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## Appendices

Citation/Title

TX CONST Art. 16, § 11, Usury; rate of interest in absence of legislation

**\*180193 Vernon's Ann.Texas Const. Art. 16, § 11**

**VERNON'S TEXAS STATUTES AND CODES ANNOTATED  
CONSTITUTION OF THE STATE OF TEXAS 1876  
ARTICLE XVI. GENERAL PROVISIONS**

*Current through End of 1999 Reg. Sess.*

**§ 11. Usury; rate of interest in absence of legislation**

Sec. 11. The Legislature shall have authority to classify loans and lenders, license and regulate lenders, define interest and fix maximum rates of interest; provided, however, in the absence of legislation fixing maximum rates of interest all contracts for a greater rate of interest than ten per centum (10%) per annum shall be deemed usurious; provided, further, that in contracts where no rate of interest is agreed upon, the rate shall not exceed six per centum (6%) per annum. Should any regulatory agency, acting under the provisions of this Section, cancel or refuse to grant any permit under any law passed by the Legislature; then such applicant or holder shall have the right of appeal to the courts and granted a trial de novo as that term is used in appealing from the justice of peace court to the county court.

**CREDIT(S)**

**1993 Main Volume**

*Amended Aug. 11, 1891, proclamation Sept. 22, 1891; Nov. 8, 1960.*

<General Materials (GM) - References, Annotations, or Tables>

**HISTORICAL NOTES**

**1993 Main Volume**

The 1891 amendment proposed by Acts 1891, 22nd Leg., H.J.R. No. 1, reduced the prescribed rates and rewrote the provisions of the section which prior thereto read:

"The legal rate of interest shall not exceed eight per cent. per annum, in the absence of any contract as to the rate of interest; and by contract parties may agree upon any rate not to exceed twelve per cent. per annum. All interest charged above this last named rate, shall be deemed usurious, and the Legislature shall, at its first session, provide appropriate pains and penalties to prevent and punish usury."

The 1960 amendment proposed by Acts 1959, 56th Leg., H.J.R. No. 6, gave the Legislature authority to classify loans and lenders, license and regulate lenders, define interest, fix maximum rates of interest, and provide for a maximum rate of interest of ten per centum (10%) per annum in the absence of legislation setting maximum rates of interest; provided that the rate of interest shall not exceed six per cent (6%) per annum in contracts where no interest rate is agreed upon; provided for the right of appeal and trial de novo in the event any regulatory agency cancels or refuses to grant any permit; provided for the necessary election and the form of the ballot; and provided for the necessary proclamation and publication.

**\*180194 Earlier Constitution:**  
Const. 1869, Art. 12, § 44.

**REFERENCES**

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### CROSS REFERENCES

Interest, usury, and consumer credit and protection, see Vernon's Ann.Civ.St. art. 5069-1.01 et seq.  
Statutory penalty usury violations, see Vernon's Ann.Civ.St. art. 5069-1.06.

### LAW REVIEW COMMENTARIES

- Analysis of status of usury law in Texas. Thomas J. Perich, Jack E. Fields and Stephen G. Hunt, 19 S.Tex.L.J. 525 (1978).
- Application of Texas usury laws to equity participation agreements. Stephen M. Hackerman, 48 Tex.L.Rev. 925 (1970).
- Consumer credit regulation in Texas. 49 Tex.L.Rev. 1011 (1971).
- Consumer credit rejoinder. S. Hugh High, 50 Tex.L.Rev. 463 (1972).
- "Dummy" corporate borrower creates usury and tax difficulties. 28 Sw.L.J. 437 (1974).
- Federal truth-in-lending and the Texas code. Carl Illig, 33 Tex.B.J. 87 (1970).
- Making choice of law a contact sport: Contractual choices of law in Texas. Sanford A. Weiner and John C. Ale, 54 Tex.Bar J. 262 (1991).
- Raises in the ceiling on residential mortgage loans by the 1979 Legislature. Scott M. Rawdin, 33 Sw.L.J. 823 (1979).
- Regulation of interest. 10 St. Mary's L.J. 825 (1979).
- Revised Texas usury ceilings: New Alice in Wonderland. Frank A. St. Claire, 14 St. Mary's L.J. 187 (1983).
- Revolving charge accounts and usury. 10 Hous.L.Rev. 140 (1972).
- Spreading interest over entire period of loan. 12 Hous.L.Rev. 159 (1974).
- State and federal interest rate regulation. Ray Farabee and James E. Dodds, 44 Tex.B.J. 879 (1981).
- State usury laws and national banks. Richard E. Brophy, Jr., 31 Baylor L.Rev. 169 (1979).
- Texas Law of Usury. Ray Pearce and J. McDonald Williams, 22 Sw.L.J. 233, 235 (1968).

**Appendix B**

**Chapter 342, Subchapter F  
Texas Finance Code**

**\*37115 V.T.C.A., Finance Code § 342.251**

**VERNON'S TEXAS STATUTES AND CODES ANNOTATED  
FINANCE CODE  
TITLE 4. REGULATION OF INTEREST, LOANS, AND FINANCED  
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LOANS**

*Current through End of 1999 Reg. Sess.*

**§ 342.251. Maximum Cash Advance**

The maximum cash advance of a loan made under this subchapter is an amount computed under Subchapter C, Chapter 341, [FN1] using the reference base amount of \$100.

**CREDIT(S)**

**1998 Main Volume**

*Acts 1997, 75th Leg., ch. 1008, § 1, eff. Sept. 1, 1997.*

**2000 Electronic Update**

*Amended by Acts 1999, 76th Leg., ch. 62, § 7.19(a), eff. Sept. 1, 1999.*

[FN1] V.T.C.A., Finance Code § 341.201 et seq.

<General Materials (GM) - References, Annotations, or Tables>

**HISTORICAL NOTES**

**HISTORICAL AND STATUTORY NOTES**

**1998 Main Volume**

For provisions relating to conflicts between this code and statutes relating to Consumer Loans (Vernon's Ann.Civ.St. art. 5069-3A.001 et seq.), see notes following V.T.C.A., Finance Code § 342.001.


**Prior Laws:**

Acts 1963, 58th Leg., p. 550, ch. 205, § 17(a).  
Vernon's Ann.Civ.St. art. 6165b, § 17(a).  
Acts 1967, 60th Leg., p. 620, ch. 274, § 2.  
Acts 1979, 66th Leg., p. 1556, ch. 672, §§ 3 to 6.  
Acts 1983, 68th Leg., p. 824, ch. 194, § 17.  
Vernon's Ann.Civ.St. art. 5069-3.15(6)(a).

**REFERENCES**

**LIBRARY REFERENCES**

**1998 Main Volume**

Consumer Credit  10.  
WESTLAW Topic No. 92B.  
C.J.S. Interest and Usury; Consumer Credit § 293.

\*37116 V.T.C.A., Finance Code § 342.252

**VERNON'S TEXAS STATUTES AND CODES ANNOTATED**  
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**§ 342.252. Alternate Interest Charge**

Instead of the charges authorized by Section 342.201, a loan contract may provide for:

- (1) on a cash advance of less than \$30, an acquisition charge that is not more than \$1 for each \$5 of the cash advance;
- (2) on a cash advance equal to or more than \$30 but not more than \$100:
  - (A) an acquisition charge that is not more than the amount equal to one-tenth of the amount of the cash advance; and
  - (B) an installment account handling charge that is not more than:
    - (i) \$3 a month if the cash advance is not more than \$35;
    - (ii) \$3.50 a month if the cash advance is more than \$35 but not more than \$70; or
    - (iii) \$4 a month if the cash advance is more than \$70;
- or
- (3) on a cash advance of more than \$100:
  - (A) an acquisition charge that is not more than \$10; and
  - (B) an installment account handling charge that is not more than the ratio of \$4 a month for each \$100 of cash advance.

**CREDIT(S)**

**1998 Main Volume**

*Acts 1997, 75th Leg., ch. 1008, § 1, eff. Sept. 1, 1997.*

**2000 Electronic Update**

*Amended by Acts 1999, 76th Leg., ch. 62, § 7.19(a), eff. Sept. 1, 1999.*

<General Materials (GM) - References, Annotations, or Tables>

**HISTORICAL NOTES**

**REVISOR'S NOTE**

**1998 Main Volume**

V.A.C.S. Article 5069-3.15(6)(a), which is revised as Section 342.251 of this code, applies to a "loan contract which includes precomputed interest and is payable in substantially equal successive monthly installments beginning within one month plus fifteen days after the date of the contract." V.A.C.S. Article 5069-3.15(6)(b), which is revised in this section, applies to a "loan contract which includes precomputed interest and is payable in other than substantially equal successive monthly installments beginning within one month plus fifteen days after the date the contract" or, in other words, to a loan contract that includes precomputed interest but that is payable in a manner other than the manner described by Section 342.251. For brevity and efficiency this section states that it applies to a "loan contract that includes precomputed interest and to which Section 342.251 does not apply."

