

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

7 TAC, Part 5, Chapter 83

The Finance Commission of Texas (commission) adopts amendments to §83.501 (relating to Maximum Interest Charge) in 7 TAC, Chapter 83, concerning Regulated Lenders and Credit Access Businesses.

The commission adopts the amendments without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4610).

The commission received no written comments on the proposal.

In general, the purpose of the adopted amendments to §83.501 is to implement HB 3855, which the Texas Legislature passed in the 2019 legislative session, by adding a reference to the single equivalent daily rate authorized under HB 3855.

Texas Finance Code, §342.201(e) allows a lender to charge a three-tiered interest rate on a loan subject to Chapter 342, Subchapter E of the Texas Finance Code. HB 3855 adds a new subsection at Texas Finance Code, §342.201(e-1), specifying that the lender may charge this amount by either: (1) applying an applicable daily rate to each bracket of the unpaid principal balance, or (2) applying a single equivalent daily rate to the entire principal balance.

The adopted amendments to §83.501 implement HB 3855 by specifying that a lender may apply the single equivalent daily rate. In subsection (c), an amendment to

paragraph (2) specifies that the currently authorized method for applying a daily rate to brackets applies when the loan is made under Texas Finance Code, §342.201(e) and (e-1)(1). New paragraph (3) explains that interest may be calculated by applying the single equivalent daily rate if the loan is made under Texas Finance Code, §342.201(e) and (e-2).

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received one informal written precomment on the rule text draft. The precomment relates primarily to proposed amendments to model plain language clauses at §90.203. For this reason, the precomment is discussed in connection with the separate adopted amendments to §90.203.

The amendments to §83.501 are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §342.551 authorizes the commission to adopt rules to enforce Chapter 342.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 342.

7 TAC, Part 5, Chapter 90

The Finance Commission of Texas (commission) adopts amendments to

§90.203 (relating to Model Clauses) in 7 TAC, Chapter 90, concerning Chapter 342, Plain Language Contract Provisions.

The commission adopts the amendments without changes to the proposed text as published in the August 30, 2019, issue of the *Texas Register* (44 TexReg 4614).

The commission received no written comments on the proposal.

In general, the purpose of the adopted amendments to §90.203 is to implement HB 3855, which the Texas Legislature passed in the 2019 legislative session, by adding model plain language provisions for loan contracts using the single equivalent daily rate authorized under HB 3855.

Texas Finance Code, §342.201(e) allows a lender to charge a three-tiered interest rate on a loan subject to Chapter 342, Subchapter E of the Texas Finance Code. HB 3855 adds a new subsection at Texas Finance Code, §342.201(e-1), specifying that the lender may charge this amount by either: (1) applying an applicable daily rate to each bracket of the unpaid principal balance, or (2) applying a single equivalent daily rate to the entire principal balance.

The adopted amendments to §90.203 implement HB 3855 by adding model clauses for loans where the lender uses the single equivalent daily rate. In paragraphs (7)(C) and (7)(E), amendments to clauses (i) and (ii) specify that the currently authorized model clauses can be used when the interest charge is computed by applying a daily rate to brackets under Texas Finance Code, §342.201(e-1)(1). In paragraphs (7)(C) and (7)(E), new clauses (iii) and (iv) contain model clauses that can be used when the interest charge is computed as a single

equivalent daily rate under Texas Finance Code, §342.201(e-1)(2).

The OCCC distributed an early precomment draft of proposed changes to interested stakeholders for review and then held a stakeholder meeting and webinar regarding the rule changes. The OCCC received one informal written precomment on the rule text draft. The precomment recommends including language in the model clauses specifying that the lender has used the single equivalent daily rate as defined by the Texas Finance Code. In response to this precomment, each new model clause in the amendments to §90.203 includes the following sentence: "The interest rate is computed by applying a single equivalent daily rate under the Texas Finance Code."

The amendments to §90.203 are adopted under Texas Finance Code, §11.304, which authorizes the Finance Commission to adopt rules to ensure compliance with Title 4 of the Texas Finance Code. Additionally, Texas Finance Code, §341.502 authorizes the commission to adopt rules governing the form of plain language contracts for loans under Chapter 342.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapters 341 and 342.

Title 7, Texas Administrative Code

Chapter 83. Regulated Lenders and Credit Access Businesses

Subchapter A. Rules for Regulated Lenders

Division 5. Interest Charges on Loans

§83.501. Maximum Interest Charge.

(a) Precomputed loans. An authorized lender may charge the add-on rates authorized by Texas Finance Code, §342.201(a) or the alternative simple interest rate authorized by Texas Finance Code, §342.201(d) or (e) as calculated by the scheduled installment earnings method, for precomputed loans that are either unsecured or secured by personal property. Prepaid interest in the form of points is not permitted, unless expressly authorized by statute.

