

CHAPTER 659

S.B. No. 1152

An Act relating to the regulation of certain secondary mortgage loans and lenders, including rates, method of payment, fees, and insurance; amending Title 79, Revised Statutes, as amended, by amending Subdivision (2) of Section (n) of Article 1.04; Section (2) of Article 5.01; Article 5.02; Sections (2) and (6) of Article 5.03; Section (4) of Article 5.04; and Section (3) of Article 5.05 (Articles 5069-1.04, 5069-5.01, 5069-5.02, 5069-5.03, 5069-5.04, and 5069-5.05, Vernon's Texas Civil Statutes).

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subdivision (2), Section (n), Article 1.04, Title 79, Revised Statutes (Article 5069-1.04, Vernon's Texas Civil Statutes), is amended to read as follows:

"(2) Any loan made under this Article that is extended primarily for personal, family, or household use but not for business, commercial, investment, agricultural, or other similar purposes, and that is *predominantly* payable in [~~consecutive~~] monthly installments and is described by Section (1), Article 5.01, of this Title and Sections (1), (3), and (4), Article 5.02, of this Title and that is made, *negotiated, or arranged* by a person engaged in the business of making, *negotiating, or arranging* those types of loans, is subject to Chapter 5 of this Title, and any person except a bank or savings and loan association engaged in that business shall obtain a license under Chapter 3 of this Title."

SECTION 2. Section (2), Article 5.01, Title 79, Revised Statutes (Article 5069-5.01, Vernon's Texas Civil Statutes), is amended to read as follows:

"(2) On or after the effective date of this Chapter, no person, except a bank, savings and loan association or credit union doing business under the laws of this State or of the United States and any person licensed to do business under the provisions of Chapter 3 of this Subtitle, shall engage in the business of making, *negotiating, or arranging* secondary mortgage loans and contract for, charge or receive, *directly or indirectly in connection with any such loan, any charge for interest which exceeds ten percent per annum on unpaid principal balances and any lawful charge for compensation, consideration, expense, or any other thing incident to or in connection with the loan which exceeds the amounts a person authorized hereunder would be permitted to charge under Section (7) of Article 5.02 of this Title* [~~5.02(5)~~]."

SECTION 3. Article 5.02, Title 79, Revised Statutes (Article 5069-5.02, Vernon's Texas Civil Statutes), is amended to read as follows:

"Article 5.02. **SECONDARY MORTGAGE LOANS AUTHORIZED.** (1) Any person authorized to do business under the provisions of this Chapter may contract for and receive on any secondary mortgage loan made under the authority of this Chapter repayable in consecutive monthly installments, substantially equal in amount, an add-on interest charge of Eight Dollars per One Hundred Dollars per annum for the full term of the loan contract, *or as an alternative thereto, any rate or amount authorized by Article 1.04 of this Title, as amended. Notwithstanding the foregoing, any secondary mortgage loan described in this Section may provide for the establishment of the first scheduled installment due date beyond one month from the date of the loan but not beyond one month plus fifteen days from the date of the loan.*

"(2) Interest authorized in Section (1) of this Article shall be computed on the cash advance at the time the loan is made for the full term of the loan contract notwithstanding the requirement of the loan contract for payment in substantially equal regular monthly installments and shall be computed on the basis of a full month for any fractional period in excess of fifteen days. *Precomputed interest* [~~Interest~~] authorized by Section (1) of this Article shall be added to the cash advance and said sum shall be the amount of the loan.

"(3) *An authorized lender may arrange a secondary mortgage loan which provides for repayment in other than substantially equal installment amounts and/or provides that the first monthly installment is not scheduled to be repayable within one month plus fifteen days from the date of the loan. However, the first installment due date of a secondary mortgage loan made under the authority of this Section shall not be scheduled to be repaid later than three months from the date of the loan. On any loan made under the authority of this Section, the lender may contract for, charge, or receive interest charges at a simple annual rate not in excess of a rate,*

considering the entire term of the loan, permitted in Section (1) of this Article. The interest contracted for, charged, or received shall not be precomputed but shall be accrued and earned by applying the simple annual interest rate under the loan contract to the principal balance, including additions to principal subsequent to the loan contract, from time to time unpaid until the date of payment in full or demand for payment in full.

