The State of South Carolina
Department of Consumer Affairs

2221 DEVINE STREET
P.O. BOX 5757
COLUMBIA, S.C. 29250

IRVIN D. PARKER
ADMINISTRATOR
AND
CONSUMER ADVOCATE

July 9, 1981

Administrative Interpretation No. 2.104-8105

MOBILE HOME SALES, ALTHOUGH CONSUMER CREDIT SALES, ARE SUBJECT TO SECTION 501(a)(1) OF THE DEREGULATION ACT OF 1980 AS AMENDED UNDER CERTAIN CONDITIONS.

You have asked about the effect of a recent law on consumer credit sales of residential manufactured homes (mobile homes). Act No. 6 of 1981 (R16,H2164), approved and effective March 2, 1981, provides in Section 3:

> The State of South Carolina does not want the provisions of subsection (a)(1) of Section 501 of Public Law 96-221, as amended, The Depository Institution [sic] Deregulation in [sic] Monetary Control Act of 1980, to apply with respect to loans, mortgages, credit sales and advances made in South Carolina under the provisions of Act 7 of 1979. This provision is enacted under the authority and intended to meet the requirements of subsection (b)(2) of Section 501 of Public Law 96-221 permitting the State to override federal preemption of the state's mortgage usury laws as related to the provisions of Act 7 of 1979. (Emphasis added)

Title V of the Depository Institutions Deregulation and Monetary Control Act of 1980 ("Deregulation Act"), Public Law 96-221, as amended, pre-empted State usury laws in several areas, including limitations on the amount of finance charges and other charges in connection with certain transactions secured by a first lien on residential real property and residential manufactured homes. Section 501(a)(1) of the Deregulation Act provides in pertinent part:

> The provisions of . . . law of any State expressly limiting the rate or amount of interest, discount points, finance charges, or other charges which may be charged, taken, received, or reserved shall not apply to any loan, mortgage, credit sale, or advance which is -
>
> (A) secured by a first lien on residential real property . . . or by a first lien on a residential manufactured home;
>
> (B) made after March 31, 1980; and
>
> (C) described in section 527(b) of the National Housing Act. . . .

The preemption was not total, however, as Congress allowed the States to override the preemptive effect within a certain time in Section 501(b)(2) which provides in pertinent part:

> [T]he provisions of subsection (a)(1) shall not apply to any loan, mortgage, credit sale, or advance made in any State after the date (on or after April 1, 1980, and before April 1, 1983) on which such State adopts a law . . . which states explicitly and by its terms that such State does not want the provisions of subsection (a)(1) to apply with respect to loans, mortgages, credit sales, and advances made in such State.

Section 3 of Act No. 6 of 1981 tracks the language in Section 501(b)(2) quoted above with the exception of additional language in the South Carolina law concerning Act No. 7 of 1979 which is underlined in the quote on page one. Your question was whether the South Carolina General Assembly overrode the federal preemption with regard to loans but did not do so with regard to certain sales of residential manufactured homes. In our opinion the answer is yes.

The South Carolina Supreme Court has provided rules of statutory construction applicable to this question in a number of cases over the years. The first rule in the construction of statutes is to carry out the intention of the legislature. Full effect must be given to each section, and the words must be given their plain meaning. Home Building & Loan Ass'n v. City of Spartanburg, 185 S.C. 313, 194 S.E. 139, 142 (1937). All words should be given effect if possible and may be regarded as surplusage only in unusual circumstances and not when the effect is to defeat the legislative intention. Bruner v. Smith, 188 S.C. 75, 198 S.E. 184, 187 (1938). Courts have the duty to give all parts and provisions of the legislative enactment effect and reconcile conflicts if reasonably and logically possible. Adams v. Clarendon Cty. School Dist. No. 2, 270 S.C. 266, 241 S.E.2d 897, 900 (1978). General words in a statute must be construed in context and, under the doctrine of ejusdem generis, the meaning of such words may be restricted by words of specification on the theory that if the legislature had intended the general words to be used in their unrestricted sense, there would have been no mention of the particular class. State v. Patterson, 261 S.C. 362, 200 S.E.2d 68, 69 (1973). In seeking the intention of the legislature, it must be presumed that it intended to accomplish something and not do a futile thing. State v. Montgomery, 244 S.C. 308, 136 S.E.2d 778, 782 (1964).

