

Office of Consumer Credit Commissioner

Address: 2601 North Lamar Boulevard
Austin, TX 78705-4207

Telephone: (512) 479-1280

FAX: (512) 479-1293

Internet and email addresses not available at this time.

Agency mission

The mission of the Office of Consumer Credit Commissioner is to regulate the credit industry and educate consumers and creditors, thereby producing a fair, lawful and healthy credit environment for social and economic prosperity in Texas.

Description of Agency Services and Responsibilities

The Office of Consumer Credit Commissioner (OCCC) was established by article 5069-2.02, VERNON'S TEXAS CIVIL STATUTES, effective October 1, 1967, to regulate consumer credit lenders and practices. The agency is the successor to the Office of Regulatory Loan Commissioner. The 68th Legislature, as a result of the sunset review process, recreated the Office of Consumer Credit Commissioner until September 1, 1995; the 72nd Legislature amended the sunset date to September 1, 2001, at which time it will again be subject to review. The consumer credit commissioner is appointed by the Finance Commission of Texas and serves at the pleasure of that commission.

HISTORY

Usury and rate regulation has been a concern to society since biblical times. So it's no surprise Texas has a long history of attempting to influence the unique nature of money and the people who have the influence to control it. The Republic of Texas adopted an Act to Regulate Interest in 1840. This law structured a basic maximum interest rate of 12%. After the Civil War, Texas abolished the 1840 act in adopting the 1869 constitution. That action removed all rate regulation and



money lenders were active in Texas. In 1876, Texas again restored interest and usury provisions in the constitution under art. XVI, section 11. The Legislature was required in the 1876 constitution to provide appropriate pains and penalties to prevent and punish usury at its first session. The 1876 constitutional and legislative definition of interest, after being somewhat refined in 1879, is the same definition of interest as today's statute.

Texas reduced the maximum interest rate to 10% in 1891. The demand for small loan lenders began to increase and the "loan shark" business, as it was called, began to emerge. Small unsecured loans were made to poor and needy borrowers which were masked in exorbitant fees and charges. These poor and needy citizens were abused by these predatory practices for several decades and by the early 1950s Texas, which was known as "the loan shark state,"² greatly needed consumer credit regulation. The State Bar of Texas responded by requesting the Legislature enact a law which would punish violations and establish a supervisory agency to license lenders. Reflecting public sentiment, the State Bar of Texas also demanded that the law "fix a maximum charge for loans that will be fair to both borrower and lender and which will be impervious to subterfuge and evasive device."³ However, the challenge was ignored and during the decade from 1951 to 1961 many of Texas' consumer lenders operated under what was commonly called the Certificate Plan [art. 1524a-1, V.A.T.S. (now repealed)].

Another class of lenders emerged and operated as "brokers," charging a fee for "guaranteeing" unsecured loans made by a third party to the loan applicant. These brokers relied on the legal principle which held that broker's fees supported by separate and independent consideration did not constitute interest. Typically, the rates on these loans were far greater than the rates charged by the small loan lenders.⁴

In 1958, the Texas Legislative Council reported to the Legislature that, "Small loans are the most expensive of all types of loans to make and service."⁵ That council recommended Texas enact a small loan law, citing three primary abuses of borrowers: excessive charges, pyramiding of loans, and harassment of borrowers in collection practices. Finally in 1960, art. XVI, sec. 11, of the Texas Constitution was amended to authorize the Legislature to classify loans and lenders, license and regulate lenders, define interest, and set maximum rates of interest. This amendment led to the enactment of the *Texas Regulatory Loan Act* in 1963, the first statutory regulation of consumer credit in the history of our state. On August 23, 1963, the Office of Regulatory Loan Commissioner was established under the authority of the *Texas Regulatory Loan Act* and had the responsibility for the regulation of two types of consumer loans under \$1,500. This regulation was very narrow and did not address problems which occurred in loan transactions that exceeded \$1,500. Additionally the lending industry was aggressively seeking expansion of the maximum limits in order to obtain a greater rate of interest on these loans.

