

FINANCE CODE
TITLE 4. REGULATION OF INTEREST, LOANS,
AND FINANCED TRANSACTIONS
SUBTITLE B. LOANS AND FINANCED TRANSACTIONS
CHAPTER 349. PENALTIES AND LIABILITIES

SUBCHAPTER A. CIVIL PENALTIES

Section 349.001. Liability for Contracting for, Charging, or Receiving Excessive Amount

Section 349.002. Liability for Charges Exceeding Twice Amount Authorized

Section 349.003. Liability for Failure to Perform or for Performance of Prohibited Act

Section 349.004. Liability Related to Criminal Offense

Section 349.005. Liability for Violating Injunction

SUBCHAPTER B. GENERAL LIMITATIONS ON LIABILITY

Section 349.101. No Liability If Violation Unintentional and from Bona Fide Error or If in Conformity with Other Law

Section 349.102. Liability for Multiple Violations in One Transaction

Section 349.103. Limitation on Multiple Recovery of Penalties

SUBCHAPTER C. LIMITING LIABILITY BY CORRECTING VIOLATION

Section 349.201. Correction Resulting in No Liability

Section 349.202. Correction of Violation of Failure to Act or Performing Prohibited Act Resulting in Limited Liability

Section 349.203. Correction of Violation of Charging Excessive Amounts Resulting in Limited Liability

Section 349.204. Giving Written Notice

Section 349.205. Correction Exception Available to All Similarly Situated

SUBCHAPTER D. LIMITING LIABILITY BY LATE REGISTRATION OR LICENSURE

Section 349.301. Payment of Fees

Section 349.302. Late Filing Fee for Registering or Renewal of Registration

Section 349.303. Late Filing Fee for Obtaining or Renewing License

Section 349.304. Effect of Compliance with Subchapter for Registrant or License Holder

Section 349.305. Effect of Compliance with Subchapter on Person Other Than Registrant or License Holder

SUBCHAPTER E. PROCEDURES FOR CIVIL ACTIONS

Section 349.401. Venue

Section 349.402. Limitation Period

Section 349.403. Class Action

Section 349.404. Liability Under Subchapter in Lieu of Liability Under Consumer Credit Protection Act

SUBCHAPTER F. CRIMINAL OFFENSES

Section 349.501. Offense of Charges Exceeding Twice Amount Authorized

Section 349.502. Offense of Engaging in Lending Business Without Proper Authority

Section 349.503. Certain Proceedings in Connection with Sale-Leaseback Transaction

SUBCHAPTER A. CIVIL PENALTIES

Section 349.001. Liability for Contracting for, Charging, or Receiving Excessive Amount

(a) A person who violates this subtitle by contracting for, charging, or receiving interest or time price differential greater than the amount authorized by this subtitle is liable to the obligor for an amount equal to:

(1) twice the amount of the interest or time price differential contracted for, charged, or received; and

(2) reasonable attorney's fees set by the court.

(b) A person who violates this subtitle by contracting for, charging, or receiving a charge, other than interest or time price differential, greater than the amount authorized by this subtitle is liable to the obligor for an amount equal to:

(1) the greater of:

(A) three times the amount computed by subtracting the amount of the charge authorized by this subtitle from the amount of the charge contracted for, charged, or received; or

(B) \$ 2,000 or 20 percent of the amount of the principal balance, whichever is less; and

(2) reasonable attorney's fees set by the court.

Section 349.002. Liability for Charges Exceeding Twice Amount Authorized

(a) A person who violates this subtitle by contracting for, charging, or receiving interest or time price differential that in an aggregate amount exceeds twice the total amount of interest or time price differential authorized by this subtitle is liable to the obligor as an additional penalty for all principal or principal balance, as well as all interest or time price differential.

(b) A person who is liable under Subsection (a) is also liable for reasonable attorney's fees incurred by the obligor in enforcing this section.

