STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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June 7, 1983 No. 83-3

Mr. Jack Welch
P. O. Box 568
Marlin, Texas 76661

Dear Mr. Welch:

This is to acknowledge receipt of your letter dated May 19, 1983 in which you pose several questions relating to Senate Bill 405 which was signed by Governor White on May 24, 1983. The provisions of that bill which are relevant to your questions become effective July 1, 1983. I will quote a paragraph of your letter and the questions you present. Each quoted question will be immediately followed by my response thereto. The quoted paragraph and your first question are as follows:

> "Please assume that a retailer operating under Chapter 6 of Article 5069, Tex. Rev. Civ. Statutes, has previously adopted an alternative rate under Art. 5069--1.04 and does provide open-end credit pursuant to which credit card transactions are made.
>
> "Question 1. In your letter to me dated February 10, 1983, (No. 83-2) in answer to Question 1, you stated that a retailer may reduce the rate without giving the notice described in Article 5069--1.04(i). You stated that this was authorized under Article 1.04(g). Your answer was in response to a question where the retailer elected to or voluntarily reduced the rate. Would your answer be the same where you have a reduction in rate by operation of law, such as the enactment of S.B. 405?"
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> Response to Question 1. A portion of Section 37 of Senate Bill 405 mandates that certain annualized ceilings applicable to accounts pursuant to which retail credit card transactions may be made be deemed to be equal to 18% as of July 1, 1983. Article 5069-1.04(g) provides that when the parties have agreed to a rate they are considered to have agreed to a lesser rate. It is the position of this office that because of Article 1.04(g) and because the Texas Legislature has mandated rate reductions as of July 1, 1983 that a retailer is not required to give the notice set out in Article 1.04(i) because of such rate reduction.
>
> "Question 2. This question pertains to Section 37 of S.B. 405 in reference to a retailer's monthly billing cycle and effective date of the Act. Please assume that a customer's closing date for such customer's monthly billing cycle is the 15th day of each month. If a retailer elects to implement the reduced rate

(18%) on a billing cycle basis as permitted under Section 37 of SB. 405, would the first day of such customer's billing cycle be July 16, 1983? May the retailer, in such event, charge the customer the rate in effect prior to July 1, 1983, which rate exceeds 18%, on purchases made on July 1, 1983, and thereafter through the last day of that customer's billing cycle in July 1983? (Which would, under the above example, be through July 15, 1983)."

Response to Question 2. Under the facts set out in your question No. 2, it is our position that Section 37 of S.B. 405 provides that the described retailer may charge the pre-July 1, 1983 rate on purchases made after July 1, 1983 and on or before the last day of the billing cycle which includes July 1, 1983. In the example given in your question No. 2 the pre-July 1, 1983 rate could be assessed on purchases made on or before July 15, 1983.

"Question 3. May a retailer charge a customer the rate in effect prior to July 1, 1983, on purchases made before July 1, 1983, or prior to such customer's closing date, if the retailer elects to implement the reduced rate on a billing cycle basis. If the retailer is using the annualized ceiling, may this charge be made until the retailer's current annual period expires? Upon the expiration of the retailer's annual period, will the ceiling for the next annual period on these prior to July 1, 1983 purchases be computed from auctions occurring during the three calendar months preceding the computation date as provided under S.B. 405 or from auctions occurring during the 12 calendar months preceding the computive date as under the old law?"

Response to Question 3. As stated in my response to question No. 2, on purchases made prior to the closing date of the customer's billing cycle which ends during the month of July, 1983, the retailer may charge the rate which was in effect prior to July 1, 1983. If the retailer is using the annualized ceiling, the pre-July 1, 1983 rate of charge may be charged on those purchases made before July 1, 1983 or before the closing of the customer's billing cycle which ends in July until the current annualized ceiling period ends.

The last two sentences of Sec. 37 of Senate Bill 405 provide as follows:

> "Notwithstanding the foregoing, a credit card transaction occurring before the effective date of Sections 29 through 36 of this Act as to the account under which it is made is governed by the law in effect immediately before the amendments made by those sections, and that law is continued in effect for that purpose. Any credit card transaction occurring on or after the effective date of Sections 29 through 36 of this Act as to the account under which it is made is governed by the law as amended by those sections and by this section."