“(4) Notwithstanding any other provisions of this Chapter, a borrower and a lender may enter into a written agreement pursuant to which one or more loans or advances to or for the account of the borrower shall be made from time to time. The agreement shall contain the date of the agreement and the name and address of each borrower and of the lender and shall be signed by the parties. A copy of the agreement shall be delivered to the borrower. The agreement may provide for a maximum loan charge on the unpaid principal amounts from time to time outstanding not in excess of a rate producing an interest yield equivalent to that which would be permitted on a similar loan made under Section (1) of this Article. The Commissioner shall prescribe monthly rates of charge which produce an interest yield equal to the add-on rate permitted under Section (1) of this Article on a loan of the same amount. The loan agreement shall clearly set forth, if a charge for insurance is to be included in the contract, a simple statement of the amount of such charge or the method by which it will be calculated.

“(5) On any loan contract which includes precomputed interest, and is payable in substantially equal successive monthly installments, additional [Additional] interest for default, if contracted for, may equal but shall not exceed Five Cents for each One Dollar of any scheduled installment when any portion of such installment continues unpaid for ten days or more following the date such payment is due, including Sundays and holidays. Interest for such default shall not be collected more than once on the same installment. If the payment date of each wholly unpaid installment, on which no interest for default has been collected is deferred as of an installment date for one or more full months and the maturity of the contract is extended for a corresponding period of time, the lender may charge and collect additional interest for such deferment. The interest for such deferment may be equal to the difference between the refund which would be required for prepayment in full as of the date of deferment and the refund which would be required for prepayment in full as of one month prior to such date multiplied by the number of months in the deferment period as defined below. The portion of the interest contracted for under Section (1) of this Article applicable to each deferred balance and installment period following a deferment period shall remain the same as that applicable to such balance and period under the original contract of loan. If a loan is prepaid in full during the deferment period defined below, the borrower shall receive, in addition to the refund required under Section (6) [4] of this Article, a pro-rata refund of that portion of the interest for deferment applicable to any unexpired full month or months of such period. The deferment period is that period beginning with the day following the due date of the scheduled installment preceding the first installment being deferred, and during which no payment is made or required by reason of such deferment. The interest for default or interest for deferment may be collected at the time of its accrual, or at any time thereafter.

“(6)(i) [4] When any loan contract payable in not more than sixty substantially equal successive monthly installments beginning within one month plus fifteen days after the date of the contract and containing precomputed interest is prepaid in full by cash, a new loan, renewal, or otherwise, or when the lender demands payment in full of the unpaid balance, after the first installment due date but before the final installment due date, the lender shall refund or credit the borrower with an amount which shall be as great a proportion of the total interest contracted for under Section (1) of this Article as the sum of the periodic balances scheduled to follow the installment date after the date of prepayment in full or demand for payment in full bears to the sum of all the periodic time balances under the schedule of payments set out in the loan contract. If such prepayment in full or demand for payment in full occurs before the first installment due date the lender shall retain for each elapsed day from date the loan was made, one-thirtieth of the portion of the interest which could be retained if the first installment period were one month and the loan were prepaid in full on the first installment period due date and the interest contracted for under Section (1) of this Article in excess of such amount shall be refunded or credited to the borrower.

“(ii) When any loan contract which includes precomputed interest and is payable in more than sixty substantially equal successive monthly installments beginning within one month plus fifteen days after the date of the contract is prepaid in full by cash, a new loan, renewal, or otherwise, or if the lender demands payment in full of the unpaid balance before the final installment due date, the lender shall retain earned interest for the period from the date of the loan to the date of prepayment in full or demand for payment in full in an amount not to exceed that which would accrue at the simple annual interest rate which the loan contract would have produced over its full term if each scheduled payment had been paid on the date due when applied to the unpaid principal amounts determined to be outstanding from time to time according to the schedule of

payments having due regard for the amount of each scheduled installment and the time of each scheduled installment period. In the event prepayment in full or demand for payment in full occurs on a date during an installment period, the lender, in addition to interest earnings for the installment period or periods that have elapsed, may retain for each day elapsed from the immediately preceding installment due date to the date of prepayment in full or demand for payment in full an interest charge produced by applying the simple annual interest rate under the contract as heretofore described to the unpaid principal balance of the loan determined to be outstanding according to the schedule of payments as of the immediately preceding installment due date and dividing that product by three hundred sixty-five. All interest contracted for and precomputed in the amount of loan in excess of the interest authorized to be retained by this subsection shall be refunded or credited to the borrower.

