



# The Attorney General of Texas

May 3, 1979

**MARK WHITE**  
Attorney General

Supreme Court Building  
P.O. Box 12548  
Austin, TX. 78711  
512/475-2501

701 Commerce, Suite 200  
Dallas, TX. 75202  
214/742-8944

4824 Alberta Ave., Suite 160  
El Paso, TX. 79905  
915/533-3484

723 Main, Suite 610  
Houston, TX. 77002  
713/228-0701

806 Broadway, Suite 312  
Lubbock, TX. 79401  
806/747-5238

4313 N. Tenth, Suite F  
McAllen, TX. 78501  
512/682-4547

200 Main Plaza, Suite 400  
San Antonio, TX. 78205  
512/225-4191

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Honorable Jerry (Nub) Donaldson  
Chairman  
House Committee on Financial  
Institutions  
State Capitol  
Austin, Texas

Opinion No. MW-17

Re: Whether House Bill 1212 is  
constitutional.

Dear Representative Donaldson:

You have asked if House Bill 1212 is constitutional. The bill would amend article 5069-L.02, V.T.C.S., to provide, in pertinent part:

**Art. L.02. MAXIMUM RATES OF INTEREST. (a)**  
Except as otherwise fixed by law, the maximum rate of interest is:

(1) one percent more than the discount rate on 90-day commercial paper in effect on the day the loan is made at the federal reserve bank in the federal reserve district where the lender is located;

(2) 12 percent a year if the rate described by Subsection (1) of this section is more than 12 percent a year; or

(3) 10 percent a year if the rate described by Subsection (1) of this section is less than 10 percent a year.

(b) A rate of interest that is greater than that allowed by Section (a) of this article is usurious unless it is otherwise authorized by law.

Article 16, section 11 of the Texas Constitution authorizes the legislature to

classify loans and lenders, license and regulate lenders, define interest and fix maximum rates of interest; provided, however, in the absence of legislation fixing maximum rates of interest all contracts for a greater rate of interest than ten per centum (10%) per annum shall be deemed usurious. . . .

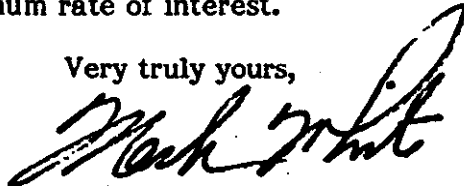
This bill fixes an absolute maximum rate of interest, in that in no instance may the rate exceed 12 percent a year. Fixing such a rate is clearly within the legislature's authority under section 11 of article 16 of the constitution.

We do not believe that the provisions of the bill suffer from the same defects which led the court in Gonzales County Savings and Loan Ass'n v. Freeman, 534 S.W.2d 903 (Tex. 1976), to hold that the legislature had not fixed a maximum rate of interest. See San Antonio Ind. Sch. Dist. v. City of San Antonio, 550 S.W.2d 262 (Tex. 1976). However, if the legislature wants to insure that it has set a maximum rate of interest under any construction by the courts, it can draft a severability clause to clarify that the absolute maximum of 12 percent is applicable regardless of the validity of the other provisions.

S U M M A R Y

House Bill 1212 fixes a maximum rate of interest.

Very truly yours,



MARK WHITE  
Attorney General of Texas

JOHN W. FAINTER, JR.  
First Assistant Attorney General

TED L. HARTLEY  
Executive Assistant Attorney General

Prepared by William G Reid  
Assistant Attorney General

APPROVED:  
OPINION COMMITTEE

C. Robert Heath, Chairman  
David B. Brooks  
Tom Pollan  
William G Reid