

# CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5/30/2009  
Date

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 3621 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

J. Carona  
CARONA

A. Averitt  
AVERITT

Wendy Davis  
DAVIS

N. Watson  
WATSON

Wentworth  
On the part of the Senate  
WENTWORTH

B. Solomon  
SOLOMONS

David Farabee  
FARABEE

Don Flynn  
FLYNN

Elkins  
ELKINS

Joe Deshotel  
On the part of the House  
Deshotel

## Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

# CONFERENCE COMMITTEE REPORT

3<sup>rd</sup> Printing

H.B. No. 3621

## A BILL TO BE ENTITLED

### AN ACT

1  
2 relating to certain charges included in a motor vehicle installment  
3 agreement.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 348.006, Finance Code, is amended to  
6 read as follows:

7 Sec. 348.006. PRINCIPAL BALANCE; INCLUSION OF DOCUMENTARY  
8 FEE. (a) The principal balance under a retail installment contract  
9 is computed by:

10 (1) adding:

11 (A) the cash price of the motor vehicle;

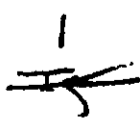
12 (B) each amount included in the retail  
13 installment contract for an itemized charge; and

14 (C) subject to Subsection (c), a documentary fee  
15 for services rendered for or on behalf of the retail buyer in  
16 [~~preparing,~~] handling[~~r~~] and processing documents relating to the  
17 motor vehicle sale [~~and to the closing of the retail installment~~  
18 ~~transaction~~]; and

19 (2) subtracting from the results under Subdivision (1)  
20 the amount of the retail buyer's down payment in money, goods, or  
21 both.

22 (b) The computation of the principal balance may include an  
23 amount authorized under Section 348.404(b).

24 (c) For a documentary fee to be included in the principal

1  


1 balance of a retail installment contract:

2 (1) the retail seller must charge the documentary fee  
3 to cash buyers and credit buyers;

4 (2) the documentary fee may not exceed:

5 (A) ~~\$100~~ [\$50] for a motor vehicle retail  
6 installment contract other than a contract for a commercial  
7 vehicle, ~~[or]~~ a reasonable amount agreed to by the retail seller and  
8 retail buyer for the documentary services; or

9 (B) for a ~~[heavy]~~ commercial vehicle retail  
10 installment contract, an amount agreed to in writing by the retail  
11 seller and retail buyer; and

12 (3) except for a buyer's order or retail installment  
13 contract for a commercial vehicle, the buyer's order and the retail  
14 installment contract must include:

15 (A) a statement of the amount of the documentary  
16 fee; and

17 (B) in reasonable proximity to the place in each  
18 where the amount of the documentary fee is disclosed, the following  
19 notice in type that is bold-faced, capitalized, underlined, or  
20 otherwise conspicuously set out from surrounding written material:

21 "A DOCUMENTARY FEE IS NOT AN OFFICIAL FEE. A DOCUMENTARY FEE  
22 IS NOT REQUIRED BY LAW, BUT MAY BE CHARGED TO BUYERS FOR HANDLING  
23 DOCUMENTS ~~[AND PERFORMING SERVICES]~~ RELATING TO THE ~~[CLOSING OF A]~~  
24 SALE. A DOCUMENTARY FEE MAY NOT EXCEED ~~[\$50 FOR A MOTOR VEHICLE~~  
25 ~~CONTRACT OR]~~ A REASONABLE AMOUNT AGREED TO BY THE PARTIES ~~[FOR A~~  
26 ~~HEAVY COMMERCIAL VEHICLE CONTRACT]~~. THIS NOTICE IS REQUIRED BY  
27 LAW."

Prior to increasing the maximum amount of the documentary fee the retail seller charges, a retail seller shall provide written notice to the commissioner of the maximum amount of the documentary fee the retail seller intends to charge.

1           (d) A retail seller shall post the documentary fee notice  
2 prescribed in Subsection (c) so that it is clearly visible in each  
3 place where a vehicle sale is finalized. If the language primarily  
4 used in an oral sales presentation is not the same as the language  
5 in which the retail installment contract is written, the retail  
6 seller shall furnish to the retail buyer a written statement  
7 containing the notice set out in Subsection (c)(3)(B) in the  
8 language primarily used in the oral sales presentation.

9           (e) The commissioner may review the amount of a documentary  
10 fee for reasonableness. In determining whether a fee charged by a  
11 retail seller is reasonable, the commissioner may consider the  
12 resources required by the retail seller to perform the retail  
13 seller's duties under state and federal law with respect to the  
14 handling and processing of documents relating to the sale and  
15 financing of a motor vehicle. If the commissioner determines that a  
16 documentary fee charged is not reasonable, the commissioner may  
17 require that the documentary fee charged be reduced or suspended.

18           (f) A documentary fee charged in accordance with this  
19 section before September 1, 2009, is considered reasonable for  
20 purposes of this section.

21           (g) This section does not:

22                   (1) create a private right of action; or

23                   (2) require that the commissioner approve a specific  
24 documentary fee amount before a retail seller charges the fee.

25           (h) The finance commission may adopt rules, including rules  
26 relating to the standards for a reasonableness determination or  
27 disclosures, necessary to enforce this section. A rule adopted

1 under this subsection may not require a retail seller to submit to  
2 the commissioner for prior approval the amount of a documentary fee  
3 that the retail seller intends to charge under this section.

4 (i) The commissioner has exclusive jurisdiction to enforce  
5 this section.

6 (j) Subsections (d), (e), and (h) do not apply with respect  
7 to a retail installment transaction for the purchase of a  
8 commercial vehicle.

9 SECTION 2. To the extent of conflict and regardless of the  
10 relative dates of enactment, this Act prevails over any other bill,  
11 including House Bill 4361 and Senate Bill 1965, enacted by the 81st  
12 Legislature, Regular Session, 2009.

