



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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November 3, 1983 83-11

Mr. Keith O'Gorman
500 First Federal Building
1100 N.E. Loop 410
San Antonio, Texas 78209

Dear Mr. O'Gorman:

This is to acknowledge receipt of your letter concerning recently enacted Senate Bill 921, now codified as Article 9022, V.T.C.S. and its applicability to transactions made pursuant to Article 5069 - Chapter 6A, V.T.C.S.

Article 9022 (Senate Bill 921) now provides that the holder of a check which has been dishonored and returned to the holder may charge the drawer or endorser a reasonable processing fee not to exceed \$15. Your inquiry is whether a person or entity which is financing a Chapter 6A contract may charge the obligor on the contract a fee as authorized by Article 9022 in the event a check given by the obligor as payment on the Chapter 6A obligation is dishonored and returned to the holder of the check who is also the obligee on the Chapter 6A contract.

This office in the past has always taken the position that since there was no statutory authorization in Chapter 6A nor any other statute for the assessment of a returned check charge in connection with a check given as payment of an installment amount due on a Chapter 6A contract that any attempt to assess such a charge was improper. Because of the enactment of Article 9022 we are changing that position. There is no language in Chapter 6A which specifically prohibits a returned check charge, and Article 9022 now authorizes same. Because of the very broad nature of Article 9022, because it is a subsequent expression of legislative intent, and because there is no language in Chapter 6A which would indicate that Article 9022 should not be applicable to a Chapter 6A transaction, it is the opinion of this office that the provisions of Article 9022 are applicable to checks given in payment of an installment due pursuant to a Chapter 6A contract.



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Although you did not raise the same question with regard to transactions subject to Chapters 6 and 7 of Article 5069, it is our view that the above set out reasoning is also applicable to those transactions. Therefore, (Senate Bill 921) is applicable (assuming appropriate circumstances) to transactions entered into pursuant to Chapters 6, 6A and 7 of Article 5069, V.T.C.S.

This is not our position with regard to loans which are subject to the provisions of Chapters 3, 4 or 5 of Article 5069, V.T.C.S. Each of those chapters has a provision (3.15(8), 4.01(7) and 5.02(5)) which specifically prohibits any charges other than those provided for in the various chapters from being received either directly or indirectly in connection with making, servicing, collecting or enforcing a loan. Since the above set out provisions of Chapters 3, 4 and 5 were not amended or repealed by Senate Bill 921 it is our position that Article 9022 is not applicable to loans subject to the provisions of Chapters 3, 4 and 5 of Article 5069, V.T.C.S.

Sincerely,



Sam Kelley
Consumer Credit Commissioner