The purpose of the first of the above quoted sentences is to insure that transactions made prior to the effective date of the quoted sections of the bill will continue to be governed by the law as it existed when they were made. When those pre-July 1, 1983 or pre-July, 1983 billing cycle closing date purchases were made they were subject to an annualized ceiling computed by using a formula

based on twelve months of six month treasury bill auction rates. Even though, beginning July 1, 1983, annualized ceilings for future purchases will be computed by utilizing three months of treasury bill auction rates, it is our position that as to transactions made prior to the effective date of the relevant provisions of S.B. 405 that the annualized ceilings applicable to those transactions should be computed by using twelve months of treasury bill auction rates. This will of course mean that this office will in the future compute and publish two types of annualized ceilings. One annualized ceiling based on twelve months of treasury bill averages will be applicable to pre-S.B. 405 balances and the new annualized ceiling based on three months of treasury bill averages will be applicable to subsequent transactions. Therefore, at the end of the described retailer's annual contract period, the ceiling for the next annual period for those unpaid pre-S.B. 405 balances will be the annualized ceiling computed by using twelve months of treasury bill averages.

"Question 4. If a retailer does not use credit cards or deletes the use of credit cards, does Section 32 (Article 1.11) of S.B. 405 apply to such retailer? If a retailer engages in credit card transactions and also non-credit card transactions, for example such as installment contracts, does Section 32 of S.B. 405 apply only to the credit card transactions?"

Response to Question 4. If a retailer does not use credit cards or discontinues the use of credit cards and therefore does not utilize a credit program pursuant to which "credit card transactions" (as defined in Art. 1.01(g)-Sec. 29, S.B. 405) may be made, Art. 1.11 (Sec. 32, S.B. 405) is not applicable to that retailer. If a retailer engages in credit card transactions and non-credit card transactions, Sec. 32 of S.B. 405 is applicable only to the program involving credit card transactions.

"Question 5. For a retailer currently assessing a rate under Art. 5069--1.04(h)(2)(variable rate) and disclosing the 12-month average as the computation formula, must the Section (i) of Art. 5069--1.04 notice be given? If so, when must such notice be given?"

Response to Question 5. If a retailer is currently assessing a rate under Article 5069-1.04(h)(2) - (variable rate) - and has stated in the agreements that they are subject to the annualized ceiling; has further stated in the agreements that the annualized ceiling is based on a twelve month average of treasury bill rates; and the annual anniversary date of that retailer's plan is June 30, 1983, it is our position that that retailer is not required to give the Article 1.04(i) notice to its customers when it lowers the rate on the agreements for the new annual period beginning July 1, 1983. The agreements will still be subject to the annualized ceiling - it will just be computed in a different manner by using three months of treasury bill auction rates rather than twelve months of those rates. As previously mentioned, Article 1.04(g)

assumes that if the parties have agreed to a rate they have also agreed to a lesser rate, and the rate in this situation is being lowered. I can see no public policy to be served by requiring the Article 1.04(i) notice in this situation since the rate on the agreements is being lowered. Also, the change in the method of computation of the annualized ceiling has been mandated by the legislature and has not been brought about by the creditor. It is our position that in the above described situation the Article 1.04(i) notice is not required. However, if at some future date the creditor desired to increase the rate in conformity with an increased annualized ceiling, the Article 1.04(i) notice should be given.

I would point out that in the fact situation described in Question 5 the agreements stated not only that the plan was subject to the annualized ceiling but went further and stated that the annualized ceiling was based on a twelve month average of treasury bill rates. If the agreements had not described the method of computation of the annualized ceiling but had only provided that the agreements were subject to the annualized ceiling, it is our position that the fact that future annualized ceilings applicable to the plan will be computed in a different manner (three months of treasury bill rates rather than twelve) would not compel the creditor to give the Art. 1.04(i) notice if the only change in the plan was the altered method of computing the ceiling.

Sincerely,

Sam Kelley

Sam Kelley
Consumer Credit Commissioner