

TAKING ADVANTAGE OF LAWS, NOT PEOPLE: CURBING LANGUAGE
DISCRIMINATION AGAINST TEXAS CONSUMERS

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INTRODUCTION

“¿Me puedo llevar mi carro a México?” *Can I take my car to Mexico?*¹ So advertised the Austin-based tax business, Gestoría Bolaños y Asociados, in Austin’s Spanish-language newspaper, *El Mundo*.² Latinos were encouraged to contact Bolaños, “the only authorized customs agent in Austin,” for assistance in exporting their cars to Mexico. But last year, the Texas Attorney General began to receive complaints.³ After paying \$1,750 and surrendering their vehicle titles, Bolaños’s Latino customers were not receiving the service they had been promised, nor would Bolaños refund their money.⁴

In October 2016, the Attorney General filed suit against Bolaños in Travis County under the Texas Deceptive Trade Practices Act (DTPA).⁵ “At all times relevant to this suit,” the State’s petition read, “Defendant has not been a customs agent or a licensed customs broker.”⁶ Indeed, investigators were unable to find a single instance, after requiring upfront

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¹Marlon Gomez, *¿Me Puedo Llevar Mi Carro a México?*, EL MUNDO (May 21, 2015), <http://elmondonewspaper.com/news/2015/may/21/3me-puedo-llevar-mi-carro-mexico/>.

²*Id.*

³Press Release, Ken Paxton, AG Paxton Takes Legal Action to Stop an Austin Business from Duping Vulnerable Texans (Nov. 1, 2016) (on file with author), <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-takes-legal-action-to-stop-an-austin-business-from-duping-vulnera>.

⁴*Id.*

⁵Plaintiff’s Original Petition at 2, State v. Perez, No. D-1-GN-16-005381 (98th Dist. Ct., Travis County, Tex. Oct. 27, 2016), https://www.texasattorneygeneral.gov/files/epress/attach01_10_27_16_POP_Bolanos.pdf

⁶*Id.* at 5.

fee payments and delivery of original titles, where Bolaños had performed the services its customers had paid for.⁷

The DTPA is one means of protecting consumers, including those whose English is limited, from “false, misleading, and deceptive business practices, unconscionable actions, and breaches of warranty”⁸ But the Texas Legislature has gone a step further in attempting to protect its non-English-speaking residents. Impliedly recognizing non-English-speakers’ proneness to exploitation, both by Anglos and, as demonstrated above, by members of the same ethnic minority, the Legislature has enacted certain provisions requiring the translation of contracts and other instruments into a foreign language when transactions occur in that language.⁹

This Note will explore the need for such legislation, the landscape of similar legislation in sister states, and the effectiveness of the legislation in accomplishing its purposes. Texas has one of the highest concentrations of non- or limited-English speakers of any state in the nation.¹⁰ Such linguistic limitations have at times been the source of disparate or, worse, deceptive treatment. While capitalizing on others’ poor English skills may take place in a variety of realms, including employment, legal services, voting rights, or housing, this article will focus on the realm of consumer finances. How do Texas’s language discrimination laws compare to similar laws in other states with high populations of those who are not proficient in English, and are our laws doing their job?

I. THE TEXAS LANDSCAPE

A. *Texas’s Limited English Proficient Population*

According to the U.S. Census Bureau, more than 25 million people residing in the U.S. are limited English proficient (LEP); that is, they speak

⁷ *Id.* at 6–7.

⁸ TEX. BUS. & COM. CODE ANN. § 17.44(a) (West 2011).

⁹ TEX. CONST. art. XVI, § 50(g); TEX. FIN. CODE ANN. §§ 341.502(a-1), 342.457(e), 348.006(d) (West 2016).

¹⁰ *Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over for States: 2009-2013*, U.S. CENSUS BUREAU, <http://www.census.gov/data/tables/2013/demo/2009-2013-lang-tables.html> (follow “Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over for States: 2009-2013” hyperlink) (last updated Oct. 28, 2015); Jie Zong & Jeanne Batalova, *The Limited English Proficient Population in the United States*, MIGRATION POLICY INSTITUTE (July 8, 2015), <http://www.migrationpolicy.org/article/limited-english-proficient-population-united-states>.

English less than “very well.”¹¹ Fourteen percent of that LEP population resides in Texas, surpassed only by California.¹² The latest data, released October 2015, revealed that more than eight million (or nearly 35% of) Texans ages five and over speak a language other than English at home.¹³ More than 40% of this population speaks English with limited English proficiency.¹⁴

Not surprisingly, Spanish is the primary language spoken by the vast majority of Texas’s LEP population (87%).¹⁵ Indeed, certain counties in Texas exist where the Spanish speakers outnumber the monolingual English-speakers.¹⁶ In characteristic “everything is bigger in Texas” style, Laredo boasts the nation’s highest concentration of languages spoken other than English at 92.1%.¹⁷ In fact, four of the five metropolitan areas with the highest distribution of non-English languages spoken at home are in Texas.¹⁸ The 2000 Census, which measured non-English speakers by county rather than by metropolis, revealed that “[a]ll but one of the 20 counties with the highest proportions of non-English-language speakers were located in Texas (Santa Cruz County, Arizona being the exception).”¹⁹

Regardless of one’s views on immigrants’ rights, English as the official language, or other such ethnocentric movements, when one in seven Texans speak English less than very well, the marketplace is prone to notice.

¹¹ *Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over for United States: 2009-2013*, U.S. CENSUS BUREAU, <http://www.census.gov/data/tables/2013/demo/2009-2013-lang-tables.html> (follow “Detailed Languages Spoken at Home and Ability to Speak English for the Population 5 Years and Over for United States: 2009-2013” hyperlink) (last updated Oct. 28, 2015).

¹² U.S. CENSUS BUREAU, *supra* note 10.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Camille Ryan, *Language Use in the United States: 2011*, AMERICAN COMMUNITY SURVEY REPORTS, Aug. 2013, at 10, 13, <https://www.census.gov/prod/2013pubs/acs-22.pdf>.

¹⁷ *Id.*

¹⁸ *Id.* Laredo, TX (92.1%); McAllen-Edinburg-Mission, TX (85.3%); El Centro, CA (72.8%); El Paso, TX (72.5%); Brownsville-Harlingen, TX (69.7%). *Id.*

¹⁹ Hyon B. Shin & Rosalind Bruno, *Language Use and English-Speaking Ability: 2000*, U.S. CENSUS BUREAU, Oct. 2003, at 1,7, <https://www.census.gov/prod/2003pubs/c2kbr-29.pdf>.

