



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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July 29, 1985 85-9

Mr. J. Scott Sheehan
Taylor, Hays, Price, McConn
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Attorneys at Law
400 Citicorp Center
1200 Smith Street
Houston, Texas 77002

Dear Mr. Sheehan:

This is to acknowledge receipt of your letter dated July 16, 1985 in which you request an interpretation by this office relative to House Bill 899, 69th Texas Legislature, Regular Session, which legislation becomes effective August 26, 1985.

House Bill 899 amends the second paragraph of Article 5069 - 1.04(h)(2), V.T.C.S. so that the paragraph will read as follows:

"Except to the extent inconsistent with any federal law, regulation, or interpretation from time to time in effect, on any open-end account entered under authority of this Article 1.04 which is primarily for personal, family, or household use, the creditor shall disclose any changes in the rate resulting from operation of the index, formula, or provision of law by giving notice of the change in the rate on or with the billing statement for a billing cycle preceding the first cycle as to which the change in the rate is effective or by a separate document mailed on or before the beginning of the first cycle as to which the change in the rate is effective, except that this notice may be given on or with any billing statement if the open-end account is not covered by Article 1.11 or 15.02(d) of this Title. Variations in the rate on the account due to operation of the previously disclosed index, formula, or provision of law need not be further disclosed under this Section (h) or under Section (i) of this Article." (Underlining indicates language added by House Bill 899.)

As can be seen, the change in notice requirements brought about by House Bill 899 was not intended to apply to credit card transactions subject to either Article 1.11 or 15.02(d) of Article 5069. On other open-end



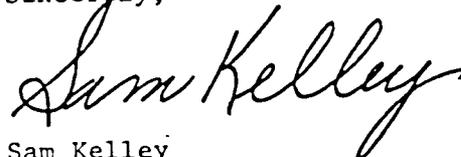
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credit plans subject to Article 1.04(h)(2) the House Bill 899 amendment eliminates the requirement that this Article 1.04(h)(2) notice be given prior to a rate change provided the obligor has previously agreed in writing to the variable rate provisions of the agreement. For example, assuming the existence of a proper written agreement, the contract could provide for an interest charge of 2% above a certain prime rate to be changed on any day on which that prime rate changed. If the account were on an end-of-month periodic monthly billing cycle and the prime rate changed in the middle of the monthly billing cycle, the rate on the account could be changed at that time and no notice of the rate change be given to the obligor until the next billing statement. In essence, House Bill 899 provides for "after the fact" notice of rate changes on contracts to which it is applicable.

This writer was present at both the House and Senate Committee hearings on House Bill 899 and followed the bill throughout the legislative process, and it is felt that the above set out position of this office accurately reflects legislative intent as well as the language of the amendment. It is again noted that the House Bill 899 amendment is not applicable to agreements subject to Article 1.11 or 15.02(d).

Sincerely,



Sam Kelley
Consumer Credit Commissioner