ƆFFICE OF CONSUMER CREDIT COMMISSIONER

SAM KELLEY, Commissioner

POST OFFICE BOX 2107   1011 SAN JACINTO BOULEVARD
AUSTIN. TEXAS 78768   512, 475-2111

June 3, 1981   No. 81-3

Mr. Nathan P. Hoffman
Woody, Gumm & Hoffman
Attorneys at Law
P. O. Box 4526
Victoria, Texas   77901

Dear Mr. Hoffman:

This is to acknowledge receipt of your letter dated May 28, 1981 concerning House Bill 1228.

Art. 1.04(a) provides that the parties to any written contract may agree to an interest rate or a time price differential which does not exceed the rates authorized by said Art. 1.04. This means that two individuals may agree in a written contract for a rate which does not exceed the Art. 1.04 rates. I would qualify this to the extent that other Sections of Art. 1.04 would require licensing in certain situations if individuals "were engaged in the business" of making loans. The licensing requirements would not apply to a person who engaged in a single transaction and was not in the business of making loans.

Art. 1.04(b)(1) provides that a rate of 18% per annum is always available but the maximum rate may be higher (as it is now) depending on the Treasury Bill rate. I am enclosing herewith a compilation of the information we have published in the Texas Register on a weekly basis to date, and hope that it will be helpful.

As I am sure you know, the United States Congress has preempted State usury statutes that formerly applied to first mortgage loans and/or credit sales of residential property. There is no interest limitation on such loans or credit sales, and if the situation to which you refer in your letter falls in this category, State law would not be applicable.

I have placed your name on a mailing list to receive notice of a weekly letter we plan to publish. It may be that you would like to subscribe.

If I can be of any further assistance to you please let me know.

Sincerely yours,

Sam Kelley
Commissioner

Enclosure