B. Consumer Protection in Texas

The Texas marketplace first began to experience major regulation in 1973.²⁰ Prior to that, consumers were responsible for protecting themselves under a “caveat emptor” mentality.²¹ “But by 1973 . . . [i]t was no longer acceptable to take advantage of another simply because you had greater resources or abilities.”²² Texas Attorney General, John Hill, with support from various statesmen and organizations, drafted the Texas Deceptive Trade Practices—Consumer Protection Act (DTPA).²³ Considered one of the broadest statutes of its kind in the country, the DTPA employed a liberal definition of “consumer”; offered attractive remedies, including attorney’s fees; and held defendants to a near strict-liability standard.²⁴

Despite understandable popularity with plaintiffs and plaintiffs’ attorneys, the DTPA, along with more traditional Texas tort statutes, underwent major reform in the 1980s and ‘90s, checking its expansive reach.²⁵ Notwithstanding these cutbacks, the current version of the DTPA continues to define “consumer” broadly as any party (including entities and state agencies) “who seeks or acquires by purchase or lease, any goods or services” (excepting business consumers with assets of \$25 million or more).²⁶ The DTPA also allows for cumulative remedies²⁷ and is construed broadly by courts.²⁸ Today, Texas consumers are in a much better position to litigate their complaints than in pre-DTPA days when attorneys scattered due to small recovery amounts and no provision for attorney’s fees.²⁹

²⁰RICHARD M. ALDERMAN, *THE LAWYER’S GUIDE TO THE TEXAS DECEPTIVE TRADE PRACTICES ACT 1-2* (Matthew Bender ed., 2016).

²¹*Id.*

²²*Id.*

²³*Id.* § 1.01, at 1-2 to -3; *see also* TEX. BUS. & COM. CODE ANN. §§ 17.41–17.63 (West 2011).

²⁴ALDERMAN, *supra* note 20, at 1-3 to -4; Richard M. Alderman, *The Texas Deceptive Trade Practices Act 2005: Still Alive and Well*, 8 J. TEX. CONSUMER L. 74, 74 (2005).

²⁵Alderman, *supra* note 24, at 74.

²⁶TEX. BUS. & COM. CODE ANN. § 17.45(4).

²⁷*Id.* § 17.43.

²⁸*Id.* § 17.44(a).

²⁹*See* ALDERMAN, *supra* note 20, at 1-2.

C. Language-Based Discrimination in the Marketplace

Texas is home to a sizeable non-English-speaking population. The Legislature and Judiciary have the means to protect these non-English speakers in consumer transactions. But the key question is: Do non- or limited-English speakers need protecting? The data, especially in the form of judicial enforcement, is admittedly sparse and sporadic. However, the signposts that are available, when viewed together, seem to indicate that the answer is “yes.”

Language barriers among potential customers have long tempted the unscrupulous.³⁰ For example, there is the Spanish-speaking customer from New York who was charged \$1,145.88 for an appliance that the court found would normally sell for \$348.³¹ Or the Texas car dealer who repossessed his customer’s car a month after it was sold, despite fraudulently representing in Spanish that the payments were not yet due.³² Or the *notarios* who defraud their immigrant clients into thinking that they are licensed attorneys because that is what *notario* means in Spanish.³³

Such language-based deception and disparate treatment are not new. Professor Steven Bender records that as early as the mid-to-late 1800’s, Anglo creditors were targeting Mexican land holders and charging them exorbitant mortgage interest rates of 36% in California.³⁴ Over 100 years later, real estate fraud continues to victimize immigrants, particularly

³⁰Steven W. Bender, *Consumer Protection for Latinos: Overcoming Language Fraud and English-Only in the Marketplace*, 45 AM. U. L. REV. 1027, 1034–35 (1996).

³¹Lisa M. Raleigh, *Consumer Protection in the Hispanic Community*, FLA. B.J., Feb. 2008, at 37–38 (citing *Frostifresh Corp v. Reynoso*, 274 N.Y.S.2d 757, 758–60 (Dist. Ct. 1966) (holding that while contract was unconscionable, seller was still entitled to recover a reasonable profit, not merely the net cost of the refrigerator), *rev’d on other grounds*, 281 N.Y.S.2d 964 (App. Term 1967)).

³²*Villarreal v. Elizondo*, 831 S.W.2d 474, 476, 478 (Tex. App.—Corpus Christi 1992, no pet.).

³³TEX. GOV’T. CODE ANN. § 406.017 (West 2013); *see also* Jonathan A. Pikoff & Charles J. Crimmins, *Lost in Translation: Texas Notary Public v. Mexico Notario Publico* (n.d.), TEX. SEC’Y OF STATE, available at <https://www.sos.state.tx.us/statdoc/notariopublicoarticle.shtml> (last visited Mar. 29, 2017); Press Release, Ken Paxton, Attorney Generals Office Shuts Down Fraudulent Notarios and Unauthorized Immigration Consultants in South Texas (May 29, 2013), <https://www.texasattorneygeneral.gov/oagnews/release.php?id=4413>.

³⁴Bender, *supra* note 30, at 1035 n.41 (citing TOMÁS ALMAGUER, *RACIAL FAULT LINES: THE HISTORICAL ORIGINS OF WHITE SUPREMACY IN CALIFORNIA* 65–87 (1994)).

Spanish-speakers whose English is limited, reports the L.A. Times.³⁵ Con artists induce the unwary to sign illegal deeds of trust in exchange for home water purification systems or shoddy home improvement work, for example.³⁶

Federal agencies are also aware of the potential for fraud.³⁷ In 2014, the Federal Trade Commission (FTC) and Consumer Financial Protection Bureau co-hosted a roundtable focusing on Debt Collection and the Latino Community.³⁸ Aware of Latinos' proneness to vulnerability, the discussion focused especially on those with limited English proficiency: "You have the right to fair treatment by debt collectors, no matter who you are or how well you speak English," said FTC Chairwoman Edith Ramirez.³⁹

The opening presentation revealed that immigrants are disproportionately unbanked, rely heavily on high-cost financial services, and are a target of predatory loans and financial products, even when controlling for other factors such as income and creditworthiness.⁴⁰ Latino families, specifically, have paid more for credit in most market segments than other groups, and that credit is often accompanied by risky terms.⁴¹ In fact, Latinos are 30% more likely to receive high-cost mortgages, nearly

³⁵ Los Angeles Times, *Wolf at the Door: The Victims of Real Estate Rip-Offs and Repair Scams Often Sign Deeds of Trust That Cost Them Their Homes. With Limited Resources, Authorities Have a Poor Prosecution Rate Against the Con Artists*, L.A. TIMES, Mar. 14, 1993, http://articles.latimes.com/1993-03-14/news/ci-996_1_real-estate-fraud.

³⁶ *Id.*

³⁷ See discussion *infra* Part III.C.

³⁸ Press Release, Fed. Trade Comm'n, Federal Trade Commission, Consumer Financial Protection Bureau to Host Roundtable on "Debt Collection & the Latino Community" Tomorrow (Oct. 22, 2014) (on file with author), <https://www.ftc.gov/news-events/press-releases/2014/10/federal-trade-commission-consumer-financial-protection-bureau-0>.

³⁹ *Id.*

⁴⁰ Marisabel Torres, Policy Analyst, Nat'l Council of La Raza, Presentation at an FTC-CFPB Roundtable: Consumer Finance and the Latino Community (Oct. 23, 2014), <http://www.consumerfinance.gov/about-us/blog/live-from-long-beach/>; Janet Murguía, *Eroding a Generation of Wealth: Abusive Lending Practices Targeting Latino Communities* 4 (Feb. 27, 2008), reviewed by *Financial Services and General Government Appropriations for 2009: Hearing on S. 2452 and H.R. 3915 Before Subcomm. on Fin. Servs. & Gen. Gov't Appropriations of the H. Comm. on Appropriations*, 110th Cong. 325 (2008) (statement of Janet Murguía, President & CEO, Nat'l Council of La Raza).

