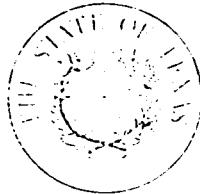


OFFICE OF
CONSUMER CREDIT
COMMISSIONER



LESLIE L. PETTIJOHN
Commissioner

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Interpretation Request Number 95-3
October 27, 1995

Ms. Claudia B. Wilkinson
Fulbright & Jaworski L.L.P.
1301 McKinney Street, Suite 5100
Houston, Texas 77010

Dear Ms. Wilkinson:

We have recently discussed several issues related to the documentary fee disclosures under the *Texas Credit Code*, Article 5069-1.01 *et seq.*, Vernon's Texas Civil Statutes (the "*Credit Code*"). Your inquiries have focused in particular on the requirements of Article 6.10(b) and Article 7.01(h-1)(iv) of the *Credit Code* as such articles were amended by the Texas Legislature this year. Article 6.10(b) was amended by Senate Bill 872 and by Senate Bill 1445. The documentary fee disclosure mandated by those two bills are not the same. Article 6.10(b) was amended by these two bills with a potentially ambiguous result.

You have requested an official written interpretation by the Consumer Credit Commissioner under Article 1.04(p) of the *Credit Code*, issued pursuant to Article 2.02A(10) of the *Credit Code*, and approved by the Finance Commission of Texas, to reconcile the apparent conflict between the requirements of Senate Bill 872 and Senate Bill 1445 in connection with Article 6.10(b) and Article 7.01(h-1)(iv). An official interpretation is appropriate to facilitate compliance efforts. It would be unreasonable to assume that the Legislature intended to create the ambiguity and uncertainty which unfortunately result from the conflict between the two cited bills. Failure to reconcile the conflict would subject many installment sales to uncertain requirements and a significant risk of noncompliance.

This official interpretation is intended (1) to reconcile the requirements of Senate Bill 872 and Senate Bill 1445; (2) to thereby make the requirements of Article 6.10(b) and Article 7.01(h-1)(iv) clear again; and (3) to provide legal protection to lenders who follow the requirements as set forth in such an interpretation.

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Background

Chapter 6 of the *Credit Code* applies in general to retail installment sales of goods and services with certain exceptions as set forth in that chapter. Article 6.10 is not applicable to all such retail installment sales. It applies only to retail installment sales of motorcycles, motor-driven cycles, mopeds, all terrain vehicles, boats, boat motors, boat trailers, horse trailers, trailers designed to be pulled by or to transport motorcycles or all-terrain vehicles, and towable recreational vehicles. Article 6.10 authorizes the imposition of a documentary fee in connection with such a transaction under certain enumerated conditions. If a documentary fee may be charged in connection with such a transaction, the disclosure requirements set forth in Article 6.10(b) must be satisfied.

Before amendment, Article 6.10(b) provided as follows:

- (b) Preliminary worksheets that are shown to the buyer in which a sale price is computed, an order from the buyer, and the retail installment contract must include, in reasonable proximity to the place in the worksheet, order, or contract where the documentary fee is disclosed, the amount of the fee and the following notice in bold-faced type:

"A DOCUMENTARY FEE IS NOT AN OFFICIAL FEE AND IS NOT REQUIRED BY LAW, BUT MAY BE CHARGED TO A BUYER FOR THE HANDLING OF DOCUMENTS AND THE PERFORMING OF SERVICES RELATED TO THE CLOSING OF A SALE. A BUYER MAY AVOID PAYMENT OF THE FEE BY HANDLING THESE DOCUMENTS AND PERFORMING THESE SERVICES. A DOCUMENTARY FEE MAY NOT EXCEED \$50. THIS NOTICE IS REQUIRED BY LAW."

Documentary fees also arise in retail installment sales of motor vehicles which are governed by Chapter 7 of the *Credit Code*. Article 7.01(h-1)(iv) contains the documentary fee disclosure requirements under Chapter 7. For many years, the language of the documentary fee disclosures under Chapter 6 and Chapter 7 have been similar, but not identical.

Senate Bill 872, which was effective on September 1, 1995, changes the wording of the documentary fee disclosure under Article 6.10(b) to be the same as the wording of the documentary fee disclosure under Article 7.01(h-1)(iv) of Chapter 7. While this change (the "disclosure standardization change") is not substantive, it is significant. The disclosure standardization change is a positive move which should facilitate compliance by lenders who finance sales of both motor vehicles and motorcycles (or other equipment described in Article 7.01(h-1)(iv)) and may make possible an integrated retail installment contract form which complies with both Chapters 6 and 7 of the *Credit Code*.

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Before the amendments made by Senate Bill 872 and Senate Bill 1445, Article 6.10(b) of Chapter 6 ("Old Article 6.10(b)") required that the documentary fee disclosure be made in bold-faced type. Senate Bill 872 changes that provision (the "conspicuousness change") to require that the disclosure be made in "type that is boldface, capitalized, underlined, or otherwise set out from surrounding written material so as to be conspicuous." This conspicuousness change was made by Senate Bill 872 in several places in Chapters 6 and 7 where bold-faced type had been required to provide consistency throughout the chapters. (This change was not necessary in Article 7.01(h-1)(iv) which already contained the same conspicuousness requirement.)