**\*37117 HISTORICAL AND STATUTORY NOTES****1998 Main Volume**

For provisions relating to conflicts between this code and statutes relating to Consumer Loans (Vernon's Ann.Civ.St. art. 5069-3A.001 et seq.), see notes following V.T.C.A., Finance Code § 342.001.

**Prior Laws:**

Acts 1963, 58th Leg., p. 550, ch. 205, § 17(a).  
Vernon's Ann.Civ.St. art. 6165b, § 17(a).  
Acts 1967, 60th Leg., p. 620, ch. 274, § 2.  
Acts 1979, 66th Leg., p. 1556, ch. 672, §§ 3 to 6.  
Acts 1983, 68th Leg., p. 824, ch. 194, § 17.  
Vernon's Ann.Civ.St. art. 5069-3.15(6)(b).

**REFERENCES****LIBRARY REFERENCES****1998 Main Volume**

Consumer Credit ☞ 10.  
WESTLAW Topic No. 92B.  
C.J.S. Interest and Usury; Consumer Credit § 293.



\*37118 V.T.C.A., Finance Code § 342.253

**VERNON'S TEXAS STATUTES AND CODES ANNOTATED**  
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**§ 342.253. Maximum Interest Charge for Loan With Single Repayment**

A loan contract to which Section 342.251 applies and that is payable in a single installment may provide for an acquisition charge and an interest charge on the cash advance that does not exceed a rate or amount that would produce the same effective return, determined as a true daily earnings rate, as allowed under Section 342.252 considering the amount and term of the loan. If a loan that has a term in excess of one month under this section is prepaid in full, the lender may earn a minimum of the acquisition charge and interest charge for one month. If a loan under this section has an initial term of less than one month, the lender may earn a minimum of the acquisition charge and an interest charge that produces the same effective return as the installment account handling charge computed at a daily rate for the term the loan is outstanding.

**CREDIT(S)**

**2000 Electronic Update**

*Amended by Acts 1999, 76th Leg., ch. 62, § 7.19(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 909, § 2.12, eff. Sept. 1, 1999.*

<General Materials (GM) - References, Annotations, or Tables>

**HISTORICAL NOTES**

**HISTORICAL AND STATUTORY NOTES**

**2000 Electronic Update**

**1999 Legislation**

Acts 1999, 76th Leg., ch. 909, in the first sentence, inserted ", determined as a true daily earnings rate," in the second sentence, inserted "that has a term in excess of one month", and added the third sentence.

For effectiveness provisions of Acts 1999, 76th Leg., ch. 909, see notes following V.T.C.A., Finance Code § 342.001.

**1998 Main Volume**

For provisions relating to conflicts between this code and statutes relating to Consumer Loans (Vernon's Ann.Civ.St. art. 5069-3A.001 et seq.), see notes following V.T.C.A., Finance Code § 342.001.

**Prior Laws:**

Acts 1963, 58th Leg., p. 550, ch. 205, § 17(a).  
\*37119 Vernon's Ann.Civ.St. art. 6165b, § 17(a).  
Acts 1967, 60th Leg., p. 620, ch. 274, § 2.  
Acts 1979, 66th Leg., p. 1556, ch. 672, §§ 3 to 6.  
Acts 1983, 68th Leg., p. 824, ch. 194, § 17.  
Vernon's Ann.Civ.St. art. 5069-3.15(6)(c).

**REFERENCES**

**LIBRARY REFERENCES**

**1998 Main Volume**

Consumer Credit ↻10.  
WESTLAW Topic No. 92B.  
C.J.S. Interest and Usury; Consumer Credit § 293.

**\*37120 V.T.C.A., Finance Code § 342.254**

**VERNON'S TEXAS STATUTES AND CODES ANNOTATED  
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*Current through End of 1999 Reg. Sess.*

**§ 342.254. No Other Charges Authorized**

(a) On a loan made under this subchapter a lender may not contract for, charge, or receive an amount unless this subchapter authorizes the amount to be charged.

(b) An insurance charge is not authorized on a loan made under this subchapter.

**CREDIT(S)**

**2000 Electronic Update**

*Added by Acts 1999, 76th Leg., ch. 62, § 7.19(a), eff. Sept. 1, 1999.*

<General Materials (GM) - References, Annotations, or Tables>

**ANNOTATIONS**

**NOTES OF DECISIONS**

**In general 1**

**1. In general**

The charges authorized in art. 5069-3.15(8) are not authorized charges under this article. Op.Atty.Gen.1972, No. M-1082.

**\*37121 V.T.C.A., Finance Code § 342.255**

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*Current through End of 1999 Reg. Sess.*

**§ 342.255. Maximum Loan Term**

The maximum term of a loan made under this subchapter is:

- (1) for a loan of \$100 or less, the lesser of:
  - (A) one month for each multiple of \$10 of cash advance; or
  - (B) six months; and
- (2) for a loan of more than \$100, one month for each multiple of \$20 of cash advance.

**CREDIT(S)**

**2000 Electronic Update**

*Added by Acts 1999, 76th Leg., ch. 62, § 7.19(a), eff. Sept. 1, 1999.*

<General Materials (GM) - References, Annotations, or Tables>

\*37122 V.T.C.A., Finance Code § 342.256

**VERNON'S TEXAS STATUTES AND CODES ANNOTATED  
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*Current through End of 1999 Reg. Sess.*

**§ 342.256. Refund**

(a) An acquisition charge authorized under Section 342.252(1) or (2) is considered to be earned at the time a loan is made and is not subject to refund.

(b) On the prepayment of a loan with a cash advance of \$30 or more but not more than \$100, the installment account handling charge authorized under Section 342.252(2) is subject to refund in accordance with Subchapter H.

(c) On the prepayment of a loan with a cash advance of more than \$100, the acquisition charge and the installment account handling charge authorized under Section 342.252(3) are subject to refund in accordance with Subchapter H.

**CREDIT(S)**

**2000 Electronic Update**

*Added by Acts 1999, 76th Leg., ch. 62, § 7.19(a), eff. Sept. 1, 1999.*

<General Materials (GM) - References, Annotations, or Tables>

\*37123 V.T.C.A., Finance Code § 342.257

**VERNON'S TEXAS STATUTES AND CODES ANNOTATED**  
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*Current through End of 1999 Reg. Sess.*

**§ 342.257. Default Charge; Deferment of Payment**

The provisions of Subchapter E [FN1] relating to additional interest for default and additional interest for the deferment of installments apply to a loan made under this subchapter.

**CREDIT(S)**

**2000 Electronic Update**

*Added by Acts 1999, 76th Leg., ch. 62, § 7.19(a), eff. Sept. 1, 1999.*

[FN1] V.T.C.A., Finance Code § 342.201 et seq.

<General Materials (GM) - References, Annotations, or Tables>

**\*37124 V.T.C.A., Finance Code § 342.258**

**VERNON'S TEXAS STATUTES AND CODES ANNOTATED  
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*Current through End of 1999 Reg. Sess.*

**§ 342.258. Schedules for Weekly, Biweekly, or Semimonthly Installments**

The commissioner may prepare schedules that may be used by an authorized lender for the repayment of a loan made under this subchapter by weekly, biweekly, or semimonthly installments.

**CREDIT(S)**

**2000 Electronic Update**

*Added by Acts 1999, 76th Leg., ch. 62, § 7.19(a), eff. Sept. 1, 1999.*

<General Materials (GM) - References, Annotations, or Tables>

**Appendix C**

**Revisions to the Official Staff Commentary  
to Regulation Z**



# FEDERAL RESERVE SYSTEM

## 12 CFR Part 226

[Regulation Z; Docket No. R-1050]

### Truth in Lending

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

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**SUMMARY:** The Board is publishing revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z. The revisions address short-term cash advances commonly called "payday loans." The Board is also publishing technical corrections to the commentary and regulation.

