

FINANCE CODE

TITLE 4. REGULATION OF INTEREST, LOANS, AND FINANCED TRANSACTIONS

SUBTITLE A. INTEREST

CHAPTER 305. PENALTIES AND REMEDIES

SUBCHAPTER A. CIVIL LIABILITY; CRIMINAL PENALTY

Sec. 305.001. LIABILITY FOR USURIOUS INTEREST. (a) A creditor who contracts for, charges, or receives interest that is greater than the amount authorized by this subtitle in connection with a transaction for personal, family, or household use is liable to the obligor for an amount that is equal to the greater of:

(1) three times the amount computed by subtracting the amount of interest allowed by law from the total amount of interest contracted for, charged, or received; or

(2) \$2,000 or 20 percent of the amount of the principal, whichever is less.

(a-1) A creditor who contracts for or receives interest that is greater than the amount authorized by this subtitle in connection with a commercial transaction is liable to the obligor for an amount that is equal to three times the amount computed by subtracting the amount of interest allowed by law from the total amount of interest contracted for or received.

(b) This section applies only to a contract or transaction subject to this subtitle.

(c) A creditor who charges or receives interest in excess of the amount contracted for, but not in excess of the maximum amount authorized by law, is not subject to penalties for usurious interest but may be liable for other remedies and relief as provided by law.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 2.05, eff. September 1, 2005.

Sec. 305.002. ADDITIONAL LIABILITY FOR MORE THAN TWICE

AUTHORIZED RATE OF INTEREST. (a) In addition to the amount determined under Section 305.001, a creditor who charges and receives interest that is greater than twice the amount authorized by this subtitle is liable to the obligor for:

(1) the principal amount on which the interest is charged and received; and

(2) the interest and all other amounts charged and received.

(b) This section applies only to a contract or transaction for personal, family, or household use subject to this subtitle.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 2.06, eff. September 1, 2005.

Sec. 305.003. LIABILITY FOR USURIOUS LEGAL INTEREST. (a) A creditor who charges or receives legal interest that is greater than the amount authorized by this subtitle is liable to the obligor for an amount that is equal to the greater of:

(1) three times the amount computed by subtracting the amount of legal interest allowed by law from the total amount of interest charged or received; or

(2) \$2,000 or 20 percent of the amount of the principal, whichever is less.

(b) This section applies only to a transaction subject to this subtitle.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 305.004. ADDITIONAL LIABILITY FOR MORE THAN TWICE AUTHORIZED RATE OF LEGAL INTEREST. (a) In addition to the amount determined under Section 305.003, a creditor who charges and receives legal interest that is greater than twice the amount authorized by this subtitle is liable to the obligor for:

(1) the principal amount on which the interest is charged and received; and

(2) the interest and all other amounts charged and received.

(b) This section applies only to a transaction subject to this subtitle.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 305.005. ATTORNEY'S FEES. A creditor who is liable under Section 305.001 or 305.003 is also liable to the obligor for reasonable attorney's fees set by the court.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 305.006. LIMITATION ON FILING SUIT. (a) An action under this chapter must be brought within four years after the date on which the usurious interest was contracted for, charged, or received. The action must be brought in the county in which:

- (1) the transaction was entered into;
- (2) the usurious interest was charged or received;
- (3) the creditor resides at the time of the cause of action, if the creditor is an individual;
- (4) the creditor maintains its principal office, if the creditor is not an individual; or
- (5) the obligor resides at the time of the accrual of the cause of action.

(b) Not later than the 61st day before the date an obligor files a suit seeking penalties for a transaction in which a creditor has contracted for, charged, or received usurious interest, the obligor shall give the creditor written notice stating in reasonable detail the nature and amount of the violation.

(c) A creditor who receives a notice under this section may correct the violation as provided by Section 305.103 during the period beginning on the date the notice is received and ending on the 60th day after that date. A creditor who corrects a violation as provided by this section is not liable to an obligor for the violation.

(d) With respect to a defendant filing a counterclaim action

alleging usurious interest in an original action by the creditor, the defendant shall provide notice complying with Subsection (b) at the time of filing the counterclaim and, on application of the creditor to the court, the action is subject to abatement for a period of 60 days from the date of the court order. During the abatement period the creditor may correct a violation. As part of the correction of the violation, the creditor shall offer to pay the obligor's reasonable attorney's fees as determined by the court based on the hours reasonably expended by the obligor's counsel with regard to the alleged violation before the abatement. A creditor who corrects a violation as provided by this subsection is not liable to an obligor for the violation.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. 955), Sec. 2.07, eff. September 1, 2005.

Sec. 305.007. PENALTIES EXCLUSIVE. The penalties provided by this chapter are the only penalties for violation of this subtitle for contracting for, charging, or receiving interest in an amount that produces a rate in excess of the maximum rate allowed by law. Common law penalties do not apply.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 305.008. CRIMINAL PENALTY. (a) A person commits an offense if the person contracts for, charges, or receives interest on a transaction for personal, family, or household use that is greater than twice the amount authorized by this subtitle.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than \$1,000.

(c) Each contract or transaction that violates this section is a separate offense.

(d) This section applies only to a contract or transaction subject to this subtitle.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1,

1999.

SUBCHAPTER B. EXCEPTION FROM LIABILITY

Sec. 305.101. ACCIDENTAL AND BONA FIDE ERROR. A creditor is not subject to penalty under this chapter for any usurious interest that results from an accidental and bona fide error.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 305.102. LEGAL INTEREST DURING INTEREST-FREE PERIOD. A person is not liable to an obligor solely because the person charges or receives legal interest before the 30th day after the date on which the debt is due.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 305.103. CORRECTION OF VIOLATION. (a) A creditor is not liable to an obligor for a violation of this subtitle if:

(1) not later than the 60th day after the date the creditor actually discovered the violation, the creditor corrects the violation as to that obligor by taking any necessary action and making any necessary adjustment, including the payment of interest on a refund, if any, at the applicable rate provided for in the contract of the parties; and

(2) the creditor gives written notice to the obligor of the violation before the obligor gives written notice of the violation or files an action alleging the violation.

(b) For the purposes of Subsection (a), a violation is actually discovered at the time of the discovery of the violation in fact and not at the time when an ordinarily prudent person, through reasonable diligence, could or should have discovered or known of the violation. Actual discovery of a violation in one transaction may constitute actual discovery of the same violation in other transactions if the violation is of such a nature that it would necessarily be repeated and would be clearly apparent in the other transactions without the necessity of examining all the other

transactions.

(c) For purposes of Subsection (a), written notice is given when the notice is delivered to the person or to the person's authorized agent or attorney of record personally, by telecopier, or by United States mail to the address shown on the most recent documents in the transaction. Deposit of the notice as registered or certified mail in a postage paid, properly addressed wrapper in a post office or official depository under the care and custody of the United States Postal Service is prima facie evidence of the delivery of the notice to the person to whom the notice is addressed.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 305.104. CORRECTION EXCEPTION AVAILABLE TO ALL SIMILARLY SITUATED. If in a single transaction more than one creditor may be liable for a violation of this subtitle, compliance with Section 305.103 by any of those creditors entitles each to the same protection provided by that section.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.

Sec. 305.105. AMOUNTS PAYABLE PURSUANT TO A FINAL JUDGMENT. A creditor is not liable to an obligor for a violation of this subtitle if the creditor receives interest that has been awarded pursuant to a final judgment that is no longer subject to modification or reversal.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999.