 15, 1972.

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

(1) knowingly reproduces for sale or causes to be transferred any recording with intent to sell the recording or cause the recording to be sold or use a recording or cause the recording to be used for commercial advantage or private financial gain through public performance without the consent of the owner;

(2) with the knowledge that the sounds on a recording have been reproduced or transferred without the consent of the owner, transports the recording within this state for commercial advantage or private financial gain; or

(3) with the knowledge that a recording has been reproduced or transferred without the consent of the owner:

(A) advertises, offers for sale, sells, or rents the recording;

(B) causes the sale, resale, or rental of the recording; or

(C) possesses the recording for a purpose described by Paragraph (A) or (B).

(c) An offense under this section is punishable by:

(1) imprisonment for a term of not more than five years, a fine not to exceed $250,000, or both, if:

(A) the offense involves at least 1,000 unauthorized recordings during a 180-day period; or

(B) the defendant has been previously convicted under this section;

(2) imprisonment for a term of not more than two years, a fine not to exceed $250,000, or both, if the offense involves more than 100 but fewer than 1,000 unauthorized recordings during a 180-day period; or

(3) confinement in the county jail for a term of not more than one year, a fine not to exceed $25,000, or both, if the offense is not otherwise punishable under Subdivision (1) or (2).

(d) This section does not apply to any fees due to the American Society of Composers, Authors and Publishers.

(e) This section does not apply to a person engaged in radio or television broadcasting who transfers, or causes to be transferred, a recording:

(1) intended for or in connection with a radio or television broadcast; or

(2) for archival purposes.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 285 (H.B. 1043), Sec. 1, eff. June 14, 2013.

Sec. 641.052. UNAUTHORIZED RECORDING OF LIVE PERFORMANCE. (a) A person commits an offense if the person, with the knowledge that a live performance has been recorded or fixed without the consent of the owner:

(1) for commercial advantage or private financial gain, advertises, offers for sale, sells, rents, or transports, causes the sale, resale, rental, or transportation of, or possesses for one or more of these purposes a recording containing sounds of the live performance; or

(2) with the intent to sell for commercial advantage or private financial gain, records or fixes the live performance, or causes the live performance to be recorded or fixed on a recording.

(b) An offense under this section is punishable by:

(1) imprisonment for a term of not more than five years, a fine not to exceed $250,000, or both, if:

(A) the offense involves at least 1,000 unauthorized recordings embodying sound or at least 65 unauthorized audiovisual recordings during a 180-day period; or

(B) the defendant has been previously convicted under this section;

(2) imprisonment for a term of not more than two years, a fine not to exceed $250,000, or both, if the offense involves more than 100 but fewer than 1,000 unauthorized recordings embodying sound or more than seven but fewer than 65 unauthorized audiovisual recordings during a 180-day period; or

(3) confinement in the county jail for a term of not more

than one year, a fine not to exceed $25,000, or both, if the offense is not otherwise punishable under Subdivision (1) or (2).

(c) In the absence of a written agreement or law to the contrary, the performer or performers of a live performance are presumed to own the rights to record or fix those sounds.

(d) For purposes of this section, a person authorized to maintain custody and control over business records that reflect whether the owner of a live performance consented to having the live performance recorded or fixed is a proper witness in a proceeding regarding the issue of consent. A witness called under this subsection is subject to the rules of evidence relating to the competency of a witness to testify and the relevance and admissibility of the testimony offered.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 641.053. UNAUTHORIZED OPERATION OF RECORDING DEVICE IN MOTION PICTURE THEATER. (a) In this section:

(1) "Audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part of a motion picture by means of any technology now known or later developed.

(2) "Motion picture theater" means a movie theater, screening room, or other place primarily used to exhibit a motion picture.

(b) A person commits an offense if, without the consent of the owner of the theater, the person, with the intent to record a motion picture, knowingly operates the audiovisual recording function of any device in a motion picture theater while the motion picture is being exhibited.

(c) An offense under this section is a Class A misdemeanor, except that the offense is:

(1) a state jail felony if the person has been previously convicted one time of an offense under this section; or

(2) a felony of the third degree if the person has been previously convicted two or more times of an offense under this section.

(d) It is a defense to prosecution under this section that the

audiovisual recording function of the device was operated solely for official law enforcement purposes.

(e) If conduct constituting an offense under this section also constitutes an offense under another law, the actor may be prosecuted under this section, the other law, or both.

