



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

2601 NORTH LAMAR
AUSTIN, TEXAS 78705-4207

(512)479-1280
(214)263-2016
(713)461-4074

June 26, 1985 85-8

Mr. Jack Welch
Attorney
Box 20
Marlin, Texas 76661

Dear Mr. Welch:

This is to acknowledge receipt of your letter concerning Senate Bill 631 recently enacted by the 69th Texas Legislature and which legislation becomes effective August 26, 1985.

Senate Bill 631 amends Article 5069 - Article 6.03 by adding a new section 6 which will be as follows:

"A retail charge agreement may provide that, on return of a dishonored check given in payment under the agreement, the holder under the agreement may charge the buyer under the agreement a reasonable processing fee of not more than \$15 and that this fee may be added to the unpaid balance under the agreement."

I would like to note that this legislation is applicable only to retail charge agreements (open-end accounts) and not to retail installment contracts (closed-end agreements).

I will set out the questions you pose and give my response to each directly following the question.

Question No. 1. "May a processing fee of not more than \$15 for a dishonored check given in payment or part payment of an account be made only if the retail charge agreement provides for such fee?"

Response to Question No. 1. It is our view that the processing fee of not more than \$15 authorized by Senate Bill 631 may be charged only if the retail charge agreement so provides or is amended to so provide. Our views on this issue are more fully discussed in Letter Interpretation No. 84-5, March 21, 1984. It is our view that if the agreement so provides, the authorized charge may be assessed on any dishonored check given in payment on the account whether intended as partial or full payment of the account.



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Question No. 2. "Must the retail charge agreement state the exact amount of the fee that will be charged or may the agreement state the range of such fee?"

Response to Question No. 2. In view of the wording of Senate Bill 631 it is the view of this office that the agreement may provide (in the words of the legislation) that the holder may charge the buyer "a reasonable processing fee of not more than \$15" and that it is not necessary for the agreement to set out any other dollar amounts relative to this charge.

Question No. 3. "Will you set forth acceptable language for a retail charge agreement that will authorize the fee?"

Response to Question No. 3. Our office is of the opinion that the below set out language would be acceptable although there could of course be variations.

"In the event a check is given in full or partial payment of this account and said check is dishonored and returned to holder (or name of holder), holder (or name of holder) may charge buyer a reasonable processing fee not to exceed \$15 for said dishonored check and may add said fee to the unpaid balance of the account."

Question No. 4. "May the same time price differential that is authorized to be charged on the unpaid balance of the account be charged on the processing fee?"

Response to Question No. 4. Yes.

Question No. 5. "May an existing retail charge agreement be amended to authorize the processing fee by using the procedure set out in Section (i) of Article 5069 - 1.04, Vernon's Ann. Civ. St.?"

Response to Question No. 5. Yes.

Sincerely,


Sam Kelley
Consumer Credit Commissioner