

FINANCE CODE

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

SUBTITLE A. INTEREST

CHAPTER 306. COMMERCIAL TRANSACTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 306.001. DEFINITIONS. In this chapter:

(1) "Account purchase transaction" means an agreement under which a person engaged in a commercial enterprise sells accounts, instruments, documents, or chattel paper subject to this subtitle at a discount, regardless of whether the person has a repurchase obligation related to the transaction.

(2) "Affiliate of an obligor" means a person who directly or indirectly, or through one or more intermediaries or other entities, owns an interest in, controls, is controlled by, or is under common control with the obligor, or a person in which the obligor directly or indirectly, or through one or more intermediaries or other entities, owns an interest. In this subdivision "control" means the possession, directly or indirectly, or with one or more other persons, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(3) "Asset-backed securities" means debt obligations or certificates of beneficial ownership that:

(A) are a part of a single issue or single series of securities in an aggregate of \$1 million or more and issuable in one or more classes;

(B) are secured by a pledge of, or represent an undivided ownership interest in:

(i) one or more fixed or revolving financial assets that by their terms convert into cash within a definite period; and

(ii) rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders; and

(C) are issued for a business, commercial, agricultural, investment, or similar purpose by a pass-through entity.

(4) "Business entity" means a partnership, corporation, joint venture, limited liability company, or other business organization or business association, however organized.

(5) "Commercial loan" means a loan that is made primarily for business, commercial, investment, agricultural, or similar purposes. The term does not include a loan made primarily for personal, family, or household use.

(6) "Guaranty" means an agreement under which a person:

(A) assumes, guarantees, or otherwise becomes primarily or contingently liable for the payment or performance of an obligation of another person;

(B) provides security, by creation of a lien or security interest or otherwise, for the payment or performance of an obligation of another person; or

(C) agrees to purchase or to advance consideration to purchase an obligation of another person or property that is security for the payment or performance of the obligation.

(7) "Pass-through entity" means a business entity, association, grantor or common-law trust under state law, or segregated pool of assets under federal tax law that, on the date of original issuance of asset-backed securities, does not have significant assets other than:

(A) assets pledged to or held for the benefit of holders of the asset-backed securities; or

(B) assets pledged to or held for the benefit of holders of other asset-backed securities previously issued.

(8) "Prepayment premium" means compensation paid by or that is or will become due from an obligor to a creditor solely as a result or condition of the payment or maturity of all or a portion of the principal amount of a loan before its stated maturity or a regularly scheduled date of payment, as a result of the obligor's election to pay all or a portion of the principal amount before its

stated maturity or a regularly scheduled date of payment.

(9) "Qualified commercial loan":

(A) means:

(i) a commercial loan in which one or more persons as part of the same transaction lends, advances, borrows, or receives, or is obligated to lend or advance or entitled to borrow or receive, money or credit with an aggregate value of:

(a) \$3 million or more if the commercial loan is secured by real property; or

(b) \$250,000 or more if the commercial loan is not secured by real property and, if the aggregate value of the commercial loan is less than \$500,000, the loan documents contain a written certification from the borrower that:

(1) the borrower has been advised by the lender to seek the advice of an attorney and an accountant in connection with the commercial loan; and

(2) the borrower has had the opportunity to seek the advice of an attorney and accountant of the borrower's choice in connection with the commercial loan; and

(ii) a renewal or extension of a commercial loan described by Subparagraph (i), regardless of the principal amount of the loan at the time of the renewal or extension; and

(B) does not include a commercial loan made for the purpose of financing a business licensed by the Texas Department of Motor Vehicles under Section [2301.251\(a\)](#), Occupations Code.

Added by Acts 1999, 76th Leg., ch. 62, Sec. 7.18(a), eff. Sept. 1, 1999. Amended by Acts 1999, 76th Leg., ch. 531, Sec. 2, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 994, Sec. 2, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.772, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1018 (H.B. [955](#)), Sec. 2.08, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 933 (H.B. [3097](#)), Sec. 3D.01, eff. September 1, 2009.

Acts 2021, 87th Leg., R.S., Ch. 276 (H.B. [3514](#)), Sec. 1, eff. September 1, 2021.

Sec. 306.002. INTEREST; APPLICATION OF OTHER PROVISIONS OF SUBTITLE. (a) A creditor may contract for, charge, and receive from an obligor on a commercial loan a rate or amount of interest that does not exceed the applicable ceilings computed in accordance with Chapter 303.

(b) All other applicable provisions, remedies, and penalties of this subtitle apply to a commercial loan unless this chapter expressly provides otherwise.

(c) The provisions of this chapter providing authorizations with respect to certain transactions do not affect or negatively impact any rules of law applicable either to other transactions subject to this chapter or to any transactions not subject to this chapter.

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

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 973 (H.B. 1979), Sec. 1, eff. September 1, 2013.

Sec. 306.003. COMPUTATION OF LOAN TERMS. (a) In addition to any other method otherwise permitted under this title, a creditor and an obligor may agree to compute an annual interest rate on a commercial loan on a 365/360 basis or a 366/360 basis, as applicable, determined by applying the ratio of the percentage annual interest rate agreed to by the parties over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. A creditor and an obligor may also agree to compute the term and rate of a commercial loan based on a 360-day year consisting of 12 30-day months. Each interest rate ceiling under Chapters 302 and 303 expressed as a rate per year may mean a rate per year computed in accordance with this section.