In response, Governor John Connally requested research concerning regulation of consumer loans above \$1,500 and sales finance contracts in 1966. The Finance Commission of Texas conducted a series of public hearings and formulated recommendations for a comprehensive body of laws governing consumer credit transactions. The research and recommendations resulted in the enactment of the *Texas Credit Code* by the Texas Legislature in 1967, which changed the name of



the agency to Office of Consumer Credit Commissioner.

The legislation in 1967 that created the agency contained the following declaration of legislative intent:

The Legislature finds as facts and determines:

(1) Many citizens of our State are being victimized and abused in various types of credit and cash transactions. These practices impose a great hardship upon the people of our State.

(2) Credit in its various forms is one of the most essential and vital elements of our economy. It can be truly said that credit affects every citizen every day. Credit transactions in our State amount to many billions of dollars per year.

(3) Credit abuses now existing in our State stem from the fact that many types of credit transactions are not now subject to effective public regulation and control and the penalties imposed for usury do not provide effective or workable safeguards in this vital area of economic activity.

(4) Such abuses are especially prevalent in the area of consumer transactions both cash and credit. Unscrupulous operators, lenders and vendors, many of whom are transient to our State, are presently engaged in many abusive and deceptive practices in the conduct of their businesses. These unregulated practices bring great social and economic hardship to many citizens of our State. They impose intolerable burdens on those segments of our society which can least afford to bear them — the uneducated, the unsophisticated, the poor and the elderly.

(5) These facts conclusively indicate a need for a comprehensive code of legislation to clearly define interest and usury, to classify and regulate loans and lenders, to regulate credit sales and services, and place limitations on charges imposed in connection with such sales and services, to provide for consumer education and debt counseling, to prohibit deceptive trade practices in all types of consumer transactions, and to provide firm and effective penalties for usury and other prohibited practices.

(6) It is the intent of the Legislature in enacting this revision of Title 79 of the Revised Civil Statutes of Texas, 1925, to protect the citizens of Texas from abusive and deceptive practices now being perpetrated by unscrupulous operators, lenders and vendors in both cash and credit consumer transactions and to implement the mandate of Section II [sic] of Article XVI of the Constitution of Texas which authorizes the Legislature to classify loans and lenders, license and regulate lenders, define interest and fix maximum rates of interest, and thus serve the public interest of the people of this State.

Acts 1967, 60th Leg., p. 608, ch. 274, sec. 1, eff. Oct. 1, 1967.



RESPONSIBILITIES

The *Texas Credit Code*, as it is commonly called, is found in VERNON'S TEXAS CIVIL STATUTES, art. 5069. The provisions of art. 5069 mandate various responsibilities of the consumer credit commissioner. Article 2.02A(1), V.T.C.S., provides that the consumer credit commissioner will enforce the provisions of chapters 2-9 and 15 of art. 5069. The consumer credit commissioner is required by arts. 1.04 and 1.05 to compute and publish in the *Texas Register* the various interest rate ceilings provided for in those articles. It is further required in art. 2.08 the commissioner annually compute and publish certain brackets and ceilings which affect the computation of finance charges on certain types of transactions. Article 2.02A(10) provides that the commissioner, with approval by the Finance Commission of Texas, may issue interpretations of Title 79 (*Texas Credit Code*).

From its creation to today, the primary responsibility of the Office of Consumer Credit Commissioner is to protect citizens of the state by ensuring that the various laws regulating and restricting credit transactions are adhered to by the rapidly growing credit-granting industry. The Office of Consumer Credit Commissioner currently regulates a multi-billion dollar industry. This industry is large and varied, ranging from small, independent consumer loan offices to multi-location motor vehicle creditors, to pawnshops. The agency recognizes the need for a healthy credit environment and to that end seeks to achieve a balance between the protection of citizens who need credit and the profitable operation for the various types of lenders in Texas. Our state will ultimately suffer if its citizenry is saddled with onerous interest payments, but our state will also suffer if financial institutions leave our state as a result of not being able to operate profitably.

Specifically, the agency licenses and examines consumer loan offices and pawnshops. The employees of pawnshops are also required to be licensed, and, sellers and creditors who finance retail sales of consumer goods and services, manufactured homes, and motor vehicles are required to register with the agency. Oversight of registered creditors is currently limited to investigations of complaints. Enforcement activities and investigations stemming from complaints or irregularities frequently result in the return of unlawful charges to consumers.