(f) A person who reasonably believes that another has knowingly operated the audiovisual recording function of a device in a motion picture theater in violation of this section is privileged to detain that other person in a reasonable manner and for a reasonable time to allow for the arrival of law enforcement authorities.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 641.054. LABELING. (a) A person commits an offense if:

(1) for commercial advantage or private financial gain, the person knowingly:

(A) advertises, offers for sale, sells, rents, or transports a recording;

(B) causes the sale, resale, rental, or transportation of a recording; or

(C) possesses a recording for a purpose described by Paragraph (A) or (B); and

(2) the outside cover, box, or jacket of the recording does not clearly and conspicuously disclose:

(A) the actual name and address of the manufacturer; and

(B) the name of the performer or group.

(b) An offense under this section is punishable by:

(1) imprisonment for a term of not more than five years, a fine not to exceed $250,000, or both, if:

(A) the offense involves at least 65 unauthorized recordings during a 180-day period; or

(B) the defendant has been previously convicted under this section;

(2) imprisonment for a term of not more than two years, a fine not to exceed $250,000, or both, if the offense involves more than seven but fewer than 65 unauthorized recordings during a 180-day period; or

(3) confinement in the county jail for a term of not more than one year, a fine not to exceed $25,000, or both, if the offense is not otherwise punishable under Subdivision (1) or (2).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 641.055. FORFEITURE. If a person is convicted of a violation of this chapter, the court in its judgment of conviction shall order the forfeiture and destruction or other disposition of:

(1) all recordings on which the conviction is based; and

(2) all devices and equipment used or intended to be used in the manufacture of the recordings on which the conviction is based.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 641.056. PRIVATE RIGHTS AND REMEDIES NOT AFFECTED. Sections 641.051, 641.052, and 641.054 do not affect the rights and remedies of a party in private litigation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 641.057. PENALTIES CUMULATIVE. A penalty provided by this chapter is in addition to any other penalty provided under other law.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

TITLE 15. CURRENCY AND TRADE

SUBTITLE A. CURRENCY

CHAPTER 661. EUROPEAN UNION CURRENCY CONVERSION

Sec. 661.001. DEFINITIONS. In this chapter:

(1) "Euro" means the currency of the member states of the European Community, as amended by the Treaty on European Union. The

term is abbreviated as EUR.

(2) "European currency unit" means the currency basket periodically used as the unit of account of the European Community, as defined by Regulation No. 3320/94 of the Council of the European Union and as referred to in Article 109g of the treaty establishing the European Community, as amended by the Treaty on European Union. The term is abbreviated as ECU.

(3) "Introduction of the euro" means the periodic implementation of economic and monetary union in member states of the European Union in accordance with the Treaty on European Union.

(4) "Treaty on European Union" means the Treaty on European Union of February 7, 1992.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 661.002. APPLICABILITY OF CHAPTER. This chapter applies to each contract, security, and instrument, including a commercial contract, governed by the laws of this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 661.003. CONFLICTS OF LAW. This chapter prevails to the extent of any conflict between this chapter and any other law of this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 661.004. NO NEGATIVE INFERENCE OR PRESUMPTION CREATED. With respect to currency alteration other than the introduction of the euro, this chapter does not create any negative inference or negative presumption regarding the validity or enforceability of a contract, security, or instrument denominated wholly or partly in a currency affected by the alteration.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01,

eff. April 1, 2009.

Sec. 661.005. CONTINUITY OF CONTRACT. (a) If a subject or medium of payment of a contract, security, or instrument is the European currency unit or a currency that has been substituted or replaced by the euro, the euro is a commercially reasonable substitute and substantial equivalent that may be:

(1) used in determining the value of the European currency unit or currency, as appropriate; or

(2) tendered, in each case, at the conversion rate specified in, and otherwise computed in accordance with, the regulations adopted by the Council of the European Union.

(b) A person may perform any obligation described by Subsection (a) in euros or in the currency or currencies originally designated in the contract, security, or instrument if that currency or those currencies remain legal tender, but the person may not perform the obligation in any other currency, regardless of whether that other currency:

(1) has been substituted or replaced by the euro; or

(2) is considered a denomination of the euro and has a fixed conversion rate with respect to the euro.

(c) The following occurrences are not considered a discharge of, do not excuse performance under, and do not give a party the right to unilaterally alter or terminate a contract, security, or instrument:

(1) the introduction of the euro;

(2) the tender of euros in connection with any obligation described by Subsection (a);

(3) the determination of the value of any obligation described by Subsection (a); or

(4) the computation or determination of the subject or medium of payment of a contract, security, or instrument with reference to an interest rate or any other basis that has been substituted or replaced because of the introduction of the euro and that is a commercially reasonable substitute and substantial equivalent.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 661.006. EFFECT ON CERTAIN AGREEMENTS. This chapter does not alter or impair an agreement between parties that specifically relates to the introduction of the euro.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBTITLE B. PORT OF ENTRY AUTHORITIES

CHAPTER 671. CITY OF LAREDO PORT OF ENTRY AUTHORITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 671.001. DEFINITIONS. In this chapter:

(1) "Authority" means the City of Laredo Port of Entry Authority created under this chapter.