(b) Interest-bearing loans. An authorized lender may charge any rate of interest that does not exceed the maximum rate authorized by Texas Finance Code, §342.201(d) or (e) as calculated by the true daily earnings method or the scheduled installment earnings method, for an interest-bearing loan that is either unsecured or secured by personal property. Prepaid interest in the form of points is not permitted, unless expressly authorized by statute.

(c) Method of calculation.

(1) An authorized lender making loans under Texas Finance Code, §342.201(a), (d), or (e) may calculate the rate and amount of interest by any method of calculation as long as the amount of interest charged does not exceed the maximum rate or amount of interest set forth in Texas Finance Code, §342.201(a), (d), or (e) calculated using the specified earnings methods of Texas Finance Code, §342.201.

(2) An authorized lender making a loan under Texas Finance Code, §342.201(e) and (e-1)(1) may contract for, charge, and receive an amount of interest, calculated according to the scheduled

installment earnings method or true daily earnings method, not exceeding the equivalent total of a:

(A) simple annual rate of 30% on that portion of the unpaid balance of the cash advance that is less than or equal to the amount computed under Texas Finance Code, Chapter 341, Subchapter C, using the reference base amount of \$500;

(B) simple annual rate of 24% on that portion of the unpaid balance of the cash advance that is more than the amount computed for subparagraph (A) of this paragraph but less than or equal to an amount computed under Texas Finance Code, Chapter 341, Subchapter C, using the reference base amount of \$1,050; and

(C) simple annual rate of 18% on that portion of the unpaid balance of the cash advance that is more than the amount computed for subparagraph (B) of this paragraph but less than or equal to an amount computed under Texas Finance Code, Chapter 341, Subchapter C, using the reference base amount of \$2,500.

(3) An authorized lender making a loan under Texas Finance Code, §342.201(e) and (e-1)(2) may contract for, charge, and receive an amount of interest, calculated according to the scheduled installment earnings method or true daily earnings method, by applying a single equivalent daily rate to the unpaid principal balance for the actual or scheduled number of days during a payment period, where the single equivalent daily rate is determined at the inception of the loan using the scheduled installment earnings method and would earn an amount of interest authorized under Texas Finance Code, §342.201(e) if the debt

were paid to maturity according to the schedule of payments.

Chapter 90. Chapter 342, Plain Language Contract Provisions

Subchapter B. Secured Consumer Installment Loans (Subchapter E)

§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) - (B) (No change.)

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

(i) For use when the interest charge is computed by applying a daily rate to brackets under Texas Finance Code, §342.201(e-1)(1), and 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) {No changes to figure.}

(ii) For use when the interest charge is computed by applying a daily rate

to the brackets under Texas Finance Code, §342.201(e-1)(1), and the administrative fee is financed:

Figure: 7 TAC §90.203(b)(7)(C)(ii) {No changes to figure.}

(iii) For use when the interest charge is computed as a single equivalent daily rate under Texas Finance Code, §342.201(e-1)(2), and the administrative fee is paid in cash or is not included in the cash advance on which interest is computed: "The annual rate of interest is ____ %. The interest rate is computed by applying a single equivalent daily rate under the Texas Finance Code. 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."

(iv) For use when the interest charge is computed as a single equivalent daily rate under Texas Finance Code, §342.201(e-1)(2), and the administrative fee is financed: " The cash advance is \$ ____ . The annual rate of interest is ____ %. The interest rate is computed by applying a single equivalent daily rate under the Texas Finance Code. 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."

(D) (No change.)

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

(i) For use when the interest charge is computed by applying a daily rate to the brackets under Texas Finance Code, §342.201(e-1)(1), and 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) {No changes to figure.}

(ii) For use when the interest charge is computed by applying a daily rate to the brackets under Texas Finance Code, §342.201(e-1)(1), and the administrative fee is financed:

Figure: 7 TAC §90.203(b)(7)(E)(ii) {No changes to figure.}

(iii) For use when the interest charge is computed as a single equivalent daily rate under Texas Finance Code, §342.201(e-1)(2), and the administrative fee is paid in cash or is not included in the cash

advance on which interest is computed: "The annual rate of interest is ____%. The interest rate is computed by applying a single equivalent daily rate under the Texas Finance Code. 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."

(iv) For use when the interest charge is computed as a single equivalent daily rate under Texas Finance Code, §342.201(e-1)(2), and the administrative fee is financed: "The cash advance is \$ _____. The annual rate of interest is ____%. The interest rate is computed by applying a single equivalent daily rate under the Texas Finance Code. 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."

(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 October 18, 2019.

Matthew J. Nance
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Office of Consumer Credit Commissioner