13 SECTION 3. This Act takes effect September 1, 2009.

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HOUSE VERSION

SECTION 1. Section 348.006, Finance Code, is amended to read as follows:

Sec. 348.006. PRINCIPAL BALANCE; INCLUSION OF DOCUMENTARY FEE. (a) The principal balance under a retail installment contract is computed by:

(1) adding:

(A) the cash price of the motor vehicle;

(B) each amount included in the retail installment contract for an itemized charge; and

(C) subject to Subsection (c), a documentary fee for services rendered for or on behalf of the retail buyer in ~~[preparing,] handling[;] and processing documents relating to the motor vehicle sale [and to the closing of the retail installment transaction];~~ and

(2) subtracting from the results under Subdivision (1) the amount of the retail buyer's down payment in money, goods, or both.

(b) The computation of the principal balance may include an amount authorized under Section 348.404(b).

(c) For a documentary fee to be included in the principal balance of a retail installment contract:

(1) the retail seller must charge the documentary fee to cash buyers and credit buyers;

(2) the documentary fee may not exceed

~~[\$50 for a motor vehicle retail installment contract or]~~ a reasonable amount for the documentary services agreed to by the retail seller and retail buyer

~~[for a heavy commercial vehicle retail installment~~

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SECTION 1. Section 348.006, Finance Code, is amended to read as follows:

Sec. 348.006. PRINCIPAL BALANCE; INCLUSION OF DOCUMENTARY FEE. (a) The principal balance under a retail installment contract is computed by:

(1) adding:

(A) the cash price of the motor vehicle;

(B) each amount included in the retail installment contract for an itemized charge; and

(C) subject to Subsection (c), a documentary fee for services rendered for or on behalf of the retail buyer in ~~[preparing,] handling[;] and processing documents relating to the motor vehicle sale [and to the closing of the retail installment transaction];~~ and

(2) subtracting from the results under Subdivision (1) the amount of the retail buyer's down payment in money, goods, or both.

(b) The computation of the principal balance may include an amount authorized under Section 348.404(b).

(c) For a documentary fee to be included in the principal balance of a retail installment contract:

(1) the retail seller must charge the documentary fee to cash buyers and credit buyers;

(2) the documentary fee may not exceed:

(A) [\$50] for a motor vehicle retail installment contract other than a contract for a commercial vehicle, ~~[or]~~ a reasonable amount agreed to by the retail seller and retail buyer for the documentary services; or

(B) for a ~~[heavy]~~ commercial vehicle retail installment

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SECTION 1. Same as Senate version.

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~~contract~~]; and

(3) the buyer's order and the retail installment contract must include:

(A) a statement of the amount of the documentary fee; and

(B) in reasonable proximity to the place in each where the amount of the documentary fee is disclosed, the following notice in type that is bold-faced, capitalized, underlined, or otherwise conspicuously set out from surrounding written material:

"A DOCUMENTARY FEE IS NOT AN OFFICIAL FEE. A DOCUMENTARY FEE IS NOT REQUIRED BY LAW, BUT MAY BE CHARGED TO BUYERS FOR HANDLING DOCUMENTS [~~AND PERFORMING SERVICES~~] RELATING TO THE [~~CLOSING OF A~~] SALE. A DOCUMENTARY FEE MAY NOT EXCEED [~~\$50 FOR A MOTOR VEHICLE CONTRACT OR~~] A REASONABLE AMOUNT AGREED TO BY THE PARTIES [~~FOR A HEAVY COMMERCIAL VEHICLE CONTRACT~~]. THIS NOTICE IS REQUIRED BY LAW."

(d) A retail seller shall post the documentary fee notice prescribed in Subsection (c) so that it is clearly visible in each place where a vehicle sale is finalized and include the notice in each retail installment agreement. The notice must be conspicuous, in bold-faced type, and

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contract, an amount agreed to in writing by the retail seller and retail buyer; and

(3) except for a buyer's order or retail installment contract for a commercial vehicle,

the buyer's order and the retail installment contract must include:

(A) a statement of the amount of the documentary fee; and

(B) in reasonable proximity to the place in each where the amount of the documentary fee is disclosed, the following notice in type that is bold-faced, capitalized, underlined, or otherwise conspicuously set out from surrounding written material:

"A DOCUMENTARY FEE IS NOT AN OFFICIAL FEE. A DOCUMENTARY FEE IS NOT REQUIRED BY LAW, BUT MAY BE CHARGED TO BUYERS FOR HANDLING DOCUMENTS [~~AND PERFORMING SERVICES~~] RELATING TO THE [~~CLOSING OF A~~] SALE. A DOCUMENTARY FEE MAY NOT EXCEED [~~\$50 FOR A MOTOR VEHICLE CONTRACT OR~~] A REASONABLE AMOUNT AGREED TO BY THE PARTIES [~~FOR A HEAVY COMMERCIAL VEHICLE CONTRACT~~]. THIS NOTICE IS REQUIRED BY LAW."

(d) A retail seller shall post the documentary fee notice prescribed in Subsection (c) so that it is clearly visible in each place where a vehicle sale is finalized.

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capitalized or underlined.

If the language primarily used in an oral sales presentation is not the same as the language in which the retail installment contract is written, the retail seller shall furnish to the retail buyer a written statement containing the notice set out in Subsection (c)(3)(B) in the language primarily used in the oral sales presentation.

(e)

The commissioner may review the amount of a documentary fee for reasonableness. In determining whether a fee charged by a retail seller is reasonable, the commissioner may consider the resources required by the retail seller to perform the retail seller's duties under state and federal law with respect to the handling and processing of documents relating to the sale and financing of a motor vehicle. If the commissioner determines that a documentary fee charged is not reasonable, then the commissioner may require that the documentary fee charged be reduced or suspended.

