



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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June 11, 1982 No. 82-11

Mr. Seth Freedman
Attorney at Law
2000 Niels Esperson Building
Houston, Texas 77002

Dear Mr. Freedman:

This is to acknowledge receipt of your letter dated May 19, 1982 wherein you pose the following question:

"Must a creditor who desires to adjust the dollar amounts of the rate brackets set forth in Article 6.03(3) provide any notice to then existing account obligors regarding the adjustment, and if so, must that creditor provide existing account obligors with an opportunity to pay balances then existing at the rate previously agreed to and at the minimum payment terms previously agreed to?"

All of the statutory references in this response are to various provisions of Article 5069, V.T.C.S.

The creditor described in your question now offers credit pursuant to a retail charge agreement previously established with various customers in accordance with the provisions of Article 6.03 and other relevant sections of Chapter 6. The credit charges now being assessed on such accounts are those which were authorized by Article 6.03(3) prior to its amendment by H.B. 1228 which was effective May 8, 1981. (Those charges are Fifteen Cents per Ten Dollars per month on unpaid balances not in excess of \$500 and Ten Cents per Ten Dollars per month on unpaid balances in excess of \$500). The creditor has not previously implemented any of the provisions of Article 1.04.

There is no authorization in Chapter 6 which enables a creditor to unilaterally amend a retail charge agreement. All the current agreements provide for the charges just mentioned. In order to provide for the Article 6.03(3) charges on the new dollar bracket amounts as created by Article 2.08 the creditor must either enter into completely new agreements wherein the customers agree to the new charges schedule or amend the existing contracts by utilizing the provisions of Article 1.04(i)(1). In the event the creditor uses the provisions of Article

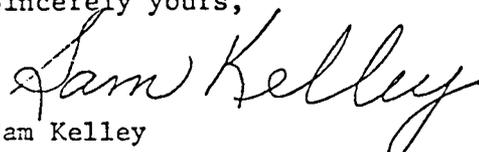
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1.04(i)(1) so as to effect the amendments to the charge agreements authorizing the new credit terms, the provisions of Article 1A.01 are applicable to balances existing at the time of the implementation of the new terms. Existing balances on subject accounts must be allowed to be retired at the old terms and rates as required by Article 1A.01.

The fact that Article 2.08 automatically increases the dollar amount brackets in Article 6.03 (and other sections) does not alter the fact that in the current contracts in the credit program the parties have agreed to charges in accordance with the pre-Article 2.08 provisions of Article 6.03. Since the only method available to the creditor for amendment of the existing contracts involves the utilization of the provisions of Article 1.04, the creditor, in our opinion, must comply with the provisions of Article 1A.01.

Sincerely yours,



Sam Kelley
Consumer Credit Commissioner