

# **CONSUMER LAW**

**Things You Should Know – If  
You Listened to Your  
Mother!**

# WHAT WE WILL COVER:

- Vehicles
- Debt collection
- General credit issues
- Identity theft and credit reports
- Consumer law myths and scams

**MOM SAYS – WHEN LIFE  
GIVES YOU LEMONS,  
MAKE LEMONADE!!!!**



# LEMON LAW

**Defined:** A new passenger motor vehicle (car, van or truck) that has a defect that impairs its use or will lower its market value substantially; and which the manufacturer cannot repair within a reasonable time. Nonconformity must appear within the first 12 months or 12,000 miles.

# LEMON LAW

- **Consumer should:** Notify the manufacturer of the defect during the term of the express warranty. The manufacturer must make any repair efforts at no cost and within a reasonable amount of time: three repair attempts for the same defect or thirty days out of service for repairs (not necessarily consecutive).

# LEMON LAW

- **Manufacturer must:** Replace the vehicle or rescind the agreement and refund the money. If the manufacturer elects to rescind and refund, the refund must be for the full purchase price of the vehicle, less a reasonable allowance for use. Full purchase price includes applicable finance charges and all governmental fees, such as sales tax, license fees and registration fees.

**MOM SAYS - DON'T BELIEVE  
EVERYTHING YOU ARE  
TOLD!!**

# USED - "AS IS"

Generally, used vehicles are sold "as is": no promise is made as to the vehicle condition. Each used vehicle is to be sold with a **Buyer's Guide** that states

- whether the vehicle is being sold "as is" or with a warranty;
- what percentage of the repair costs a dealer will pay under the warranty;
- that spoken promises are difficult to enforce;
- to get all promises in writing;
- to keep the Buyers Guide for reference after the sale;
- the major mechanical and electrical systems on the car, including some of the major problems you should look out for; and
- to ask to have the car inspected by an independent mechanic before you buy.

# USED VEHICLES

Warranties can be written or oral. While an oral representation may be an express warranty, do not automatically assume that such a representation is a warranty. A representation may be considered by the courts as nonspecific or mere "puffing." Even if the statement is more specific, it is difficult to prove that it was made. Also, the written warranty may state that the written warranty is the only warranty and oral representations are not a part of the contract or the warranty.

# OTHER WARRANTIES

**Warranty of title:** the seller has good title to the car and can transfer this title to the buyer. This warranty also says that the car does not have any liens that the buyer has not been told about.

**Implied warranty of merchantability:** seller warrants that car is fit for the ordinary purposes for which cars are used. Minor problems, such as a broken automatic door lock, may not be considered as a breach of this warranty.

**Implied warranty of fitness for a particular purpose:** seller warrants that car is fit for a specialized purpose. Seller has to know what the specialized purpose is and that the buyer is relying on the seller's skill or judgment in recommending something fit for that purpose.

# ANOTHER “WARRANTY”

**Extended Service Contract:** a separate contract sold for an additional price.

Warranty or contract purchased to cover all or a part of repairs on a used vehicle.

Read carefully for limitations and exclusions.

MOM SAYS PAY YOUR  
BILLS – BUT YOU CAN'T  
GET BLOOD OUT OF A  
TURNIP!!

# DEBT COLLECTION

## ORIGINAL CREDITOR - SOUTH CAROLINA CONSUMER PROTECTION CODE

**Collector cannot:** Collect using unconscionable means, including but not limited to: threats or use of force or criminal prosecution, communicating at frequent intervals or at unusual hours, publish list of consumers who allegedly refuse to pay, use obscene language, advertise for sale any debt to coerce payment.

# THIRD PARTY - FAIR DEBT COLLECTION PRACTICES ACT

**Collector defined:** Any person, *other than the original creditor*, who regularly collects debts owed to others. Includes attorneys who collect debts on a regular basis.

**Collector cannot:** Contact at unreasonable times or places, such as before 8 a.m. or after 9 p.m., unless agreed. A debt collector also may not contact at work if the collector knows that the employer disapproves.



# HARASSMENT

Collectors may not harass or abuse any person, falsely imply that they are attorneys or government representatives, falsely imply that consumer committed a crime, falsely represent that they work for a credit bureau, misrepresent the amount of debt, indicate that papers being sent are legal forms when they are not or indicate that papers being sent are not legal forms when they are, state that consumer will be arrested, that they will seize, garnish, attach, or sell property or wages, unless the collection agency or credit intends to do so and it is legal to do so.

# HARASSMENT, PART II

Collectors may not give false credit information, send anything that looks like an official document from a court or government agency, use a false name.

Collectors may not collect any amount greater than the debt, unless allowed by law, deposit a post-dated check prematurely, make consumer accept collect calls or pay for telegrams, take or threaten to take property unless this can be done legally.

MOM SAYS TO TREAT  
OTHERS THE WAY YOU  
WOULD LIKE TO BE  
TREATED.

