



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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July 30, 1981 No. 81-12

Mr. Ed Harness, Credit Manager
Finger Furniture Company
P. O. Box 194
Houston, Texas 77001

Dear Mr. Harness:

This is to acknowledge receipt of your letters of June 4 and June 29, 1981, wherein you requested our interpretation of various questions concerning retail charge agreements as affected by H.B. 1228, now a part of Article 5069, V.T.C.S. Since we have already, in earlier interpretative letters, expressed our views on your questions except for one, I will limit this letter to that one question. You may of course consider our earlier letters on the other questions as expressing the position of this Office on the other questions you presented.

Your question concerns the application of Article 1A.01, Article 5069, and more particularly the last sentence of that Article which provides for a method of allocation of payments to existing balances on "open-end accounts" that are amended so as to implement the provisions of Article 1.04, Article 5069. The question set out in your letter is as follows:

"As an example, let's assume a customer had a balance of \$1,000 prior to the Act (grandfathered by H.B. 1228) and made a purchase of \$1,000 after the Act (covered by the new rate). The payments on the old balance were \$50.00 and the payments on the new balance are \$50.00. The question arises; how is the customer's \$100.00 payment to be credited? Do we credit all \$100.00 to the old balance existing prior to the Act or do we credit \$50.00 to the old and \$50.00 to the new? If the latter is the case, an additional question arises. How do creditors credit customers' accounts when more than the standard payment is paid; i.e. the customer pays \$150.00 and the standard payment is \$100.00?"

Article 1A.01 provides as follows:

"Conversion of Open-End Accounts. Any creditor electing to implement the provisions of Article 1.04 of this Title, as amended, to an open-end account existing on the effective date of this Act and not previously subject to Article 1.04, as amended, must allow the obligor to pay the balance then existing at the rate previously agreed to and at the minimum payment terms

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previously agreed to. For this purpose, payments on an account may be applied by the creditor to the balance existing on the account on the effective date of this Act prior to applying same to credit extended after the effective date of this Act."

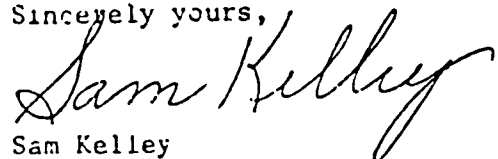
As can be seen from the first sentence of Article 1A.01, and as we pointed out in our letter interpretation No. 81-8, dated July 13, 1981, the obligor is entitled to pay off the balance existing on the date of implementation of the new Article 1.04 rates in accordance with the "old" contract provisions. In the context of this "right," the date of the Act (May 8, 1981) is not important. The parties look to the balance existing on the conversion date to determine the appropriate balance on which to apply the earlier contract provisions.

The last sentence of Article 1A.01 authorizes the creditor to apply any and all payments made on an account to that prior balance which was in existence on the date of the Act. Obviously it does not make reference to the date of implementation of the new rates. However, as mentioned in our letter interpretation No. 81-S, the last sentence of Article 1A.01 is permissive in nature, and probably unnecessary anyway. Watson v. Cargill, Inc. Metrena Division, 573 S.W.2d 35, (Waco Ct. Civ. App., 1978, ref. n.r.e.); First National Bank in Dallas v. Whirlpool Corp., 517 S.W.2d 262 (Sup. Ct. of Tex. 1974). Even though the last sentence in Article 1A.01 refers to the balance existing on the date of the Act, since the balance to be "grandfathered" is that in existence on the date of the implementation of Article 1.04 provisions, and in view of the above-mentioned cases which in my judgment would allow this method of allocation of payments anyway, in my opinion the creditor may apply payments on an account first to the balance existing on the date of conversion.

I am also of the opinion that in the first example given in your letter, the entire \$100 payment may be applied to the old balance of \$1,000 which was "grandfathered." In the second example, I am of the opinion that all of the \$150 payment may be applied to the old \$1,000 balance. I realize that this result can be said to result in the debtor not paying off the old balance in accordance with the old contract terms. However, I believe that some meaning should be given to the last sentence of Article 1A.01. That Article, after "grandfathering" the old balances, provides "For this purpose" (the "grandfathering") the payments on the account may be first applied to the old balance. The Legislature was saying, it seems to me, that the old balances will be paid off in accordance with the old terms but within the framework of the last sentence of Article 1A.01.

Thus, as previously stated, it is the opinion of this Office that in your first example the entire \$100 payment may be applied to the old \$1,000; in the second example, the entire \$150 payment may be applied to the old \$1,000 balance.

Sincerely yours,



Sam Kelley
Consumer Credit Commissioner