Section 349.003. Liability for Failure to Perform or for Performance of Prohibited Act

(a) Except as provided by this subtitle, a person who fails to perform a requirement specifically imposed on the person by this subtitle or who commits an act prohibited by this subtitle is liable to the obligor for an amount that does not exceed an amount computed under one, but not both, of the following:

- (1) three times the actual economic loss to the obligor that results from the violation; or
- (2) if the violation was material and the violation induced the obligor to enter into a transaction that the obligor would not have entered if the violation had not occurred, twice the interest or time price differential contracted for, charged, or received, not to exceed:
 - (A) \$ 2,000 in a transaction in which the amount financed does not exceed \$ 5,000; or
 - (B) \$ 4,000 in a transaction in which the amount financed exceeds \$ 5,000.
- (b) A person who is liable under Subsection (a) is also liable for reasonable attorney's fees set by the court.
- (c) In a judicial proceeding under Subsection (a)(2), the court determines whether the violation is material and the finder of fact determines whether the violation induced the obligor to enter into the transaction.

Section 349.004. Liability Related to Criminal Offense

In addition to other applicable penalties, a person who commits an offense under Section 349.502 is liable to the obligor for an amount equal to:

- (1) the principal of and all charges contracted for or collected on each loan made without the authority required by Chapter 342 or 346; and
- (2) reasonable attorney's fees incurred by the obligor.

Section 349.005. Liability for Violating Injunction

- (a) A person who violates an injunction issued under this subtitle is liable to this state for a civil penalty that does not exceed \$ 1,000 for each violation.
- (b) For purposes of this section, a district court that issues an injunction under this subtitle shall retain jurisdiction, and the cause shall be continued.
- (c) The attorney general may petition the court for recovery of the civil penalty prescribed by this section.

**SUBCHAPTER B.
GENERAL LIMITATIONS ON LIABILITY**

Section 349.101. No Liability If Violation Unintentional and From Bona Fide Error or If in Conformity with Other Law

- (a) A person is not liable under Section 349.001, 349.002, or 349.003 if the person shows by a preponderance of evidence that:
 - (1) the violation:
 - (A) was not intentional; and
 - (B) resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such a violation; or
 - (2) the violation was an act done or omitted in good faith in conformity with:

(A) a rule adopted under, or interpretation of, this title by a state agency, board, or commission;

(B) the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.); or

(C) a rule or regulation adopted under, or interpretation of, the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) by an agency, board, or commission of the United States.

(b) The exception from liability provided by Subsection (a)(2) is not affected by the fact that after the act or omission occurs, the rule, regulation, or interpretation in conformity with which the act was done or omitted is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

Section 349.102. Liability for Multiple Violations in One Transaction

(a) A person who would be liable under Sections 349.001 and 349.003 as a result of the same transaction is liable only for the penalties provided by Section 349.001.

(b) An obligor is entitled to only one recovery for multiple violations of this subtitle that occur in the same transaction.

Section 349.103. Limitation on Multiple Recovery of Penalties

(a) An administrative penalty, fine, settlement, or assurance of voluntary compliance under this title or federal law that is assessed by or agreed to with an administrative agency or the attorney general shall be considered and applied as a bar or credit to recovery of further fines, penalties, or enhanced damages for substantially the same act, practice, or violation in a suit or other proceeding brought by a private litigant under this title, the Business & Commerce Code, or other applicable law of this state. This section does not apply to a claim for restitution for unreimbursed actual damages.

(b) A suit or other proceeding by a private litigant does not affect or restrict any state or federal agency from pursuing a person for any administrative remedy, including an administrative penalty. An administrative agency of this state, however, shall consider as a mitigating factor any relief recovered in a private suit or proceeding when the agency determines an administrative remedy.

SUBCHAPTER C. LIMITING LIABILITY BY CORRECTING VIOLATION

Section 349.201. Correction Resulting in No Liability

(a) A person is not liable to an obligor for a violation of this subtitle if:

(1) not later than the 60th day after the date on which the person actually discovered the violation, the person corrects the violation as to that obligor by:

(A) performing the required act; or

(B) refunding the amount in excess of the amount authorized by law; and

(2) the person gives to the obligor written notice of the violation as provided by Section 349.204 before the obligor:

(A) gives written notice of that violation; or

(B) files an action alleging that violation.

(b) For purposes of Subsection (a), "actually discovered" refers to the time of the discovery of the violation in fact and not to the time when an ordinarily prudent person, through reasonable diligence, could or should have discovered or known as a matter of law or fact 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 actually discovered 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 of the other transactions.

Section 349.202. Correction of Violation of Failure to Act or Performing Prohibited Act Resulting in Limited Liability

(a) Liability to an obligor for a violation of this subtitle to which Section 349.003 applies is limited as provided by this section if, after the 60-day period described by Section 349.201(a)(1) but before the time the obligor gives written notice of that violation or files an action alleging that violation, the violation is corrected as to that obligor by:

(1) the performance of the required act; and

(2) giving to the obligor written notice of the violation as provided by Section 349.204.