**DATES:** This rule is effective March 24, 2000. Compliance is optional until October 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Natalie E. Taylor, Counsel, or Michael L. Hentrel or David A. Stein, Staff Attorneys; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; for users of Telecommunications Device for the Deaf (TDD)only, contact Janice Simms at (202) 872-4984.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The purpose of the Truth in Lending Act (TILA; 15 U.S.C. 1601 *et seq.*) is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwelling. The act also regulates certain practices of creditors.

TILA is implemented by the Board's Regulation Z (12 CFR part 226). The Board's official staff commentary (12 CFR part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific

transactions. The commentary is a substitute for individual staff interpretations; it is updated periodically to address significant questions that arise.

In November 1999, the Board published proposed amendments to the commentary (64 FR 60368, November 5, 1999). The Board received more than 50 comment letters. Most of the comments were from financial institutions, other creditors, and their representatives. Comments were also received from state attorneys general, state regulatory agencies, and consumer advocates. The comment letters were focused on the proposed comment concerning payday loans. Most commenters supported the proposal. A few commenters, mostly payday lenders and their representatives, were opposed.

As discussed below, the commentary is being adopted substantially as proposed. Some revisions have been made for clarity in response to commenters' suggestions. The commentary revision concerning payday loans clarifies that when such transactions involve an agreement to defer payment of a debt, they are within the definition of credit in TILA and Regulation Z. Several technical corrections are being made to the commentary and regulation.

## **II. Regulatory Revisions**

### **Subpart B—Open-End Credit**

#### **Section 226.5a— Credit and Charge Card Applications and Solicitations**

##### **5a(a) General Rules**

##### **5a(a)(3) Exceptions**

Section 226.5a(a)(3) is republished to correct a technical error. This section was published in its entirety in 1989. (54 FR 13865, April 6, 1989.) A portion of the text was inadvertently omitted from subsequent publications of the Code of Federal Regulations (54 FR 24670, June 9, 1989).

#### **Section 226.12— Special Credit Card Provisions**

##### **12(g) Relation to Electronic Fund Transfer Act and Regulation Z**

Section 226.12(g) contains a reference and citation to the Board's Regulation E (Electronic Fund Transfers), 12 CFR Part 205. Technical amendments have been made to conform the citation in section 226.12(g) with organizational changes made to Regulation E in 1996. The references to sections 205.5 and 205.6 of Regulation E are replaced by a reference to section 205.12(a).

## **III. Commentary Revisions**

### **Subpart A— General**

## **Section 226.2— Definitions and Rules of Construction**

### **2(a) Definitions**

#### **2(a)(14) Credit**

The Board proposed to add comment 2(a)(14)-2 to clarify that transactions commonly known as “payday loans” constitute credit for purposes of TILA. These transactions may also be known as “cash advance loans,” “check advance loans,” “post-dated check loans,” “delayed deposit checks,” or “deferred deposit checks.”

Typically in such transactions, a cash advance is made to a consumer in exchange for the consumer’s personal check, or the consumer’s authorization to debit the consumer’s deposit account electronically. In either case, the consumer pays a fee in connection with the advance. Both parties understand that the amount advanced is not, or may not be, available from the consumer’s deposit account at the time of the exchange. The parties agree, therefore, that the consumer’s check will not be cashed or deposited for collection (or the consumer’s deposit account debited) until a designated future date. On that date, the consumer may have the option of repaying the obligation or further deferring repayment of the advance. The consumer may repay the obligation in various ways, for example, by providing cash or by allowing the obligee to deposit the consumer’s check or electronically debit the consumer’s deposit account.

Most commenters supported the proposal because they believed that payday loans are credit transactions. A few commenters opposed the proposal. These commenters questioned whether payday loans should be covered under TILA when applicable state law does not treat such transactions as credit. They were concerned that Regulation Z would preempt state law where, for example, the transactions are regulated under check-cashing laws, and they also asserted that providing TILA disclosures would result in unnecessary compliance costs. These commenters also questioned whether disclosure of the APR in such transactions provides consumers with useful information. One commenter asserted that the proposed comment’s scope was unclear, and believed the comment might be interpreted too broadly, resulting in the application of Regulation Z to noncredit transactions. This commenter also suggested that payday lenders will be unable to determine whether transactions are consumer credit or for an exempt purpose, such as business credit.

For the reasons discussed below, comment 2(a)(14)-2 is adopted to clarify that payday loans, and similar transactions where there is an agreement to defer payment of a debt, constitute credit for purposes of TILA. Some revisions have been made for clarity to address commenters’ concerns.

Consistent with section 103(e) of TILA, section 226.2(a)(14) of Regulation Z defines “credit” as the right to defer the payment of debt or the right to incur debt and defer its payment. Comment 2(a)(14)-2 is intended to provide an example of a specific transaction that involves an agreement to defer payment of a debt. In these transactions,

the consumer receives a cash advance in exchange for the consumer's check or authorization to debit the consumer's deposit account. Because there is also an agreement to defer presentment of the check or defer debiting the consumer's account, there is an agreement to defer payment of the debt. Such agreements are deemed to be "credit" as defined by section 226.2(a)(14), however they are described--as payday loans, cash advances, check advance loans, deferred presentment transactions, or by another name. Contemporaneous check-cashing transactions will not be affected where there is no agreement to defer presentment of the consumer's check; the routine delay in debiting a consumer's deposit account during the check collection process does not constitute credit.

TILA, as implemented by Regulation Z, reflects the intent of the Congress to provide consumers with uniform cost disclosures to promote the informed use of credit and assist consumers in comparison shopping. This purpose is furthered by applying the regulation to transactions, such as payday loans, that fall within the statutory definition of credit, regardless of how such transactions are treated or regulated under state law. The fact that some creditors may have to comply with state laws as well as with Regulation Z, and that creditors may bear compliance costs, is not a sufficient basis to disregard TILA's applicability to the covered transactions. Where a creditor is unable to determine if a transaction is primarily for an exempt purpose, such as business-purpose credit, the creditor is free to make disclosures under TILA, and the fact that disclosures are made would not be controlling on the question of whether the transaction was exempt. See Comment 3(a)-1.

A few commenters questioned the effect of the proposed comment on state laws that regulate payday loans and similar transactions. Section 226.28 of Regulation Z describes the effect of TILA on state laws. As a general matter, state laws are preempted if they are inconsistent with the act and regulation, and then only to the extent of the inconsistency. A state law is inconsistent if it requires or permits creditors to make disclosures or take actions that contradict the requirements of federal law. A state law may not be deemed inconsistent if it is more protective of consumers.

TILA does not impair a state's authority to regulate or prohibit payday lending activities. Persons that regularly extend payday loans and otherwise meet the definition of creditor (§ 226.2(a)(17)) are required, however, to provide disclosures to consumers consistent with the requirements of Regulation Z. The Board notes that a number of state statutes expressly require payday lenders to provide federal TILA disclosures. The Board will review any issues brought to its attention regarding the effect of TILA and Regulation Z on particular state laws. Appendix A to Regulation Z outlines the Board's procedures for making such determinations.

Some commenters expressed concern that by referring specifically to "payday loans," the proposed comment might be limited to transactions labeled as such. Comment 2(a)(14)-2 has been modified to address this concern. Transactions in which the parties

agree to defer payment of a debt are “credit” transactions regardless of the label used to describe them.

In describing payday loan transactions, the proposed comment referred to the fact that consumers typically must pay a fee. Some commenters questioned whether such fees are finance charges for purposes of Regulation Z. These commenters noted that under some state laws, the fees charged for payday loans and similar transactions are not considered interest or finance charges.

A fee charged in connection with a payday loan may be a finance charge for purposes of TILA pursuant to section 226.4 of Regulation Z, regardless of how the fee is characterized for state law purposes. Where the fee charged constitutes a finance charge under TILA, and the person advancing funds regularly extends consumer credit, that person is a creditor covered by Regulation Z. See § 226.2(a)(17). Comment 2(a)(14)-2 has been revised to reflect this guidance.

A few commenters sought clarification on whether payday lenders obtain a security interest in the check provided by a consumer. Under Regulation Z, the existence of a security interest is determined by the applicable state law. See § 226.2(a)(25). Once a security interest is determined to exist, it must be disclosed according to section 226.6(c) for open-end credit plans, or section 226.18(m) for closed-end transactions. If a creditor is unsure whether a particular interest is a security interest under applicable law, the creditor may at its option treat it as a security interest for purposes of TILA. See Comment 2(a)(25)-1.