(f) A documentary fee charged in accordance with this section before September 1, 2009, is considered reasonable for purposes of this section.

(g) This section does not:

- (1) create a private right of action; or
- (2) require that the commissioner approve a specific

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If the language primarily used in an oral sales presentation is not the same as the language in which the retail installment contract is written, the retail seller shall furnish to the retail buyer a written statement containing the notice set out in Subsection (c)(3)(B) in the language primarily used in the oral sales presentation.

(e) Prior to increasing the maximum amount of the documentary fee the retail seller charges, a retail seller shall provide written notice to the commissioner of the maximum amount of the documentary fee the retail seller intends to charge.

The commissioner may review the amount of a documentary fee for reasonableness. In determining whether a fee charged by a retail seller is reasonable, the commissioner may consider the resources required by the retail seller to perform the retail seller's duties under state and federal law with respect to the handling and processing of documents relating to the sale and financing of a motor vehicle. If the commissioner determines that a documentary fee charged is not reasonable, the commissioner may require that the documentary fee charged be reduced or suspended.

(f) A documentary fee charged in accordance with this section before September 1, 2009, is considered reasonable for purposes of this section.

(g) This section does not:

- (1) create a private right of action; or
- (2) require that the commissioner approve a specific

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documentary fee amount before a retail seller charges the fee.

(h) The finance commission may adopt rules, including rules relating to the standards for a reasonableness determination or disclosures, necessary to enforce this section. A rule adopted under this subsection may not require a retail seller to submit to the commissioner for prior approval the amount of a documentary fee that the retail seller intends to charge under this section.

(i) The commissioner has exclusive jurisdiction to enforce this section.

No equivalent provision.

No equivalent provision.

SENATE VERSION

documentary fee amount before a retail seller charges the fee.

(h) The finance commission may adopt rules, including rules relating to the standards for a reasonableness determination or disclosures, necessary to enforce this section. A rule adopted under this subsection may not require a retail seller to submit to the commissioner for prior approval the amount of a documentary fee that the retail seller intends to charge under this section.

(i) The commissioner has exclusive jurisdiction to enforce this section.

(j) Subsections (d), (e), and (h) do not apply with respect to a retail installment transaction for the purchase of a commercial vehicle.

SECTION 2. To the extent of conflict and regardless of the relative dates of enactment, this Act prevails over any other bill, including House Bill 4361 and Senate Bill 1965, enacted by the 81st Legislature, Regular Session, 2009.

SECTION \_\_\_\_. Section 15.303, Finance Code, is amended to read as follows:

Sec. 15.303. DEPUTY COMMISSIONER. (a) The [Subject to the commission's approval, the] commissioner may appoint a deputy commissioner[~~, who must have the qualifications required of the commissioner].~~

~~(b)~~ The deputy commissioner serves at the will of the

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SECTION 2. Same as Senate version.

Same as House version.

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commissioner and, at the commissioner's direction, may exercise the powers and prerogatives of the commissioner.

(b) ~~(e)~~ The deputy commissioner is an employee of the department ~~[commission]~~ and is subject to the commissioner's ~~[commission's]~~ orders and directions.

(c) ~~(d)~~ During the commissioner's absence or inability to act, the deputy commissioner shall perform the commissioner's duties.

(d) The commissioner may appoint assistant deputy commissioners, whose powers shall be limited to the powers, duties, or functions set forth in the appointment.

No equivalent provision.

SECTION \_\_. Section 15.305, Finance Code, is amended to read as follows:

Same as House version.

Sec. 15.305. GENERAL COUNSEL. A person who is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission, may not serve as general counsel to the commission or the department.

No equivalent provision.

SECTION \_\_. Section 15.308, Finance Code, is amended to read as follows:

Same as House version.

Sec. 15.308. COMPENSATION OF EMPLOYEES. (a) The commission shall set the compensation of the commissioner ~~[and deputy commissioner]~~. The compensation shall be paid according to the General Appropriations Act.

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No equivalent provision.

(b) Except for the commissioner [~~and deputy commissioner~~], Chapter 654, Government Code, applies to any department position.

SECTION \_\_. Subsection (c), Section 15.402, Finance Code, is amended to read as follows:

(c) The commission by rule shall establish reasonable and necessary fees to recover the costs of maintaining and operating the department and enforcing [~~for the administration of~~] this chapter and Subtitle D, Title 3.

Same as House version.

No equivalent provision.

SECTION \_\_. Section 15.408, Finance Code, is amended to read as follows:

Sec. 15.408. COLLECTION OF MONEY. The commissioner shall collect all fees, charges, and revenues required to be paid by a credit union under Section 15.402(c). All money paid to the department under this chapter and Subtitle D, Title 3, is subject to Subchapter F, Chapter 404, Government Code. A credit union is not entitled to a refund of any unused portion of the fee, charge, or revenue.

Same as House version.

No equivalent provision.

SECTION \_\_. Subsection (a), Section 15.410, Finance Code, is amended to read as follows:

(a) The commission shall adopt, and the commissioner shall enforce, reasonable rules requiring a credit union, except a corporate central credit union, to provide share and deposit insurance protection for credit union members and depositors.

Same as House version.

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No equivalent provision.

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SECTION \_\_\_. Subchapter E, Chapter 15, Finance Code, is amended by adding Section 15.4111 to read as follows:

Sec. 15.4111. REGULATORY COORDINATION. (a) To ensure effective coordination among and between the department and other state and federal agencies, the commissioner may enter into cooperative, coordinating, or information-sharing agreements with those agencies.

(b) To further the rapid restoration of credit union services after an emergency, the commissioner may enter into cooperative, coordinating, or information-sharing agreements with credit unions or credit union trade associations or other organizations affiliated with or representing one or more credit unions.