Following the principles of statutory construction provided by the Supreme Court in these cases, we conclude that the General Assembly intended to limit its overriding of the preemption to loans that have some connection with Act No. 7 of 1979 as amended. Although Section 3 of Act No. 6 of 1981 refers to "credit sales" as well as loans, that language was taken directly from the Deregulation Act, no doubt because of the requirement that an overriding State law must state "explicitly

and by its terms" that the State does not want the federal law to apply to "loans, mortgages, credit sales, and advances" made in the State. By using the exact language from the Deregulation Act, the General Assembly apparently was attempting to insure that the override would not be found to be defective because of even a slight deviation from the language which Congress appears to have required to accomplish the override. Besides the required language, however, the General Assembly added its own language concerning Act No. 7 of 1979 which cannot be ignored. The additional language about Act No. 7 of 1979 can be seen as more specific than the general language borrowed from the federal law and cannot be disregarded as mere surplusage. It must have been added with the intent to accomplish something other than a total override of the federal law because simply leaving it out would have resulted in a total override of the federal preemption.

It is possible to reconcile the otherwise apparent conflict by concluding that the General Assembly intended to override the federal law relating to loans only. Act No. 7 of 1979, as amended, concerns only loans: Section 1 concerns first mortgage loans in general; Section 2 concerns consumer loans subject to the Consumer Protection Code; Section 3 concerns loans of $100,000 or less; Section 4 concerns certain loans excluded from the Consumer Protection Code; Section 5 adds a new exclusion from the Consumer Protection Code for certain first mortgage loans; Section 6 concerns the definition of consumer loan; Section 7 deletes a proviso concerning first mortgage loans from Section 34-31-30; and Section 8 concerns a borrower's right to select the closing attorney.

The Consumer Protection Code distinguishes between consumer credit sales (Chapter 2 of Title 37) and consumer loans (Chapter 3 of Title 37). Most transactions which were affected by Section 501 (a)(1) of the Deregulation Act were loans that came within the exclusion in Consumer Protection Code Section 37-1-202(11) (§5 of Act No. 7 of 1979 as amended) of "first mortgage loans made to enable the debtor to build or purchase a residence" when made by certain lenders. Other transactions, although less numerous, were also affected by the preemption such as loans secured by a first lien on residential real property which were not to enable the debtor to build or purchase a residence (such as a home improvement loan to a consumer who owns his home outright) and loans and sales secured by a first lien on a residential manufactured home when made by certain creditors. The effect of the General Assembly's overriding Section 501(a)(1) of the Deregulation Act with regard to transactions that have some relationship to Act No. 7 of 1979 on the Consumer Protection Code, in the Department's opinion, is that all rates and charges on consumer loans secured by a first lien on residential real property or residential manufactured homes that were governed by the Consumer Protection Code prior to the Deregulation Act are once again governed by the Consumer Protection Code. On the other hand, because Act No. 7 of 1979 has no bearing on and makes no reference to sales of any type, in our opinion consumer credit sales secured by a first lien on a residential manufactured home will be subject to the Deregulation Act when and if the conditions in that act are met.

A residential manufactured home credit seller who wishes to make sales at rates and with charges under the authority of the Deregulation Act should be certain first that he meets the requirements of a creditor for purposes of that act (§501(a)(1)(C) and National Housing Act §527(b), 12 U.S.C. §1735f-5(b) as modified). If he does qualify as such a creditor, then he must comply with the terms and conditions set forth in the consumer protection regulations for those transactions which have been prescribed by the Federal Home Loan Bank Board. Deregulation Act §501(c), 12 C.F.R. 590.4. Such consumer credit sellers should be aware that these regulations, although somewhat similar to provisions of the Consumer Protection Code, are different in some respects and may be more restrictive, no doubt as a trade-off for the lifting of the finance charge ceiling. E.g., §590.4(d) on prepayment and (f) on late charges. Unaffected provisions of the Consumer Protection Code, however, must still be complied with. Because of complications involved in determining whether the federal law applies and if so how to comply with it as well as applicable state law, some credit sellers may simply choose to continue to comply totally with the Consumer Protection Code.

In summary, it is our interpretation of the Consumer Protection Code as affected by the Deregulation Act and Act No. 6 of 1981 that all consumer loans that were subject to the Consumer Protection Code rate and charge provisions before the Deregulation Act are once again fully subject to the Consumer Protection Code. Consumer credit sales of residential manufactured homes are also subject to the Consumer Protection Code. However, for a creditor who qualifies under Section 501(a)(1) of the Deregulation Act, finance and other charges for sales secured by a first lien on a residential manufactured home may be made under the authority of the Deregulation Act but only if he complies with the consumer protection provisions of the Federal Home Loan Bank Board regulations promulgated under the Deregulation Act. Such compliance does not relieve the seller from complying with additional provisions of the Consumer Protection Code.

Roy C. Harms
Deputy Administrator

Kathleen Goodpasture Smith

By Kathleen Goodpasture Smith
Counsel to the Administrator

KGS/sbb