Comment 2(a)(14)-2 has been added as an example of a specific type of transaction that involves an agreement to defer payment of a debt. Because such a transaction falls within the existing statutory and regulatory definition of “credit,” the comment does not represent a change in the law. Generally, updates to the Board’s staff commentary are effective upon publication. Consistent with the requirements of section 105(d) of TILA, however, the Board typically provides an implementation period of six months or longer. During that period, compliance with the published update is optional so that creditors may adjust their documents to accommodate TILA’s disclosure requirements.

## **Subpart B—Open-End Credit**

### **Section 226.13— Billing Error Resolution**

#### **13(i) Relation to Electronic Fund Transfer Act and Regulation E**

A technical amendment has been made to comment 13(i)-3 to conform a citation to Regulation E with organizational changes made to that regulation. The reference to section 205.11(e) of Regulation E has been replaced with a reference to section 205.11(c).

## **Subpart C— Closed-End Credit**

### **Section 226.19— Certain Residential Mortgage and Variable-Rate Transactions**

#### **19(b) Certain variable-rate transactions**

The Board is adopting technical amendments to comments 19(b)-5, 19(b)(2)-4, 19(b)(2)(vi)-1, and 19(b)(2)(vii)-1 to conform the citations in those comments to section 226.19(b)(2) of Regulation Z, as amended. No substantive change is intended.

## **Subpart E— Special Rules for Certain Home Mortgage Transactions**

### **Section 226.32— Requirements for Certain Closed-end Home Mortgages**

#### **32(a) Coverage**

##### **32(a)(1)(ii)**

TILA, as amended by the Home Ownership and Equity Protection Act of 1994 (HOEPA), imposes additional disclosure requirements and substantive limitations on certain closed-end mortgage loans bearing rates or fees above a certain percentage or amount. See § 226.32. Such loans are covered by HOEPA if the total points and fees payable by the consumer at or before loan closing exceed the greater of \$400 or 8 percent of the total loan amount. HOEPA requires the Board to adjust the \$400 amount annually on January 1 by the annual percentage change in the Consumer Price Index (CPI) that was reported on the preceding June 1. (15 U.S.C. 1602(aa)(3) and 12 CFR 226.32(a)(1)(ii)). The adjusted amount for 2000 (\$451), published on November 5, 1999 (64 FR 60335), is added to comment 32(a)(1)(ii)-2.

#### **32(c) Disclosures**

##### **32(c)(4) Variable-rate**

The Board is revising comment 32(c)(4)-1 to conform the citations in the comment to section 226.19(b)(2) of Regulation Z, as amended. No substantive change is intended.

## **List of Subjects in 12 CFR Part 226**

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, the Board amends 12 CFR part 226 as follows:

### **PART 226— TRUTH IN LENDING (REGULATION Z)**

1. The authority citation for part 226 continues to read as follows:

**Authority:** 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. Section 226.5a(a)(3) is revised to read as follows:

\*\*\*\*\*

SUBPART B— OPEN-END CREDIT

\*\*\*\*\*

Section 226.5a— Credit and Charge Card Applications and Solicitations

(a) General rules.

\*\*\*\*\*

(3) Exceptions. This section does not apply to home-equity plans accessible by a credit or charge card that are of the type subject to the requirements of section 226.5b; overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards; or lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines.

\*\*\*\*\*

3. Section 226.12 is amended by revising paragraph (g) to read as follows:

\*\*\*\*\*

Section 226.12— Special Credit Card Provisions

\*\*\*\*\*

(g) Relation to Electronic Fund Transfer Act and Regulation E. For guidance on whether Regulation Z or Regulation E applies in instances involving both credit and electronic fund transfer aspects, refer to Regulation E, 12 CFR 205.12(a) regarding issuance and liability for unauthorized use. On matters other than issuance and liability, this section applies to the credit aspects of combined credit/electronic fund transfer transactions, as applicable.

\*\*\*\*\*

4. In Supplement I to Part 226, the following amendments are made:

a. Under Section 226.2— Definitions and Rules of Construction under 2(a)(14) Credit, paragraph 2. is added.

b. Under Section 226.13— Billing Error Resolution under 13(i) Relation to Electronic Fund Transfer Act and Regulation E, paragraph 3. is revised.

c. Under Section 226.19— Certain Residential Mortgage and Variable-Rate Transactions, under 19(b) Certain variable-rate transactions paragraph 5. is revised.

d. Under Section 226.19— Certain Residential Mortgage and Variable-Rate Transactions, under Paragraph 19(b)(2), paragraph 4. is amended by removing “section 226.19(b)(2)(xi)” and adding “section 226.19(b)(2)(x)” in its place.

e. Under Section 226.19— Certain Residential Mortgage and Variable-Rate Transactions, under Paragraph 19(b)(2)(vi), paragraph 1. is amended by removing “comments 19(b)(2)(viii)-7 and 19(b)(2)(x)-4” and adding “comments 19(b)(2)(viii)(A)-7 and 19(b)(2)(viii)(B)-4” in its place.

f. Under Section 226.19— Certain Residential Mortgage and Variable-Rate Transactions, under Paragraph 19(b)(2)(vii), paragraph 1. is amended by removing “comments 19(b)(2)(viii)-6 and 19(b)(2)(x)-3” and adding “comments 19(b)(2)(viii)(2)(A)-6 and 19(b)(2)(viii)(B)-3” in its place.

g. Under Section 226.32— Requirements for Certain Closed-End Home Mortgages, under 32(a)(1)(ii), the second sentence of paragraph 2. is revised and paragraph 2.v. is added; and

h. Under Section 226.32— Requirements for Certain Closed-End Home Mortgages, under 32(c)(4), paragraph 1. is amended by removing “section 226.19(b)(2)(x)” and adding “section 226.19(b)(2)(viii)(B)” in its place.

\* \* \* \* \*

SUPPLEMENT I TO PART 226— OFFICIAL STAFF INTERPRETATIONS

\* \* \* \* \*

SUBPART A— GENERAL

\* \* \* \* \*

Section 226.2— Definitions and Rules of Construction

\* \* \* \* \*

2(a) Definitions

\* \* \* \* \*

2(a)(14) Credit

\* \* \* \* \*

2. Payday loans; deferred presentment Credit includes a transaction in which a cash advance is made to a consumer in exchange for the consumer's personal check, or in exchange for the consumer's authorization to debit the consumer's deposit account, and where the parties agree either that the check will not be cashed or deposited, or that the consumer's deposit account will not be debited, until a designated future date. This type of transaction is often referred to as a “payday loan” or “payday advance” or “deferred presentment loan.” A fee charged in connection with such a transaction may be a finance charge for purposes of section 226.4, regardless of how the fee is characterized under



state law. Where the fee charged constitutes a finance charge under section 226.4 and the person advancing funds regularly extends consumer credit, that person is a creditor and is required to provide disclosures consistent with the requirements of Regulation Z. See § 226.2(a)(17).

\*\*\*\*\*

SUBPART B— OPEN-END CREDIT

\*\*\*\*\*

Section 226.13— Billing Error Resolution

\*\*\*\*\*

13(i) Relation to Electronic Fund Transfer Act and Regulation E

\*\*\*\*\*

3. Application to debit/credit transactions— examples If a consumer withdraws money at an automated teller machine and activates an overdraft credit feature on the checking account:

A. An error asserted with respect to the transaction is subject, for error resolution purposes, to the applicable Regulation E provisions (such as timing and notice) for the entire transaction.

B. The creditor need not provisionally credit the consumer's account, under section 205.11(c)(2)(i) of Regulation E, for any portion of the unpaid extension of credit.

C. The creditor must credit the consumer's account under section 205.11(c) with any finance or other charges incurred as a result of the alleged error.

D. The provisions of section 226.13(d) and (g) apply only to the credit portion of the transaction.

\*\*\*\*\*

SUBPART C— CLOSED-END CREDIT

\*\*\*\*\*

Section 226.19— Certain Residential Mortgage and Variable-Rate Transactions

\*\*\*\*\*

19(b) Certain Variable-Rate Transactions

\*\*\*\*\*

5. Examples of variable-rate transactions

i. The following transactions, if they have a term greater than one year and are secured by the consumer's principal dwelling, constitute variable-rate transactions subject to the disclosure requirements of section 226.19(b).