⁴¹ Torres, *supra* note 40.

twice as likely as white families to have credit card interest rates over 20%, and they are more likely to be charged costly markups on their auto loans.⁴²

The Texas Attorney General, too, continues to uncover scams targeting Spanish-speaking Texans.⁴³ The most recently enjoined alleged perpetrators, as with Bolaños above, are themselves Hispanics.⁴⁴ Briseno Construction, based out of Hidalgo County, advertises home construction with no financing and no interest.⁴⁵ Aspiring homeowners must pay 60% down in order to initiate construction.⁴⁶ But often, construction is delayed, paused, and never completed.⁴⁷ Thus far, fifty-five complaints have been lodged against Briseno Construction, all reflecting the same pattern of defraudation.⁴⁸

Although reported litigation is not widespread, the sad tales recounted above constitute “some evidence” of a problem in Houston (and beyond).

⁴²Murguía, *supra* note 40, at 325 (In the auto lending context, “Economist Mark Cohen of Vanderbilt University conducted a series of studies chronicling the impact of a pricing component known as a ‘markup’ on Latino and African American consumers. Dr. Cohen found that minority car buyers were more likely than their peers, regardless of creditworthiness, to have a marked up auto loan. For example, in a statistical analysis of more than 1.5 million race-coded sale files, Dr. Cohen found a staggering disparity between the amount of the markup paid by minorities and that paid by White customers. This racial disparity exists in every state analyzed and in all credit tiers. As a result, Hispanic and African American consumers with the same creditworthiness as White customers nevertheless pay more for credit.”); Torres, *supra* note 40; *see also* Yingda Bi et al., *Limited English Skills, Relative Youth Contribute to Hispanic Poverty Rates*, SOUTHWEST ECONOMY, First Quarter 2012, at 11, <https://www.dallasfed.org/~media/documents/research/swe/2012/swe1201.pdf>. Even without disparate treatment of Hispanics acting as a driver to widen the poverty gap in Texas, the most significant contributor, according to the Research Department at the Federal Reserve Bank of Dallas and Agnes Scott College economics professor, Madeline Zavodny, is limited English skills. *Id.* Using data from the 2010 census, the Research Department isolated a variety of factors that contribute to the 13 percentage-point poverty gap between Hispanics and non-Hispanic whites, almost half of which (6.1%) was explained by the population’s poor English-speaking ability. *Id.*

⁴³Press Release, Ken Paxton, AG Paxton Files Lawsuit to Stop Housing Scam Targeting Hispanic Consumers in Texas (Feb. 22, 2017) (on file with author), <https://texasattorneygeneral.gov/news/releases/ag-paxton-files-lawsuit-to-stop-housing-scam-targeting-hispanic-consumers-i>.

⁴⁴*See* Plaintiff’s Original Petition & Application for Ex Parte Temporary Restraining Order, Temporary Injunction & Permanent Injunction at 1, *State v. Briseno*, No. C-0769-17-I, (398th Dist. Ct., Hidalgo County, Tex. Feb. 17, 2017), https://www.texasattorneygeneral.gov/files/epress/20170217_briseno_pop_1_stamped_filed.pdf.

⁴⁵*Id.* at 3, 5.

⁴⁶*Id.* at 5.

⁴⁷*Id.*

⁴⁸*Id.*

Given Texas's significant LEP population, as well as that population's vulnerability to disparate treatment in the marketplace, how has the Texas Legislature responded?

II. LANGUAGE-RELATED CONSUMER PROTECTION LAWS IN TEXAS AND BEYOND

In 2005, the Texas Legislature, aware of the State's growing Spanish-speaking population, found that:

At least 27 percent of people in Texas speak Spanish as their primary language. These individuals all too often are victimized by unscrupulous lenders who entice borrowers with Spanish advertisements and negotiate loan terms in Spanish, yet force the borrower to sign a loan contract that is written in English and does not contain the same terms to which the parties verbally agreed.⁴⁹

Recognizing the vulnerability of non-English-speakers in the marketplace, Texas law requires the translation of certain documents and disclosures in a handful of consumer contexts.⁵⁰

A. *History of Enactment*

1. 1979: Vehicle Documentary Fees

Texas's oldest consumer translation law took effect in 1979.⁵¹ Texas Finance Code § 348.006(d) requires sellers in the Motor Vehicle Installment Sale context to provide a disclosure to customers regarding documentary fees "in the language primarily used in the oral sales presentation."⁵² This law is designed to prevent car salespeople from

⁴⁹H. Research Org., Bill Analysis, Tex. H.B. 1547, 79th Leg. R.S. (2005).

⁵⁰TEX. CONST. art. XVI, § 50(g); TEX. FIN. CODE ANN. §§ 341.502(a-1), 342.457(e), 348.006(d) (West 2016).

⁵¹Act of April 10, 1979, 66th Leg., R.S., ch. 450, § 1, 1979 Tex. Gen. Laws 1016, 1016.

⁵²TEX. FIN. CODE ANN. § 348.006(c)-(d). Sellers must furnish to buyers a conspicuous disclosure in the applicable language – the language primarily used in the oral sales presentation – that reads as follows: "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 relating to the sale. A documentary fee may not exceed a reasonable amount agreed to by the parties. This notice is required by law." Sellers must notify the Office of Consumer Credit Commissioner in writing before charging a

charging an exorbitant fee for the handling and processing of documents related to the transaction.⁵³

The available history is silent on the Legislature's motivation for suddenly requiring translation.⁵⁴ However, the concept may have been justifiably novel, given the newness of consumer protection legislation and Texas's smaller LEP population in the late 1970s. In just the last fifteen years, that population has increased by almost one million, not counting the number of Texas residents who did not respond to the U.S. census.⁵⁵ Therefore, the need for translation and consumer protection for non-English-speakers pre-1979 was likely not as prevalent as it has since become.

2. 1997: Home Equity Loans

Next, in 1997, Latina legislator Irma Rangel authored Texas's second translation requirement as an amendment to House Joint Resolution No. 31, proposing an amendment to article XVI, section 50, of the Texas Constitution.⁵⁶ The Joint Resolution would allow homestead owners to use their homesteads as collateral for home equity loans, considerably broadening the circumstances under which Texas homeowners could encumber their homesteads and subject them to foreclosure.⁵⁷ Between the first and second readings, Rangel, Texas's first female Mexican-American legislator,⁵⁸ proposed adding this clause: "If the discussions with the borrower are conducted primarily in a language other than English, the lender shall, before closing, provide an additional copy of the notice

documentary fee exceeding \$50. 7 TEX. ADMIN. CODE ANN. § 84.205(b) (West 2017). "The OCCC will presume a documentary fee of \$150 or less to be reasonable." *Id.*

⁵³ See TEX. FIN. CODE ANN. § 348.006.

⁵⁴ H. Comm. on Fin. Institutions, Bill Analysis, S.B. 359, 66th Leg., R.S. (Tex. 1979).