(2) "Board" means the governing board of the authority.

(3) "City" means the city of Laredo.

(4) "Governing body" means the governing body of the city.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 671.002. CREATION OF AUTHORITY. The city by ordinance may create the City of Laredo Port of Entry Authority for the purposes provided by this chapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 671.003. AUTHORITY JURISDICTION. The authority's jurisdiction is coextensive with the area within the boundaries and extraterritorial jurisdiction of the city.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER B. GOVERNING BOARD

Sec. 671.051. COMPOSITION OF BOARD. (a) The authority is governed by a board of 11 members appointed by the governing body.

(b) Nine members are voting members who must reside in the authority and two members are nonvoting members who must reside in Mexico.

(c) The voting board members must include:

(1) one representative of United States customs brokers;

(2) one representative of freight forwarders;

(3) one representative of the transportation industry;

(4) one international banker; and

(5) one representative of a maquiladora project.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 671.052. BOARD TERMS; VACANCY. (a) Board members serve staggered two-year terms, with the terms of five members expiring February 1 of each odd-numbered year and the terms of six members expiring February 1 of each even-numbered year.

(b) A vacancy that occurs more than 60 days before the expiration date of a term shall be promptly filled for the unexpired term by the appointment of a member who has the same qualifications as the member creating the vacancy.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 671.053. OFFICERS. The board shall select from among the board's voting members a presiding officer, an assistant presiding officer, a treasurer, and any other officers that the board considers appropriate.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 671.054. REMOVAL. After a hearing, a board member may be removed for cause by a two-thirds vote of the membership of the governing body.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 671.055. COMPENSATION; REIMBURSEMENT. A board member serves without compensation but is entitled to reimbursement for necessary expenses incurred in the performance of duties as a member.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 671.101. FEES. The authority shall establish and collect rentals, tolls, and other appropriate fees:

(1) from an operator of a commercial vehicle entering the authority by an international bridge; and

(2) for the use of any other facility designated by the city.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 671.102. USE OF MONEY. The authority may use the money collected under this chapter as the board determines appropriate only for the development and promotion of international trade. The authority must obtain the approval of the governing body before any expenditure of money.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 671.103. EFFECT OF AUTHORITY ACTION; CITY APPROVAL. (a) Not later than the 15th day after the date on which the authority or the board acts, the city may approve or disapprove the action.

(b) If the city disapproves an action under Subsection (a), the action has no effect. If the city does not disapprove the action, the action becomes effective on the earlier of:

(1) the date on which the city approves the action; or

(2) the 15th day after the date on which the authority or board acted.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 671.104. AD VALOREM TAXES AND BONDS PROHIBITED. The authority may not:

(1) impose an ad valorem tax; or

(2) issue bonds.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 671.105. DEPOSITORY; ORDER TO DISBURSE. (a) The treasurer of the authority shall deposit money collected by the authority in a separate account in a bank or trust company.

(b) Money of the authority may be paid out on the warrant or other order of the presiding officer of the board or another person designated by the authority.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 671.106. AUDIT. (a) At least once a year, the authority shall have a certified public accountant conduct an audit of the authority's books, accounts, and other records. A copy of the audit shall be delivered to the city.

(b) If the authority does not have the required audit conducted, an auditor or accountant designated by the city may examine, at the expense of the authority, the accounts and books of the authority, including receipts, disbursements, contracts, leases, investments, and other matters relating to the authority's finances, operation, and affairs.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBTITLE C. TRADE ZONES

CHAPTER 681. FOREIGN TRADE ZONES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 681.001. DEFINITION. In this chapter, "foreign trade zone" has the meaning assigned to the term "zone" by the Foreign Trade Zones Act (19 U.S.C. Section 81a et seq.).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.002. AUTHORIZATION SUBJECT TO FEDERAL LAW AND REGULATIONS. An authorization under this chapter is subject to the requirements of federal law and the regulations of the board established to carry out the provisions of the Foreign Trade Zones Act (19 U.S.C. Section 81a et seq.).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER B. GENERAL AUTHORITY FOR ESTABLISHMENT OF FOREIGN TRADE ZONES BY CERTAIN ENTITIES

Sec. 681.051. DEFINITIONS. In this subchapter:

(1) "Eligible corporation" means a corporation organized to establish, operate, and maintain a foreign trade zone.

(2) "Governmental entity" means:

(A) this state;

(B) a state agency;

(C) a county, municipality, or special district; or

(D) a combination of entities listed in Paragraphs (A)-(C).