(c) Disclosure of information by or to the department under this section does not constitute a waiver of or otherwise affect or diminish any legal privilege to which the information is otherwise subject, even if the disclosure is not governed by a confidentiality agreement. Notwithstanding other applicable law, a party to an agreement described by this section shall execute, honor, and comply with requirements to maintain confidentiality and oppose disclosure of information obtained from the department, and shall treat as confidential any information obtained from the department that is entitled to confidential treatment under applicable state or federal law.

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Same as House version.

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No equivalent provision.

SECTION \_\_\_\_. Section 121.002, Finance Code, is amended by amending Subdivision (2) and adding Subdivision (10-a) to read as follows:

(2) "Credit union," unless the context relates to a federal credit union, means a voluntary, cooperative, nonprofit financial institution authorized to do business in this state under this subtitle for purposes of:

(A) encouraging thrift among its members;

(B) creating a source of credit at fair and reasonable interest rates;

(C) developing and providing to its members alternative methods of financing their purchases at reasonable costs;

(D) providing an opportunity for its members to use, protect, or [and] control their money or property to improve or maintain their economic or [and] social condition; and

(E) conducting any other business, engaging in any other activity, or providing any other service that may benefit its members.

(10-a) "Share-insuring organization" means a cooperative share insurance fund, guaranty corporation, or credit union that provides aid and financial assistance to credit unions that are in the process of liquidation or are incurring financial difficulty to protect or guarantee against loss the share and deposit accounts in the credit union up to a specified level for each account.

Same as House version.

No equivalent provision.

SECTION \_\_\_\_. Chapter 121, Finance Code, is amended

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by adding Section 121.007 to read as follows:  
Sec. 121.007. COST OF SUPERVISION AND REGULATION. (a) Each credit union shall promptly pay the fees, charges, and revenues established by the commission under Section 15.402 to recover:  
(1) the cost of examination;  
(2) the credit union's equitable or proportionate share of the costs of maintenance and operation of the department; and  
(3) the costs of enforcement of this subtitle and Chapter 15.  
(b) The commission shall adjust those fees, charges, and revenues so that the amount collected during the fiscal year equals the total amount appropriated, including amounts appropriated for both direct and indirect costs for that fiscal year.

No equivalent provision.

SECTION \_\_. Subchapter A, Chapter 122, Finance Code, is amended by adding Section 122.0011 to read as follows:  
Sec. 122.0011. EXPENSE FUND. (a) Before a credit union organized under this subtitle may be authorized to do business, the credit union shall create a fund from which operating expenses may be paid until earnings, together with net worth allocations and dividends that may be declared and credited, are sufficient to cover operating expenses.  
(b) Except as provided by this section, the amounts contributed to the expense fund are not a liability of the

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credit union.

(c) The credit union may pay dividends to contributors to the expense fund on amounts contributed to the same extent the credit union pays dividends to a member. Any amount contributed to the expense fund is considered a deposit of the credit union, which the credit union's board may reduce pro rata as operating expenses are paid from the fund.

(d) With the prior written consent of the commissioner, contributions to the expense fund may be repaid to the contributors, in accordance with this subsection, from the net earnings of the credit union after the credit union has attained a net worth ratio greater than six percent. At the close of each dividend period, the board may pay or credit the accounts of the contributors an amount that is not more than one percent of the net earnings of the credit union during that period until the contributors have been repaid in full.

(e) If the credit union is liquidated before the contributions to the expense fund have been fully repaid, any portion of the contributions not needed for the payment of the expenses of liquidation and for the payment of depositors in full shall be paid to the contributors in proportion to their contributions until they have been repaid in full.

(f) The commission may adopt reasonable rules necessary to administer this section and to accomplish the purposes of this subchapter.

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No equivalent provision.

SECTION \_\_. Subsection (b), Section 122.007, Finance Code, is amended to read as follows:  
(b) The commissioner's order may be appealed to the commission not later than the 30th [~~60th~~] day after the date of the order.

Same as House version.

No equivalent provision.

SECTION \_\_. Subsections (a) and (c), Section 122.013, Finance Code, are amended to read as follows:  
(a) A foreign credit union may do business in this state if it is organized in a state or country that allows any [~~a~~] credit union organized under this subtitle to do business in that state or country.  
(c) The commissioner may suspend or revoke a foreign credit union's authority to do business in this state if the commissioner finds that the foreign credit union:  
(1) has failed to conduct its business in this state in a manner consistent with the laws of this state [~~violated a rule adopted under this subtitle~~];  
(2) is in an unsafe or unsound condition;  
(3) refuses to comply with an order of the commissioner [~~is engaged in a pattern of unsafe or unsound practices~~];  
[~~or~~]  
(4) refuses to comply with a request by the commissioner to review the books and records of the credit union; or  
(5) has not met or does not meet a [~~commission~~] requirement imposed by commission rules.

Same as House version.



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No equivalent provision.

SECTION \_\_. Subchapter A, Chapter 122, Finance Code, is amended by adding Section 122.0131 to read as follows:

Same as House version.

Sec. 122.0131. TEMPORARY FOREIGN CREDIT UNION OFFICE. If a state contiguous to this state experiences an emergency, on a request by that state's credit union regulatory agency, the commissioner may authorize one or more credit unions located in that state to open temporary offices in this state to more promptly restore credit union services to their members. The commissioner shall issue an order permitting the temporary office and specifying the period of time the office may remain open. On a finding that the conditions requiring the temporary office continue to exist, the commissioner may extend the period the office may remain open. A credit union may convert a temporary office to a permanent location if it qualifies to do business in this state as a foreign credit union under Section 122.013 and commission rules.

No equivalent provision.

SECTION \_\_. Section 122.051, Finance Code, is amended by amending Subsections (a) and (d) and adding Subsection (d-1) to read as follows:

Same as House version.

