



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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June 28, 1983 83-7

Ms. Claudia B. Wilkinson
Fulbright & Jaworski
Bank of the Southwest Building
Houston, Texas 77002

Dear Ms. Wilkinson:

This is to acknowledge receipt of your letter dated June 23, 1983 wherein you pose two questions concerning Senate Bill 405, the relevant sections of which are various provisions of Article 5069, V.T.C.S. I will first quote a portion of your letter and your questions and then respond. Your letter is, in part, as follows:

"The interpretations requested in this letter are based upon the following fact situation. A bank (the 'lender') issues credit cards and extends credit pursuant to an agreement subject to Chapter 4 (the 'Agreement'). The Agreement provides, in part, as follows:

'We figure the FINANCE CHARGE on your account by applying a periodic rate of 1.75% per month (corresponding ANNUAL PERCENTAGE RATE of 21%) to the Average Daily Balance of your account (including current transactions). This rate will be in effect for a 12-month period commencing July 1, 1982 and will remain in effect for successive 12-month periods until changed in accordance with the law.'
(Emphasis added.)

"Significant changes to the credit card laws in Texas become effective on July 1, 1983 which is also the first anniversary date of the annualized rate adopted in the Agreement. Your office has announced a new 'Annual Rate Applicable to Pre-July 1, 1983 Retail Credit Card and Lender Credit Card Balances with Annual implementation. Dated from 7/01/83-9/30/83.' That rate is 18.31% and it becomes effective on July 1, 1983. The lender plans to lower the rate which is applicable to the unpaid principal balance of transactions made on or after July 1, 1982 and before July 1, 1983 (the 'Annualized Balance') from 21% per annum to 18.3% per annum.



"Under Article 1A.01, when the lender adopted Article 1.04 rates, the cardholders had to be allowed to pay off the balance existing in their account at the time of the rate change 'at the rate previously agreed to.' The cardholders had previously agreed that interest would be charged (i) on that portion of the average daily balance not above \$1,500 at an annual rate of 18 percent; and (ii) on that portion of the average daily balance above \$1,500 and not above \$2,500 at an annual rate of 12 percent and (iii) on that portion of the average daily balance above \$2,500 at an annual rate of 10%. Currently, these rates (the 'Old Rates') apply to the unpaid principal balance of transactions made before July 1, 1982 (the 'Old Balance').

"After July 1, 1983, the Old Rates generally will continue to apply to the Old Balance. However, if the amount of unpaid Old Balance in an account as of the first day of the first billing cycle for the account after July 1, 1983 is greater than \$2,500 and there is an Annualized Balance in the account, the provisions related to an annual percentage rate of 12% will not apply, and a periodic rate of interest which does not exceed an annual rate of 10% will apply to the average daily balance of the amount of Old Balance in excess of \$1,500. The result, under those circumstances, is that an annual percentage rate which does not exceed 10% will be charged on that portion of the average daily balance of the Old Balance which is above \$1,500 and not above \$2,500 instead of an annual percentage rate of 12% as previously agreed.

"Based upon the foregoing, we request your interpretation of the following:

"1. As to each of its credit card accounts, may the lender reduce the rate which is applicable to transactions made on or after July 1, 1982 and before July 1, 1983, from 21% per annum to 18.3% per annum as of the first day of the first billing cycle of such account beginning after July 1, 1983?

"2. May the lender charge a rate which is less than the rate previously agreed to on a portion of the Old Balance without violating article 1A.01?"

Section 37 of Senate Bill 405 provides in part as follows:

"Provided, that if a creditor bills its customers on a monthly billing cycle and the effective date of those sections does not coincide with the beginning of a monthly billing cycle for some or all of that creditor's accounts on which credit card transactions can be made, the creditor may, at its option, comply

with the law in effect immediately before the effective date of this Act as to each such account until the first day of the first monthly billing cycle beginning after the effective date of those sections, and the amendments made by Sections 29 through 36 of this Act take effect as to each such account on the first day of the first monthly billing cycle beginning after the effective date of those sections."

The above quoted language was included in Senate Bill 405 because the Legislature was aware of the fact that if all credit card issuers were forced to make the change from the old law to the new as to all cardholders on July 1, 1983 that great difficulties could possibly be imposed on creditors with no significant benefits resulting for the cardholders. For this reason, the creditors were given the option of changing as of July 1, 1983 or waiting until the first billing cycle immediately following July 1, 1983. If a creditor chooses the latter method, Section 37 states that the creditor may comply with the law in effect immediately before the effective date of Senate Bill 405, which is July 1, 1983. The lawful rate on the contracts described in your letter prior to July 1, 1983 was 21%. It is our opinion that the legislature intended to allow the creditor described in your letter to leave the 21% rate in effect until the various billing cycle dates immediately following July 1, 1983, at which time the rate on the accounts will be lowered to 18.3%. Therefore, the answer to your first question is "Yes."

Our response to your second question also is "Yes." Article 5069 - 1.04(g) provides in part that "...when the parties have agreed to a rate, they are considered also to have agreed to any lesser rate that the creditor may elect..." In your described situation the lender may charge a rate which is less than the rate previously agreed to on a portion of the Old Balance without violating Article 1A.01.

Sincerely,


Sam Kelley
Consumer Credit Commissioner