# ADVICE TO CONSUMERS

Write a letter to collection agency telling them to stop. Once the agency receives the letter, they may not contact again except to say there will be no further contact, and to notify that the debt collector or creditor intends to take some specific action.

# GARNISHMENT

Generally, creditors may not garnish wages for a consumer debt. However, **IF** the debt arose in a state where garnishment is allowed, **IF** the creditor obtained a valid judgment in that state and **IF** the order is domesticated, the creditor may be able to garnish a debtor's wages in South Carolina to satisfy the judgment.

# REPOSSESSION

- Creditor must have valid security interest
- Nonpayment or significant impairment of collateral
- Notice of Right to Cure must be sent once during life of closed-end contract, but not necessary for voluntary surrender of collateral
- Self-help repossession allowed as long as no breach of peace

# NOTICE OF RIGHT TO CURE

- Consumer must be at least 10 days in default
- Gives 20 days to bring current
- Only one notice required
- Certified mail NOT required
- Federal credit unions not required to provide notice

# RIGHT OF REDEMPTION

- Consumer has right to redeem after repossession
- Usually must pay the unpaid balance plus repossession costs
- Once property is sold to 3<sup>rd</sup> party, consumer loses right to redeem

# CREDIT ISSUES

## INTEREST RATES

**Maximum rates:** Creditor who charges more than 18% must file with the Department of Consumer Affairs and post in its place of business the maximum rate that it will charge. Except for certain lenders, no limit on the rate that can be charged when the creditor files and posts its maximum rate.

**MOM SAYS – KEEP YOUR  
EYES AND EARS OPEN –  
AND READ BEFORE YOU  
SIGN!!**

# PAYDAY LENDING

- Always shop around.
- Ask questions.
- If you don't understand the terms of the loan, talk to someone you trust to review the document for you.
- Don't trust ads promising "no credit, no problem."
- Ignore high-pressure sales tactics.
- Don't take the first loan you are offered.
- Be wary of promises to refinance the loan to a better rate in the future.

# TRUTH-IN-LENDING

**Required disclosures:** Actual cost of the credit as an annual percentage rate, finance charge, amount financed, total of payments, number and amount of monthly payments, date payments begin, cost of credit insurance (if applicable), description of security interest, late fees, whether consumer is entitled to a rebate of unearned finance charge if contract is paid early, whether there is a penalty for early pay off.

**Statute of limitations:** Action may be brought within **one year** from the date on which the violation occurred. This limitation does not apply when TILA violations are asserted as a defense.

**MOM SAYS – SHRED FIRST  
AND ASK QUESTIONS  
LATER!!!**

# IDENTITY THEFT

**First Step:** Call the toll-free fraud number of any one of the three major credit bureaus to place a fraud alert on credit report. As soon as the credit bureau confirms fraud alert, the other two credit bureaus will be notified to place fraud alerts on credit report, and all three reports will be sent to consumer free of charge.

Review credit reports carefully. Look for inquiries you didn't initiate, accounts you didn't open, and unexplained debts on your true accounts. Check your SSN, addresses, name, and employers. Whether inaccuracies are due to fraud or error, notify credit bureau as soon as possible by telephone and in writing. Continue to check reports periodically, especially in the first year after the theft.

# IDENTITY THEFT, CONTINUED

## Second Step

- Close any accounts that have been tampered with or opened fraudulently. If closing existing accounts and opening new ones, use new Personal Identification Numbers (PINs) and passwords.
- Ask the company if they accept the FTC's ID Theft Affidavit. If they don't, ask them to send their fraud dispute forms. If ATM card has been compromised, cancel the card and use a new PIN with the replacement.
- If checks have been stolen or misused, close the account and ask bank to notify the appropriate check verification service.

# AND MORE IDENTITY THEFT

## Third Step

- **File a report with local police or the police in the community where the identity theft took place. Keep a copy of the report. It may be needed to validate claims to creditors.**

## Fourth Step

- **File a complaint with the FTC.**

MOM SAYS TO DO IT  
RIGHT THE FIRST TIME  
SO YOU WON'T HAVE TO  
SPEND TIME FIXING  
THINGS!!

# TO AVOID ID THEFT

Shred unnecessary documents and account information and discard old receipts, files, and records after a few years.

Check your credit report at least once a year for inaccuracies, new accounts, and changes of name or address.

Don't give your information to unfamiliar people or businesses – no matter how official they seem.

Ask inquirers about the information they need: why do they need it? What will they do with it and how will they protect it? With whom will they share?

# AND.....

**Don't give out personal information** on the phone, through the mail or over the Internet unless you've initiated the contact or are sure you know who you're dealing with. Before you share any personal information, confirm that you are dealing with a legitimate organization. You can check the organization's Web site as many companies post scam alerts when their name is used improperly, or you can call customer service using the number listed on your account statement or in the telephone book.

# AND...

If you receive pre-screened credit card offers in the mail (based on your credit data), tear them up after you decide you don't want to accept the offer.