(b) The liability of any person for the violation to the obligor as described by Subsection (a) is limited for each transaction to an amount that does not exceed one, but not both, of the following:

(1) the actual economic loss suffered by the obligor as a result of the violation; or

(2) the time price differential or interest contracted for, charged, or received, not to exceed \$ 2,000, if:

(A) the violation was material; and

(B) the violation induced the obligor to enter into a transaction that the obligor would not have entered if the violation had not occurred.

(c) A person who is liable under Subsection (b) is also liable for reasonable attorney's fees set by the court.

(d) In a judicial proceeding under Subsection (b)(2), the court determines whether the violation is material and the finder of fact determines whether the violation induced the obligor to enter into the transaction.

Section 349.203. Correction of Violation of Charging Excessive Amounts Resulting in Limited Liability

(a) This section applies only to a violation of this subtitle to which Section 349.001 applies and that results from:

(1) contracting for, charging, or receiving interest or time price differential that exceeds the amount authorized by law if the excess is directly and solely attributable to and computed on the amount of a charge other than the interest or time price differential; or

(2) contracting for, charging, or receiving a charge, other than interest or time price differential, that exceeds the amount authorized by law.

(b) If, after the 60-day period described by Section 349.201(a)(1) but before the time an obligor gives written notice of the violation or files an action alleging the violation, the violation is corrected as to the obligor by refunding the amount of the excess and giving to the obligor written notice of the violation as provided by Section 349.204, the liability of any person to that obligor is limited for each transaction to an amount that does not exceed:

(1) the time price differential or interest contracted for, charged, or received, not to exceed \$ 2,000; and

(2) reasonable attorney's fees set by the court.

Section 349.204. Giving Written Notice

(a) For purposes of this subchapter, written notice is given to a person by delivering the notice to the person or the person's agent or attorney of record:

(1) in person; or

(2) by United States mail to the address shown on the most recent documents in the transaction.

(b) Deposit of a 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 it is addressed.

Section 349.205. Correction Exception Available to All Similarly Situated

If in a single transaction more than one person may be liable for a violation of this subtitle, compliance with Section 349.201, 349.202, or 349.203 by any of those persons entitles each to the protection provided by that section.

SUBCHAPTER D.

LIMITING LIABILITY BY LATE REGISTRATION OR LICENSURE

Section 349.301. Payment of Fees

A person who registers or obtains or renews a license under this title after the date on which the person was required to register or to obtain or renew the license may limit the person's liability as provided by this subchapter by paying to the commissioner:

(1) all registration or license fees that the person should have paid under this title for prior years; and

(2) except as provided by Section 349.302(a), a late filing fee as provided by this subchapter.

Section 349.302. Late Filing Fee for Registering or Renewal of Registration

(a) A person who renews a registration not later than the 30th day after the date on which the registration expires is not required to pay a late filing fee.

(b) The late filing fee is \$ 250 for:

- (1) registering after the time registration is required under this title; or
- (2) renewal of a registration after the day prescribed by Subsection (a).

Section 349.303. Late Filing Fee for Obtaining or Renewing License

(a) The late filing fee for renewing an expired license is \$ 1,000 if the license:

- (1) was in good standing when it expired; and
- (2) is renewed not later than the 180th day after its expiration date.

(b) The late filing fee is \$ 10,000 for:

- (1) obtaining a license after the time it is required under this title; or
- (2) renewing an expired license to which Subsection (a) does not apply.

Section 349.304. Effect of Compliance with Subchapter for Registrant or License Holder

(a) A person who pays the applicable registration fees and late filing fee as provided by Section 349.301 is considered for all purposes to have had the required registration for the periods for which the registration fees have been paid.

(b) A person who renews an expired license and pays the applicable license fees and, if required, a late filing fee as provided by Section 349.301 is considered for all purposes to have held the required license as if it had not expired.

(c) A person who obtains a license and pays the applicable license fees and the late filing fee under Section 349.301 is considered for all purposes to have held the license for the period during which it was required but only as to a loan on which the person has contracted for, charged, or received interest that does not exceed the amount that would have been allowed for the loan under Chapter 303.

