

Title 7. Banking and Securities

Part 5. Office of Consumer Credit Commissioner

Chapter 83. Regulated Lenders and Credit Access Businesses

Chapter 90. Chapter 342, Plain Language Contract Provisions

The Finance Commission of Texas (commission) adopts amendments to §83.503 in Chapter 83, concerning Regulated Lenders and Credit Access Businesses, and §90.203 in Chapter 90, concerning Chapter 342, Plain Language Contract Provisions.

The commission adopts the amendments to §83.503 without changes to the proposed text as published in the November 3, 2017, issue of the *Texas Register* (42 TexReg 6081).

The commission adopts the amendments to §90.203 with changes to the proposed text as published in the November 3, 2017, issue of the *Texas Register* (42 TexReg 6081) and the November 17, 2017 issue of the *Texas Register* (42 TexReg 6525). Due to an error by the *Texas Register*, the figures in the proposed amendments to §90.203 were included in the November 17 issue, rather than the November 3 issue.

The commission received two comments on the proposal: one from the Independent Bankers Association of Texas, and another from an individual. Both comments support the amendments as proposed.

In 2013, the Texas Legislature passed SB 1251, which amended Texas Finance Code, §342.201 to provide that the Subchapter E administrative fee is not considered interest, and authorized the commission to set the maximum amount of the administrative fee. The administrative

fee is a flat, nonrefundable charge paid to the lender. The commission adopted a rule at current 7 TAC §83.503(1), specifying that the maximum amount of the administrative fee is \$100. Since 2013, the agency has received questions from stakeholders about whether the administrative fee can be included in the cash advance or principal balance on which interest is computed. This issue is not addressed in the current rules.

The agency circulated an early draft of the rule changes to interested stakeholders. The agency received two informal written precomments, both supporting the draft as written.

Adopted §83.503(5) explains that the administrative fee may be included in the cash advance or principal balance on which interest is computed. This amendment is consistent with Texas Finance Code, §342.201(f), which specifies that the administrative fee is not interest. The amendment is also consistent with the definition of "cash advance" in Texas Finance Code, §341.001(3), which includes an "amount that is paid at the borrower's direction or request, on the borrower's behalf, or for the borrower's benefit." In addition, the amendment is consistent with Texas case law governing the calculation of the principal balance for a loan. *See Tanner Dev. Co. v. Ferguson*, 561 S.W.2d 777, 782 (Tex. 1977) (holding that the true principal of a loan is calculated by subtracting interest from the amount advanced to the borrower).

Adopted amendments to §90.203(b)(7) add model plain language clauses to be used

in transactions where the lender finances the administrative fee. Lenders that do not finance the administrative fee will be able to continue using the other model clauses currently in §90.203(b)(7). The amendments specify that the current model clauses should be used when the administrative fee is paid in cash or is not included in the cash advance on which interest is computed. The current model clauses are amended to include updated rate bracket amounts under Texas Finance Code, §342.201. The amendments also add new clauses to be used when the administrative fee is financed. Each of the new clauses includes a statement of the amount of the cash advance, in order to ensure that the contract discloses the specific amount on which interest will be computed.

The proposal contained a typographical error in the current text of §90.203(b)(7)(D), improperly using the phrase "scheduled installment earnings method" instead of "true daily earnings method." The error has been corrected in this adoption. The correction does not affect any of the new text added by the adoption.

Figures in §90.203(b)(7)(A), (b)(7)(C), and (b)(7)(E), have been amended and renumbered as (b)(7)(A)(i), (b)(7)(C)(i), and (b)(7)(E)(i). New figures have been added at §90.203(b)(7)(A)(ii), (b)(7)(C)(ii), and (b)(7)(E)(ii), for use when the administrative fee is financed.

The amendments are adopted under Texas Finance Code, §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, the amendment to §83.503 is adopted under Texas Finance Code, §342.551, which authorizes the commission to adopt rules to enforce Chapter 342. The

amendments to §90.203 are adopted under Texas Finance Code, §341.502, which authorizes the commission to adopt rules governing the form of plain language contracts for loans under Chapter 342.

The statutory provisions affected by the adopted amendments are contained in Texas Finance Code, §341.502 and §342.201.