A. Renewable balloon-payment instruments where the creditor is both unconditionally obligated to renew the balloon-payment loan at the consumer's option (or is obligated to renew subject to conditions within the consumer's control) and has the option of increasing the interest rate at the time of renewal. (See comment 17(c)(1)-11 for a discussion of conditions within a consumer's control in connection with renewable balloon-payment loans.)

B. Preferred-rate loans where the terms of the legal obligation provide that the initial underlying rate is fixed but will increase upon the occurrence of some event, such as an employee leaving the employ of the creditor, and the note reflects the preferred rate. The disclosures under section 226.19(b)(1) and 226.19(b)(2)(v), (viii), (ix), and (xii) are not applicable to such loans.

C. "Price-level-adjusted mortgages" or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation. The disclosures under section 226.19(b)(1) are not applicable to such loans, nor are the following provisions to the extent they relate to the determination of the interest rate by the addition of a margin, changes in the interest rate, or interest-rate discounts: Section 226.19(b)(2)(i), (iii), (iv), (v), (vi), (vii), (viii), and (ix). (See comments 20(c)-2 and 30-1 regarding the inapplicability of variable-rate adjustment notices and interest-rate limitations to price-level-adjusted or similar mortgages.)

ii. Graduated-payment mortgages and step-rate transactions without a variable-rate feature are not considered variable-rate transactions.

\*\*\*\*\*

## SUBPART E— SPECIAL RULES FOR CERTAIN HOME MORTGAGE TRANSACTIONS

\*\*\*\*\*

### Section 226.32— Requirements for Certain Closed-End Home Mortgages

\*\*\*\*\*

#### 32(a) Coverage

\*\*\*\*\*

#### Paragraph 32(a)(1)(ii)

\*\*\*\*\*

2. Annual adjustment of \$400 amount \* \* \* The \$400 figure is adjusted annually on January 1 by the annual percentage change in the CPI that was in effect on the preceding June 1. \* \* \*  
\* \* \* \* \*

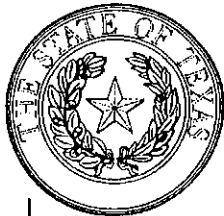
v. For 2000, \$451, reflecting a 2.3 percent increase in the CPI-U from June 1998 to June 1999, rounded to the nearest whole dollar.  
\* \* \* \* \*

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs and the Secretary of the Board under delegated authority, March 24, 2000.

\_\_\_\_\_  
(signed)  
Robert deV. Frierson  
Associate Secretary of the Board

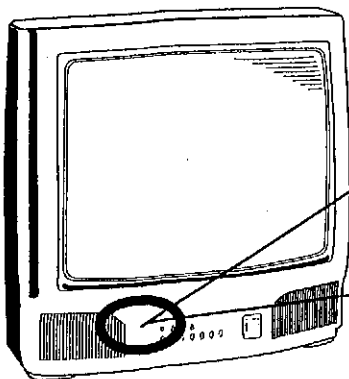
**Appendix D**

**Office of Consumer Credit Commissioner  
handout on Sale/Leaseback Transactions**



# SALE-LEASEBACK TRANSACTIONS

## THE SALE.....

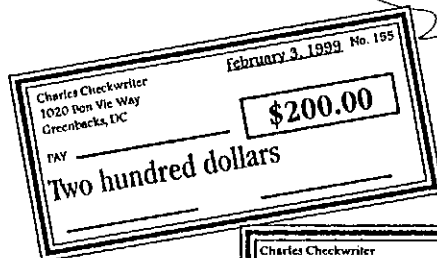


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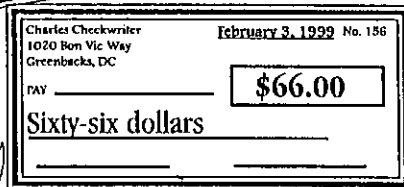
A consumer in need of cash locates a business that agrees to "purchase" some portion of the consumer's personal property — a television for instance — without actually taking physical possession of the property. Instead, the business records the serial number of the property to be "sold". The consumer transfers title of the television in exchange for cash by executing a bill of sale.

## THE LEASEBACK.....

Contemporaneous with the sale, the consumer signs a lease agreement to retain the item and writes one or two checks, the total value of which must cover the "sales" price, or security deposit, and a biweekly "lease" payment. The lease term is generally fifteen days.



Sales Price



Lease Price

## FIFTEEN DAYS PASS.....

The consumer pays another fee to extend the "lease" for two more weeks

**OR**

The consumer lets the business cash the security deposit check or pays the balance and picks up the check

**OR**

Some stores allow the consumer to turn over the property to the business



**Appendix E**  
**Senate Bill 88**

ENGROSSED

76th-'99

By: Carona, Moncrief, Ellis

S.B. No. 88

A BILL TO BE ENTITLED

AN ACT

1 relating to certain transactions subject to regulation as loans.

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

3 SECTION 1. Subchapter A, Chapter 342, Finance Code, is  
4 amended by adding Section 342.007 to read as follows:

5 Sec. 342.007. CERTAIN SALES OF PERSONAL PROPERTY. (a) A  
6 sale or purported sale of personal property used primarily for  
7 personal, family, or household use is a loan subject to this  
8 subtitle if:

9 (1) the buyer agrees to lease the property back to the  
10 seller for lease payments that in the aggregate equal or exceed  
11 the price paid for the property by the buyer;

12 (2) the buyer agrees to resell the property to the  
13 seller for an amount that equals or exceeds the price paid for the  
14 property by the buyer; or

15 (3) the seller gives the buyer a check, negotiable  
16 order of withdrawal, or share draft for an amount that equals or  
17 exceeds the price paid for the property by the buyer and agrees  
18 that the instrument may be deposited or negotiated if the seller  
19 does not exercise a purchase option or make lease payments.

20 (b) If, in a transaction described by Subsection (a), the  
21 total amount received by the buyer exceeds the price paid for the  
22 property by the buyer, the excess amount is interest subject to  
23 this subtitle.

24 (c) The purported taking of title to or a security interest

1 or other lien in property by a buyer in connection with a  
2 transaction described by Subsection (a) is a deceptive trade  
3 practice under Subchapter E, Chapter 17, Business & Commerce Code,  
4 Title to the property is not transferred and the security interest  
5 or other lien does not attach.

6 (d) This section does not apply to a sale or purported sale  
7 of personal property used for business, commercial, investment,  
8 agricultural, or similar purposes.

9 SECTION 2. Subchapter D, Chapter 392, Finance Code, is  
10 amended by adding Section 392.307 to read as follows:

11 Sec. 392.307. THREATENING OR PURSUING ACTION TO COLLECT  
12 CERTAIN CHECKS. (a) In this section, "check" includes a  
13 negotiable order of withdrawal or share draft.

14 (b) A person may not file or threaten to file a charge,  
15 complaint, or criminal prosecution under Section 31.03, 31.04, or  
16 32.41, Penal Code, based on nonpayment of a check if the person  
17 from whom collection is sought gave the check:

18 (1) in exchange for a cash advance and the person  
19 making the advance received compensation exceeding five percent of  
20 the amount of the check; or

21 (2) as the seller in a transaction described by  
22 Section 342.007.

23 SECTION 3. This Act takes effect September 1, 1999.

24 SECTION 4. The importance of this legislation and the  
25 crowded condition of the calendars in both houses create an  
26 emergency and an imperative public necessity that the

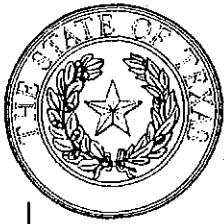


S.B. No. 88

1 constitutional rule requiring bills to be read on three several  
2 days in each house be suspended, and this rule is hereby suspended.

**Appendix F**

**Office of Consumer Credit Commissioner  
handout on Cash Advance Transactions**

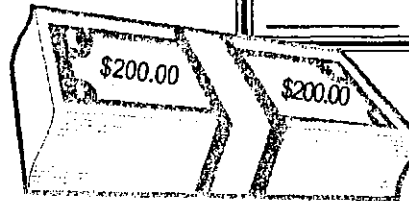
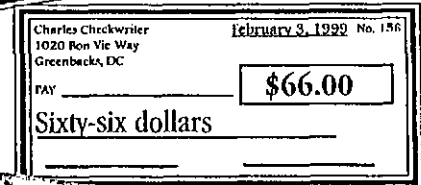
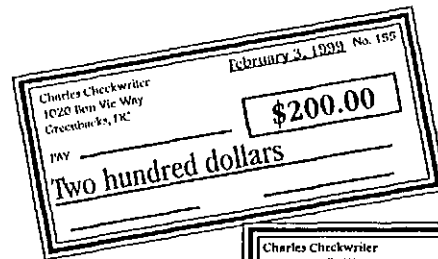


# CASH ADVANCE TRANSACTIONS AT WORK



A consumer needs cash for an unforeseen emergency, perhaps a car repair, but lacks the required money. Although the individual has other credit options — a securitized loan, a loan from a signature loan company, or a loan from a pawnshop — the consumer chooses to visit a “cash-advance” store.