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.052. GENERAL AUTHORITY FOR ELIGIBLE CORPORATION OR GOVERNMENTAL ENTITY. (a) An eligible corporation or a governmental entity may:

(1) apply for and accept a grant of authority to establish,

operate, and maintain a foreign trade zone and subzones; and

(2) take other actions necessary to establish, operate, and maintain the foreign trade zone and subzones.

(b) An applicant under Subsection (a) may select and describe the location of the foreign trade zone and subzones.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER C. GENERAL AUTHORITY FOR ESTABLISHMENT OF FOREIGN TRADE ZONES BY CERTAIN JOINT BOARDS

Sec. 681.101. DEFINITION. In this subchapter, "joint board" means a joint board created by two or more municipalities with a combined population of more than one million under:

(1) Chapter 114, Acts of the 50th Legislature, Regular Session, 1947; or

(2) Section 22.074, Transportation Code.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.102. GENERAL AUTHORITY FOR JOINT BOARD. (a) A joint board may apply for and accept a permit, license, or other grant of authority to establish, operate, and maintain:

(1) one or more foreign trade zones, as Texas ports of entry under federal law, in any county in which the board's airport is located; and

(2) other subzones or other additions to an existing zone inside or outside that county.

(b) In operating and maintaining a foreign trade zone or subzone under this subchapter, a joint board may exercise any power or authority necessary to establish, operate, and maintain the foreign trade zone or subzone in accordance with federal law, rules, and regulations.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER D. SPECIFIC AUTHORITY FOR CERTAIN FOREIGN TRADE ZONES

Sec. 681.151. AMARILLO TRADE ZONE CORPORATION. The Amarillo Trade Zone, Inc., organized under the laws of this state, with offices at or near Amarillo, Potter, and Randall Counties, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone in Amarillo, Potter, and Randall Counties; and

(2) other subzones.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.152. CITY OF AUSTIN OR DESIGNEE. The City of Austin, or a nonprofit corporation organized under the laws of this state and designated by the City of Austin, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone in Travis County; and

(2) other subzones.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.153. CITY OF BEAUMONT; JEFFERSON COUNTY; PORT OF BEAUMONT NAVIGATION DISTRICT; OR CERTAIN OTHER CORPORATIONS OR ENTITIES. (a) This section applies to:

(1) the City of Beaumont;

(2) the Beaumont Chamber of Commerce;

(3) Jefferson County;

(4) the Port of Beaumont Navigation District of Jefferson County;

(5) the Beaumont Economic Development Foundation, a nonprofit corporation organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), with offices at Beaumont, Jefferson County; or

(6) any other corporation organized under the laws of this state and designated by the Port of Beaumont Navigation District of Jefferson County.

(b) A corporation or entity listed in or described by

Subsection (a) may apply for and accept a grant of authority to establish, operate, and maintain a foreign trade zone and subzones in Beaumont, Jefferson County, or another location in the portion of the Port Arthur Customs District located in this state.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.154. PORT FREEPORT OR DESIGNEE. Port Freeport, or a corporation organized under the laws of this state and designated by Port Freeport, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone adjacent to a port of entry in Port Freeport; and

(2) other subzones.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.013, eff. September 1, 2009.

Sec. 681.155. BROWNSVILLE NAVIGATION DISTRICT. The Brownsville Navigation District may:

(1) apply for and accept a grant of authority to establish, operate, and maintain:

(A) a foreign trade zone at the Brownsville port of entry; and

(B) subzones of that zone; and

(2) on issuance of the grant of authority, take any action necessary or appropriate to establish, operate, or maintain the foreign trade zone and subzones.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.156. CALHOUN-VICTORIA FOREIGN TRADE ZONE CORPORATION. The Calhoun-Victoria Foreign Trade Zone, Inc., a corporation

organized under the laws of this state, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone in Calhoun County, Victoria County, or both; and

(2) other subzones.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.157. CITY OF CORPUS CHRISTI, PORT OF CORPUS CHRISTI AUTHORITY, OR DESIGNEE. The City of Corpus Christi, the Port of Corpus Christi Authority of Nueces County, or any other approved public agency designated by the City of Corpus Christi or the Port of Corpus Christi Authority of Nueces County may apply for and accept a grant of authority to establish, operate, and maintain a foreign trade zone and subzones.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.158. CITY OF DEL RIO OR DESIGNEE. The City of Del Rio, or a nonprofit corporation organized under the laws of this state and designated by the City of Del Rio, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone in Del Rio, Val Verde County; and

(2) other subzones.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.159. CITY OF EAGLE PASS OR DESIGNEE. The City of Eagle Pass, or a nonprofit corporation organized under the laws of this state and designated by the City of Eagle Pass, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone in Eagle Pass, Maverick County; and

(2) other subzones.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.160. CITY OF EL PASO OR EL PASO TRADE ZONE CORPORATION. The City of El Paso or the El Paso Trade Zone, Inc., organized under the laws of this state, with offices at or near El Paso, El Paso County, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone adjacent to any port of entry in El Paso County; and