(a) A person may be a member of a credit union only if the person is an incorporator or other person who:

(1) shares a definable community of interest, in accordance with the credit union's articles of incorporation or bylaws, including a community of interest based on occupation, association, or residence;

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- (2) has done one or both of the following:
- (A) paid an entrance fee or membership fee, or both, as required by the bylaws; or
- (B) met [~~(3) has complied with~~] the minimum share or deposit account [~~, including membership share,~~] requirements or complied with other qualifying [~~account~~] requirements that [~~established by~~] the board may establish; and
- (3) [(4)] has complied with any other requirement of the articles of incorporation and bylaws.
- (d) [~~In this subsection, "good cause" includes the act of physically or verbally abusing a credit union member or employee.~~] A person's membership in a credit union may be terminated, [or] suspended, or restricted [~~for good cause or for not maintaining membership requirements,~~] under the conditions and in accordance with the procedures provided in the bylaws for having done any of the following:
- (1) violated the membership agreement or any policy adopted by the board;
- (2) been physically or verbally abusive to credit union members or staff;
- (3) caused a financial loss to the credit union;
- (4) been involved in suspicious or unusual account activity; or
- (5) committed any other act or engaged in any activity proscribed by rules adopted by the commission.
- (d-1) [~~A credit union may also discontinue providing any or all services to a member for good cause without~~

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~~terminating or suspending the person's membership.]~~  
Termination or suspension of a person's membership in the credit union or discontinuing services does not relieve the person from any outstanding obligations owed to the credit union.

No equivalent provision.

SECTION \_\_. Section 122.053, Finance Code, is amended by amending Subsections (d), (e), and (f) and adding Subsections (g), (h), and (i) to read as follows:

Same as House version.

(d) The bylaws shall prescribe the directors' terms and the board's duties. A term may not exceed three years. If the terms are longer than one year, the terms shall be staggered so that an approximately equal number expire each year. A director may serve more than one term.

(e) The board or its executive committee shall meet at least once each month. The board may permit the executive committee to act on its behalf in all except one meeting per calendar quarter. The board shall have no fewer than four regularly scheduled meetings each year.

(f) To ~~[If and to]~~ the extent provided in the bylaws, a director may participate in and act at any meeting of the board by means of electronic communications equipment through which all persons participating in the meeting may simultaneously hear each other and [ear] communicate during the meeting ~~[with each other]~~. Participation in a meeting in the manner authorized by this subsection constitutes attendance at a meeting. However, each director must physically attend at least one meeting each calendar year.

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(g) A director of a credit union who is present at a meeting of its board of directors at which action on any matter is taken is presumed to have assented to the action taken unless the minutes of the meeting specifically indicate otherwise.

(h) The directors, officers, and employees shall hold in confidence all matters presented to the board for deliberation and determination, except if disclosure of a matter is permitted by applicable law.

(i) The board shall adopt a code of ethics for all directors, officers, and honorary or advisory directors. The code of ethics must include standards that are reasonably necessary to promote:

(1) honest and ethical conduct, including the ethical handling of actual and apparent conflicts of interest between personal and professional relationships; and

(2) compliance with applicable laws.

No equivalent provision.

SECTION \_\_. Subchapter B, Chapter 122, Finance Code, is amended by adding Section 122.0531 to read as follows:

Sec. 122.0531. ACTION BY BOARD OF DIRECTORS WITHOUT MEETING. (a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted to be taken under this subtitle at a board meeting may be taken without a meeting if the action is consented to by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed by each

Same as House version.

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director, and included in the minutes or filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A written consent signed under this section has the effect of a meeting vote and may be described as such in any document.

No equivalent provision.

SECTION \_\_. Subsections (a) and (c), Section 122.056, Finance Code, are amended to read as follows:

(a) The board may appoint [~~not more than three~~] individuals to serve at the board's pleasure as honorary or advisory directors to advise and consult with the board and otherwise aid the board in carrying out the board's duties and responsibilities.

(c) An honorary or advisory director may participate in any board deliberation. An honorary or advisory director must hold in confidence all matters presented to the board.

Same as House version.

No equivalent provision.

SECTION \_\_. Section 122.061, Finance Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) While serving as a director, honorary director, advisory director, committee member, officer, or employee of a credit union, a person may not:

(1) participate, directly or indirectly, in the deliberation on or determination of a question affecting the person's

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pecuniary interest or the pecuniary interest of a member of the person's immediate family or of a partnership, association, or corporation, other than the credit union, in which the person is directly or indirectly interested; or  
(2) become employed by, engage in, or own an interest in a business or professional activity that the person could reasonably expect to:  
(A) require or induce the person to disclose confidential information acquired because of the person's office or employment in the credit union; or  
(B) impair the person's independence or judgment in the performance of the person's duties or responsibilities to the credit union.  
(c) In this section, "member of a person's immediate family" means a person's parents, spouse, children, or siblings.

No equivalent provision.

SECTION \_\_. Subchapter B, Chapter 122, Finance Code, is amended by adding Sections 122.065 and 122.066 to read as follows:  
Sec. 122.065. FIDUCIARY RELATIONSHIP. Directors and officers are considered to have a fiduciary relationship with the credit union, as an entity, and must discharge the duties of their respective positions:  
(1) in good faith;  
(2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and  
(3) in a manner the director or officer believes to be in the best interests of the credit union.