Once at the cash-advance store, the consumer writes two checks, one for \$200.00, the other for \$66.00. The lender gives the consumer \$200.00 cash and agrees to hold the \$200.00 check for a specified amount of time, usually the consumer’s next pay day, but never more than two weeks.



## .....TWO WEEKS PASS.....

The consumer pays the store another \$66.00 fee to extend the loan for two more weeks

**OR**

The consumer redeems the check for \$200.00

**OR**

The consumer does nothing and the store deposits the check



**Appendix G**

**7 TAC §1.605**  
**Effective July 9, 2000**

**Title 7. Banking and Securities**  
**Part I. Finance Commission of Texas**  
**Chapter 1. Consumer Credit Commissioner**  
**Subchapter F. Alternate Charges for Consumer Loans**  
**7 TAC §1.605**

The Finance Commission of Texas (the commission) adopts new 7 TAC §1.605 concerning the authority to engage in deferred presentment transactions. The new rule is adopted with nonsubstantive changes to the proposed text as published in the May 12, 2000, issue of the *Texas Register* (25 TexReg 4259).

The commission received 14 comments to the proposed rule. Five comments were received from citizens of San Antonio (Michael Hymel; Mario Cisneros, *esq.*; Jean Hooge; Nellie Robinson; and Eva Herbery). The citizen comments expressed concern about the general practice and authorization of “payday loans”. Other than a general objection to the concept of “payday loans” the comments offered no other specific suggestions or criticisms of the rule. The commission understands the potential abuses that may accompany payday loans and the commission is adopting the rule to minimize those abuses. The rule does not authorize a payday loan transaction outside the context of Subchapter F, Chapter 342 and is designed to pointedly address payday loans within the parameters of Subchapter F. The commission agrees with the commenters’ general concern of potential abuses, but disagrees that the loan must be declared illegal within the context of the current credit statutes. Comments were also received offering specific suggestions on the rule from Conrad Werkenthin, Clark, Thomas & Winters, Austin; Paul Purtha, Humphreys & Peterson, Garland; Consumers Union and Consumer Federation of America; Carl Beasely, Huntsville; and Gary Kley, Livingston. Four other comments expressing dissatisfaction that the maximum allowable rate was not high enough to compete with out of state banks offering payday loans or that the minimum charge could not be earned frequently enough such that it limits this product’s viability were received from Christopher Yonavich, Royse City; Larry Nuckols, San Antonio; Buz Waitz, San Antonio; and Martin D. Huggins, Austin. One of these comments states “the risk associated with a payday loan under these proposed rules is just greater than the reward of the rate you can charge.” In response to the general comment that the rate that may be charged on a payday loan is not adequate, the commission declines to amend the proposed rule. The commission is bound to follow the credit statutes as enacted by the Texas Legislature. The commission is merely adopting rules to recognize a payday loan transaction within the context of the existing statute. The commission does not have the authority to increase the rate that may be charged on a payday loan.

Typically in a payday loan, a cash advance is made to a consumer in exchange for the consumer’s personal check, or the consumer’s authorization to debit the consumer’s deposit account electronically. In either case the consumer pays a fee in connection with the advance. Both parties understand that the amount advanced is not, or may not be, available from the consumer’s deposit account at the time of the exchange. The parties agree, therefore, that the consumer’s check will not be cashed or deposited for collection until a designated future date. On that date, the consumer may have the option of repaying the

obligation or further deferring repayment of the advance. The consumer may repay the obligation in various ways, for example, by providing cash or allowing the obligee to deposit the consumer's check or electronically debit the consumer's deposit account. The obligation for repayment classifies these transactions as loans within the statutory definition of loan [Texas Finance Code §301.002(10)]. The charge associated with the advance is interest or compensation for the use, forbearance, or detention of money [Texas Finance Code §301.002(4)]. These types of transactions clearly fall within the purview of Title 4 of the Finance Code. Furthermore, the maximum rate limitations for a loan of this type would be subject to Chapter 342. This rule prescribes the standards of conduct that will be used to regulate and enforce these transactions within the framework of Chapter 342.

Section 1.605 establishes the ability for a lender licensed under Chapter 342 to take a check to secure the payment of a loan. The practice of payday loans or deferred presentment transactions has rapidly spread across the United States. This rule recognizes and authorizes this type of loan within the Texas statutory usury framework.

Subsections (a) and (b) of the rule establish the definition and application of a payday loan or deferred presentment transaction. These subsections are necessary to appropriately define the types of transactions that may fall within the rule's scope. One commenter suggested that the definition be expanded to apply to a transaction where the exchange would be "in part or in whole" for the check and the amount of the advance. The commenter believes that this clarification will prevent the "exotic disguises" of what is otherwise a payday loan. The definition in this section was drafted to correspond to a similar definition in the Staff Commentary to Regulation Z (12 C.F.R. Part 226). While the commission does not disagree with the comment, the commission believes that it is more important to retain the definition as proposed so that it is consistent with the definition in the Regulation Z commentary.

Subsection (c) clarifies the maximum charge that may be assessed on this type of loan. One commenter suggested that it would clarify the rule to reference all the provisions of Subchapter F when referring to the maximum amount that may be charged on a payday loan. In particular the commenter believes that it would clear up confusion related to subsection (f). The commission agrees with this comment to reference these sections and amends the rule accordingly.

Subsection (d) establishes a minimum term of 7 days of a loan of this type. One commenter objects to the minimum term of 7 days. This commenter urges a payday loan term of at least 14 days or the borrower's next pay period. The commenter believes that a seven day term for a payday loan is *per se* unconscionable. The commenter acknowledges that this version of the proposed rules ameliorates the problem to some degree and supports those changes. The commission disagrees with this comment. The commission believes that the modifications made in this version of the rule place a borrower in an equivalent position in regards to whether the borrower gets a 7 day loan; a 14 day loan or a 21 day loan. The incremental charge incurred by the borrower in these loans only relates to the daily finance charge and is proportionately the same. Furthermore, the Texas Finance Code §342.258

authorizes the commissioner to establish repayment schedules on a weekly basis. This subsection conforms the rule with the statutory authorization.

Subsection (e) prescribes the procedures for these types of loans. The subsection addresses the disclosures that must be given in addition to providing the measures for rebating the unearned charges and the time limitation on presenting a check for payment.

Disclosures are necessary to adequately inform the borrower of the requirements and cost of this transaction. One commenter suggests requiring an additional disclosure that reads as follows: "If you are having trouble managing your debt, you may want to contact your local nonprofit consumer credit counseling service. They may be able to work out payment plans and help get your debt under control. You can reach them at [insert phone for nearest nonprofit consumer credit counseling agency]." While the commission certainly supports the activities of nonprofit consumer credit counseling agencies, the commission believes that it would be inappropriate to require this disclosure at this time. The Office of Consumer Credit Commissioner provides consumer education material for display in each regulated lender's office. This material includes information about nonprofit consumer credit counseling agencies. The commission declines to adopt the additional disclosure.

The time restriction of 31 days for presenting checks to a bank for payment is necessary to prevent checks from becoming stale, in addition, to ensure that the borrower is adequately aware of the outstanding nature of the check. A primary intended objective of regulating and enforcing these and other consumer loan transactions is to ensure that a borrower fully understands the terms and conditions of the obligation.