(2) other subzones.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.161. CITY OF GALVESTON OR BOARD OF TRUSTEES OF GALVESTON WHARVES. The City of Galveston or the Board of Trustees of the Galveston Wharves may:

(1) apply for and accept a grant of authority to establish, operate, and maintain:

(A) a foreign trade zone at the Galveston port of entry; and

(B) any subzones of that zone; and

(2) on issuance of the grant of authority, take any action necessary or appropriate to establish, operate, and maintain the foreign trade zone and subzones.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.162. HARLINGEN TRADE ZONE CORPORATION. The Harlingen Trade Zone, Inc., organized under the laws of this state, with offices at or near Harlingen, Cameron County, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone adjacent to any port of entry in Cameron County; and

(2) other subzones.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.163. CITY OF HOUSTON, HARRIS COUNTY, OR CERTAIN OTHER CORPORATIONS OR ENTITIES. (a) This section applies to:

(1) the City of Houston;

(2) Harris County;

(3) a corporation organized under the laws of this state and designated by the City of Houston or Harris County; or

(4) any municipality or county located within five miles of a major space and aeronautics center.

(b) To establish, operate, and maintain a space facility to be named "Star Port," a corporation or entity listed in or described by Subsection (a) may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone adjacent to or near a facility of the National Aeronautics and Space Administration in Harris County; and

(2) other subzones.

(c) The corporation or entity may apply for or adopt any appropriate inducements for the establishment and operation of the foreign trade zone, including any appropriate or applicable tax abatement or tax exemption.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.164. CITY OF HOUSTON, PORT OF HOUSTON AUTHORITY, OR HOUSTON FOREIGN-TRADE ZONE CORPORATION. The City of Houston, the Port of Houston Authority, and the Houston Foreign-Trade Zone, Incorporated, a private corporation organized under the laws of this state, may each:

(1) apply for and accept a grant of authority to establish, operate, and maintain:

(A) a foreign trade zone at the Houston port of entry; and

(B) any subzones of that zone; and

(2) if the grant of authority is approved, take any action

necessary to establish, operate, and maintain the foreign trade zone.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.165. JEFFERSON COUNTY AIRPORT GOVERNING BODY. The governing body of the Jefferson County Airport may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone in Jefferson County, which may include:

(A) land inside the boundaries of the airport; and

(B) private industrial land, not to exceed 1,000 acres, adjacent to the airport; and

(2) other subzones.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.166. CITY OF LAREDO. The City of Laredo or an instrumentality of the City of Laredo may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone at the Laredo port of entry; and

(2) other subzones.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.167. CITY OF LUBBOCK OR DESIGNEE. The City of Lubbock, or a corporation organized under the laws of this state and designated by the City of Lubbock, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone adjacent to the United States Customs port of entry at Lubbock; and

(2) other subzones.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.168. MCALLEN TRADE ZONE CORPORATION. The McAllen Trade Zone, Inc., organized under the laws of this state, with offices at McAllen, Hidalgo County, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone at the McAllen port of entry; and

(2) other subzones, one of which may be located in Starr County.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.169. CITY OF MIDLAND OR DESIGNEE. The City of Midland, or a corporation organized under the laws of this state and designated by the City of Midland, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone adjacent to the Midland Regional Airport; and

(2) other subzones.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.170. CITY OF MIDLOTHIAN. The City of Midlothian may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone in Midlothian, Ellis County, adjacent to the port limits of the Dallas-Fort Worth port of entry; and

(2) other subzones in Ellis County.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 70, eff. September 1, 2009.

Sec. 681.171. ORANGE COUNTY NAVIGATION AND PORT DISTRICT. The Orange County Navigation and Port District may apply for and accept a

grant of authority to establish, operate, and maintain:

(1) a foreign trade zone in Orange County; and

(2) other subzones.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.172. PORT OF PORT ARTHUR NAVIGATION DISTRICT. The Port of Port Arthur Navigation District of Jefferson County may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone in Jefferson County; and

(2) other subzones.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.173. SAN ANGELO TRADE ZONE CORPORATION. The San Angelo Trade Zone, Inc., organized under the laws of this state, with offices at San Angelo, Tom Green County, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone in San Angelo, Tom Green County;

(2) a foreign trade zone at the San Angelo port of entry; and

(3) other subzones.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.174. CITY OF SAN ANTONIO OR DESIGNEE. (a) The City of San Antonio, or a nonprofit corporation organized under the laws of this state and designated by the City of San Antonio, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone at or adjacent to any port of entry in Bexar County; and

(2) other subzones.