(d) A person who under this section is considered to have been registered or to have held a license is not subject to any liability, forfeiture, or penalty, other than as provided by this subchapter, relating to the person's not having been registered or not holding a license during the period for which the registration or license fees and late filing fee are paid under Section 349.301.

Section 349.305. Effect of Compliance with Subchapter on Person Other Than Registrant or License Holder

A benefit provided to a person under Section 349.304 also applies to that person's employees or other agents, employers, predecessors, successors, and assigns but does not apply to any other person required to be licensed under this title.

**SUBCHAPTER E.
PROCEDURES FOR CIVIL ACTIONS**

Section 349.401. Venue

An action under this chapter must be brought in the county in which:

- (1) the transaction was entered; or
- (2) the defendant resides when the action is filed.

Section 349.402. Limitation Period

(a) Except as provided by Subsection (b), an action under this chapter must be brought before the later of:

- (1) the fourth anniversary of the date of the loan or retail installment transaction with respect to which the violation occurred; or
- (2) the second anniversary of the date on which the violation occurred.

(b) An action under this chapter with respect to an open-end credit transaction must be brought before the second anniversary of the date on which the violation occurred.

Section 349.403. Class Action

(a) In a class action that alleges one or more violations of this subtitle and is determined by the court to be maintainable as a class action, the class may recover the amount of actual damages proximately caused to the members of the class as a result of the violations.

(b) The court may assess as a penalty:

- (1) for each obligor who is named as a class representative at the time that the action is determined to be maintainable as a class action, the amount that could be recovered by the person under this chapter; and
- (2) for other class members, an amount set by the court under Subsection (c) and subject to Subsection (d).

(c) In determining the award amount, the court shall consider, in addition to other relevant factors:

- (1) the amount of any actual damages awarded;
- (2) the frequency and persistence of violations by the creditor;
- (3) the resources of the creditor;

- (4) the number of persons adversely affected; and
 - (5) the extent to which the creditor's violation was intentional or reckless.
- (d) A minimum recovery is not applicable to a class member to whom Subsection (b)(2) applies. The total recovery under Subsection (b)(2) in a class action or series of class actions arising out of the same violation of this subtitle by the same person may not exceed the lesser of \$ 100,000 or five percent of the net worth of the person.
- (e) In a successful action to enforce the liability under this section, the court may award:
- (1) costs of the action; and
 - (2) reasonable attorney's fees set by the court.

Section 349.404. Liability Under Subchapter in Lieu of Liability Under Consumer Credit Protection Act

- (a) A final judgment granting or denying relief under the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) bars a subsequent action under Section 349.001, 349.002, or 349.003 by the same obligor with respect to the same violation.
- (b) If an obligor brings an action under the Consumer Credit Protection Act (15 U.S.C. Section 1601 et seq.) against a person after a final judgment has been rendered under Section 349.001, 349.002, or 349.003 in favor of the obligor against that person with respect to the same violation, that person in the same or an independent action may sue that obligor to recover:
- (1) the amount of the judgment rendered under Section 349.001, 349.002, or 349.003; and
 - (2) reasonable attorney's fees set by the court.

**SUBCHAPTER F.
CRIMINAL OFFENSES**

Section 349.501. Offense of Charges Exceeding Twice Amount Authorized

- (a) A person commits an offense if the person contracts for, charges, or receives interest, time price differential, and other charges that in an aggregate amount exceed twice the total amount of interest, time price differential, and other charges authorized by this subtitle.
- (b) An offense under this section is a misdemeanor punishable by a fine of not more than \$ 100.
- (c) Each contract or transaction that violates Subsection (a) is a separate offense.

Section 349.502. Offense of Engaging in Lending Business Without Proper Authority

(a) A person commits an offense if the person engages in a business that is subject to Chapter 342, 346, or 351 without holding the license or other authorization required under that chapter.

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

(c) Each loan made without the authority required by Chapter 342, 346, or 351 is a separate offense.

Section 349.503. Certain Proceedings in Connection with Sale-Leaseback Transaction

(a) If a buyer in a sale-leaseback transaction requires the seller to provide a check as security for the transaction, the buyer may not file or threaten to file a charge, complaint, or criminal prosecution under Section 31.03, 31.04, or 32.41, Penal Code, based on nonpayment of the check.

(b) A buyer who violates Subsection (a) commits an offense. An offense under this section is a misdemeanor punishable by a fine of not more than \$ 1,000.