



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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August 24, 1981 No. 81-16

Mr. John B. Lederer
Assistant General Counsel
Texas Credit Union League
P. O. Box 225147
Dallas, Texas 75265

Dear Mr. Lederer:

This is to acknowledge receipt of your letter dated August 14, 1981 in which you ask our opinion as to what rate of interest or time price differential may be charged on credit transactions as defined in Section 2(2)(d), Chapter 6A, Article 5069, V.T.C.S., on and after September 1, 1981.

As you know, there has been a great deal of confusion concerning the question you present, due primarily to the fact that in separate bills the 67th Legislature enacted provisions which are not precisely compatible. Those two bills were H.B. 1228 and S.B. 382, the latter being the last to be enacted and which becomes effective September 1, 1981.

H.B. 1228 contained several provisions relating to Chapter 6A. One is now codified as Article 1.04(a) which provides that the parties to an agreement described in Chapter 6A may agree to a rate or amount of time price differential producing a rate that does not exceed the interest rates authorized by Article 1.04.

Section 19 of H.B. 1228 amended the then existing Section 3 of Chapter 6A by adding a new Subsection G as follows:

"Alternate Rate. As an alternative to the rates and amounts of time price differential provided by Subsection A of this section, the parties may agree to any rate or amount of time price differential not exceeding a rate or amount authorized by Article 1.04 of this Title."

It seems clear that the Legislature intended in H.B. 1228 to make applicable the new Article 1.04 rates to transactions subject to Chapter 6A.

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S.B. 382 was a virtual re-write of Chapter 6A and, as mentioned, becomes effective September 1, 1981. During debate in the House, a floor amendment to the bill was adopted which added Subsection (7) to Section 3 of the new Chapter 6A. That Subsection is as follows:

"(7) The provisions of this chapter shall apply to credit transactions as defined by Subsection 2(d) notwithstanding any provision of Article 1.04 of this title."

To summarize at this point, it seems clear that certain provisions of H.B. 1228 were intended to make the alternative Article 1.04 rates applicable to Chapter 6A. On the other hand, the floor amendment to S.B. 382 (enacted as Chapter 6A, Section 3(7)) makes the provisions of Chapter 6A applicable to subject credit transactions notwithstanding the provisions of Article 1.04. I at first thought that since S.B. 382 was passed after H.B. 1228, and since Section 3(7) apparently prevented Article 1.04 from being applicable to Chapter 6A transactions, that as of the effective date of S.B. 382 (September 1, 1981) the Article 1.04 rates would not be applicable to credit transactions subject to Chapter 6A. I have changed my opinion on this question for the reason that I believe that Chapter 6A (without relying upon Article 1.04) does not provide for any rate of interest or time price differential, and therefore there is nothing in the new Chapter 6A to conflict with the provisions of Article 1.04 on the amount of interest or time price differential which may be charged.

The new Chapter 6A provides in Section 3(1) and (2) as follows:

"(1) Subject to Subsection (2) of this section, the interest or time price differential in a credit transaction may not exceed the sum obtained by applying a simple interest rate equal to 13.32 percent a year to the unpaid balance for the scheduled term of the transaction.

"(2) The rate and limitation prescribed by Subsection (1) of this section are effective only if the federal usury preemptions for residential mortgage loans contained in the Veterans' Disability Compensation and Survivors' Benefits Act of 1979, Public Law 96-128, the Housing and Community Development Act of 1979, Public Law 96-153, and the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221, are expressly made inapplicable to transactions made in this state by an Act of the legislature of this state. The limitation prescribed by Subsection (1) of this section becomes effective on the effective date of such an Act."

As can be seen, Section 3(1) limits the interest or time price differential charge to that which would produce an equivalent interest yield of 13.32 percent per annum. However, Section 3(2) provides that the rate limitation in Section 3(1) is effective only if the Texas Legislature overrides the various federal interest

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rate preemptions of states' usury ceilings relating to the financing of residential manufactured housing. The Legislature has not overridden any of these preemptions, so I am of the opinion that Section 3(1) does not provide a rate of interest or time price differential for Chapter 6A transactions. This being the case, the only state laws providing for interest or time price differential charges on Chapter 6A transactions are Sections 5 and 19 of H.B. 1228 which added Article 1.04(a) and Section G to Section 3 of the "old" Chapter 6A (the "old" subsections were listed alphabetically rather than numerically). Since Chapter 6A does not provide for interest or time price differential charges other than those authorized by the H.B. 1228 amendment to Section 3 authorizing the Article 1.04 rates on such transactions, there is nothing in the new Chapter 6A to conflict with the rate provisions authorized by Article 1.04. I am of the opinion, therefore, that at the present time as well as after the effective date of S.B. 382 (the new chapter 6A) the interest and time price differential charges authorized by Article 1.04 may be charged on transactions subject to Chapter 6A.

Other provisions of Article 1.04 which are in conflict with provisions of Chapter 6A would not be applicable to 6A transactions after the effective date of S.B. 382. For example, Section 4 of the new Chapter 6A places various limitations on the types of variable rate contracts on Chapter 6A transactions. Those provisions would control on variable rate contracts subject to Chapter 6A rather than the variable rate provisions of Article 1.04.

Sincerely yours,



Sam Kelley
Consumer Credit Commissioner