



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

AL ENDSLEY, Commissioner

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Mr. R. W. Alexander
First State Bank of Denton
P. O. Box 100
Denton, Texas 76202

Dear Mr. Alexander:

We have received your request for a written statement interpreting the propriety of the "demand feature" clause in consumer loan agreements. Your request has specifically asked that we review this matter as it relates to precomputed and simple interest installment loans and single payment simple interest loans.

Installment loans to consumers, both precomputed and simple interest or interest bearing, are generally covered by Chapters 3, 4 and 5 of Article 5069, V.A.T.S. All three chapters expressly provide for the making of loans which may be repaid in installments and incidentally Chapter 4 is entitled "Installment Loans." All three chapters contain an identical provision in the Prohibited Practices article (Articles 3.20(6), 4.04(6) and 5.05(5)) that states:

"No (authorized) lender shall take any instrument whereby a borrower waives any right accruing to him under the provisions of this Chapter."

When a lender makes a loan subject to Chapters 3, 4 or 5 the borrower is granted a right to repay that loan in installments according to the provisions of those chapters. Any clause or provision in a Chapter 3, 4 or 5 loan instrument which gives the lender the right to demand payment of the loan in full when the borrower is complying with the terms of the loan agreement violates the borrower's statutory right to repay the loan in installments constituting, in effect, a waiver of this right which is prohibited. This provision applies equally to precomputed and simple interest loans.

We believe this position is supported by the Texas Supreme Court in their ruling in Gonzales vs. Gainan's Chevrolet City, 690 S.W.2d 885 (Tex. 1985). In this case the court was asked to rule on the legality of a contractual provision having to do with repossession but which did not track the language of the statute. The majority opinion of the Court stated:

"The Consumer Credit Code contains a lengthy litany of requirements for installment credit contracts in Texas. . . . A creditor has a duty to prepare a contract in accordance with these standards. . . . We hold that there is no reason to presume the legality of terms and provisions of a contract which are required or prohibited by the Consumer Credit Code . . ."

In contrast a single payment simple interest loan is subject to the provisions of Chapter 1 of Article 5069. We find no language there which would prohibit demand features.

Sincerely,



Al Endsley
Consumer Credit Commissioner