



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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January 25, 1985 85-1

Mr. W. David East
15930 Tumbling Rapids
Houston, Texas 77084

Dear Mr. East:

This letter is in response to your request for an interpretation by this office as to whether various provisions of Article 5069, V.T.C.S. are applicable to a proposed credit extension program. It is felt that the most accurate manner in which to respond to your request is to set out the fact situation as outlined by you in your letter and then to state the position of this office with regard to your questions concerning the program and its status with regard to the various provisions of Article 5069. Your letter, in part, states as follows:

"The client on behalf of whom I am making this request is MediCredit, Inc., a Delaware Corporation duly authorized to do business in Texas. MediCredit's business plan is to issue a credit card usable only to charge medical and health care services and items purchased as a part of those services. The card would be made available to all employees of a particular employer as a part of its health care benefit plan. The card and the accompanying services of the MediCredit Program would be offered through health care insurance carriers and professional contract administrators.

"Being integrated with a benefit plan, the card and related services would have to be offered to all employees to whom health care benefits must be offered under the Employees Retirement Income Security Act (ERISA) even though some of them might not be credit-worthy and even though some of them will undoubtedly decline to take the card. The only way my client would be able to issue the cards to all employees without regard to credit reputation is to obtain from the employer a guaranty of all sums charged on the card by each employee and obtain a deposit of a portion of the amount guaranteed.



"In addition to the MediCredit Card my client plans to offer as a part of its services a twenty-four hour telephone service to verify to health care providers that a particular employee cardholder is covered by a health care benefits plan and to provide information as to the benefits available under that plan. This service will be offered on behalf of the employer, who is currently being asked by the health care provider to furnish this information. MediCredit also proposes to make available to employee cardholders who so request a twenty-four hour medical emergency information service to store critical medical history to be released to health care providers in an emergency.

"Offering these services requires an extensive data base on plan benefits, eligibility and medical history as well as people to man the system continuously. MediCredit therefore plans to charge the employer an administrative charge for establishing the data base and periodically verifying the information. MediCredit also plans to charge the benefit plan or administrator through whom the services are offered a monthly administrative charge for maintaining the system continuously.

"In summary then the parties and their relationships to each other will be as follows:

"A. The card issuer (my client) will have a contract with an employer as a result of which the card issuer will offer cards to all employees covered by the employer's health care benefits plan. Under this contract the employer will guarantee payment of all amounts which employees may charge on their cards up to the credit limit for each employee. In addition the employer will deposit with the card issuer a portion of the amount guaranteed. The cards will be usable only to charge medical and health care services and items purchased as a part of those services. The card issuer will also provide a twenty-four hour telephone service to verify on behalf of employers that a particular person is eligible for benefits under the benefit plan and to furnish information on those benefits. This verification and information will be furnished to health care providers. The employer will pay the card issuer an initial expense charge for setting up the data base necessary to provide the services and will pay a similar charge at least annually for reverifying the data base.

"B. The card issuer will have a contract with each employee to whom a card is issued. Under this contract the employee cardholder will be required to make minimum monthly payments on amounts charged and will agree to pay an interest charge on the unpaid balance of 9.9% annually (.825% monthly). The interest charged to the employee cardholder will never exceed ten percent annually.

"C. The card issuer will have a contract with a health benefit plan carrier and/or administrator. Under that contract the carrier and/or administrator will offer the card and related services as a part of its package of health care benefits. The carrier and/or administrator will pay a monthly administrative expense charge to the card issuer for each employee cardholder.

"D. The card issuer will have contracts with a number of providers of medical and health care services. Under these contracts the providers will agree to permit patients to charge medical and health care services on the card. The card issuer will then purchase those charges at a discount and collect from the cardholder under the terms of the contract with the cardholder."

In the above outlined program the debtor/cardholder will never pay interest in excess of 10% per annum on indebtedness incurred pursuant to the program. It has always been the position of this office that lenders may make loans bearing a rate of interest of 10% per annum or less without being licensed by this office. (Please see Letter Interpretation Number 81-14, August 19, 1981). As pointed out in that letter, it is the position of this office that such loans are authorized by Article 5069 - 1.02, V.T.C.S. and Article 16, Section II of the Texas Constitution.

It is pointed out in your letter that the debtor/cardholder's employer will guarantee payment by the employee and will deposit with the card issuer a portion of the amount guaranteed. It is our opinion that this fact would not result in the debtor/cardholder being charged more than 10% per annum nor result in the principal amount advanced being reduced by the amount deposited with the card issuer. See Bradley v. Houston State Bank, 588 SW 2d 618, (Tex. Civ. App., 1979, ref. n.r.e.). In view of this and assuming the fact situation set out earlier in this letter, it is the opinion of this office that:

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1. The card issuer is not required to be licensed under Article 5069 - V.T.C.S. as long as the cardholder is not charged a higher interest rate than 10% per annum;
2. The card issuer does not have to comply with Article 5069 - Chapter 15, V.T.C.S.;
3. The card issuer does not have to comply with Article 5069 - 1.04., V.T.C.S.
4. The card issuer's plan, as set out above, does not violate the provisions of Article 5069 - Chapter 15, Article 1.04 or 1.02, V.T.C.S.

Sincerely,


Sam Kelley
Consumer Credit Commissioner