Chapter 83. Regulated Lenders and Credit Access Businesses

§83.503. Administrative Fee.

An authorized lender may collect an administrative fee pursuant to Texas Finance Code, §342.201(f), on interest-bearing and precomputed loans.

(1) - (4) (No change.)

(5) The administrative fee may be included in the cash advance on which interest is computed under Texas Finance Code, §342.201(a) or (e). The administrative fee may be included in the principal balance on which interest is computed under Texas Finance Code, §342.201(d).

Chapter 90. Chapter 342, Plain Language Contract Requirements

§90.203. Model Clauses.

(a) (No change.)

(b) Model clauses for a Chapter 342, Subchapter E secured consumer installment loan contract.

(1) - (6) (No change.)

(7) Finance charge earnings and refund method. The model finance charge

earnings and refund method clauses include rate bracket amounts that are updated annually in the Texas Credit Letter. The model finance charge earnings and refund method clause options read:

(A) For contracts using the scheduled installment earnings method, Texas Finance Code, §342.201(a):

(i) For use when the administrative fee is paid in cash or is not included in the cash advance on which interest is computed:

Figure: 7 TAC §90.203(b)(7)(A)(i) {See attached amendments, renumbered from 7 TAC §90.203(b)(7)(A).}

(ii) For use when the administrative fee is financed:

Figure: 7 TAC §90.203(b)(7)(A)(ii) {New figure.}

(B) For contracts using the scheduled installment earnings method, Texas Finance Code, §342.201(d):

(i) For use when the administrative fee is paid in cash or is not included in the principal balance on which interest is computed: "The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not get a refund if the refund would be less than

\$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment."

(ii) For use when the administrative fee is financed: "The cash advance is \$ _____. The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code to the unpaid cash advance. The unpaid cash advance includes the administrative fee, but does not include late charges and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not get a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment."

(C) For contracts using the scheduled installment earnings method, Texas Finance Code, §342.201(e):

(i) For use when the administrative fee is paid in cash or is not included in the cash advance on which interest is computed:

Figure: 7 TAC §90.203(b)(7)(C)(i) {See attached amendments, renumbered from 7 TAC §90.203(b)(7)(C).}

(ii) For use when the administrative fee is financed:

Figure: 7 TAC §90.203(b)(7)(C)(ii) {New figure.}

(D) For contracts using the true daily earnings method, Texas Finance Code, §342.201(d):

(i) For use when the administrative fee is paid in cash or is not included in the principal balance on which interest is computed: "The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment."

(ii) For use when the administrative fee is financed: "The cash advance is \$ _____. The annual rate of interest is ____%. This interest rate may not be the same as the Annual Percentage Rate. You figure the Finance Charge by applying the true daily earnings method as defined by the Texas Finance Code to the unpaid portion of the cash advance. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment."

(E) For contracts using the true daily earnings method, Texas Finance Code, §342.201(e):

(i) For use when the administrative fee is paid in cash or is not

included in the cash advance on which interest is computed:

Figure: 7 TAC §90.203(b)(7)(E)(i) {See attached amendments, renumbered from 7 TAC §90.203(b)(7)(E).}

(ii) For use when the administrative fee is financed:

Figure: 7 TAC §90.203(b)(7)(E)(ii) {New figure.}

(8) - (27) (No change.)

Certification

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on February 16, 2018.

Laurie B. Hobbs
Assistant General Counsel
Office of Consumer Credit Commissioner

Amended Figure 7 TAC ~~§90.203(b)(7)(A)(i)~~ [~~§90.203(b)(7)(A)~~]

(Add-on method under §342.201(a), administrative fee not financed)

"Interest will be calculated by using the add-on interest method. Add-on interest is calculated on the full amount of the cash advance and added as a lump sum to the cash advance for the full term of the loan. The interest charge will be:

- \$18.00 per \$100.00 per year on that portion of the cash advance that is \$2,070 [~~\$2,010~~] or less; and
- \$8.00 per \$100.00 per year on that portion of the cash advance that is greater than \$2,070 [~~\$2,010~~] through \$17,250 [~~\$16,750~~].