⁵⁵ According to the 2000 census, Texas was home to approximately 2.7 million LEP residents, but by 2013, that number had risen to 3.4 million. U.S. CENSUS BUREAU, *supra* note 10; U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, *Language Spoken at Home and Ability to Speak English by Nativity for the Population 5 Years and Over by State: 2000*, Feb. 2003, at tbl. 6, <https://www2.census.gov/programs-surveys/decennial/2000/phc/phc-t-20/tab06.pdf>.

⁵⁶ List of House Amendments Currently Under Consideration, H.R.J. Res. 31, 75th Leg., R.S. (Tex. 1997).

⁵⁷ Tex. Leg. Council, Analyses of Proposed Constitutional Amendments, 47, H.R.J. Res. 31, 75th Leg., R.S. (Tex. 1997).

⁵⁸ *Rangel, Irma Lerma*, TEX. ST. HIST. ASS'N. <https://tshaonline.org/handbook/online/articles/fra85> (last modified June 20, 2016).

[containing a summary of the borrower's rights] translated into the written language in which the discussions were conducted."⁵⁹ Rangel's amendment passed and became part of article XVI, section 50(g) of the Texas Constitution.⁶⁰

3. 2001: Loan Contracts

Four years later, in 2001, the Legislature adopted a statute governing the form of three types of contracts: consumer loan contracts, retail installment contracts, and home equity loan contracts.⁶¹ Codified at Texas Finance Code § 341.502, the statute required that these contracts, "whether in English or Spanish . . . be written in plain language designed to be easily understood by the average consumer. The contract must be printed in an easily readable font and type size."⁶² While this law was designed to "help head off any potentially fraudulent practices and . . . guarantee that consumers understand the terms of the transactions they enter into," the original statute did not go so far as to *require* the contract to be in Spanish when the negotiations had been.⁶³ It merely stated that the readability requirement applied to all covered contracts, regardless of what language they were written in.⁶⁴ However, in 2005, based on the reasoning noted above that 27% of Texas's population was all too often being victimized by unscrupulous lenders,⁶⁵ the Legislature "beefed up" the 2001 translation requirement by adding Section (a-1) to read:

If the terms of the agreement for a loan under Subsection (a) were negotiated in Spanish, a copy of a summary of those terms and other pertinent information shall be provided to the debtor in Spanish in a form identical to disclosures required for a closed-end transaction under 12 C.F.R. Section 226.18 [Regulation Z, implementing the Truth in Lending Act].⁶⁶

⁵⁹Floor Am. No. 8, H.R.J. Res. 31, 75th Leg., R.S. (Tex. 1997).

⁶⁰TEX. CONST. art. XVI, § 50(g).

⁶¹TEX. FIN. CODE ANN. § 341.502 (West 2016).

⁶²Act of April 10, 2001, 77th Leg., R.S., ch. 1235, § 11, 2001 Tex. Gen. Laws 2899, 2903.

⁶³H. Research Org., Bill Analysis, S.B. 317, 77th Leg., R.S. (Tex. 2001).

⁶⁴S. Comm. on Bus. & Commerce, Bill Analysis, H.B. 1547, 79th Leg., R.S. (Tex. 2005).

⁶⁵H. Research Org., Bill Analysis, H.B. 1547, 79th Leg., R.S. (Tex. 2005).

⁶⁶TEX. FIN. CODE ANN. § 341.502(a-1).

This law is by far the most far-reaching of the Texas consumer translation laws, extending well outside the very narrow contexts of the other three provisions discussed in this section.⁶⁷ Still, the law did not go as far as it could have. The original bill required lenders “to provide borrowers a copy [of] the loan contract and all related documents that included terms of repayment in the language in which a loan was negotiated.”⁶⁸ However, due to concerns about increased costs and administrative burdens placed on lenders, the committee substitute only required a single summary document in Spanish.⁶⁹

4. 2005: Automobile Club Memberships

The final translation law in the Texas consumer context was also passed in 2005.⁷⁰ Its scope is very narrow. When generating car loans, Texas Finance Code § 342.457 requires authorized lenders to provide a disclosure, in English or Spanish, regarding automobile club memberships (which provide services such as roadside assistance, towing, or theft protection).⁷¹ The disclosure must state that membership is not a condition of loan approval, and it must also alert consumers to the fact that they may cancel club membership and receive a full refund before the 31st day.⁷² The purpose of this disclosure is to “protect consumers who felt pressured to buy the membership or later realized that they did not need [it].”⁷³

B. Comparison with Other States’ Laws.

Given the fact that Texas’s LEP population is the second highest in the nation,⁷⁴ how does the State’s protection of consumers who may be vulnerable to linguistic discrimination compare to other populous states? This section will look at the translation laws of the five remaining states that, with Texas, are home to two-thirds of the nation’s LEP population:

⁶⁷TEX. CONST. art. XVI, § 50(g); FIN. §§ 342.457(d), 348.006(d).

⁶⁸Tex. H.B. 1547.

⁶⁹*Id.*

⁷⁰H.B. 1088, 79th Leg., R.S. (Tex. 2005) (adopted version).

⁷¹TEX. FIN. CODE ANN. § 342.457.

⁷²*Id.* § 342.457(d).

⁷³H. Research Org., Bill Analysis, H.B. 1088, 79th Leg., R.S. (Tex. 2005).

⁷⁴Zong & Batalova, *supra* note 10.

California (27%), Texas (14%), New York (10%), Florida (8%), Illinois (4%), and New Jersey (4%).⁷⁵

1. California

Nearly 44% of Californians speak a language other than English at home.⁷⁶ In 1976, in an effort to protect the State's growing Spanish-speaking population, the California Legislature passed the California Translation Act.⁷⁷ Later, the Act was expanded to include protection for speakers of four other languages: Tagalog, Chinese, Vietnamese, and Korean.⁷⁸

Still in effect today, the Act represents the broadest of its kind in the nation. Specifically, it covers:

- Credit sale contracts involving consumer goods and services of all kinds, including automobile purchases and leases;
- Virtually all loans or other extensions of credit for use primarily for personal, family, or household purposes, except loans secured by real property;
- Consumer loans secured by real property, if arranged by a real estate loan broker, or made by a personal finance company;
- Contracts for the rental, lease, or sublease of apartments or other dwellings (including mobile homes) for a period longer than one month;
- Contracts involving the payment of fees or charges for legal services furnished by lawyers;
- Reverse mortgages; and
- Mortgage foreclosure consulting contracts.⁷⁹

When a businessperson negotiates one of these contracts in any of the languages covered by the Act, he or she must follow some important steps. First, the Act has a posting requirement. Businesses that regularly negotiate these contracts must display a conspicuous notice in the target language stating that they are required by law to provide the consumer with a contract

⁷⁵ *Id.*

⁷⁶ U.S. CENSUS BUREAU, *supra* note 10.

⁷⁷ CAL. CIV. CODE ANN. § 1632(a)(1) (West 2011).

⁷⁸ *Id.* § 1632(a)(3).