To opt out of receiving pre-screened credit card offers, call: 1-888-5-OPTOUT (1-888-567-8688). The three major credit bureaus use the same toll-free number to let consumers choose to not receive pre-screened credit offers.

In addition, you can notify the three major credit bureaus that you do not want personal information about you shared for promotional purposes.

# AND...

**Secure personal information in your home**, especially if you have roommates, employ outside help or are having service work done in your home.

**Pay attention to your billing cycles.** Follow up with creditors if your bills don't arrive on time. A missing credit card bill could mean an identity thief has taken over your account and changed your billing address to cover his tracks.

**Be wary of promotional scams.** Identity thieves may use phony offers to get you to give them your personal information.

**MOM SAYS BE AWARE!!**

# CREDIT REPORTS

**General:** South Carolinians can get a free credit report from each of the three major credit reporting agencies (Equifax, Experian, TransUnion) annually. Reports should be reviewed regularly (at least annually) for suspicious activity.

Consumers have **two years** from the date the incorrect information was placed on the report in which to bring an action in court for removal.

# REVIEWING CREDIT REPORTS

Consumer should review report carefully. Look at: Date of Last Activity - should reflect last payment made by consumer - is it correct; is it more than seven years old. Accuracy of information - amount owed, when last payment made, status (settled, paid in full, charged off, etc.), payment history (# times delinquent, days delinquent)

- Is it consumer's debt?
- Did consumer ever file bankruptcy and include this debt?
- Are there other issues/disputes with any of the debts (consumer was co-signor, joint account that other party was responsible for, problems with services/property, etc)?

# CORRECTING CREDIT REPORTS

Tell the reporting company, in writing, what information is inaccurate. Include copies (NOT originals) of documents that support the position. In addition to providing complete name and address, letter should clearly identify each disputed item, state the facts and explain why it is disputed, and request that information be deleted or corrected. Keep copies of dispute letter. Consumer reporting companies must investigate the items in question within 30 days. When investigation is complete, reporting company must give written results and a free copy of the report if the dispute results in a change. If an investigation doesn't resolve dispute, ask that a statement (100 words or less) of the dispute be included in file and future reports.

**YOUR MOM WAS RIGHT –  
IF IT'S TOO GOOD TO BE  
TRUE, IT PROBABLY IS!!**

# MYTHS AND SCAMS

**THREE DAY RIGHT OF RESCISSION:** Generally, once a contract has been signed, the consumer is bound by its terms. South Carolina law does not provide a right to cancel the contract, so unless the terms include a right to rescind, the consumer is bound by the contract.

## Exceptions

- Home solicitation sales - consumer is given a three day right to rescind the contract.
- Health facilities - Prepaid or credit contracts for physical fitness facilities must allow consumer three business days to cancel.
- Refinance of real estate mortgage - Consumer has three days to rescind a refinance of the mortgage on his home, or a home equity loan that is secured by a mortgage of his home.

# NIGERIAN FRAUD

Claiming to be Nigerian officials, businesspeople or the surviving spouses of former government officials, con artists offer to transfer millions of dollars into a bank account in exchange for a small fee. If the consumer responds to the initial offer, he may receive "official looking" documents. Typically, he is then asked to provide blank letterhead and his bank account numbers, as well as some money to cover transaction and transfer costs and attorney's fees.

# CANADIAN/INTERNATIONAL LOTTERY

Scam operators often based in Canada — are using the telephone and direct mail to entice U.S. consumers to buy chances in high-stakes foreign lotteries from as far away as Australia and Europe. These lottery solicitations **violate U.S. law**, which prohibits the cross-border sale or purchase of lottery tickets by phone or mail.

Many scam operators don't buy the promised lottery tickets, and they use victims' bank account numbers to make unauthorized withdrawals or credit card numbers to run up additional charges.

If you play a foreign lottery-through the mail or over the telephone-you're violating federal law. There are no secret systems for winning lotteries. Your chances of winning more than the cost of your tickets are slim to none. If you purchase one foreign lottery ticket, expect many more bogus offers for lottery or investment "opportunities."  
Keep your credit card and bank account numbers to yourself.

# MONEY LAUNDERING SCHEME

- Certified check is sent to consumer
- Consumer cashes and sends most of the money to scammer
- Check eventually bounces and bank looks to consumer for the money
- Many variations, same idea

# RESOURCES

Department of Consumer Affairs:

[www.sccoconsumer.gov](http://www.sccoconsumer.gov)

SC Bar: [www.scbar.org](http://www.scbar.org)

Federal Trade Commission:

[www.ftc.gov/consumer](http://www.ftc.gov/consumer)

National Consumer Law Center:

[www.consumerlaw.org](http://www.consumerlaw.org)

Consumer World: [www.consumerworld.org](http://www.consumerworld.org)

[www.bankrate.com](http://www.bankrate.com)

<http://moneycentral.msn.com/home.asp>