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Sec. 122.066. RELIANCE BY DIRECTORS OR OFFICERS. (a) Unless the director or officer has knowledge that makes reliance unwarranted, a director or officer, in discharging the director's or officer's duties to the credit union, may rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by:  
(1) an officer or employee of the credit union whom the director or officer believes in good faith to be reliable and competent in the matters presented;  
(2) legal counsel, a certified public accountant, or another person regarding a matter the director or officer believes in good faith is within the person's professional or expert competence; or  
(3) in the case of reliance by a director, a committee of the board of directors of which the director is not a member if the director believes in good faith that the committee merits confidence.  
(b) Information, opinions, reports, or statements on which a director or officer may rely under this section may be written or oral or formal or informal.

No equivalent provision.

SECTION \_\_. Subchapter D, Chapter 122, Finance Code, is amended by adding Section 122.1511 to read as follows:  
Sec. 122.1511. AUTHORITY TO PURCHASE ASSETS. (a) A credit union, with the prior written approval of the commissioner, may purchase all or substantially all of the assets of another entity.

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(b) Except as otherwise expressly provided by another statute, the purchase of all or part of the assets of the selling entity does not make the purchasing credit union responsible for any liability or obligation of the selling entity not expressly assumed by the purchasing credit union.

No equivalent provision.

SECTION \_\_. Subchapter E, Chapter 122, Finance Code, is amended by adding Section 122.204 to read as follows:

Same as House version.

Sec. 122.204. CONVERSION OF MUTUAL SAVINGS INSTITUTION TO STATE CREDIT UNION. (a) A mutual savings institution may convert to a state credit union by complying with the laws of the original chartered authority and on the approval of the commissioner.

(b) Application for approval of the conversion to a state credit union must be submitted to the department in the form prescribed by the commissioner.

(c) The commissioner may cause an examination to be made of any converting mutual savings institution. The converting mutual savings institution shall pay all fees and charges prescribed by the commission.

No equivalent provision.

SECTION \_\_. Subsection (a), Section 122.257, Finance Code, is amended to read as follows:

Same as House version.

(a) If the commissioner finds that a credit union or any director, officer, employee, agent, or other person participating in the conduct of the affairs of the credit



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union has engaged, is engaging, or is about to engage in an act, practice, or transaction meeting any of the criteria [makes a finding] listed in Section 122.255, the commissioner may issue [and determines that] an order directing the credit union or any director, officer, employee, agent, or other person participating in the conduct of the affairs of the credit union to cease and desist from engaging [is necessary and] in the act, practice, or transaction or from doing any act in furtherance [best interest] of the act, practice, or transaction [credit union involved and its depositors, creditors, and members, the commissioner may serve on the credit union, its board, and each offending person an order to cease and desist from a violation or practice specified in the order] and to take appropriate affirmative action within a reasonable period, as prescribed by [that] the commissioner, [considers necessary] to correct the conditions [a condition] resulting from the act, [a violation or unsafe or unsound] practice, or transaction [found].

No equivalent provision.

SECTION \_\_. Section 123.003, Finance Code, is amended to read as follows:

Same as House version.

Sec. 123.003. ENLARGEMENT OF POWERS. (a) Notwithstanding any other law, and subject to Subsection (b), a [A] credit union may engage in any activity [in which it could engage], exercise any power [it could exercise], or make any loan or investment permissible for [it could make, if it were operating as] a

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[federal] credit union organized under federal law or the law of another state.

(a-1) A credit union that intends to engage in an activity, exercise a power, or make a loan or investment authorized under Subsection (a) shall submit written notice to the commissioner describing the activity, power, loan, or investment and the specific federal or state authority on which the credit union is relying. The credit union may proceed as described in the notice on or after the 30th day following submission of the notice, unless the commissioner extends the period in accordance with this subsection, or prohibits the activity, power, loan, or investment.

(a-2) The commissioner may prohibit the credit union from engaging in an activity, exercising a power, or making a loan or investment as described in the notice under Subsection (a-1) only if the commissioner finds that:

(1) specific authority does not exist; or  
(2) the engagement, exercise, or making would adversely affect the safety and soundness of the credit union.

(a-3) The commissioner may extend the 30-day period if the commissioner determines that the credit union's notice under Subsection (a-1) raises issues requiring additional information or additional time for analysis. If the 30-day period is extended, the credit union may not proceed without the commissioner's prior written approval. The commissioner must issue either an

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approval or prohibition letter not later than the 60th day after the date the notice is submitted.

(b) The commission may adopt rules relating to the exercise of [Notwithstanding any other law, and in addition to the powers and authorities conferred under Subsection (a), a credit union has the] powers or authorities granted under this section [of a foreign credit union operating a branch in this state if the commissioner finds that exercise of those powers or authorities is convenient for and affords an advantage to the credit union's members and maintains the fairness of competition and parity between the credit union and any foreign credit union. A credit union does not have the field of membership powers or authorities of a foreign credit union operating a branch in this state].

No equivalent provision.

SECTION \_\_. Section 123.104, Finance Code, is amended to read as follows:

Sec. 123.104. MEMBERSHIP IN OTHER ORGANIZATION; OPERATION AS CORPORATE CENTRAL CREDIT UNION. A credit union may:

- (1) be a member of:
  - (A) another credit union organized under this subtitle or other law; and
  - (B) another organization approved by the board; or
- (2) operate, with the commissioner's approval, as a corporate central credit union.

Same as House version.

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No equivalent provision.

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SECTION \_\_. Subchapter B, Chapter 123, Finance Code, is amended by adding Section 123.1041 to read as follows:

Sec. 123.1041. CORPORATE CENTRAL CREDIT UNION. (a) Any number of credit unions may apply to organize a corporate central credit union to engage exclusively in corporate financial and operational activities that are part of or incidental to the credit union business.

(b) Membership in the corporate central credit union consists of and is limited to:

(1) credit unions incorporated under this subtitle, the Federal Credit Union Act (12 U.S.C. Section 1751 et seq.), or any other law applicable to credit unions; and

(2) organizations owned by credit unions.