"The lender may also retain earned interest on any additions to principal or other permissible charges added to the loan subsequent to the date of the loan contract, at the simple annual interest rate as described above, from the date such additions are made until paid or until demand for payment in full of the total unpaid balance under the loan contract is made by the lender.

"If the loan contract does not contain precomputed interest, then interest may be earned on the principal balance, including additions to principal subsequent to the loan contract, from time to time unpaid, at the rate contracted for, until the date of payment in full or demand for payment in full.

"(iii) No refund shall be required for partial prepayments and no refund of less than One Dollar need be made.

"(7) [(5)] In addition to the authorized charges provided in this Chapter no further or other charge or amount whatsoever shall be directly, or indirectly, charged, contracted for, or received. This includes (but is not limited by) all charges such as fees, compensation, bonuses, commissions, brokerage, discounts, expenses and every other charge of any nature whatsoever, whether of the types listed herein or not. Without limitation of the foregoing, such charges may be any form of costs or compensation whether contracted for or not, received by the lender, or any other person, in connection with (a) the investigating, arranging, negotiation, procuring, guaranteeing, making, servicing, collecting or enforcing of a loan; or (b) for the forbearance of money, credit, goods or things in action; or (c) for any other service or services performed or offered. A secondary mortgage loan lender or an assignee of a secondary mortgage loan may collect on or before the closing of a loan, or include in the principal of the secondary mortgage loan, the following:

"(A) reasonable fees for title examination and preparation of an abstract of title by an attorney not an employee of the lender, or a title company or property search company authorized to do business in this State; or premiums or fees for title insurance or title search for the benefit of the mortgagee, and, at mortgagor's option, title insurance or title search for the benefit of the mortgagor;

"(B) reasonable fees charged to the lender by an attorney, provided the attorney is not a salaried employee of the lender, for preparation of the loan documents in connection with the mortgage loan, if the fees are evidenced by a statement for services rendered addressed to the lender;

"(C) charges prescribed by law that are or will be paid to public officials for determining the existence of and for perfecting, releasing, and satisfying a security interest;

"(D) reasonable fees for an appraisal of real property offered as security for the loan prepared by a certified appraiser who is not an employee of the lender;

"(E) reasonable cost of any credit report;

"(F) reasonable fees for a survey of real property offered as security for the loan prepared by a registered surveyor who is not a salaried employee of the lender; and

"(G) the premiums received in connection with the sale of credit life insurance, credit accident and health insurance, and mortgage guaranty insurance, the benefits of which go in whole or in part to reduce or extinguish the loan balance. Premiums for property insurance written in conformity with Section (2) of Article 5.03 of this Title may be added to the loan contract.

"In addition, the contract for a secondary mortgage loan may provide for:

"(A) reasonable fees or charges paid to the trustee in connection with a deed of trust or similar instrument executed in connection with the secondary mortgage loan, including but not limited to fees for enforcing the lien, posting for sale, selling, or releasing the property secured by the deed of trust;

"(B) reasonable fees paid to an attorney who is not an employee of the creditor in the collection of a delinquent secondary mortgage loan and any court costs and fees incurred in the collection of, or foreclosure of, any lien created by the loan;

"(C) a fee of Fifteen Dollars or less for the return by a depository institution of a dishonored check, negotiable order of withdrawal, or share draft offered in full or partial payment of a

secondary mortgage loan. [However, the prohibition set out herein shall not apply to amounts actually incurred by a lender as:

- “(i) court costs;
 - “(ii) attorney’s fees assessed by a court;
 - “(iii) lawful fees paid to any public office for filing, recording, or releasing any instrument securing a loan;
 - “(iv) the reasonable cost expended for repossessing, storing, preparing for sale, or selling any security;
 - “(v) the premiums or identifiable charge received in connection with the sale of insurance authorized under this Chapter including a premium or charge for title insurance;
 - “(vi) an attorney’s reasonable fee for title examination and opinion not in excess of the charge or premium set by the State Board of Insurance for title insurance for such a transaction; or
 - “(vii) the reasonable and necessary charges paid to persons not salaried employees of the lender for: appraisal and inspection of collateral; investigation of the credit standing or credit worthiness of the borrower; legal fees to an attorney for the preparation of documents in connection with the transaction; or official fees for construction permits.
- “(6) As an alternative to the rate provided by Section (1) of this Article, the parties may agree to any rate not exceeding a rate authorized by Article 1.04 of this Title.]”

SECTION 4. Sections (2) and (6), Article 5.03, Title 79, Revised Statutes (Article 5069-5.03, Vernon’s Texas Civil Statutes), are amended to read as follows:

“(2) A creditor may request or require the borrower to provide property insurance as security against reasonable risks of loss, damage, and destruction. The amount and terms of the insurance must be reasonable in relation to the amount and terms of the total indebtedness and the value of the security. However, a creditor may not require the purchase of duplicate property insurance if the creditor has knowledge that the borrower has valid and collectible insurance covering the property and has provided a loss payable endorsement sufficient to protect the creditor. A creditor may rely, for this knowledge, on a written consent to purchase insurance in which the borrower is given the opportunity to disclose the existence of other coverage. Insurance authorized under this Section shall be obtained from an insurance company authorized to do business in this State. [On any loan having a cash advance of Three Hundred Dollars or more, a lender may, in addition, request or require a borrower to insure property offered as security for a loan. Such insurance and the premiums or charges thereon shall bear a reasonable relationship to the amount, term and conditions of the loan, the value of the collateral, the existing hazards or risk of loss, damage or destruction, and shall not provide for unusual or exceptional risks or coverages which are not ordinarily included in policies issued to the general public.]”

“(6) If a borrower is obligated under the terms of a loan contract to obtain or maintain required insurance coverages and fails to do so or requests the lender to procure that insurance, the lender may procure substitute insurance, which coverage is substantially equivalent to or more limited than that originally required, in accordance with Sections (4) and (5) of this Article. The lender may add the premium advanced by the lender for that insurance to the unpaid balance of the loan contract and may charge interest on that amount from the time of its addition to the unpaid balance of the loan contract until it is paid at a rate not in excess of the rate that the loan contract would produce over its full term if each scheduled payment were paid on the date due. If any [the] insurance for which a charge is included in or added to the loan contract is cancelled, adjusted or terminated for any reason, the refund for unearned insurance premiums received by the lender shall be credited, except to the extent applied to the purchase by the lender of similar insurance, to any amounts then unpaid on the account and the balance shall be promptly refunded to the borrower; provided, however, that no cash refund shall be required if the amount thereof is less than One Dollar.”

SECTION 5. Section (4), Article 5.04, Title 79, Revised Statutes (Article 5069-5.04, Vernon’s Texas Civil Statutes), is amended to read as follows:

“(4) When a loan is repaid in full, or an open-end account is terminated according to the terms of the contract, the lender shall cancel and return to the borrower, within a reasonable time, any note, assignment, security agreement, mortgage, deed of trust, or other instrument representing or securing such loan which no longer secures any indebtedness of the borrower to the licensee.”

SECTION 6. Section (3), Article 5.05, Title 79, Revised Statutes, as amended (Article 5069-5.05, Vernon’s Texas Civil Statutes), is amended to read as follows:

“(3) Except in the case of an open-end account, no [No] lender shall take any promise to pay or loan obligation that does not disclose the amount financed and the schedule of payments.”

SECTION 7. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on May 15, 1985, by the following vote: Yeas 31, Nays 0; passed the House on May 24, 1985, by a non-record vote.

Approved: June 14, 1985

Effective: August 26, 1985