⁷⁹ *Id.* § 1632(b)(1)–(7); *see also Foreign Language Translation of Consumer Contracts: Legal Guide K-4*, CAL. DEP'T OF CONSUMER AFFAIRS (May 2012), http://www.dca.ca.gov/publications/legal_guides/k-4.shtml.

or agreement in the language in which it was negotiated.⁸⁰ (The Act does not apply to negotiations where the consumer provides his own over-age-18 interpreter.⁸¹) Next, the translated contract must include every term or condition contained in the English version.⁸² If a term materially varies from the English version, no contract will have been entered into.⁸³ The business entity must provide the translated contract to the consumer before it is executed.⁸⁴ Further, any subsequent document that modifies or substantially changes the rights or obligations of the consumer must also be translated in the manner described above.⁸⁵ The Act grants aggrieved consumers the right to rescind their contract.⁸⁶ Certain violators may also be fined, investigated, or even imprisoned.⁸⁷

In addition to the comprehensive California Translation Act, more than twenty-five other California statutes incorporate the CTA by reference. For example, California Public Utility Code § 777.1 requires that a plain language notice regarding termination of utility services be posted “in English and the languages listed in Section 1632 of the Civil Code.”⁸⁸ Similar provisions may be found in the Finance, Government, Civil, and Business and Professions Codes.⁸⁹ California, with over a quarter of the nation’s LEP population, has taken substantial measures to protect those residents in consumer transactions.

2. New York

New York, home to 10% of the nation’s LEP population, has no laws in place to protect consumers from language discrimination. Nor are they likely to adopt such laws, given recent proposed legislation known as the New York State English Language Empowerment Act.⁹⁰ The language of

⁸⁰ CAL. CIV. CODE ANN. § 1632(f).

⁸¹ *Id.* § 1632(h).

⁸² *Id.* § 1632(b).

⁸³ *Id.* § 1632(j).

⁸⁴ *Id.* § 1632(b).

⁸⁵ *Id.* § 1632(g).

⁸⁶ *Id.* § 1632(k).

⁸⁷ Yuriko Mary Shikai, *Applying the California Translation Act to Consumer Agreements*, 35 L.A. LAW. 11, 12–13 (2012).

⁸⁸ CAL. PUB. UTIL. CODE ANN. § 777.1 (West 2004 & Supp. 2017).

⁸⁹ *E.g.*, CAL. CIV. CODE ANN. § 3485; CAL. FIN. CODE ANN. § 22368 (West 2015); CAL. GOV'T CODE ANN. § 60371 (West 2010); CAL. BUS. & PROF. CODE ANN. § 6243 (West 2003).

⁹⁰ S1582, 2015-2016 N.Y. Reg. Sess. 2.

the bill notes that New York is comprised of individuals from diverse ethnic, cultural, and linguistic backgrounds.⁹¹ Historically, English has been the common thread that binds such individuals together.⁹²

Command of the English language is necessary to participate in and take full advantage of the opportunities afforded by American life. Absent a rudimentary command of the English language, citizens of this state are not able to make their voices heard in the legislative process, effectively exercise their right to vote, or fully understand the rights afforded them by the United States and New York Constitutions.⁹³

Notwithstanding this proposed “learn English” legislation, New York did enact one translation law in 2011.⁹⁴ Drafted by the Workplace Justice Project, the Wage Theft Prevention Act was designed to address what one author has called an endemic in New York – theft of immigrants’ and LEP workers’ wages by employers.⁹⁵ The law requires employers to provide each new hire with written notice of details related to her rate of pay, overtime, pay period, etc., both in English and in the employee’s primary language.⁹⁶ However, in the consumer protection arena, New York, the third most populous LEP state, offers virtually no protection to those vulnerable to linguistic discrimination in the marketplace.

3. Florida

Florida is home to the nation’s fourth largest LEP population.⁹⁷ Yet, like New York, Florida law contains virtually no translation requirements. However, the Florida Administrative Code has not always been so silent.

For over twenty years, from 1974 until 1996, the Florida Administrative Code required contracts to be translated into the language of the

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ N.Y. LAB. LAW § 195(1) (Consol. 2003 & Supp. 2016).

⁹⁵ See Lauren K. Dasse, *Wage Theft in New York: The Wage Theft Prevention Act as a Counter to an Endemic Problem*, 16 CUNY L. REV. 97, 122 (2012).

⁹⁶ N.Y. LAB. LAW § 195(1).

⁹⁷ U.S. CENSUS BUREAU, *supra* note 10.

transaction.⁹⁸ This broad protection was promulgated under the Florida Deceptive and Unfair Trade Practices Act.⁹⁹ However, the rule was repealed in 1996 along with 5,000 others when Governor Lawton Chiles sought to eliminate “outdated, duplicative, unnecessary, or ill-advised” rules.¹⁰⁰ Florida AG Special Counsel, Lisa Raleigh, suspects that the translation rule may have been repealed based on the twenty-year failure to litigate and enforce it.¹⁰¹ Although the Attorney General considered reviving the rule in 2007, the proposal failed.¹⁰²

All that remains in Florida are a handful of narrowly-scoped translation requirements, outside of the financial services context. The Insurance Code requires HMOs, prepaid health clinics, and prepaid limited health service organizations (providing services such as dental, vision, mental health, substance abuse, etc.) to provide members with a written translation of their contract when negotiations take place in a language other than English.¹⁰³ Florida Statute § 117.05 contains a conspicuous notice requirement when notary publics advertise in a language other than English.¹⁰⁴ They must disclose in the language used that they are not attorneys and they may not give, or accept fees for, legal advice.¹⁰⁵ The Florida Bar has adopted a rule requiring attorneys to submit proposed advertisements, with translation if applicable, for approval at least twenty days prior to dissemination.¹⁰⁶ And finally, farm labor contractors must post an approved translated form disclosing terms and conditions of employment.¹⁰⁷

⁹⁸ FLA. ADMIN. CODE ANN. r. 2-9.005 (repealed 1996), *quoted in* Raleigh, *supra* note 31, at 37–38.

⁹⁹ Raleigh, *supra* note 31, at 38.

¹⁰⁰ *Id.* (quoting Lawton Chiles, *On Rules Reduction and Rational Executive Branch Reform*, 71 FLA. B.J. 16, 18 (Mar. 1997)).

¹⁰¹ *Id.*

¹⁰² Press Release, The Florida Bar News, AG Considers ‘Language other than English’ Advertising Transaction Rule (Jul. 1, 2007) (on file with author), https://www.floridabar.org/DIVCOM/JN/JNNews01_WORK.nsf/Articles/.8E802B6F17CE179A85257301006FF1F2.

¹⁰³ FLA. STAT. ANN. §§ 636.015, 641.305, 641.421 (West 2015 & 2005).

¹⁰⁴ *Id.* § 117.05(10).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* r. 4-7.19(h)(4).

¹⁰⁷ *Id.* § 450.33(4).

