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To: Clients and Friends

From: David F. Dulock

Subject: Texas Legislative Update II – Finance Commission of Texas, Department of Banking, Savings and Mortgage Lending Department, Office of Consumer Credit Commissioner continued in existence to September 1, 2031.

This legislative update summarizes Senate Bill 614 and House Bill 1442 from the 2019 Regular Session of the 86th Texas Legislature. Senate Bill 614 continues in existence the Finance Commission of Texas, the Department of Banking and the Savings and Mortgage Lending Department to September 1, 2031. House Bill 1442 continues in existence the Office of Consumer Credit Commissioner to September 1, 2031.

Previous to this legislative update, we issued Legislative Update I, which summarizes Senate Bill 2330 granting temporary authority for certain individual applicants for residential mortgage loan originator licenses to act as a residential mortgage loan originator in Texas if certain conditions and requirements are met. Legislative Update I may be found on the Resources page of the firm's website www.bmandg.com.

1. CONTINUATION AND FUNCTIONS OF FINANCE COMMISSION OF TEXAS, TEXAS DEPARTMENT OF BANKING, AND DEPARTMENT OF SAVINGS AND MORTGAGE LENDING ([Senate Bill 614](#))

Effective September 1, 2019, Senate Bill 614 amends current law relating to the continuation and functions of the Finance Commission of Texas, the Texas Department of Banking, and the Department of Savings and Mortgage Lending. These agencies are subject to abolishment under the Texas Sunset Act (Chapter 325, Government Code) on September 1, 2019, unless continued in existence by the Texas Legislature. Senate Bill 614 amends the Sunset Provisions of the Finance Code—Section 11.108 (Finance Commission of Texas); Section 12.109 (Texas Department of Banking); and Section 13.102 (Department of Savings and Mortgage Lending)—to continue these agencies in existence until September 1, 2031.

In addition to amending the Finance Code Sunset Provisions to continue the above agencies in existence, Senate Bill 614 amends, adds or deletes the following sections and subsections of the Finance Code:

- Section 11.110. TRAINING. Adds Subsections (d) and (e) to require the commissioners of the Texas Department of Banking, the Department of Savings and Mortgage Lending and the Office of Consumer Credit Commissioner to create training manuals for members of the Finance Commission of Texas that include the information required by Subsection (b) applicable to that commissioner's finance agency. Requires the commissioner of each finance agency to distribute a copy of the training manual annually to each member of the Finance Commission. Notwithstanding the above, it also authorizes these finance agency commissioners to collaborate and jointly create one training manual that includes the information required by Subsection (b) applicable to each finance agency.

(7 pages)

- Section 11.113. **ADVISORY COMMITTEES.** Adds this Section authorizing the Finance Commission of Texas to appoint advisory committees to assist the Finance Commission in performing its duties. Requires the Finance Commission to specify each committee's purpose, powers, and duties, and to require each committee to report to the Finance Commission on the committee's activities and the results of its work.

- Section 12.108. **CONSUMER INFORMATION AND COMPLAINTS.** Amends this Section to require the Texas Department of Banking, rather than the banking commissioner, to maintain a system to promptly and efficiently act on complaints filed with the Department and to maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition. Deletes existing text requiring the banking commissioner to prepare and make available certain information to the public and appropriate state agencies. Requires the Department to make information available describing its procedures for complaint investigation and resolution. Deletes existing text requiring the Department to maintain a file on each written complaint filed with the Department. Requires the Department to periodically notify the complaint parties of the status of the complaint until final disposition. Deletes existing text requiring the Department to provide complaint parties a summary of Department policies regarding complaints.

- Section 12.113. **ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION.** Adds this Section to require the Finance Commission, by rule, to develop a policy to encourage the use of (i) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of rules applicable to the Texas Department of Banking, and (ii) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the Department's jurisdiction. Requires the procedures applicable to the Department relating to alternative dispute resolution to conform, to the extent possible, to model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies. Requires the Department to (i) coordinate the implementation of the policy adopted by the Finance Commission, (ii) provide training to implement the procedures for negotiated rulemaking or alternative dispute resolution, and (iii) collect data concerning the effectiveness of those procedures.

- Section 12.114. **ADVISORY COMMITTEES.** Adds this Section authorizing the banking commissioner to appoint advisory committees to assist the Texas Department of Banking and the banking commissioner in performing their duties. Requires the banking commissioner to specify each committee's purpose, powers, and duties, and to require each committee to report to the commissioner or the Department on the committee's activities and the results of its work.