The relevant portion of Senate Bill 1445 changes the wording of the required documentary fee disclosures under Chapters 6 and 7. Under the requirements of Senate Bill 1445, the Old Article 6.10(b) documentary fee language would remain intact, except for the omission of the sentence "A buyer may avoid payment of the fee by handling these documents and performing these services." Senate Bill 1445 omits the same sentence from the documentary fee disclosure in Article 7.01(h-1)(iv). Senate Bill 1445 does not incorporate either the disclosure standardization change or the conspicuousness change to Article 6.10(b), expressly made in Senate Bill 872 and effective as of September 1, 1995.

Questions

You have requested answers to the following specific questions:

1. As of January 1, 1996, what will be the correct wording of the documentary fee disclosure as required under Article 6.10(b)?
2. As of January 1, 1996, what will be the correct wording of the documentary fee disclosure as required under Article 7.01(h-1)(iv)?
3. As of January 1, 1996, do the conspicuousness changes made by Senate Bill 872 to replace the requirement of bold-faced type with a requirement for "type that is boldface, capitalized, underlined, or otherwise set out from surrounding material so as to be conspicuous" remain in effect in Article 6.10(b)?

Discussion

The Texas Legislature clearly intended to make certain specific revisions to the *Credit Code*. Senate Bill 872 and Senate Bill 1445 are two of the bills which contain express revisions to the *Credit Code*. The answers below are the direct result of incorporating the express revisions made by each of Senate Bill 872 and Senate Bill 1445 sequentially into the relevant provisions of the *Credit Code*, as such were in effect before September 1, 1995.

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The Legislature clearly intended to accomplish three purposes in the relevant portions of Senate Bill 872 and Senate Bill 1445. First, in Senate Bill 872, the Legislature intended to make the disclosure standardization change so that the wording of the documentary fee disclosures are identical under both Chapters 6 and 7. Second, in Senate Bill 872, the Legislature intended to incorporate the conspicuousness change in several places throughout Chapters 6 and 7, including in Article 6.10(b). Third, in Senate Bill 1445, the Legislature intended to delete the sentence "A buyer may avoid payment of the fee by handling these documents and performing these services" from the documentary fee disclosures in both Chapters 6 and 7. The answers set forth below should accomplish all three of these changes which were expressly set forth by the Legislature in the relevant portions of the two cited bills.

If Senate Bill 1445 were interpreted to totally overwrite the conflicting portions of Senate Bill 872, at least two of the three purposes described above would be thwarted. The non-substantive differences in wording of the documentary fee disclosures under Chapters 6 and 7 would be reinstated and consistency in the wording of the documentary fee disclosures would once again be lost. In addition, the conspicuousness changes made in Senate Bill 872 would be undone in Article 6.10(b), but left in force elsewhere.

A statutory construction which rolls back certain of the amendments expressly made in Senate Bill 872 would defeat the specific intent of the Legislature. The intent of the Legislature to accomplish certain definite objectives should be given all due consideration and the relevant provision of Senate Bill 872 and Senate Bill 1445 should be construed to give full effect to each of those objectives.

Senate Bill 1445 is not a bill which primarily deals with the *Credit Code*. It would be inappropriate to give the relevant provisions of Senate Bill 1445 complete dominance over Senate Bill 872 which does primarily deal with the *Credit Code*. Such complete dominance is not necessary to accomplish the relevant revisions to Articles 6.10(b) and 7.01(h-1)(iv) which were intended to be made by Senate Bill 1445.

In an ideal situation, all changes to the *Credit Code* would be made in one bill. However, amendments are not made in that fashion. When separate amendments are made to the same sections of the *Credit Code* in different bills, some uncertainty is virtually certain, since each of the bills must work from the preexisting law without regard to proposed amendments in other bills which may or may not become law.

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Answers

1. As of January 1, 1996, the correct wording of the documentary fee disclosure as required under Article 6.10(b) is 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 AND PERFORMING SERVICES RELATING TO THE CLOSING OF A SALE. A DOCUMENTARY FEE MAY NOT EXCEED \$50. THIS NOTICE IS REQUIRED BY LAW."

2. As of January 1, 1996, the correct wording of the documentary fee disclosure as required under Article 7.01(h-1)(iv) is 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 AND PERFORMING SERVICES RELATING TO THE CLOSING OF A SALE. A DOCUMENTARY FEE MAY NOT EXCEED \$50. THIS NOTICE IS REQUIRED BY LAW."

3. As of January 1, 1996, the conspicuousness changes made by Senate Bill 872 to replace the requirement for bold-faced type with a requirement for "type that is boldface, capitalized, underlined; or otherwise set out from surrounding material so as to be conspicuous" remain in effect in Article 6.10(b).

Sincerely,



Leslie L. Pettijohn
Commissioner

LLP:jjm

Approved by the Finance Commission of Texas October 27, 1995