4. Illinois

The next greatest concentration of LEP individuals reside in Illinois and New Jersey.¹⁰⁸ Illinois enacted a broad consumer protection law in 1975, making it unlawful to conduct or negotiate a retail transaction in a language other than English without first providing the consumer with an unexecuted copy of the contract in that language.¹⁰⁹ However, in 2001, spurred on by the Retail Merchants and New Car Dealers Associations, the Illinois legislature substantially pruned back the law to its current state.¹¹⁰ The law applies when a retail transaction is conducted or negotiated in a language other than English, resulting in a written contract. Now, the consumer and the party through whom the negotiation took place, whether an interpreter or the retailer, must all sign a statutorily prescribed consent form.¹¹¹ By this form, the consumer acknowledges that he understands the contract, the terms of which were explained to him in his native language.¹¹² The law exempts credit card transactions but arguably includes residential loans.¹¹³

Additional, more narrowly tailored laws impose translation and disclosure requirements on providers of immigration assistance services by certain non-attorneys, assisted living facilities, sub-dividers, those pursuing residential foreclosure actions, payday lenders, cemeteries, and more.¹¹⁴

While Illinois's consumer protection law in favor of LEP residents is not as broad as it once was or could be, it still offers significantly more protection than do Florida and New York – states with higher LEP populations.

¹⁰⁸U.S. CENSUS BUREAU, *supra* note 10.

¹⁰⁹Pub. Act No. 79-926, § 1, 1975 Ill. Laws 2812 (current version at 815 ILL. COMP. STAT. ANN. 505/2N (West 2008)).

¹¹⁰S. TRANSCRIPT, 92nd Gen. Assemb., Reg. Sess., at 63-65 (Ill. 2001).

¹¹¹815 ILL. COMP. STAT. ANN. 505/2N (West 2008) (as amended by Pub. Act No. 92-478, § 5, 2001 Ill. Laws 3090).

¹¹²*Id.*

¹¹³*Id.*; MICHAEL T. NIGRO & JAMES R. MATA NIGRO, 24 ILL. PRAC., ILL. CONSTR. LAW MANUAL § 4:6 (2016); Harold L. Levine, *A Day in the Life of a Residential Mortgage Defendant*, 36 J. MARSHALL L. REV. 687, 717-18 (2003).

¹¹⁴*E.g.* 815 ILL. COMP. STAT. ANN. 505/2AA; 210 ILL. COMP. STAT. ANN. 9/85 (West 2014); 765 ILL. COMP. STAT. ANN. 86/5-10 (West 2001 & Supp. 2016); 735 ILL. COMP. STAT. ANN. 5/15-1504.5 (West 2011); 815 ILL. COMP. STAT. ANN. 122/2-20 (West 2008 & Supp. 2016); 225 ILL. COMP. STAT. ANN. 411/20-30 (West 2012).

5. New Jersey

Like its neighbor to the north, New Jersey has not adopted any comprehensive language discrimination laws. A smattering of laws governing employers, auto dealers, pawnbrokers, and utility service providers have English and Spanish disclosure requirements.¹¹⁵ But that is the extent of the statutory shield explicitly designed to protect New Jersey LEP consumers.

In fact, New Jersey legislators have been proposing Official English bills for at least twenty years.¹¹⁶ Sponsoring Senator Anthony Bucco says that “[t]he motivation behind the bill is to encourage those who do not speak English, or speak it at a limited level, to fully learn the language. Data from the Census Bureau tells us that those who struggle to speak English experience the highest unemployment and lowest wages.”¹¹⁷ Despite the bill’s failure to pass, the Northeast does not seem likely to embrace comprehensive linguistic protection for its LEP population in the near future.

C. Comparison with Federal Laws

Texas falls in about the middle of the pack compared to other LEP hosts. Texas’s translation statutes are not as broad as California’s or Illinois’s.¹¹⁸ However, these statutes provide more protection than do New York’s, Florida’s, or New Jersey’s. How do Texas’s translation statutes compare to federal legislation?

In 2010, in response to America’s financial crisis and “to protect consumers from abusive financial services practices,” Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-

¹¹⁵ *E.g.* N.J. ADMIN. CODE §§ 3:16-1.3, 14:3-3A.3 (2017); N.J. STAT. ANN. § 43:21-11.2 (West 2015); N.J. STAT. ANN. § 56:12-34 (West 2012).

¹¹⁶ Bender, *supra* note 30, at 1048–49; *see, e.g.*, S.B. 276, 207th Leg., 1st Sess. (N.J. 1996); A530, 208th Leg., Pre-filed (N.J. 1998); A89, 209th Leg., Pre-filed (N.J. 2000); A918, 210th Leg., Pre-filed (N.J. 2002); A1140, 211th Leg., Pre-filed (N.J. 2004); A1099, 212th Leg., Pre-filed (N.J. 2006); S.B. 1090, 213th Leg. (N.J. 2008); S.B. 1148, 214th Leg. (N.J. 2010); S.B. 1619, 215th Leg. (N.J. 2012); S.B. 115, 216th Leg., Pre-filed (N.J. 2014); S.B. 69, 217th Leg., Pre-filed (N.J. 2016).

¹¹⁷ Mary Lou Lang-Byrd, *Three States Consider Making English Official Language*, THE WASHINGTON FREE BEACON (Sept. 16, 2014), <http://freebeacon.com/issues/three-states-consider-making-english-official-language>.

¹¹⁸ *Cf.* CAL. CIV. CODE § 1632 (West 2011 & Supp. 2017); 815 ILL. COMP. STAT. ANN. 505/2N (West 2008).

Frank).¹¹⁹ The Act puts in place “common-sense protections” for consumers and created the Consumer Financial Protection Bureau (CFPB).¹²⁰ Once regulated by seven different agencies, the CFPB would now assume full responsibility for supervising the U.S. consumer financial services marketplace.¹²¹

Congress passed Dodd-Frank to provide broad protection for all consumers, not just those susceptible to language discrimination. However, the Act does contain one reference to non-English speakers in the home-buying context.¹²² In 12 U.S.C. § 1701x-1, Congress instructs the Secretary of Housing and Urban Development to take all actions necessary “to inform potential homebuyers of the availability and importance of obtaining an independent home inspection.”¹²³ This includes the publishing of resources in both English and Spanish, urging homebuyers to get an inspection and counseling them on important questions to ask their inspectors.¹²⁴

The CFPB’s regulations do not do a great deal more to help LEP consumers than does the agency’s enabling act. Fifteen times in Title 12 (Banks and Banking) of the Code of Federal Regulations, the CFPB *permits*, but does not mandate, foreign language disclosures: “Disclosures required by this part may be made in a language other than English, provided that the disclosures are made available in English upon the consumer’s request.”¹²⁵

Only once do the CFPB’s regulations *require* a foreign language disclosure, and this is in keeping with Congress explicitly requiring the same in the Dodd-Frank Act. In the international wiring of money context (“remittance transfers”), “[t]he disclosures required under this section shall be made in English and in each of the foreign languages principally used by

¹¹⁹Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

¹²⁰*Wall Street Reform: The Dodd-Frank Act*, THE WHITE HOUSE, <https://obamawhitehouse.archives.gov/economy/middle-class/dodd-frank-wall-street-reform> (last visited Nov. 19, 2016).

¹²¹*Id.*; see also *Statutes Enforced or Administered by the Commission*, FEDERAL TRADE COMMISSION, <https://www.ftc.gov/enforcement/statutes> (last visited Apr. 7, 2016).

¹²²12 U.S.C. § 1701x-1(a)(1) (2012).

