



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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December 5, 1985 85-15

Mr. Hennon Gilbert
Gilcom Corporation
10715 Gulfdale
San Antonio, Texas 78216

Dear Mr. Gilbert:

This is to acknowledge receipt of your letter dated November 14, 1985 in which you request an interpretation by this office concerning appropriate default charges permissible on different types of credit transactions subject to various chapters of Article 5069, V.T.C.S. A portion of your letter states the following question:

"When a loan contract contains precomputed interest and is payable in substantially equal consecutive monthly installments beginning within one month plus fifteen days after the date of the contract, may additional interest for default be contracted for and charged as described in the first sentence of Articles 3.15(5) and 4.01(5) respectively?"

As is often the case in dealing with questions concerning Article 5069, this response becomes somewhat technical and the relevant statutory language could be more complete. Basically however the answer to your main area of concern depends on what is a "regular" loan and what is an "irregular" loan for the purpose of assessment of default charges authorized by Articles 3.15(5) and 4.01(5) of Article 5069. Both articles are identical and provide for different methods of assessing default (late) charges depending on whether a loan is "regular" or "irregular", which terms are not found in the statute but have acquired common usage status by this office and those engaged in the credit industry.

First, notice should be taken of two other provisions, Articles 3.15(6)(a) and 4.01(6)(a), which do not relate to default charges but rather to refunding procedures in the event of prepayment in full of either a Chapter 3 or 4 loan. For the purposes of this letter it is not necessary to review those sections in detail but suffice it to say that they are



identical and provide different methods of computing rebates for "regular" as opposed to "irregular" loans. Both of these articles have language which provides that if a loan contract containing precomputed interest is repayable in substantially equal monthly installments beginning within one month plus fifteen days after the date of the contract the sum of the periodic balances method of computing rebates may be used in connection with the loan. Stated another way, for refunding purposes both Article 3.15(6)(a) and 4.01(6)(a) treat a loan which otherwise meets the substantially equal regular monthly repayment schedule test but has a first payment period of more than a month but not more than one month plus fifteen days as a "regular" loan.


However, as noted in your letter, Articles 3.15(5) and 4.01(5), which provide for default charges on various types of loans, have no similar language relating to a loan which has a first payment period of not more than one month plus fifteen days from the date of the contract. Both of these just mentioned articles have identical first sentences which provide for certain default charges on precomputed loans which are repayable in substantially equal successive monthly installments and make no mention of a loan with an extended first payment period of not more than one month plus fifteen days being included in this "regular" category of loans. So the question arises of whether a precomputed loan repayable in substantially equal successive monthly installments with a first installment due date of not more than one month plus fifteen days from the date of the contract should be treated as a "regular" loan for the purposes of computing refunds under Articles 3.15(6)(a) or 4.01(6)(a) and as an "irregular" loan for the purpose of assessing default charges under Article 3.15(5) or 4.01(5). I think not. Such a loan should be a "regular" loan for both purposes. This office has been aware of the difference in the wording of the above mentioned refund and default provisions and has always taken the position that precomputed loans repayable in substantially equal successive monthly installments beginning within one month plus fifteen days after the date of the contract should be treated as "regular" loans for both refund and default purposes. Therefore in response to your question it is the position of this office that in a precomputed loan contract repayable in substantially equal successive monthly installments beginning within one month plus fifteen days after the date of the contract subject to Chapter 3 or 4 of Article 5069, additional interest for default may be contracted for and charged as described in the first sentence of Articles 3.15(5) or 4.01(5). Our response would be the same as regards the same type loan subject to Chapter 5 of Article 5069.

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This problem would not arise on retail installment contracts subject to either Chapter 6 or 7 of Article 5069. Articles 6.02(11) and 7.03(6) both authorize on any subject transaction a delinquency charge on each installment in default not to exceed five percent of each installment or Five Dollars, whichever is less, or in lieu thereof, interest after maturity not to exceed the highest lawful contract rate. In neither article is any distinction made as to the type of transaction.

Sincerely,



Sam Kelley
Consumer Credit Commissioner