



IRVIN D. PARKER
ADMINISTRATOR

The State of South Carolina

Department of Consumer Affairs

600 COLUMBIA BUILDING
P. O. BOX 11739
COLUMBIA, S. C. 29211
(803) 758-2040

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October 1, 1976

Declaratory Ruling No. 3.202-7608

SUPERVISED LENDER MAY SELL SINGLE PREMIUM
ACCIDENTAL DEATH INSURANCE AS A SEPARATE
TRANSACTION NOT IN CONNECTION WITH A LOAN.

You have asked whether a supervised lender may sell "UNIPAY" insurance as an adjunct to the business of making supervised loans where such sale is made under the following circumstances and procedures:

- a) the lender solicits the sale of the insurance simultaneously with negotiations for a loan;
- b) the insurance application is not a part of the "loan set" but is a separate document, separately executed;
- c) The borrower is made aware that the purchase of the insurance is optional and is in no way required as a condition for obtaining the loan;
- d) the premium is not deducted from the loan proceeds but is paid by the affirmative act of the borrower endorsing a check made payable solely to the borrower in the amount of the insurance premium;
- e) the policy is mailed directly to the insured-borrower by the insurer with a conspicuous notice to the borrower that he may within ten days after receipt of the policy rescind it and receive a full refund of premium paid, such notice clearly stating what the insured must do to exercise this right.

Since the sale of insurance is a sale of "services" [Section 2.105(3)] such a sale is not prohibited by Section 3.512 unless such business is carried on in such a manner as to evade or violate the Code.

"All charges" made by a lender "as an incident to" the making of a loan are "loan finance charges" except that the term does not include "charges as a result of default, additional charges"

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(Section 3.202), delinquency charges (Section 3.203), or deferral charges (Section 3.204)." (Emphasis added) (See Section 3.109)

"Additional charges" which may be made "in connection with" a loan are enumerated in Section 3.202. Subsection 1(b) provides that "charges for insurance described in subsection (2)" are additional charges. Subsection (2) does not include accidental death and dismemberment insurance such as that provided in the UNIPAY plan.

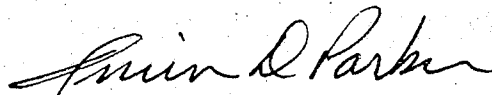
Since the insurance premium is not of the type described in Section 3.202(2) and is not therefore, an "additional charge" the charge may not be made by a supervised lender "in connection with" a loan. But such a lender might legally sell such insurance and make a premium charge therefore if such sale and charge is a separate transaction-- not "in connection with" a loan.

The question resolves itself into whether a sale of UNIPAY insurance in the manner outlined in your question (above) is a separate transaction or whether it is a sale "in connection with" a loan.

By limiting additional charges "in connection with" loans as was proposed in the Uniform Code, it seems clear enough that the legislature intended to restrict the abuse of using the loan transaction as a vehicle or conduit for making charges for goods or services which borrowers either do not need or do not want and would not buy except that it is either concealed in the loan transaction or made to appear that it is a condition for getting a loan.

It seems equally clear that there was no intent to prohibit outright, the sale of non-credit insurance by supervised lenders. Prior to adoption of the Code the sale of such insurance by licensed lenders in this State was a common practice. Had the legislature intended to abolish such business it would likely have so provided in Section 3.512 which was an amendment to the Uniform version of the Code to prohibit such lenders from selling "goods."

It is the opinion of this office that a supervised lender may sell noncredit insurance such as single premium accidental death and dismemberment insurance provided that the charge therefor is not made "in connection with" a loan; and further that such a sale pursuant to the procedure set forth in your question above would constitute a separate transaction, not in connection with a loan.



Irvin D. Parker
Administrator