¹²³*Id.*

¹²⁴*Id.*

¹²⁵12 C.F.R. § 1026.27 (2016). The quoted language comes from Regulation Z, the Truth in Lending regulations. However, identical language appears in Regulations B (Equal Opportunity Credit Act), E (Electronic Fund Transfers), M (Consumer Leasing), X (Real Estate Settlement Procedures Act), and DD (Truth in Savings), all under Title 12 of the Code of Federal Regulations.

the remittance transfer provider, or any of its agents, to advertise, solicit, or market, either orally or in writing, at that office.”¹²⁶

Other than these limited acknowledgements of an LEP population exceeding twenty-five million, Congress and the CFPB seem to leave language-discrimination lawmaking up to the states.¹²⁷

III. THE CURRENT PICTURE

While Texas law offers more protection to LEP consumers than some other host states, this protection is only as effective as the victims’ willingness to litigate or the government’s commitment to enforce (unless the quietness on the [southern] front indicates complete compliance with the Legislature’s commands).

A. *Litigation (or Lack Thereof)*

In thirty-eight years of linguistic minority laws in Texas, only two reported cases litigating violations of these state laws exist.¹²⁸ Yet a brief survey of *federal* language discrimination enforcement actions against not-so-innocent Texans reveals that unlitigated abuse under state law likely also exists. In addition, Latinos’ reticence to engage in litigation may contribute to the lack of caselaw.

1. Federally Disclosed Language Discrimination

For example, the Federal Trade Commission has stepped in to crack down on a Plano mortgage broker who allegedly targeted Hispanic customers for mortgage refinancing, negotiating terms in Spanish, then providing English closing documents containing less favorable terms.¹²⁹ The Department of Justice, likewise, has brought suit against Texas banks

¹²⁶ 15 U.S.C. § 1693o-1(b); *see also* 12 C.F.R. § 1005.31(g). Regulation Z, which implements the Truth in Lending Act, also prohibits misleading foreign-language advertisements where credit is secured by a dwelling. 12 C.F.R. §§ 226.24(i)(7), 1026.27.

¹²⁷ Zong & Batalova, *supra* note 10.

¹²⁸ *See generally* Yates Ford, Inc. v. Benavides, 684 S.W.2d 736 (Tex. App.—Corpus Christi 1984, writ ref’d n.r.e.); Villarreal v. Elizondo, 831 S.W.2d 474 (Tex. App.—Corpus Christi 1992, no writ).

¹²⁹ Federal Trade Comm’n v. Mortgages Para Hispanos.com Corp. and Daniel Moises Goldberg, 4:06-CV-19 (E.D. Tex. Sept. 25, 2006), <https://www.ftc.gov/enforcement/cases-proceedings/042-3206/mortgages-para-hispanoscom-corporation-daniel-moises-goldberg>.

that allegedly discriminated against Hispanic borrowers by charging higher rates and fees in violation of the Equal Credit Opportunity Act.¹³⁰

Though outside the consumer transaction arena, congressional findings dating back to the 1960s and '70s also revealed language discrimination by Texans against LEP voters.¹³¹ These findings resulted in Texas being one of nine states to require preclearance by the federal government under the Voting Rights Act before making any changes that would affect voting.¹³² John Trasviña, former general counsel for the Senate Subcommittee on the Constitution and a graduate of Stanford and Harvard Law Schools, found that language-based discrimination was not solely a thing of the past.¹³³ In his 2006 testimony before the Senate Committee on the Judiciary, he testified to election judges and Redistricting Committee officials engaging in continued prejudicial treatment of LEP citizens.¹³⁴ These examples of federal regulation involving Texas LEP residents suggest that the lack of reported litigation may not equal a lack of language discrimination.

2. Non-Litigious Culture

One reason the South Western Reporter may contain a dearth of linguistic discrimination caselaw is that Latinos, the bulk of Texas's LEP population, are unlikely litigants of their own consumer protection rights.¹³⁵ Legal marketing strategist, Leslie Inzunza, explains Latinos' hesitancy to litigate. Hispanics are naturally cautious when it comes to trusting

¹³⁰United States v. Tex. Champion Bank, 2:13-CV-44 (S.D. Tex. Mar. 5, 2013), http://www.justice.gov/crt/about/hce/documents/texas_championsettle.pdf; United States v. Fort Davis State Bank, P-13-CV-77 (W.D. Tex. Dec. 19, 2013), <http://www.justice.gov/crt/about/hce/documents/fortdavissettle.pdf>.

¹³¹Angelo N. Ancheta, *Language Accommodation and the Voting Rights Act*, in VOTING RIGHTS ACT REAUTHORIZATION OF 2006: PERSPECTIVES ON DEMOCRACY, PARTICIPATION, AND POWER 293, 300 (Ana Henderson ed., 2007); *Continuing Need for Section 203's Provisions for Limited English Proficient Voters: Hearing Before the S. Comm. on the Judiciary*, 109th Cong. 346-47 (2006) (statement of John Trasviña, Interim President & Gen. Counsel, Mexican Am. Legal Def. and Educ. Fund).

¹³²*Jurisdictions Previously Covered by Section 5*, DOJ: CIVIL RIGHTS DIVISION (Aug. 6, 2015), <https://www.justice.gov/crt/jurisdictions-previously-covered-section-5>.

¹³³Trasviña, *supra* note 131, at 2, 347, 349-50.

¹³⁴*Id.* at 349-50.

¹³⁵Leslie Inzunza, *Engaging Hispanics for Mass Tort and Class Action Litigation*, THE NAT'L TRIAL LAWYERS (Aug. 21, 2014), <http://www.thenationaltriallawyers.org/2014/08/hispanics/>.

government (and banking) institutions.¹³⁶ Also, their perception of time is different.¹³⁷ Therefore, “filing a claim now for a possible reward somewhere in the near or distant future holds little appeal.”¹³⁸

Another factor is that Latinos are more interdependent than Anglos tend to be.¹³⁹ Therefore, “group needs take priority over individual needs,” and a what’s-in-it-for-me mentality would be foreign to most Latinos.¹⁴⁰ Hispanics also tend to be risk-averse.¹⁴¹ For these reasons, an expectation that Hispanics, and perhaps other cultures, will litigate the language-protection laws promulgated on their behalves may be unwarranted. The American propensity to fight for our rights and go after those who abuse them is unlikely to be duplicated by linguistic minorities.

California attorney, Yuriko Mary Shikai, noted a similar lack of litigation where the California Translation Act is concerned: “Although this law generally has been on the books since 1976, its impact on the legal landscape has not been widely felt. Very few California appellate decisions have been reported, although a small number of federal trial court decisions have dealt with the statute.”¹⁴²

B. Agency Regulation

If the victims are unlikely to prosecute their perpetrators under these language-discrimination laws, is the State at least committed to enforcing them? The Office of Consumer Credit Commissioner has responsibility for ensuring compliance with Texas’s financial transaction laws, including the above-cited Texas Finance Code provisions.¹⁴³ With its \$9 million budget and nearly 100 employees, the OCCC currently regulates more than 16,000 Texas lenders, including property tax lenders, motor vehicle sellers, credit access businesses, and pawnshops.¹⁴⁴ In 2016, the OCCC issued

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² Shikai, *supra* note 87, at 11.

