



STATE OF TEXAS

# OFFICE OF CONSUMER CREDIT COMMISSIONER

AL ENDSLEY, Commissioner

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August 30, 1989 89-2

Sam Kelley  
301 Congress, Suite 2100  
Austin, Texas 78701

Dear Mr. Kelley:

You have requested an interpretation of the various statutes which determine the time price differential ceiling(s) applicable to open-end retail charge agreements subject to Article 5069 - Chapter 6, Vernon's Annotated Texas Statutes. In providing background on this issue you have advised that your client implemented the provisions of Art. 5069-1.04 in 1981 and made all of its retail charge agreements subject to the annualized ceiling. All such accounts have continued to be subject to such ceiling since that time.

You have specifically asked whether your client may lawfully:

"(1) amend the agreements made pursuant to the program, which agreements are now subject to the annualized ceiling, so as to make the agreements subject to the quarterly ceiling authorized by Art. 5069-1.04; and

"(2) if such an amendment is effected and the quarterly ceiling is implemented, whether at some future date the agreements may again be amended so as to make them once again subject to the annualized ceiling.

"(3) If (1) and (2) above are answered in the affirmative, I would also request your interpretation of whether all of the provisions of Art. 5069-1.04(i)(1) and (2) must be complied with when the amendments are made even though there is no increase in the rate charged on the agreements at the time of the amendments."

Art. 5069-1.04(a) clearly provides the general authority for a creditor to choose among the three rate ceilings, indicated, quarterly and annual, in connection with written contracts (subject to certain limitations set forth in other sections). Art. 5069-1.04(h)(1) is more specific in addressing open-end accounts and authorizing the various ceilings on such accounts.

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Art. 5069-1.04(i)(1) contains statutory authorization for a creditor to amend open-end account agreements by notice to the customer. Such amendments may include "...terms, including the rate, or index, formula, or provision of law used to compute the rate...." I find no statutory provisions that would prohibit a creditor from amending existing retail charge agreements by notice, to provide for a change in the provision of law used to compute the rate, that is, to change the applicable rate ceiling from annual to quarterly or from quarterly to annual. A creditor is not limited in the number of times such changes may be made but may only do so at the expiration of the previously elected rate ceiling period of three or twelve months.

Art. 5069-1.04(i)(1) clearly sets forth a notice that is required to effect the amendment described above. Subsection (F) specifies exact language to be incorporated in the notice if the rate is increased by the amendment. It is recognized that switching between ceilings may not involve an increase in the rate at the time of amendment. I know of no reason for a creditor to switch from the annual to the quarterly ceiling except the anticipation of charging an increased rate at an earlier future date than would otherwise be permitted. In keeping with the spirit of notice to an obligor of an increased rate and the account termination options extended to him in Art. 5069-2.04(i)(2), I believe that the creditor should treat such amendment as a rate increase.

In summary, a holder of retail installment contracts subject to the annualized ceiling may by notice conforming to all the requirements of Art. 5069-1.04(i)(1) and (2) amend such contracts so as to make them subject to the quarterly ceiling and may take similar future action to again make the contracts subject to the annualized ceiling.

Sincerely,



Al Endsley  
Commissioner