



STATE OF TEXAS

# OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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June 4, 1981 No. 81-4

Mr. Dan L. Nicewander  
Gardere & Wynne  
Attorneys at Law  
1700 Republic National Bank Bldg.  
Dallas, Texas 75201

Dear Mr. Nicewander:

This is to acknowledge receipt of your letter dated May 22, 1981 concerning the new Art. 1.04(q), Article 5069, V.A.C.S., recently enacted into law by the 67th Legislature as a part of House Bill 1228. Art. 1.04(q) provides as follows:

"The maximum rates authorized by this Article do not apply to agreements under which credit is extended for a home solicitation transaction as defined in Chapter 13 of this Title if the agreement is secured by a lien on the obligor's homestead and the credit is extended by the seller or its owner, subsidiary, or corporate affiliate."

As you may know, Art. 1.04(q) was not included in H.B. 1228 as it was originally introduced or as it was reported from the House Financial Institutions Committee. It was added as a floor amendment during House debate. The only mentioned intent of the amendment was directed at the rate provisions of Art. 1.04 and there was never any reference made during this portion of the debate to Art. 2.08, which of course was the provision in H.B. 1228 providing for increases in dollar bracket amounts in various Chapters of Article 5069 based on a formula involving the Consumer Price Index.

By its expressed language, Art. 1.04(q) refers only to "rates authorized by this Article" (Art. 1.04) and makes no reference to Art. 2.08, which was in a different Section (9) of H.B. 1228.

It is our position that 1.04(q) serves to prohibit the charging of the alternative rates authorized by Art. 1.04 if the credit is extended for a home solicitation transaction as defined in Chapter 13, Article 5069, and otherwise meets the criteria of 1.04(q). However, as is evidenced by its language, Art. 1.04(q)

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has no applicability as long as the creditor charges the "old" rates authorized prior to the enactment of H.B. 1228. Nor does 1.04(q) in any way restrict the applicability of Art. 2.08, which, for example, increases the dollar amounts of the brackets in Art. 6.02(9)(a)(i), (ii) and (iii) from \$500 to \$1250 and \$1000 to \$2500, respectively. Thus a creditor who enters into a Chapter 6 retail installment transaction and who charges the rates authorized in Art. 6.02(9)(a)(i), (ii) and (iii) but on the highest dollar amounts authorized by Art. 2.08 is not subject to the provisions of Art. 1.04(q). Such creditor in such a contract may take a lien as security for the contract as authorized in Chapter 6.

I hope this is a satisfactory response to your inquiry.

Sincerely yours,



Sam Kelley  
Consumer Credit Commissioner