¹⁴³ TEX. FIN. CODE ANN. §§ 14.001(a)(2), 14.101 (West 2013 & Supp. 2016).

¹⁴⁴ OFFICE OF CONSUMER CREDIT COMM’R, *Budget FY 2016*, <http://occc.texas.gov/sites/default/files/uploads/pub/fy16-budget-approved-final.pdf> (last visited May 30, 2016); OFFICE OF CONSUMER CREDIT COMM’R, *Licensee Lookup Portal*, <https://alecs.occc.texas.gov/Generic/AdvanceSearch#> (last visited May 30, 2016).

approximately 483 enforcement orders.¹⁴⁵ None related to Texas Finance Code §§ 341.502 or 342.457, discussed above.¹⁴⁶ Nearly 30% related to Texas Finance Code § 348.006.¹⁴⁷ However, this section requires much more than a documentary fee disclosure in the language primarily used in the motor vehicle oral sales presentation. It sets forth the method for computing the principal balance due on motor vehicle retail installment contracts and lists additional requirements regarding documentary fees.¹⁴⁸ Although the publicly available list of enforcement orders does not indicate which subsections of Section 348.006 the OCCC's efforts center around, the fact that no enforcement orders exist for the other translation laws makes it unlikely that it is subsection (d).

The OCCC's reasons for not enforcing the Texas Finance Code's language-discrimination provisions are likely be varied and complex. But whatever those reasons may be, Texas is certainly not alone. Attorneys in both California and New York have indicated that lack of enforcement and poor prosecution rates in those states contribute to these discrimination-protection laws' low effectiveness as well.¹⁴⁹ While the idea behind these laws that are designed to protect vulnerable consumers from being defrauded is a noble one, unenforced laws will do little to deter those who are determined to defraud.

C. Solutions

If those victimized will not litigate and the State will not enforce, what is left to be done? The Texas legislature has revealed its concern for and awareness of this vulnerable population by paving a path for its protection. Yet that path is virtually untrod, though likely not for want of abuse.

1. Focused Enforcement

One possibility, following a federal model, is more focused collaboration between government and other interested non-governmental

¹⁴⁵ *OCCC Enforcement Orders*, OFFICE OF CONSUMER CREDIT COMM'R, <http://occc.texas.gov/occc-enforcement-orders> (last visited Jan. 9, 2017).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ TEX. FIN. CODE ANN. § 348.006.

¹⁴⁹ Shikai, *supra* note 87, at 11; L.A. TIMES, *supra* note 35; Dasse, *supra* note 95, at 110; *see also* Bender, *supra* note 30, at 1105 ("Too few state agencies have exercised their authority on behalf of language minorities.").

Texas organizations. For example, in 2004, aware that Latinos are twice as likely as non-Hispanic whites to be victims of consumer fraud, the Federal Trade Commission launched its Hispanic Law Enforcement and Outreach Initiative.¹⁵⁰ The agency held a two-day workshop in Washington, D.C. to facilitate discussions between various cross-sections of those sectors in a position to effect change and to develop a law enforcement action plan.¹⁵¹ Because “Hispanics may under-report fraud due to cultural issues and/or fear of reporting,” the workshop also developed key strategies to use when conducting educational outreaches.¹⁵²

Another reproducible aspect of the FTC’s initiative is to create a sub-department focused solely on Hispanics or those with limited English proficiency. If the OCCC has its hands full with the monitoring of all regulated lenders under the Finance Code, it may be loath to drop other important responsibilities to go see about an otherwise quiet and uncomplaining population. But if a subdivision of the OCCC were created specifically to monitor the protection of the LEP population under the Texas Finance Code, then the laws would receive the attention they deserve, the LEP population would be better-served than they currently are, and more data could be gathered to obtain a realistic picture of the true landscape regarding the treatment of the LEP consumer population in Texas.

2. Community Education

Community education may be another way for Texas’s language-discrimination laws to see more action. The FTC, again, may act as a role model. For example, the agency publishes consumer materials on its website in Spanish.¹⁵³ These include a blog with articles of interest; advice for consumers related to key areas such as money and credit, houses and mortgages, employment and earnings, and more; and a site for filing a

¹⁵⁰ Edith Ramirez, Chairwoman, Fed. Trade Comm’n, Remarks at the Hispanic National Bar Association (Sept. 12, 2014) (transcript available at https://www.ftc.gov/system/files/documents/public_statements/628131/140912hnba.pdf).

¹⁵¹ *Hispanic Outreach Forum & Law Enforcement Workshop: A Summary of the Proceedings*, FED. TRADE COMM’N, ii (Oct. 2004), <https://www.ftc.gov/sites/default/files/documents/reports/hispanic-outreach-forum-and-law-enforcement-workshop-summary-proceedings-october-2004/hispanicoutreach.pdf>.

¹⁵² *Id.*

¹⁵³ Ramirez, *supra* note 150.

complaint in Spanish.¹⁵⁴ Regional FTC conferences held across the country with local interested parties provide the fodder for these publications by gathering information on current scams and areas of deficiency.¹⁵⁵ The FTC also maintains a telephone hotline where it receives complaints.¹⁵⁶

At its above-referenced D.C. Workshop and Forum, the FTC generated a list of keys to keep in mind when planning community-education strategies.¹⁵⁷ These include knowing the culture; partnering with community-based organizations and the media, building long-term relationships, and coordinating with law enforcement.¹⁵⁸

Professor Steven Bender suggests additional tactics, such as presenting educational topics in conjunction with community language programs that offer adult English instruction, consulting with representatives of the target group to ensure relevance of content, and coordinating with private organizations to bypass Hispanics' distrust of government-sponsored activities.¹⁵⁹ A number of national consumer organizations already exist and could serve as valuable partners in a Texas-based initiative.¹⁶⁰

IV. CONCLUSION.

Texas is certainly on the right track. The Legislature has recognized the need to take action to protect its LEP consumers and has passed bills of a manageable scope accordingly. However, these statutes (and constitutional provision) do little good if they remain unutilized. Someone – either the State or the LEP residents – must take action. The LEP residents, absent significant educational efforts, are unlikely to do so due to cultural barriers. Therefore, the burden rests on the State. Though some readers may be tempted to exhibit a leave-well-enough-alone attitude, the well-enough landscape is a mirage. The silence, as shown above, most likely stems from the victims' cultural tendencies and not from their lack of victimization. A decision to refrain from enforcement will be a conscious decision to ratify language-based discrimination in Texas. But this cannot have been the Legislature's intent, given its passage of Texas's translation laws. Even if

¹⁵⁴ *FTC en español*, FED. TRADE COMM'N, <https://www.ftc.gov/es> (last visited Jan. 9, 2017).

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Hispanic Outreach Forum*, *supra* note 151, at ii–iii.

¹⁵⁸ *Id.*

¹⁵⁹ Bender, *supra* note 30, at 1104.

¹⁶⁰ *Id.*

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the effort is small, let us at least do *something* to begin addressing the plight of Texas's 8 million non-native English speakers.¹⁶¹

¹⁶¹U.S. CENSUS BUREAU, *supra* note 10.