The agency strives to provide information and problem resolutions to all members of the general public regardless of the scope of authority of the request as long as the agency is capable of providing accurate, complete information. The agency also expends considerable effort mediating disputes between consumers and creditors. The swift, fair resolution of these disputes results in general satisfaction to both parties and serves the people of Texas by reducing the need for costly, lengthy litigation.

While the agency does not regulate banks or savings and loan institutions, an integral segment of our service to the industry is to provide assistance and advice to them and their legal representatives. This assistance benefits the consumer by enabling industry members to construct transactions that comply with the *Texas Credit Code*.



Licensed consumer loan companies make about \$2.5 billion in loans comprised of over 4.5 million transactions to Texans each year. No statutory requirements exist for reporting loan volume statistics for pawnshops. Thus, the OCCC can only estimate the impact of this segment of licensed activity. To that end, the agency has been gathering samples of pawn data as part of each examination to more accurately estimate Texas pawn loan volume. The estimates from this data suggest licensed pawnshops make approximately nine million transactions a year for a total loan volume in excess of \$500 million. A strong, effective regulatory program is necessary for protection of the general public who become obligated on these loans and to ensure fair, competitive industry practices.

The Office of Consumer Credit Commissioner is also directed by art. 9.01(2) to “... provide advice, assistance and counsel to coordinate, encourage, aid and assist public and private agencies, organizations and groups and consumer credit institutions in the development and operation of voluntary education programs designed to promote the prudent and beneficial use of consumer credit by the citizens of this State.” It is unrealistic to think that the agency can protect the consumer solely through examination and licensing in such a fast growing industry. Consequently, the agency’s education program is a critical component of the agency’s mission. Educational development of agency staff and lenders is also critical to maintaining a positive and effective regulatory environment.

Agency leadership

Leslie L. Pettijohn, Commissioner

Finance Commission Members	End of Term	Hometown
W. D. Hilton, Jr.	February 1, 2002	Greenville
Jeff Austin, Jr.	February 1, 2000	Jacksonville
James T. Chambers	February 1, 1998	Stephenville
Kay Glover	February 1, 2000	Austin
Steven C. Hastings	February 1, 2000	Southlake
Alfred (Chip) Johnson	February 1, 1998	Dallas
Marlene Martin	February 1, 2002	San Antonio
Manuel J. Mehos	February 1, 2002	Houston
Victor (Buddy) Puente, Jr.	February 1, 1998	Pantego

Total FTEs (as of June 1996)

31



Organizational Aspects

PERSONNEL

The Office of Consumer Credit Commissioner staff requirements demands a full-time staff of 32 employees, 21 of whom are designated as headquarters staff located in the State Finance Commission Building at 2601 North Lamar Boulevard in Austin. The field examination staff is comprised of 11 employees stationed in Houston, Dallas and San Antonio. Of these positions, four are classified under the *State Classification Act* and the remaining positions are established as exempt under the Finance Commission Salary Administration Plan provided for by the *Texas Credit Code* [art. 5069-2.02(7)]. The agency has implemented a detailed affirmative action recruitment plan and continues to strive to achieve the percentage goals as set out in art. IX, sec. 108 of H.B. 1 (74th Legislature, Regular Session). The average tenure for Office of Consumer Credit Commissioner employees is 5.8 years. Even though the average tenure has declined since the last biennium, the stable, seasoned staff is knowledgeable and experienced in the areas that impact the credit consumer. Retirement of some of our more experienced staff over the last six years has resulted in a decrease in the average tenure of employees. The field examination staff's average tenure is 5.1 years. While this level may be low compared to the agency's prior history, the examination staff is well developed and continued training and education remains a high priority. Two members of the staff have been with the agency for more than 25 years.

OVERSIGHT

The Finance Commission of Texas is the supervisory and oversight commission for the OCCC. This commission consists of a nine member board appointed by the governor with members serving six-year staggered terms. The Finance Commission of Texas also supervises the Department of Banking and the Savings and Loan Department.