- Section 13.011. **CONSUMER INFORMATION AND COMPLAINTS.** Amends subsections (a), (b) and (c) to require the Department of Savings and Mortgage Lending to maintain a system to promptly and efficiently act on complaints filed with the Department and to maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition; deletes existing text requiring the commissioner to prepare certain information relating to the Department and the complaint process and to make that information available to the public and appropriate state agencies; requires the Department to make information available describing its complaint investigation and resolution procedures; requires the Department to periodically notify the

complaint parties of the status of the complaint until final disposition; deletes existing text requiring the Department to maintain a file on each written complaint filed with the Department and the information the file must include; deletes subsection (d) requiring the Department to provide to the parties to a complaint a copy of the Department's complaint investigation and resolution policies and procedures; and deletes subsection (e) requiring the Department, at least quarterly, to notify the parties to a complaint of the complaint's status.

- **Section 13.017. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION.** Adds this Section to require the Finance Commission, by rule, to develop a policy to encourage the use of (i) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of rules applicable to the Department of Savings and Mortgage Lending, and (ii) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the Department's jurisdiction. Requires the procedures applicable to the Department relating to alternative dispute resolution to conform, to the extent possible, to model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies. Requires the Department to (i) coordinate the implementation of the policy adopted by the Finance Commission, (ii) provide training to implement the procedures for negotiated rulemaking or alternative dispute resolution, and (iii) collect data concerning the effectiveness of those procedures.

- **Section 13.018. ADVISORY COMMITTEES.** Adds this Section authorizing the savings and mortgage lending commissioner to appoint advisory committees to assist the Department of Savings and Mortgage Lending and the commissioner in performing their duties. Requires the commissioner to specify each committee's purpose, powers, and duties, and to require each committee to report to the commissioner or the Department on the committee's activities and the results of its work.

- **Section 31.202. APPEAL OF BANKING COMMISSIONER DECISION/ORDER.** Amends this Section to delete existing text that authorizes an appeal of an order or decision of the banking commissioner to be submitted to the Finance Commission of Texas for review at the option of the appellant.

- **Sec. 31.204. APPEAL TO DISTRICT COURT** (*New heading*). Amends this Section to delete existing text relating to a person affected by a final order of the Finance Commission of Texas to appeal the final order and to make conforming grammatical changes to existing text authorizing a person affected by a final order of the banking commissioner to appeal the final order to a district court in Travis County.

- **Section 32.009. PARITY BETWEEN STATE AND NATIONAL BANKS.** Amends subsection (d) to remove a state bank's right to appeal to the Finance Commission of Texas under Section 31.203 a denial by the banking commissioner of a bank's requested right or privilege to engage in an activity granted to national banks.

- Amends the following sections of the Finance Code to make a conforming change to delete a state bank's right to appeal the banking commissioner's order to the Finance Commission of Texas under Section 31.203:

- Section 32.010. ADDITIONAL POWERS. Amends subsection (d).
- Section 35.0035. REMOVAL OR PROHIBITION ORDERS IN RESPONSE TO CERTAIN CRIMINAL OFFENSES. Amends subsection (g).
- Section 35.004. HEARING ON PROPOSED ORDER. Amends subsection (c).
- Section 35.005. EMERGENCY ORDER. Amends subsection (e).
- Section 35.104. POST-HEARING ORDER. Amends subsection (c).
- Section 35.110. REVIEW OF SUPERVISOR OR CONSERVATOR DECISION. Amends subsection (d) and deletes existing text relating to authorized actions by the Finance Commission of Texas on appeal of an order to the commission.

- Section 157.012. LICENSE REQUIRED FOR RESIDENTIAL MORTGAGE LOAN ORIGINATORS. Amends subsection (c) to delete existing text regarding the individual's good moral character as a requirement to be licensed as a residential mortgage loan originator.

- Section 201.009. ENFORCEMENT; APPEALS. Amends subsections (a) and (b) to make a conforming change to delete the right of a bank holding company, foreign bank or an out-of-state state bank, respectively, to appeal the banking commissioner's order regarding said entity's violation of state law to the Finance Commission of Texas under Section 31.20.

- Section 204.119. STATUS OF REVOKED LICENSE. Amends this Section to delete the authority of the Finance Commission of Texas to stay a final order of the banking commissioner revoking a license of a foreign bank to maintain a Texas state branch.