(b) After a nonprofit corporation has accepted a grant of

authority to establish, operate, and maintain a foreign trade zone under this section, the City of San Antonio may not exercise any further control or supervision over the corporation with regard to:

(1) the naming of directors and officers of the corporation; or

(2) the corporation's internal management or organization.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.175. SATURN TRADE ZONE CORPORATION. The Saturn Trade Zone Corporation, a corporation organized under the laws of this state, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone at the location designated by General Motors Corporation in this state for the Saturn automobile production facility; and

(2) other subzones.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.176. STARR COUNTY INDUSTRIAL FOUNDATION. The Starr County Industrial Foundation, a nonprofit corporation organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), to promote the economic development of Starr County, with offices at Rio Grande City, Starr County, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone in Rio Grande City, Starr County; and

(2) other subzones.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.177. CITY OF WESLACO OR WESLACO DEVELOPMENT CORPORATION. The City of Weslaco or the Weslaco Development

Corporation, Incorporated, a corporation organized under the laws of this state, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone in Weslaco, Hidalgo County; and

(2) other subzones.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 681.178. WESTPORT ECONOMIC DEVELOPMENT CORPORATION. The Westport Economic Development Corporation, organized as a nonprofit corporation under the laws of this state, with offices at El Paso, El Paso County, may apply for and accept a grant of authority to establish, operate, and maintain:

(1) a foreign trade zone in or adjacent to the United States Customs port of entry at El Paso, El Paso County; and

(2) other subzones.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

TITLE 16. ADVERTISING AND MARKETING

SUBTITLE A. ADVERTISEMENTS

CHAPTER 721. USE OF NAMES OR PICTURES IN ADVERTISEMENTS

Sec. 721.001. DEFINITIONS. In this chapter:

(1) "Heir" means a surviving grandparent, parent, sibling, child, or grandchild of a deceased individual.

(2) "Personal representative" means an executor, independent executor, administrator, independent administrator, or temporary administrator, together with their successors.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.014(a), eff. September 1, 2009.

Sec. 721.002. CERTAIN USES OF NAME OR PICTURE OF MEMBER OF ARMED FORCES PROHIBITED. (a) A person commits an offense if the person uses, in an advertisement for a commercial purpose, the name of an individual who is an active duty or former member of the United

States armed forces, who is a member or former member of a reserve component of the United States armed forces, or who is a member or former member of the state military forces, as defined by Section 437.001, Government Code, or a picture of the individual in uniform in which the individual is clearly identifiable, without obtaining the consent of:

(1) the individual, if the individual is living; or

(2) the individual's surviving spouse or personal representative or a majority of the individual's adult heirs, if the individual is deceased.

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

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.014(a), eff. September 1, 2009.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 3.01, eff. September 1, 2013.

Sec. 721.003. INAPPLICABILITY OF CHAPTER TO MEDIA REPORT. This chapter does not apply to a member of the print or broadcast media who uses a name or picture of an individual in a report of news to the public or an advertisement for that report.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.014(a), eff. September 1, 2009.

SUBTITLE B. MARKETING PRACTICES

CHAPTER 761. CREDIT CARD MARKETING AT POSTSECONDARY EDUCATIONAL INSTITUTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 761.001. DEFINITIONS. In this chapter:

(1) "Campus credit card marketing activity":

(A) means any activity:

(i) conducted by an agent or employee of a credit card issuer on the campus of a postsecondary educational institution; and

(ii) designed to encourage and enable students to apply for a credit card; and

(B) includes the act of placing on the campus a display

or poster together with a form that can be returned to the credit card issuer as a credit card application, even if an employee or agent of the credit card issuer is not present at the display.

(2) "Credit card" means a card or device issued under an agreement by which the issuer gives to a cardholder the right to obtain credit from the issuer or another person.

(3) "Credit card issuer" means a lender, including a financial institution, or a merchant that receives applications and issues credit cards to individuals.

(4) "Governing board" means the body charged with policy direction of any postsecondary educational institution, including a board of directors, a board of regents, a board of trustees, and an independent school district board that is charged with policy direction of a public junior college.

(5) "Postsecondary educational institution" means:

(A) an institution of higher education as defined by Section 61.003, Education Code;

(B) a private or independent institution of higher education as defined by Section 61.003, Education Code; or

(C) a private postsecondary educational institution as defined by Section 61.302, Education Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.014(a), eff. September 1, 2009.

SUBCHAPTER B. PROHIBITED CONDUCT

Sec. 761.051. CAMPUS CREDIT CARD MARKETING ACTIVITY OUTSIDE DESIGNATED LOCATION OR TIME PROHIBITED. (a) A credit card issuer may not engage in campus credit card marketing activities:

(1) outside of a campus location designated by the governing board of the postsecondary educational institution for that purpose in accordance with Subsection (b); or

(2) at a time other than a time designated by the governing board in accordance with Subsection (b).