FUNCTIONAL DIVISIONS OF AGENCY

The primary functions of the agency are divided into four general areas:

- **Licensing and Registration**
- **Consumer Protection**
- **Consumer Assistance**
- **Credit Education**

Licensing and Registration

The licensing and registration section handles all application and registration processing. Three types of license applications are processed and issued:

- Regulated Loan Licenses**
- Pawnshop Licenses**
- Pawnshop Employee Licenses**

This section handles many new, transfer and renewal applications every year. Continual emphasis is placed upon improving the procedures and timing of application processing. A particular innovation which has enhanced the efficiency of renewal processing has been the incorporation of bar



coding into renewal processing. This section also registers the creditors who finance the sales of their goods and services.

Consumer Protection

The consumer protection section examines licensed lenders and investigates retail creditors. In order to cover the 262,017 square miles of Texas efficiently, examiners are strategically stationed in areas of higher concentration of licensed lenders. Travel is required approximately 50% of the time in order to reach the more remote and sparsely located lenders. Although the number of licensees has consistently grown at a rapid rate, restrictions on appropriations have seriously hampered the agency's ability to schedule and perform thorough examinations and investigations in a prudent, effective, and efficient manner. Consequently examiners traveling on overnight trips has declined to between 35-40% and day trips have increased. While this has reduced overall hard travel costs, it has resulted in decreased efficiency and increased staff time.

As mentioned, the number of licenses and volume of consumer credit business have increased steadily over the past few years, but agency funding and staffing have not kept pace. Until 1978, the agency examined 100% of licensees annually. Now, only about 48% of licensees, up from 40% in 1993-95, are examined annually. The time between examinations has been increasing, perhaps diminishing the perception of the agency's regulatory presence within the industry.

Consumer Assistance

The consumer assistance section responds to consumers' pleas for help, intervention and information. The nucleus of this section's activity generates around the toll-free consumer helpline. Since installation in 1992, call volume has rocketed to the current level of roughly 4,000 calls each month. Consumers become aware of the helpline due to the fact that all credit contracts subject to the agency's jurisdiction have a notice providing the number. Most complaints are resolved on the telephone the same day as received. Swift, accurate resolution of these complaints assists consumers and creditors in an efficient, cost-effective forum.

Credit Education

A high priority area continues to be the education program addressing the needs of Texas' credit consumers. The consumer education section identifies consumer needs and determines appropriate delivery mechanisms. The approach is to increase awareness in consumer credit issues and has the potential to grow enormously, significantly impacting Texans' lives and their economic well-being and stability. The largest limiting factor to the expansion of this program is inadequate funding; OCCC actively collaborates with other entities — private, public and non-profit — and seeks grants to support this activity.

The second facet of credit education is the education of creditors. Creditors have been supportive of this concept and have even expressed a desire for the agency to sponsor formal educational training seminars for the industry. The agency regularly addresses creditor groups and uses a combination of internal and external publications to communicate items of an educational nature to creditors. Creditor education programs will be instrumental in maintaining the agency's exposure and presence in the industry.



Current organizational issues

Identify unregistered creditors and achieve compliance with registration requirements. Implement a comprehensive initiative to identify and register retail creditors. Coordinate with other state agencies to obtain information identifying these retail creditors.

ENDNOTES

¹ Exodus 22:25; Leviticus 25:35-37; Deuteronomy 23:19-20; Psalms 15:5; Ezekiel 18:5-17.

² Holman, Dixon, *Consumer Credit Law in Texas*, 1970, p. 11.

³ *The Small Loan Business in Texas*, A Report to the 56th Legislature, by Texas Legislative Council, December, 1958, p. 74.

⁴ The certificate plan allowed corporations to sell investment certificates as a condition of making a loan at 10% interest. The borrower paid for the certificate in monthly installments so that the cost of the certificate was equivalent to the total of the note. The statute construed the transaction such that the conditioned sale was not a loan and the cost associated with the certificate was not interest.

⁵ *The Small Loan Business in Texas Through 1961*, by Texas Legislative Council, pg. 2, 24-25.

⁶ *Ibid.*

Agency Liaison for the Survey of Organizational Excellence

Richard Herman, Chief Accountant, (512) 479-1297