- Section 31.203. APPEAL TO FINANCE COMMISSION. Deletes this Section regarding an appeal of a decision or order of the banking commissioner to the Finance Commission of Texas.

2. CONTINUATION AND FUNCTIONS OF THE OFFICE OF CONSUMER CREDIT COMMISSIONER, THE LICENSING AND REGISTRATION OF PERSONS AND CERTAIN CONSUMER FINANCIAL TRANSACTIONS REGULATED BY THAT STATE AGENCY. ([House Bill 1442](#))

Effective September 1, 2019, House Bill 1442 amends current law relating to the continuation and functions of the Office of Consumer Credit Commissioner. This state agency is subject to abolishment under the Texas Sunset Act (Chapter 325, Government Code) on September 1, 2019, unless continued in existence by the Texas Legislature. House Bill 1442 amends the Sunset Provision of Section 14.066 of the Finance Code to continue the Office of Consumer Credit Commissioner in existence until September 1, 2031.

In addition to amending the Sunset Provision of Section 14.066 of the Finance Code to continue the Office of Consumer Credit Commissioner (OCCC) in existence, House Bill 1442 amends, adds or deletes the following sections and subsections of the Finance Code:

- Section 11.305. RESEARCH. Amends this Section to delete reference to the Finance Commission of Texas and to delete existing text relating to high-cost lending in this state and the

OCCC's responsibilities in regard to same as specified in Section 11.305.

- Section 14.062. CONSUMER INFORMATION AND COMPLAINTS. Amends this Section to require the Office of Consumer Credit Commissioner to maintain a system to promptly and efficiently act on complaints filed with the OCCC and to maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition. Requires the OCCC to make information available describing its complaint investigation and resolution procedures. Requires the OCCC to periodically notify the complaint parties of the status of the complaint until final disposition. Deletes existing text requiring the OCCC to maintain a file on each written complaint filed with the OCCC.

- Section 14.107. FEES. Amends subsection (b) to permit the consumer credit commissioner to collect a single fee for the term of the license from a person licensed under Subchapter G of Chapter 393 (*credit services organization*) or Chapters 342 (*consumer loans*), 347 (*manufactured home credit transactions*), 348 (*motor vehicle installment sales*), 351 (*property tax lenders*), or 371 (*pawnshops*); requires that the fee must include amounts due for both licensing and examination; and deletes existing text permitting an annual fee.

- Section 14.110. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION. Adds this Section to require the Finance Commission, by rule, to develop a policy to encourage the use of: (i) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of rules by the Commission applicable to the Office of Consumer Credit Commissioner; and (ii) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the OCCC's jurisdiction. Requires the procedures applicable to the OCCC relating to alternative dispute resolution to conform, to the extent possible, to model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies. Requires the OCCC to (i) coordinate the implementation of the policy adopted by the Finance Commission, (ii) provide training to implement the procedures for negotiated rulemaking or alternative dispute resolution, and (iii) collect data concerning the effectiveness of those procedures.

- Section 14.111. ADVISORY COMMITTEES. Adds this Section authorizing the consumer credit commissioner to appoint advisory committees to assist the OCCC and the commissioner in performing their duties. Requires the commissioner to specify each committee's purpose, powers, and duties, and to require each committee to report to the commissioner or the OCCC on the committee's activities and the results of its work.

- Section 14.112. LICENSING AND REGISTRATION TERMS. Adds this Section to require the Finance Commission, by rule, to set a licensing or registration period of no more than two years for licenses and registrations issued under Finance Code Chapters 342 (*consumer loans*), 345 (*retail installment sales*), 347 (*manufactured home credit transactions*), 348 (*motor vehicle installment sales*), 351 (*property tax lenders*), 352 (*tax refund anticipation loans*), 353 (*commercial motor vehicle installment sales*), 371 (*pawnshops*), 393 (*credit services organizations*), and 394 (*debtor assistance*) that comply with Chapter 180, Finance Code, and the federal SAFE Act. Provides that if the Finance Commission sets a license or registration period

under this Section for a period other than one year, the consumer credit commissioner is required to prorate the applicable fee. Provides that this Section applies only to a license or registration issued or renewed on or after September 1, 2019.