Subsection (f) provides interpretation of Texas Finance Code <\*342.501> and clarifies that multiple and duplicate loans are limited. Subchapter F does not contemplate that a lender may have two loans to the same borrower within the same month that each have initial terms of less than one month. Potentially this situation could be construed as a violation of §342.501, as this section prohibits more than one obligation under Subchapter F to the same borrower that has the effect of exacting a greater interest charge than would otherwise be authorized under other sections of the chapter. Subsection (f) is intended to clarify how the agency will enforce the provisions relating to obligations on more than one loan contract and how the agency will enforce the maximum rate provision relative to multiple loans within the same month to the same borrower or multiple rollovers. Texas Finance Code <\*>341.002 specifies that a month is the period from a date in a month to the corresponding date in the succeeding month. Two commenters specifically object to the application of this subsection that recognizes a borrower may have multiple loans within a month, but that earnings from acquisition charges are limited to a maximum of \$10 a month. The commenters believe that under §342.253 they are entitled to earn an acquisition charge each time a loan is renewed. The enactment of Subchapter F contemplated loans made on a monthly basis. The rationale for the assessment of an acquisition charge relates to the work required to initially originate a loan. A routine renewal of a payday loan does not require the same degree of work nor does it merit the same degree of charge. The commenters argue that §342.253 entitles them to multiple acquisition charges within a single month. The

commission believes that this interpretation could lead to an absurd result and thus, requires the adoption of this rule. Assuming no term limitations, the commenters' argument would permit earnings of up to 31 acquisition charges on a payday loan in a single month if the payday loan were made for one day and renewed each day of the month. This would result in finance charges of \$314 on that \$100 loan, an annual percentage cost of approximately 3700%. Even using the minimum loan term set forth in these rules, four consecutive seven day renewals would permit charges of \$43.73 on a \$100 loan in a single month resulting in an APR of approximately 570% for the entire month. The commission believes that the statute does not support this interpretation nor was it the intent of the Legislature in enacting Subchapter F to authorize the earning of multiple acquisition charges within a single month. The commission does not believe that it is appropriate to promulgate a rule that supports this theory. By contrast, the rule permits the acquisition charge for the initial term in the month with continuing charges for additional days. A \$100 payday loan under the rule could have an acquisition charge of \$10 and a daily charge of 13.72 cents for each day the loan is outstanding. A comparable annual percentage for the same 28 day period would be approximately 190%. The commission declines to modify the rule as the commission believes that the rule appropriately applies the statutory rates to the payday loan transaction. The rule is modified with nonsubstantive clerical type changes. Additionally, subsection (f) maintains a standard that the lender make a good faith effort to evaluate the borrower's ability to repay consistent with the requirement established in 7 TAC §1.11. The agency specifically solicited comments on the use of the word "civil" in (f)(2). The agency received four comments on the use of the word "civil" in the rule. Three commenters urge the removal of the word "civil" in the rule. These commenters state that criminal prosecution is warranted especially in certain situations, such as when a consumer deliberately stops payment on a check or closes an account in an attempt to avoid payment on a payday loan. One commenter argues strongly that the word "civil" should be retained in the rule. The commenter points out that the essential element in prosecution of hot check charges in Texas is the element of intent. The person writing the check must intend to defraud the payee. In a payday loan transaction, the element of intent is absent; the payee accepts the check knowing that the funds were unavailable and the check instead represents a promise to discharge a present obligation on a future date. The commission believes that the transaction represents a promise to discharge a present obligation on a future date and thus defines the character of a payday loan as a credit relationship. Whether other criminal offenses may be present in a payday loan transaction is a fact question that is best presented to a court of competent jurisdiction. The commission makes a nonsubstantive change to the rule that retains the word civil within the rule, but clarifies the rule regarding criminal prosecution.

Several of the provisions in the proposed rules are consistent with industry practices and procedures in other states where the loan product is offered in a regulated manner. These rules conform this type of transaction to the Texas statutes and specifies the conditions that will be applied to these transactions in order to enforce the usury statutes.

The new rule is adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to enforce Title 4 of the Texas Finance Code.



Additionally, Texas Finance Code §342.551 authorizes the Finance Commission to adopt rules for the enforcement of the consumer loan chapter. The rule is adopted to harmonize this type of transaction with the general objectives and purposes of the consumer loan statute, that being providing protections to consumers from abuses and egregious practices and providing the conditions and maximum limits for the amounts that may be charged on a consumer loan. Furthermore, Texas Finance Code §14.108 grants the consumer credit commissioner and the Finance Commission the authority to interpret the provisions of Title 4, Subtitle B, in which Chapter 342 is located.

**§1.605. Payday Loans; Deferred Presentment Transactions.**

(a) Definitions. For the purposes of this chapter, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Check—A check, draft, share draft, or other instrument for the payment of money.

(2) Payday loan or deferred presentment transaction—A transaction in which a cash advance is made in exchange for the consumer’s personal check, or in exchange for the consumer’s authorization to debit the consumer’s deposit account, in the amount of the advance plus a fee and where the parties agree that the check will not be cashed or deposited, or that the consumer’s deposit account will not be debited, until a designated future date. This type of transaction is often referred to as a “payday loan,” “payday advance,” or “deferred deposit loan.”

(b) Authorization. A licensee may engage in a payday loan or deferred presentment transaction under this chapter and subject to the provisions of Texas Finance Code, Chapter 342, Subchapter F. A payday loan or deferred presentment transaction is a loan of money. The check given in the transaction may serve as security for the payment of the loan. A person who negotiates, arranges, or acts as an agent for an authorized lender in a payday loan or deferred presentment transaction that has an effective annual rate of greater than 10% is required to be licensed.

(c) Maximum charge. A licensee may charge an amount that does not exceed the rates authorized in Texas Finance Code, §342.251 - §342.258. The chart in Exhibit 1 provides examples of the maximum authorized rates for loans made under Texas Finance Code Subchapter F. Texas Finance Code §342.254 which prohibits other charges applies to this section.

(d) Minimum term. A licensee may engage in a payday loan or deferred presentment transaction with a term of not less than 7 days.

(e) Procedures.

(1) If a check is accepted, the licensee must require that the check be made payable to the actual name of the company printed on the license and must be dated the day the loan is made.

(2) The transaction must be documented by a written agreement signed by the borrower and the licensee. The agreement must contain the name of the licensee, the transaction date, the amount of the check, a statement of the total amount charged, expressed both as a dollar amount and as an annual percentage rate (APR), and the earliest date on which the check may be deposited. The agreement must also contain a notice of the name and address of the Office of Consumer Credit Commissioner and the telephone number of the consumer helpline. Additionally, the lender shall provide a notice to the consumer that reads as follows:

*This cash advance is not intended to meet long-term financial needs. This loan should only be used to meet immediate short-term cash needs. Renewing the loan rather than paying the debt in full when due will require the payment of additional charges.*

(3) The borrower shall have a right to prepay the loan and redeem the check at any time prior to the due date. If the loan is prepaid in full, the lender must refund any unearned finance charges.

(4) A check may not be held for more than 31 days and then subsequently presented to the bank for payment.

(5) The licensee must post a notice of the fee schedule for engaging in a payday or deferred presentment loan.

(f) Conditions. A lender may accept a check to secure payment of a payday loan if the lender complies with the following sections.

(1) Duplicate and multiple loans. The provisions of Texas Finance Code, §342.501 and §1.851 of this title (relating to Duplication of Loans) apply to loans made under the authority of this section. In accordance with Texas Finance Code §342.501 a lender and a borrower may renew a loan, but the loan must be converted from a single payment balloon loan to a declining balance installment note. Alternatively, the payday loan or deferred presentment transaction may be renewed without limitation to the number of renewals where the effect of the total amount of charge would not exceed the total amount authorized by §342.252 having due regard for the amount of the cash advance and the time the cash advance is outstanding. The result is that the acquisition charge may only be earned once in a month and the installment account handling charge may continue to be earned on a equivalent daily charge basis in accordance with the limitations of Subchapter F. In lieu of a renewal, a lender and a borrower may agree to extend the maturity date of the existing payday loan or deferred presentment transaction.

(2) Collection practices. A payday loan constitutes a credit relationship for all purposes, including collection. If a borrower defaults, including the return of the check to

the licensee from a financial institution due to insufficient funds, closed account, or stop payment order, the licensee may pursue all legally available civil means to collect the debt.

Collection practices must be in accordance with this chapter and with the Texas Debt Collection Practices Act, Texas Finance Code, §392.001 *et seq.*

(3) Fair lending. A lender must make a good faith effort to assess the borrower's ability to repay the payday loan or deferred presentment transaction under the loan terms.