You base the Finance Charge and the Total of Payments as if I will make each payment on the day it is due. I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. The amount I save will be figured using the scheduled installment earnings method as defined by the Texas Finance Code. I will not get a refund if the amount I save would be less than \$1.00."

New Figure 7 TAC §90.203(b)(7)(A)(ii)

(Add-on method under §342.201(a), administrative fee financed)

"The cash advance is \$____. Interest will be calculated by using the add-on interest method. Add-on interest is calculated on the full amount of the cash advance and added as a lump sum to the cash advance for the full term of the loan. The interest charge will be:

- \$18.00 per \$100.00 per year on that portion of the cash advance that is \$2,070 or less; and
- \$8.00 per \$100.00 per year on that portion of the cash advance that is greater than \$2,070 through \$17,250.

You base the Finance Charge and the Total of Payments as if I will make each payment on the day it is due. I can make a whole payment early. Unless you agree otherwise in writing, I may not skip payments. If I make a payment early, my next payment will still be due as scheduled. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. The amount I save will be figured using the scheduled installment earnings method as defined by the Texas Finance Code. I will not get a refund if the amount I save would be less than \$1.00."

Amended Figure 7 TAC ~~§90.203(b)(7)(C)(i)~~ [~~§90.203(b)(7)(C)~~]

(Scheduled installment earnings method under §342.201(e), administrative fee not financed)

"The annual rate of interest is: (1) 30% on the unpaid cash advance that is \$3,450.00 [~~\$3,350.00~~] or less; (2) 24% on the unpaid cash advance that is greater than \$3,450.00 [~~\$3,350.00~~] through \$7,245.00 [~~\$7,035.00~~]; and (3) 18% on the unpaid cash advance that is greater than \$7,245.00 [~~\$7,035.00~~] through \$17,250 [~~\$16,750~~]. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not get a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment."

New Figure 7 TAC §90.203(b)(7)(C)(ii)

(Scheduled installment earnings method under §342.201(e), administrative fee financed)

"The cash advance is \$____. The annual rate of interest is: (1) 30% on the unpaid cash advance that is \$3,450.00 or less; (2) 24% on the unpaid cash advance that is greater than \$3,450.00 through \$7,245.00; and (3) 18% on the unpaid cash advance that is greater than \$7,245.00 through \$17,250.00. You figure the Finance Charge by applying the scheduled installment earnings method as defined by the Texas Finance Code. The unpaid cash advance includes the administrative fee, but does not include late charges and returned check charges. If I prepay my loan in full before the final payment is due, I may save a portion of the Finance Charge. I will not get a refund if the refund would be less than \$1.00. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. My final payment may be larger or smaller than my regular payment."

Amended Figure 7 TAC ~~§90.203(b)(7)(E)(i)~~ [~~§90.203(b)(7)(E)~~]

(True daily earnings method under §342.201(e), administrative fee not financed)

"The annual rate of interest is: (1) 30% on the unpaid cash advance that is \$3,450.00 [~~\$3,350.00~~] or less; (2) 24% on the unpaid cash advance that is greater than \$3,450.00 [~~\$3,350.00~~] through \$7,245.00 [~~\$7,035.00~~]; and (3) 18% on the unpaid cash advance that is greater than \$7,245.00 [~~\$7,035.00~~] through \$17,250 [~~\$16,750~~]. This interest rate may not be the same as the Annual Percentage Rate. The unpaid cash advance does not include the administrative fee, late charges, and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment."

New Figure 7 TAC §90.203(b)(7)(E)(ii)

(True daily earnings method under §342.201(e), administrative fee financed)

"The cash advance is \$____. The annual rate of interest is: (1) 30% on the unpaid cash advance that is \$3,450.00 or less; (2) 24% on the unpaid cash advance that is greater than \$3,450.00 through \$7,245.00; and (3) 18% on the unpaid cash advance that is greater than \$7,245.00 through \$17,250. This interest rate may not be the same as the Annual Percentage Rate. The unpaid cash advance includes the administrative fee, but does not include late charges and returned check charges. You base the Finance Charge and Total of Payments as if I will make each payment on the day it is due. You will apply payments on the date they are received. This may result in a different Finance Charge or Total of Payments. My final payment may be larger or smaller than my regular payment."