- Section 14.2015. CONFIDENTIALITY OF CERTAIN INFORMATION. Amends subsection (b) by amending (b)(2) and adding (b)(4) to permit the consumer credit commissioner or the commissioner’s representative to disclose certain confidential information or material described in subsection (a), if the information was previously provided to or provided by the license holder, registrant, applicant, or other person, and the person consents to the release of the information or has published the information contained in the release; or to provide a summary of investigation information to the person who filed the complaint with the OCCC.

- Section 14.202. REQUEST FOR INFORMATION; INVESTIGATION AUTHORITY (*New heading*). Amends this Section to remove the condition precedent that a person fail to furnish the information requested by the commissioner before the commissioner may conduct an investigation to determine whether a violation by the person of Finance Code, Title 4, Subsection B or C, exists. (*Note: Subsection B includes Chapter 342.*)

- Section 14.208. INJUNCTION; APPEAL. Amends subsection (a) to delete existing text granting a person the right to appeal a consumer credit commissioner cease and desist order or order to take affirmation action to the finance commissioner as provided by subsection (d) or directly to the district court in accordance with Chapter 2001 of the Government Code. Deletes subsection (d).

- Section 342.005. APPLICABILITY OF CHAPTER. Existing Section 342.005 sets out four prerequisites that must be satisfied for a loan to be subject to Chapter 342. House Bill 1442 amends the second prerequisite – which currently requires the loan be extended primarily for personal, family, or household use – to add that the loan also must be to a person who is located in this state at the time the loan is made.

- Section 342.0515. RESIDENTIAL MORTGAGE LOAN ORIGINATOR ACTIVITIES. Amends subsection (c) (relating to requiring the Finance Commission to adopt rules establishing procedures for issuing, renewing, and enforcing an individual license under Section 342.0515) to make it subject to new Section 14.112 (see summary above) and to delete from subdivision (c)(3)(B) (relating to the applicant paying a license fee in an amount determined by Section 14.107) the words “an annual” preceding the word “license” so that the amended text correlates with the “single fee for the term of the license” amendment to Section 14.107 (see summary above).

- Section 342.053. AREA OF BUSINESS; LOANS BY MAIL OR ONLINE (*New heading*). Amends subsection (b) to permit a lender to also make, negotiate, arrange, and collect loans online from a licensed office, in addition to the existing by mail authorization.

- Section 342.101. APPLICATION REQUIREMENTS. Amends subsection (c) (relating to the applicant paying a license fee) to delete the words “for the license’s year of issuance” so that the amended text correlates with the “single fee for the term of the license” amendment to Section 14.107 (see summary above).

- Section 342.106. LICENSE TERM. Adds this Section to state: “A license issued under this chapter is valid for the period prescribed by finance commission rule adopted under Section 14.112.” (See summary above.)
- Section 342.154. LICENSE FEE (*New heading*). Amends this Section to require a license holder, not later than 30 days before the date the license expires (rather than not later than December 1), to pay to the consumer credit commissioner for each license held a fee (rather than an annual fee for the year beginning the next January 1,) in an amount determined as provided by Section 14.107 so that the amended text correlates with the “single fee for the term of the license” amendment to Section 14.107 (see summary above).
- Section 342.155. EXPIRATION OF LICENSE ON FAILURE TO PAY FEE (*New heading*). Amends this Section by deleting the word “annual” preceding the word “fee” and additional text so that this amended Section provides that if a license fee is not paid, the license expires on the 16th day after the date on which the written notice of delinquency of payment has been given to the license holder, rather than the later of that day or December 31 of the last year for which an annual fee was paid.
- Section 342.1555. GROUNDS FOR REFUSING RENEWAL. Adds this Section to state: “The commissioner may refuse to renew the license of a person who fails to comply with an order issued by the commissioner to enforce this chapter.”
- Section 342.156. LICENSE SUSPENSION OR REVOCATION. Amends this Section to authorize the commissioner, after notice and opportunity for a hearing (rather than after notice and a hearing) to suspend or revoke a license if the commissioner makes certain findings. Makes a conforming change to delete the word “annual” preceding the words “license fee”.
- Section 343.002. APPLICABILITY. Amends this Section to add the following statement: “This chapter applies to a loan under this chapter that is extended to a person who is located in this state at the time the loan is made.” (*Note: Chapter 343 includes High-cost Home Loans.*)

The above summaries of Senate Bill 614 and HB 1442 do not summarize all the amendments made by these bills. Therefore, we advise you to review the entirety of these bills. You may request copies from us or you may click on the hyperlink in the title to each bill.

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