



STATE OF TEXAS

OFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

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May 3, 1984 No. 84-6

Mr. Harold J. Dollinger
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One Glen Lakes Park
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Dear Mr. Dollinger:

This is to acknowledge receipt of your recent letter concerning certain home solicitation contracts which are subject to Chapter 6, Article 5069, V.T.C.S. The specific question presented by your inquiry is as follows:

May a home solicitation contract which is subject to the provisions of Article 1.04(q) and to Chapter 6 have a time price differential charge computed in a "simple" manner rather than "add-on" so long as the rate on the contract will not exceed the equivalent rate of the "add-on" charges authorized by Article 6.02(9)(a)? (All statutory references are to various provisions of Article 5069, V.T.C.S.)

There are several statutory provisions which have relevance to the question presented. Prior to the enactment of H.B. 1228 (effective May 8, 1981) the only type charges applicable to a closed-end retail installment transaction subject to Chapter 6 were of the "add-on" type (Article 6.02(9)(a)). It was therefore our position until that date that there could be no "simple" type computation of the charge on such a contract. However, a section of H.B. 1228, which section is now codified as Article 1.04(n)(4), allows the parties to any contract (including a Chapter 6 contract) to agree to any rate or amount allowed by that chapter or any simple or precomputed rate or amount not exceeding those allowed by Article 1.04. Although a "simple" method of computation of time price differential is a departure from the historical concept of that type of charge it seems clear that the legislature intended such change. (Reference our Letter Interpretation No. 84-3, February 24, 1984).



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However, in H.B. 1228 the legislature provided in what is now Article 1.04(q) that the maximum rates authorized by Article 1.04 do not apply to a home solicitation transaction as defined by Chapter 13 if the agreement is secured by a lien on the obligor's homestead. The wording of this section probably could have been more precise but it precludes the use of the Article 1.04 maximum rates on such contracts and does not preclude the applicability of other provisions of Article 1.04. It is not clear what is meant by the term "maximum rates" in this context, but certainly Article 1.04(q) did nothing to prevent the charging of the rates or amounts authorized by Article 6.02(9)(a) on home solicitation contracts. (Reference our Letter Interpretation No. 81-4, June 4, 1981).

Also to be considered is Article 6.02(15) which provides, among other things, that the parties to a Chapter 6 retail installment contract may agree to any rate or amount of time price differential not exceeding a rate or amount authorized by Article 1.04. (This section is of course limited somewhat by Article 1.04(q)).

All of these four mentioned sections must be considered not only individually but also as they relate to each other in order to arrive at what is thought to be the proper statutory construction. Our Office has reached the following conclusions. Article 1.04(n)(4) allows for the "simple" method of calculation of a time price differential charge on a Chapter 6 retail installment contract. Both Article 1.04(n)(4) and Article 6.02(15) provide that the rates or amounts of charge authorized by Article 1.04 may be agreed to by the parties to a Chapter 6 contract. These rate authorization sections are limited however by Article 1.04(q) which restricts the rate of charge on the defined home solicitation Chapter 6 contracts to an equivalent rate that does not exceed the add-on charges provided for in Article 6.02(9)(a).

It is the position of this Office that a Chapter 6 retail installment contract which is subject to Article 1.04(q) may be structured so as to calculate the time price differential in a "simple" manner so long as the rate so calculated does not exceed the equivalent "simple" rate of the "add-on" charges authorized by Article 6.02(9)(a).

I would point out that Article 6.02(9)(a) is subject to the provisions of Article 2.08 and thus the brackets establishing dollar amounts of balances on which certain time price differential charges may be assessed are subject to change on July 1 of each year. Until July 1, 1984, the amounts of the brackets in Article 6.02(9)(a) are \$1,400 and \$2,800.

Sincerely,



Sam Kelley
Consumer Credit Commissioner