



The State of South Carolina

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September 1, 1981

Administrative Interpretation No. 2.301-8107

COMPLIANCE WITH TRUTH IN LENDING SIMPLIFICATION AND REFORM ACT WILL BE CONSIDERED COMPLIANCE WITH CONSUMER PROTECTION CODE DISCLOSURE REQUIREMENTS.

Passage of the Truth in Lending Simplification and Reform Act on March 31, 1980, Title VI of the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221 as amended, has raised questions concerning compliance with disclosure requirements of the Consumer Protection Code. Sections 37-2-301 and 37-3-301 (1976) of the Consumer Protection Code provide:

A person upon whom the Federal Truth in Lending Act imposes duties or obligations shall make or give to the consumer the disclosures, information and notices required of him by that act and in all respects comply with that act. (Emphasis added)

Compliance with the Truth in Lending Act as amended March 31, 1980 and revised Federal Reserve Board Regulation Z, 12 C.F.R. 226, is optional as of April 1, 1981 and becomes mandatory April 1, 1982 as a matter of federal law.

Both Section 37-2-301 concerning consumer credit sales and consumer leases and Section 37-3-301 concerning consumer loans were part of Act No. 1241 of 1974, the law initially enacting the Consumer Protection Code, as was Section 37-6-104(2) requiring the Administrator to "enforce the Federal Truth in Lending Act to the fullest extent provided by law." None of these provisions has been amended since that time. The question is: what version of the federal Truth in Lending Act is a creditor required to comply with in South Carolina as a matter of State law--that existing on August 13, 1974 (the date of approval of Act No. 1241 of 1974, the CPC), on January 1, 1975 (the effective date of substantive provisions of the CPC), or the federal law as amended from time to time?

Although the term "Federal Truth in Lending Act" is not specifically defined in the Consumer Protection Code, that act is Title 1 of the Consumer Credit Protection Act, Public Law 90-321, 15 U.S.C. §§1601 et seq. Section 37-1-302 (1976) of the Consumer Protection Code provides:

In this title "Federal Consumer Credit Protection Act" means the Consumer Credit Protection Act (Public Law 90-321: 82 Stat. 146), as amended, and includes regulations issued pursuant to that act. (Emphasis added)

TELEPHONES (AREA CODE 803)

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It is apparent that the drafters were aware that the federal law which includes the Truth in Lending Act was subject to amendment and had already been amended when the Consumer Protection Code was passed. Since then, it was amended three more times before Congress enacted the sweeping amendments in the Truth in Lending Simplification and Reform Act.

While Section 37-1-302 defining the Consumer Credit Protection Act was taken from Section 1.302 of the Official 1968 Text of the Uniform Consumer Credit Code ("UCCC"), Sections 37-2-301 and 37-3-301 on disclosure were not. The Official 1968 Text of the UCCC contained detailed disclosure provisions in Part 3 of both Article 2 on consumer credit sales and Article 3 on consumer loans. The South Carolina General Assembly, instead of including each disclosure requirement in the Consumer Protection Code itself as the 1968 UCCC did, took the same approach as Section 3.201 of the Official 1974 Text of the UCCC which incorporates the federal disclosure law as State law. The Consumer Protection Code's disclosure provisions are the first sentence in 1974 UCCC Section 3.201 whose official comment says that "the purpose [of incorporation by reference] is to attain the dual administrative enforcement of Truth in Lending as recommended by the Report of the National Commission on Consumer Finance p. 60 (1972)."

The Prefatory Note to the Official 1974 Text of the UCCC explains the reasons for changing the approach to disclosure in the 1974 UCCC from that in the 1968 UCCC. While the expectation under the 1968 UCCC was to obtain a State exemption from the Truth in Lending Act, the Note points out the difficulty of obtaining State exemption in the first place and keeping State laws and regulations parallel even if exemption had been obtained because of frequent changes in the federal law and regulations. The Note continues as follows:

Consequently, this Act contains few substantive disclosure provisions and in Section 3.201 provides simply that a person upon whom the federal Act imposes duties or obligations shall make or give to the consumer the disclosures required of him by the federal Act and in all respects comply with that Act. Section 3.201 allows the Administrator to enforce the disclosure provisions of the Truth in Lending Act and Regulation Z as State law. ...

In adopting this basic approach the National Conference [of Commissioners on Uniform State Laws] recognizes that in some States problems of delegation of legislative power may arise. However, in the ever increasing complexity of areas in which both the federal government and individual States have enacted legislation, solutions of this type are increasingly common and have been sustained. (Citations omitted) In any event, whatever difficulties may be involved, the course adopted in this Act and the abandonment of any effort to duplicate disclosure requirements by substantive provisions seem preferable to the alternative of attempting to establish and maintain parallel federal and state legislation on the subject.

It is the opinion of this Department that compliance with the Federal Truth in Lending Act as amended by the Truth in Lending Simplification and Reform Act and revised Federal Reserve Board Regulation Z will result in compliance with the Consumer Protection Code's disclosure requirements contained in Sections 37-2-301 and 37-3-301. We reach this conclusion by following the cardinal rule of statutory construction which requires us to try to ascertain the legislative intent of those provisions. In our opinion, based on language in the Consumer Protection Code itself and official comments to the UCCC, the legislature must have intended that South Carolina creditors who are in compliance with current federal disclosure law will also be in compliance with the Consumer Protection Code's disclosure requirements.