(b) The governing board of a postsecondary educational institution may designate:

(1) one or more locations on campus where a credit card issuer may engage in campus credit card marketing activities; and

(2) one or more times during which a credit card issuer may

engage in campus credit card marketing activities.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.014(a), eff. September 1, 2009.

Sec. 761.052. RESTRICTION ON GIFTS OR INCENTIVES FOR COMPLETING CREDIT CARD APPLICATION. A credit card issuer may not offer a gift or other incentive in exchange for the completion of a credit card application as part of a campus credit card marketing activity unless the credit card issuer, at the time the credit card issuer provides a credit card application to an individual, provides financial educational material developed under Section 761.101 to the individual.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.014(a), eff. September 1, 2009.

SUBCHAPTER C. EDUCATIONAL MATERIAL AND SESSIONS

Sec. 761.101. CREDIT CARD ISSUER TO DEVELOP FINANCIAL EDUCATIONAL MATERIAL. A credit card issuer who conducts campus credit card marketing activities shall develop financial educational material in consultation with or subject to approval by the postsecondary educational institution. The financial educational material must include a clear and practical explanation of:

(1) effective money management skills, including how to develop and maintain a budget;

(2) key financial terms and phrases related to credit cards and personal debt management;

(3) credit educational materials and programs offered by the credit card issuer that are available to student cardholders after they have opened an account;

(4) resources to assist students in understanding credit reports and credit scores and the consequences of irresponsible credit card use; and

(5) the importance of responsible credit practices, including timely paying the minimum amount due each month and reducing costs by paying as much of the balance as possible.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec.

4.014(a), eff. September 1, 2009.

Sec. 761.102. CREDIT CARD ISSUER TO PROVIDE FINANCIAL EDUCATIONAL MATERIAL. A credit card issuer that conducts campus credit card marketing activities shall:

(1) during the time that the credit card issuer conducts the credit card marketing activity on the campus, make available to students, on the campus, financial educational material developed under Section 761.101;

(2) make financial educational material similar to material developed under Section 761.101 available on the Internet; and

(3) provide to a student to whom a credit card is issued, at the time the credit card is provided to the student, financial educational material developed under Section 761.101.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.014(a), eff. September 1, 2009.

Sec. 761.103. CREDIT CARD AND DEBT EDUCATION AT NEW STUDENT ORIENTATION. The governing board of a postsecondary educational institution that has designated a location for campus credit card marketing activities under Section 761.051(b) shall also adopt a policy requiring a credit card and debt education and counseling session to be included in any orientation program for new students. The postsecondary educational institution may use existing educational materials prepared by nonprofit entities for purposes of the credit card and debt education and counseling session.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.014(a), eff. September 1, 2009.

SUBCHAPTER D. ENFORCEMENT PROVISIONS

Sec. 761.151. CIVIL PENALTY. A person who intentionally violates this chapter is liable to the state for a civil penalty in an amount not to exceed $2,500 for each violation. The attorney general or the prosecuting attorney in the county in which the violation occurs may bring suit to recover the civil penalty imposed under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 4.014(a), eff. September 1, 2009.

TITLE 99. MISCELLANEOUS COMMERCIAL PROVISIONS

CHAPTER 2001. DESTRUCTION OF DIE, MOLD, OR FORM

Sec. 2001.001. DEFINITIONS. In this chapter:

(1) "Molder" means an individual, firm, or corporation that:

(A) makes a die, mold, or form; or

(B) uses a die, mold, or form to make another product.

(2) "Owner" means an individual, firm, or corporation that holds title to a die, mold, or form.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 2001.002. NOTICE OF INTENT TO DESTROY DIE, MOLD, OR FORM NOT OWNED BY MOLDER. (a) After the third anniversary of the date a die, mold, or form was last used or, if the die, mold, or form was never used, after the third anniversary of the date the die, mold, or form was made, a molder that is in possession of the die, mold, or form may send notice to the owner that the molder intends to destroy the die, mold, or form.

(b) The notice must be sent by registered mail, return receipt requested, to the last known address of the owner.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 2001.003. DESTRUCTION OF DIE, MOLD, OR FORM NOT OWNED BY MOLDER. A molder that sends a notice in accordance with Section 2001.002 may destroy the die, mold, or form if, before the 121st day after the date the owner receives the notice, the owner does not:

(1) take possession of the die, mold, or form; or

(2) make arrangements with the molder for the removal or continued storage of the die, mold, or form.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01,

eff. April 1, 2009.