(c) A corporate central credit union has the powers and privileges of any other credit union incorporated under this subtitle and, subject to rules adopted by the commission, may have the power to:

(1) provide access for its members on a mutual basis to financial systems and the services and products of financial institutions;

(2) provide its members with research and consulting services concerning financial matters, institutions, and products;

(3) provide financial system support services and facilities;

(4) establish and execute financial programs to assist its members in meeting the members' needs;

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(5) provide safekeeping or trustee services to or on behalf of its members; and

(6) issue uninsured share investments or classes of share investments in amounts in excess of \$250,000 with terms and conditions that may vary from other shares authorized by this subtitle as approved by the department.

No equivalent provision.

SECTION 26. Subsection (c), Section 123.208, Finance Code, is amended to read as follows:

(c) The commissioner may restrict or prohibit the payment of a dividend:

(1) if the commissioner issues a cease and desist order under Section 122.257; or

(2) as necessary to protect the member's interests and preserve the solvency of the credit union as authorized by commission rule.

Same as House version.

No equivalent provision.

SECTION \_\_. Subchapter A, Chapter 124, Finance Code, is amended by adding Section 124.006 to read as follows:

Sec. 124.006. ADVANCES PAID BY CREDIT UNION. (a) A credit union may pay taxes, assessments, insurance premiums, and similar charges for the protection of the credit union's interest in property that secures a loan of the credit union.

(b) A payment under Subsection (a) is an advance, and the credit union may:

(1) carry the payment on the credit union's books as an

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asset of the credit union for which the credit union may charge interest; or

(2) add the payment to the unpaid balance of the loan to which it applies as of the first day of the month in which the payment is made.

(c) With the exception of a loan secured by an encumbrance against the equity in a homestead property, a payment under Subsection (a) is a lien against the property that secures the loan for which it is made. For an extension of credit as defined and authorized by Section 50(a)(6), Article XVI, Texas Constitution, additional terms and conditions apply as provided by that section for the payment to become a lien against the property.

No equivalent provision.

SECTION \_\_. Section 124.051, Finance Code, is amended to read as follows:

Sec. 124.051. OPEN-END CREDIT PLAN. (a) A credit union may enter into a written agreement with a member under which:

(1) the member is allowed to borrow money from time to time; and

(2) interest may from time to time be computed on the unpaid balance.

(b) If, at any time, application of the contract interest rate to the outstanding unpaid balance results in a charge of less than \$1, the lawful interest charge shall be \$1.

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No equivalent provision.

SECTION \_\_. Section 124.151, Finance Code, is amended to read as follows:

Sec. 124.151. PREPAYMENT PRIVILEGE. (a) A loan may be prepaid in whole or in part, without penalty, during regular working hours on any day on which the credit union is open for business, except as provided by Subsection (b) or Section 124.152.

(b) A prepayment penalty may be charged on a business loan.

(c) In this section, "business loan" means a loan other than a loan made primarily for personal, family, or household purposes.

Same as House version.

No equivalent provision.

SECTION \_\_. Subsection (a), Section 124.351, Finance Code, is amended to read as follows:

(a) A credit union may invest money not used in loans to members in:

- (1) capital shares, obligations, participation certificates, or common or preferred stock of an agency, association, or company, subject to Section 124.352(a);
- (2) loans to a national or state credit union association or corporation of which the credit union is a member;
- (3) obligations, bonds, notes, or other evidences of indebtedness of a state or political subdivision of a state;
- (4) certificates of deposit or other accounts issued by a state or national bank, savings and loan association, savings association, or mutual savings bank;
- (5) securities, obligations, participations, or other instruments of or issued by the United States, or in a trust

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established for investing directly or collectively in those investments;

(6) loans to, shares of, or deposits in another credit union, a corporate central credit union, a corporate credit union, a central liquidity facility established under state or federal law, a trust, or an organization established for lending directly or collectively to credit unions;

(7) securities, obligations, participations, or other instruments fully or partially guaranteed as to principal, interest, or both by the United States, or in a trust established for investing directly or collectively in those investments;

(8) participation loans with another credit union, corporation, credit organization, or financial organization;

(9) notes receivable, loans to members, or other assets of a credit union operating under this subtitle or the Federal Credit Union Act (12 U.S.C. Section 1751 et seq.); and

(10) other investments authorized by rules adopted by the commission that satisfy Subsection (b).

No equivalent provision.

SECTION \_\_\_\_ Subchapter H, Chapter 124, Finance Code, is amended by adding Section 124.353 to read as follows:

Sec. 124.353. PASSIVE INVESTMENT IN MINERAL INTERESTS. (a) A credit union may hold a nonworking mineral or royalty interest if:

(1) the credit union acquires the interest incidental to a lawful investment or to avoid or minimize a loss on a

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loan or investment previously made in good faith;  
(2) the interest is not subject to expenses of exploration, development, production, operation, maintenance, or abandonment, or any other expense associated with extracting and marketing the minerals subject to the rights or interest;  
(3) the interest is reasonably valued on the books of the credit union for not more than a nominal amount, and the aggregate amount of earnings from those interests is separately disclosed in the financial statements of the credit union;  
(4) the credit union does not make any new investments relating to the rights or interests without the approval of the commissioner; and  
(5) the commissioner determines that the possession of the rights or interests is not inconsistent with the safety and soundness of the credit union.  
(b) The commissioner may order a credit union that holds a nonworking mineral or royalty interest to divest the interest at any time if the commissioner determines that continued ownership of the interest is detrimental to the credit union.  
(c) Subject to compliance with this section, nonworking mineral or royalty interests are not considered to be real property for purposes of this subtitle.

No equivalent provision.

SECTION \_\_. Section 125.402, Finance Code, is amended to read as follows:  
Sec. 125.402. DISCLOSURE OF RECORDS OF

Same as House version.