The Consumer Protection Code contains its own rules of construction in Section 37-1-102 (1976 as amended) which provides in pertinent part:

This title shall be liberally construed and applied to promote its underlying purposes and policies [which] are:

- (a) To simplify, clarify and modernize the law governing retail installment sales, consumer credit and usury; ...
- (c) To further consumer understanding of the terms of credit transactions...
- (f) To conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act.
(Emphasis added)

By construing the Consumer Protection Code as requiring compliance with the Truth in Lending Act as recently amended, we believe that South Carolina law governing consumer credit will be simplified by requiring compliance with only one overall disclosure law. Trying to determine how to comply with a different State disclosure law without violating federal law would be extremely difficult if it could be done at all.

We also believe that consumer understanding of the terms of credit transactions will be furthered by not requiring compliance with two sets of disclosure law which would result in the information overload that was attempted to be avoided by the Simplification Act. See Report of the Senate Committee on Banking, Housing and Urban Affairs on S.108, Senate Report No. 96-73 at 3.

Further, we believe that requiring compliance with the amended federal law as a matter of State law will more nearly conform our regulation of consumer credit to the policies of the Federal Consumer Credit Protection Act. Along these lines, Section 37-6-104(3)(1976) provides in pertinent part:

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To keep the Administrator's rules in harmony with the Federal Consumer Credit Protection Act and the regulations prescribed from time to time pursuant to that Act by the Board of Governors of the Federal Reserve System... [t]he Administrator, so far as is consistent with the purposes, policies and provisions of this title, shall ...

(b) In adopting, amending, and repealing rules, take into consideration:

(i) The regulations so prescribed by the Board of Governors of the Federal Reserve System... . (Emphasis added)

That uniform provision is taken from Section 6.104 of the Official 1968 Text of the UCCC. Although we have no specific Administrator's disclosure "rules" due to the incorporation of the federal disclosure law and regulations by reference, in our opinion this is further evidence of the legislative intent that compliance with the federal law and Federal Reserve Board regulations as amended from time to time will be compliance with State law disclosure requirements as well. In accordance with this view, we have enforced the Truth in Lending Act as amended from time to time, prior to the Simplification Act, under Section 37-6-104(2).

The South Carolina Supreme Court has told us that in certain circumstances it is proper to look at the effects and consequences of an interpretation when construing a law. *State v. Patterson*, 220 S.C. 269, 66 S.E. 2d 875, 876 (1951). Were we not to interpret these sections of the Consumer Protection Code as we do, the result would be federal preemption of much of the South Carolina disclosure law. Section 111 of the Truth in Lending Act, 15 U.S.C. §1610, preempts State disclosure law which is inconsistent with the federal law to the extent of the inconsistency. An interpretation that compliance with the Truth in Lending Act prior to its amendment is required by South Carolina law would result in inconsistent disclosures because the recently amended Truth in Lending Act and revised Regulation Z contradict the original Truth in Lending Act and Regulation Z in many respects. Federal Reserve Board Revised Regulation Z §226.28, 12 C.F.R. 226; e.g., compare revised Reg. Z §226.18 with original Reg. Z §226.8. Construing the disclosure provisions in such a way that would put creditors in peril of violating federal disclosure law would make its application unreasonable or absurd, a result to be avoided according to the South Carolina Supreme Court. *Stephens v. Hendricks*, 226 S.C. 79, 83 S.E. 2d 634, 641 (1954).

Finally, we are aware that this interpretation is at variance with an Attorney General's opinion issued in 1975. AGO No. 4208 of December 2, 1975. That opinion said that the Consumer Protection Code specifically adopts the Federal Truth in Lending Act as it existed on August 13, 1974 and does not incorporate subsequent amendments. With all due respect, we reach a different conclusion today. While obviously two interpretations are possible, as the administrator and enforcer of the Consumer

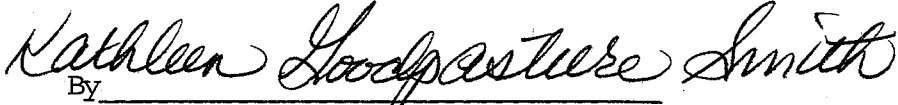
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Protection Code and the federal Truth in Lending Act as incorporated into it, we choose this interpretation as being fair and just under the circumstances. *Adams v. Pitts*, 140 F. Supp. 618 (D.S.C. 1956); CPC §§37-6-104(1)(b), 37-6-506(3)(1976).

It should be emphasized that this interpretation reaches only disclosure requirements contained in Sections 37-2-301 and 37-3-301. It has no effect on other provisions of the Consumer Protection Code such as its scope, the definition of consumer credit transactions, and limitations on charges, agreements, and practices. See Administrative Interpretation No. 3.301-7915 of August 3, 1979.

In summary, in our opinion a creditor who complies with the Truth in Lending Act as recently amended and revised Regulation Z will be in compliance with disclosure provisions of the Consumer Protection Code.

Roy C. Harms
Acting Administrator


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