Sec. 2001.004. TITLE EXTINGUISHED ON DESTRUCTION OF DIE, MOLD, OR FORM. Title to a die, mold, or form destroyed in accordance with this chapter is extinguished at the time of the destruction.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 2001.005. LIMITATION ON LIABILITY OF MOLDER. A molder may not be held criminally or civilly liable for destroying a die, mold, or form if the molder complies with Sections 2001.002 and 2001.003.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 2001.006. DESTRUCTION OF DIE, MOLD, OR FORM OWNED BY MOLDER. This chapter does not prohibit a molder that is the owner of a die, mold, or form from destroying the die, mold, or form at any time.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 2002. LIQUEFIED PETROLEUM GAS CONTAINERS

Sec. 2002.001. DEFINITIONS. In this chapter:

(1) "Liquefied petroleum gas" means the hydrocarbon product extracted from natural gas or crude oil and commonly known as butane or propane.

(2) "Person" means an individual, association, or corporation.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 2002.002. NOTICE TO PROSPECTIVE PURCHASERS AND USERS. A

person in the business of leasing or selling liquefied petroleum gas containers shall give to each prospective purchaser or user of a container a written notice of the purchase or use options provided by that business, including, as applicable, options to purchase, lease, or lease-purchase. The notice must include a written statement that other persons in the business of leasing or selling liquefied petroleum gas containers may provide purchase or use options that include purchase, lease, and lease-purchase.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 2002.003. SUPPLY CONTRACT REQUIREMENT. If a person in the business of leasing or selling liquefied petroleum gas containers signs a supply contract with another person, a separate agreement on the face of the supply contract must state that the supplier gave to the user, before the user signed the supply contract, the notice required by Section 2002.002.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 2002.004. FILLING OR REFILLING OF CONTAINER BY NONOWNER. A person who is not the owner of a liquefied petroleum gas container may fill or refill the container if the person who occupies the premises where the container is located:

(1) requests the service; and

(2) signs a written request stating that:

(A) an emergency exists; and

(B) the owner is unavailable to fill or refill the container, as applicable.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 2002.005. CRIMINAL PENALTIES. (a) A person commits an offense if the person knowingly violates this chapter.

(b) A person who is not the owner of a liquefied petroleum gas

container commits an offense if the person:

(1) except as provided by Section 2002.004, without written authorization of the owner of the container sells, fills, refills, delivers or permits to be delivered, or uses the container for any purpose;

(2) obtains a written request under Section 2002.004 through misrepresentation; or

(3) defaces, removes, or conceals a name, mark, initial, or device on the container without the written consent of the owner of the container.

(c) An offense under this section is a misdemeanor punishable by a fine of not less than $25 and not more than $200.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

CHAPTER 2004. INTRASTATE MANUFACTURE OF CERTAIN INCANDESCENT LIGHT BULBS

Sec. 2004.001. DEFINITIONS. In this chapter:

(1) "Generic and insignificant part" means an item that has manufacturing or consumer product applications other than inclusion in an incandescent light bulb.

(2) "Incandescent light bulb" means a standard incandescent or halogen light bulb that:

(A) is intended for general service applications;

(B) has a lumen range of not less than 310 lumens and not more than 2,600 lumens; and

(C) is capable of being operated at a voltage range at least partially within 110 and 130 volts.

Added by Acts 2011, 82nd Leg., R.S., Ch. 533 (H.B. 2510), Sec. 2, eff. January 1, 2012.

Sec. 2004.002. MEANING OF "MANUFACTURED IN THIS STATE." For the purposes of this chapter, an incandescent light bulb is manufactured in this state if the item is manufactured:

(1) in this state from materials located in this state; and

(2) without the inclusion of any part imported from another state other than a generic and insignificant part.

Added by Acts 2011, 82nd Leg., R.S., Ch. 533 (H.B. 2510), Sec. 2, eff. January 1, 2012.

Sec. 2004.003. NOT SUBJECT TO FEDERAL REGULATION. An incandescent light bulb that is manufactured in this state and remains in this state is not subject to federal law or federal regulation under the authority of the United States Congress to regulate interstate commerce.

Added by Acts 2011, 82nd Leg., R.S., Ch. 533 (H.B. 2510), Sec. 2, eff. January 1, 2012.

Sec. 2004.004. MARKETING OF LIGHT BULBS. An incandescent light bulb manufactured and sold in this state must have the words "Made in Texas" clearly stamped on it.

Added by Acts 2011, 82nd Leg., R.S., Ch. 533 (H.B. 2510), Sec. 2, eff. January 1, 2012.

Sec. 2004.005. ATTORNEY GENERAL. On written notification to the attorney general by a resident of this state of the resident's intent to manufacture an incandescent light bulb to which this chapter applies, the attorney general may seek a declaratory judgment from a federal district court in this state that this chapter is consistent with the United States Constitution.

Added by Acts 2011, 82nd Leg., R.S., Ch. 533 (H.B. 2510), Sec. 2, eff. January 1, 2012.