Figure: JTAC \$ 1.605 (c)

Amount	Financed:	Term - days	Finance Charge	APR	Finance Charge	APR	Finance Charge	APR	Finance Charge	APR	Finance Charge	APR
	\$100.00		\$11.40	366.29%	\$11.87	369.47%	\$12.33	257.17%	\$12.80	222.48%	\$13.27	197.70%
	\$150.00		\$11.60	352.83%	\$12.13	276.72%	\$12.67	231.23%	\$13.20	200.75%	\$13.73	178.98%
	\$200.00		\$11.80	319.04%	\$12.40	251.44%	\$13.00	210.89%	\$13.60	183.85%	\$14.20	164.54%
	\$250.00		\$12.00	292.00%	\$12.67	231.23%	\$13.33	194.62%	\$14.00	170.33%	\$14.67	152.99%
	\$300.00		\$12.20	269.88%	\$12.93	214.52%	\$13.67	181.44%	\$14.40	159.27%	\$15.13	143.44%
	\$350.00		\$12.40	251.44%	\$13.20	200.75%	\$14.00	170.33%	\$14.80	150.06%	\$15.60	135.57%
			\$12.60	235.85%	\$13.47	189.10%	\$14.33	160.94%	\$15.20	142.26%	\$16.07	128.91%
			\$12.80	222.48%	\$13.73	178.98%	\$14.67	152.99%	\$15.60	135.57%	\$16.53	123.13%
			\$13.00	210.89%	\$14.00	170.33%	\$15.00	148.00%	\$16.00	129.78%	\$17.00	118.19%
			\$13.20	200.75%	\$14.27	162.77%	\$15.33	139.89%	\$16.40	124.71%	\$17.47	113.87%
			\$13.40	191.80%	\$14.53	155.98%	\$15.67	134.58%	\$16.80	120.24%	\$17.93	109.99%
			\$13.60	183.85%	\$14.80	150.06%	\$16.00	129.78%	\$17.20	116.26%	\$18.40	106.60%
			\$13.80	176.74%	\$15.07	144.75%	\$16.33	125.48%	\$17.60	112.70%	\$18.87	103.57%
			\$14.00	170.33%	\$15.33	139.89%	\$16.67	121.69%	\$18.00	109.50%	\$19.33	100.79%
			\$14.20	164.54%	\$15.60	135.57%	\$17.00	118.19%	\$18.40	106.60%	\$19.80	98.33%
			\$14.40	159.27%	\$15.87	131.65%	\$17.33	115.01%	\$18.80	103.97%	\$20.27	96.09%
			\$14.60	154.46%	\$16.13	127.99%	\$17.67	112.17%	\$19.20	101.57%	\$20.73	93.99%
			\$14.80	150.06%	\$16.40	124.71%	\$18.00	109.50%	\$19.60	99.36%	\$21.20	92.12%
			\$15.00	146.00%	\$16.67	121.69%	\$18.33	107.05%	\$20.00	97.33%	\$21.67	90.39%
			\$15.20	142.26%	\$16.93	118.84%	\$18.67	104.84%	\$20.40	95.46%	\$22.13	88.76%
			\$15.40	138.79%	\$17.20	116.26%	\$19.00	102.74%	\$20.80	93.73%	\$22.60	87.29%
			\$15.60	135.57%	\$17.47	113.87%	\$19.33	100.79%	\$21.20	92.12%	\$23.07	85.92%
			\$15.80	132.57%	\$17.73	111.58%	\$19.67	99.03%	\$21.60	90.62%	\$23.53	84.62%
			\$16.00	129.78%	\$18.00	109.50%	\$20.00	97.33%	\$22.00	89.22%	\$24.00	83.43%

Exhibit 1

## **Appendix H**

**Title 5 of the Gramm-Leach-Bliley Act of 1999  
15 U.S.C.A. §6802(b)**

**\*113696 15 U.S.C.A. § 6802**

**UNITED STATES CODE ANNOTATED  
TITLE 15. COMMERCE AND TRADE  
CHAPTER 94--PRIVACY  
SUBCHAPTER I--DISCLOSURE OF NONPUBLIC PERSONAL  
INFORMATION**

*Current through P.L. 106-180, approved 3-17-2000*

**§ 6802. Obligations with respect to disclosures of personal information**

**(a) Notice requirements**

Except as otherwise provided in this subchapter, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice that complies with section 6803 of this title.

**(b) Opt out**

**(1) In general**

A financial institution may not disclose nonpublic personal information to a nonaffiliated third party unless--

(A) such financial institution clearly and conspicuously discloses to the consumer, in writing or in electronic form or other form permitted by the regulations prescribed under section 6804 of this title, that such information may be disclosed to such third party;

(B) the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party; and

(C) the consumer is given an explanation of how the consumer can exercise that nondisclosure option.

**(2) Exception**

This subsection shall not prevent a financial institution from providing nonpublic personal information to a nonaffiliated third party to perform services for or functions on behalf of the financial institution, including marketing of the financial institution's own products or services, or financial products or services offered pursuant to joint agreements between two or more financial institutions that comply with the requirements imposed by the regulations prescribed under section 6804 of this title, if the financial institution fully discloses the providing of such information and enters into a contractual agreement with the third party that requires the third party to maintain the confidentiality of such information.

**(c) Limits on reuse of information**

Except as otherwise provided in this subchapter, a nonaffiliated third party that receives from a

financial institution nonpublic personal information under this section shall not, directly or through an affiliate of such receiving third party, disclose such information to any other person that is a nonaffiliated third party of both the financial institution and such receiving third party, unless such disclosure would be lawful if made directly to such other person by the financial institution.

**\*113697** (d) Limitations on the sharing of account number information for marketing purposes

A financial institution shall not disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(e) General exceptions

Subsections (a) and (b) shall not prohibit the disclosure of nonpublic personal information--

(1) as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer, or in connection with--

(A) servicing or processing a financial product or service requested or authorized by the consumer;

(B) maintaining or servicing the consumer's account with the financial institution, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(C) a proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer;

(2) with the consent or at the direction of the consumer;

(3) (A) to protect the confidentiality or security of the financial institution's records pertaining to the consumer, the service or product, or the transaction therein; (B) to protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability; (C) for required institutional risk control, or for resolving customer disputes or inquiries; (D) to persons holding a legal or beneficial interest relating to the consumer; or (E) to persons acting in a fiduciary or representative capacity on behalf of the consumer;

(4) to provide information to insurance rate advisory organizations, guaranty funds or agencies, applicable rating agencies of the financial institution, persons assessing the institution's compliance with industry standards, and the institution's attorneys, accountants, and auditors;

(5) to the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 [12 U.S.C.A. § 3401 et seq.], to law enforcement agencies (including a Federal functional regulator, the Secretary of the Treasury with respect to subchapter II of chapter 53 of Title 31 [31 U.S.C.A. § 5311 et seq.], and chapter 2 of Title I of Public Law 91-508 (12 U.S.C. 1951-1959), a State insurance authority, or the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

**\*113698** (6) (A) to a consumer reporting agency in accordance with the Fair Credit Reporting Act [15 U.S.C.A. § 1681 et seq.], or (B) from a consumer report reported by a consumer reporting agency;

(7) in connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(8) to comply with Federal, State, or local laws, rules, and other applicable legal requirements; to comply with a properly authorized civil, criminal, or regulatory investigation or

subpoena or summons by Federal, State, or local authorities; or to respond to judicial process or government regulatory authorities having jurisdiction over the financial institution for examination, compliance, or other purposes as authorized by law.

**CREDIT(S)**

**2000 Electronic Update**

*(Pub.L. 106-102, Title V, § 502, Nov. 12, 1999, 113 Stat. 1437.)*

**HISTORICAL NOTES**

**HISTORICAL AND STATUTORY NOTES**

**Revision Notes and Legislative Reports**

1999 Acts. House Conference Report No. 106-434, see 1999 U.S. Code Cong. and Adm. News, p. 245.

**References in Text**

This subchapter, referred to in subsecs. (a) and (c), was in the original "this subtitle", meaning Subtitle A of Pub.L. 106-102, Title V, §§ 501 to 510, Nov. 12, 1999, 113 Stat. 1436, which enacted this subchapter and amended section 1681s of this title.

**Effective and Applicability Provisions**

1999 Acts. For effective date of section, see section 510 of Pub.L. 106-102, set out as a note under section 6801 of this title.

**REFERENCES**

**LIBRARY REFERENCES**

American Digest System

Banks and Banking ☞ 151.

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C.J.S. Banks and Banking §§ 266 to 268, 277 to 278.