(b) A creditor and an obligor may agree that one or more payments of interest due or that are scheduled to be due with respect to a commercial loan may be paid on a periodic basis when due wholly or partly by adding to the principal balance of the loan

the amount of unpaid interest due or scheduled to be due, regardless of whether the interest added to the principal balance is evidenced by an existing or a separate promissory note or other agreement. On and after the date an amount of interest is added to the principal balance under this subsection, that amount no longer constitutes interest, but instead constitutes part of the principal for purposes of calculating the maximum lawful rate or amount of interest on the loan.

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

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 973 (H.B. 1979), Sec. 2, eff. September 1, 2013.

Sec. 306.004. DETERMINING RATES OF INTEREST BY SPREADING.

(a) To determine whether a commercial loan is usurious, the interest rate is computed by amortizing or spreading, using the actuarial method during the stated term of the loan, all interest at any time contracted for, charged, or received in connection with the loan.

(b) If a commercial loan is paid in full before the end of the stated term of the loan and the amount of interest received for the period that the loan exists exceeds the amount that produces the maximum rate authorized by law for that period, the lender shall:

(1) refund the amount of the excess to the borrower;
or

(2) credit the amount of the excess against amounts owing under the loan.

(c) A lender who complies with Subsection (b) is not subject to any of the penalties provided by law for contracting for, charging, or receiving interest in excess of the maximum rate authorized.

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

Sec. 306.005. PREPAYMENT PREMIUMS AND SIMILAR AMOUNTS.

With respect to a loan subject to this chapter, a creditor and an

obligor may agree to a prepayment premium, make-whole premium, or similar fee or charge, whether payable in the event of voluntary prepayment, involuntary prepayment, acceleration of maturity, or other cause that involves premature termination of the loan, and those amounts do not constitute interest.

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. 2.12, eff. September 1, 2005.

Sec. 306.006. CERTAIN AUTHORIZED CHARGES ON COMMERCIAL LOANS. In addition to the interest authorized by this chapter, the parties to a commercial loan may agree and stipulate for:

(1) a delinquency charge on the amount of any installment or other amount in default for a period of not less than 10 days in an amount not to exceed five percent of the total amount of the installment; and

(2) a returned check fee in an amount that does not exceed the maximum fee authorized in Section 3.506, Business & Commerce Code, on any check, draft, order, or other instrument or form of remittance that is returned unpaid or dishonored for any reason.

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. 2.13, eff. September 1, 2005.

Sec. 306.007. GUARANTY, ASSUMPTION, PAYMENT, OR OTHER AGREEMENT. With respect to a commercial loan, an obligor may be required to assume, pay, or provide a guaranty of another person's existing or future obligation as a condition of the obligor's own use, forbearance, or detention of money. The amount of the other person's obligation required to be assumed, paid, or guaranteed does not constitute interest with respect to any obligation of the obligor.

Added by Acts 2005, 79th Leg., Ch. 1018 (H.B. [955](#)), Sec. 2.14, eff. September 1, 2005.

SUBCHAPTER B. PROVISIONS RELATING TO SPECIFIC TYPES OF COMMERCIAL
LOANS OR TRANSACTIONS

Sec. 306.101. QUALIFIED COMMERCIAL LOAN. (a) The parties to a qualified commercial loan agreement may contract for a rate or amount of interest that does not exceed the applicable rate ceiling.

(b) The parties to a qualified commercial loan agreement may contract for the following charges:

(1) a discount or commission that an obligor has paid or agreed to pay to one or more underwriters of securities issued by the obligor;

(2) an option or right to exchange, redeem, or convert all or a portion of the principal amount of the loan, or interest on the principal amount, for or into capital stock or other equity securities of an obligor or of an affiliate of an obligor;

(3) an option or right to purchase capital stock or other equity securities of an obligor or of an affiliate of an obligor;

(4) an option or other right created by contract, conveyance, or otherwise, to participate in or own a share of the income, revenues, production, or profits:

(A) of an obligor or of an affiliate of an obligor;

(B) of any segment of the business or operations of an obligor or of an affiliate of an obligor; or

(C) derived or to be derived from ownership rights of an obligor or of an affiliate of an obligor in property, including any proceeds of the sale or other disposition of ownership rights; or

(5) compensation realized as a result of the receipt, exercise, sale, or other disposition of an option or other right described by this subsection.

(c) A charge under Subsection (b) is not interest.

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

Sec. 306.102. ASSET-BACKED SECURITIES TRANSACTION. An amount that is paid, passed through, or obligated to be paid or to be passed through in connection with asset-backed securities or that is not paid as a result of a discounted sale price to the holders of asset-backed securities by a pass-through entity is not interest. This section does not affect interest that is agreed on and fixed by the parties to a written contract and paid, charged, or received on the ultimate underlying assets pledged to or held for the benefit of holders of asset-backed securities.

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

Sec. 306.103. ACCOUNT PURCHASE TRANSACTION. (a) An amount of a discount in, or charged under, an account purchase transaction is not interest.

(b) For the purposes of this chapter, the parties' characterization of an account purchase transaction as a purchase is conclusive that the account purchase transaction is not a transaction for the use, forbearance, or detention of money.

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