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MEMBER; CONFIDENTIALITY. (a) The directors, officers, committee members, and employees and any honorary or advisory directors of a credit union shall hold in confidence all information regarding transactions of the credit union, including information concerning transactions with the credit union's members and the members' personal affairs, except to the extent necessary in connection with making, extending, or collecting a loan or extension of credit, or as otherwise authorized by commission rules adopted under Subsection (d) or other applicable law.

(b) A credit union is not required to disclose or produce to a third party or permit a third party to examine a record pertaining to the affairs of a credit union member unless:

(1) the request is made in connection with an examination or audit by a government agency authorized by law to examine credit unions;

(2) the member consents to the disclosure or production of the record; or

(3) the request is made by the department or is made in response to:

(A) a subpoena or other court order; or

(B) an administrative subpoena or summons issued by a state or federal agency as authorized by law.

(c) ~~(b)~~ The commission may authorize the disclosure of information relating to a credit union member under circumstances and conditions that the commission determines are appropriate or required in the daily

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operation of the credit union's business.

~~(d)~~ ~~[(e)]~~ The commission may adopt reasonable rules relating to the:

(1) permissible disclosure of nonpublic personal information about [confidentiality of] the accounts of credit union members; and

(2) duties of the credit union to maintain ~~[that]~~ confidentiality.

No equivalent provision.

SECTION \_\_. Subsection (c), Section 126.002, Finance Code, is amended to read as follows:

Same as House version.

(c) The commissioner may disclose the information described by Subsection (a) to a law enforcement agency, a share-insuring organization, or another department, agency, or instrumentality of this state, another state, or the United States if the commissioner determines that disclosure is necessary or proper to enforce the laws of this state applicable to credit unions.

No equivalent provision.

SECTION \_\_. Subsection (a), Section 126.051, Finance Code, is amended to read as follows:

Same as House version.

(a) The department, through examiners it appoints and in accordance with commission rules, shall ~~[periodically]~~ examine the condition and affairs [books and records] of each credit union, and may examine the condition and affairs of any subsidiary wholly owned or controlled by a credit union, at least once during each 24-month period. The department may examine a credit union or its subsidiaries more frequently if the commissioner

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considers it necessary or advisable to safeguard the interest of depositors, creditors, and members or to efficiently enforce applicable law.

SECTION 2. This Act takes effect September 1, 2009.

SECTION 3. Same as House version.

SECTION 3. Same as House version.

**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

May 30, 2009

**TO:** Honorable David Dewhurst, Lieutenant Governor, Senate  
Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE:** HB3621 by Solomons (Relating to certain charges included in a motor vehicle installment agreement.), Conference Committee Report

Estimated Two-year Net Impact to General Revenue Related Funds for HB3621, Conference Committee Report: an impact of \$0 through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

| Fiscal Year | Probable Net Positive/(Negative)<br>Impact to General Revenue Related<br>Funds |
|-------------|--|
| 2010        | \$0  |
| 2011        | \$0  |
| 2012        | \$0  |
| 2013        | \$0  |
| 2014        | \$0  |

**All Funds, Five-Year Impact:**

| Fiscal Year | Probable Savings/(Cost)<br>from<br><i>General Revenue Fund</i><br>1 | Probable Revenue Gain<br>from<br><i>General Revenue Fund</i><br>1 | Change in Number of State<br>Employees from FY 2009 |
|-------------|---|---|---|
| 2010        | (\$168,570)   | \$168,570   | 2.0   |
| 2011        | (\$166,070)   | \$166,070   | 2.0   |
| 2012        | (\$166,070)   | \$166,070   | 2.0   |
| 2013        | (\$166,070)   | \$166,070   | 2.0   |
| 2014        | (\$168,570)   | \$168,570   | 2.0   |

**Fiscal Analysis**

The bill would amend Chapter 348 of the Finance Code relating to documentary fees charged for handling documents associated with a retail installment contract. The \$50 documentary fee cap on motor vehicle retail installment contracts would be removed, and retailers would instead be able to charge a reasonable fee. The commissioner would be able to review the reasonableness of the fee. The Finance Commission may adopt and enforce rules related to determining standards of reasonableness.

The bill would take effect September 1, 2009. A documentary fee charged before September 1, 2009, would be considered reasonable for the purposes of the section. To the extent of conflict and regardless of the relative dates of enactment, the bill would prevail over any other bill, including HB 4361 and SB 1965.

## **Methodology**

Based on information provided by the Office of Consumer Credit Commissioner, it is assumed that two additional positions would be needed to implement the provisions of the bill. These would include one Financial Examiner I at a salary and benefits cost of \$59,785 each year and one Attorney II at a salary and benefits cost of \$73,285 each year to determine what is reasonable, to enforce the rules that would be established, and to respond to consumer complaints. Other costs associated with the new full-time-equivalent positions (FTEs), including travel, operating expenses, and consumables would total \$33,000 each year. It is assumed that additional technology costs of \$2,500 in fiscal year 2010 and \$2,500 in fiscal year 2014 for computers and software for new positions would be realized as well.

The Office of Consumer Credit Commissioner is a self-leveling agency and is statutorily required to generate revenues sufficient to cover all of the agency's direct and indirect costs.

## **Technology**

Technology costs for the new FTEs include \$2,500 in fiscal year 2010 and \$2,500 in fiscal year 2014 for computers and software.

## **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 466 Office of Consumer Credit Commissioner, 450 Department of Savings and Mortgage Lending, 451 Department of Banking, 469 Credit Union Department

**LBB Staff:** JOB, KJG, MW, ACa, JRO

## Certification for Compliance with Rule 13, Section 6(b), House Rule of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of the conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report was furnished to each member in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.

  
(House Chair of Conference Comm.)

MAY 30 2009  
\_\_\_\_\_  
(Date)