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ADMINISTRATOR
AND
CONSUMER ADVOCATE

The State of South Carolina
Department of Consumer Affairs

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December 19, 1980

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Administrative Interpretation No. 3.210-8015

\$15 "MINIMUM CHARGE" IS AUTHORIZED ONLY IF CONTRACTED FOR, THERE IS PREPAYMENT, EARNED FINANCE CHARGE IS LESS THAN \$15, AND LEGAL FINANCE CHARGE CONTRACTED FOR IS AT LEAST \$15

You have asked for an administrative interpretation of subsection (2) of Consumer Protection Code Section 37-3-210 (Cum. Supp. 1979) as amended by Section 3 of Act No. 326 of 1980, approved and effective March 6, 1980. That subsection of the Consumer Protection Code now says:

Upon prepayment of a consumer loan, whether or not precomputed, except a consumer lease or one pursuant to a revolving loan account, the creditor may collect or retain a minimum charge not exceeding \$15, if the minimum charge was contracted for and the loan finance charge earned at the time of prepayment is less than the minimum charge contracted for. (Emphasis added)

In the example illustrating your two questions a customer desires to borrow \$300 from a bank for thirty days repayable in one payment. First you asked, may the bank contract for a minimum charge of \$15 or is it limited to \$8.87 ($\$300 \times 36\% \times 30 \div 365$ [the maximum finance charge applicable to the loan])? Second, if the customer prepays the loan after fifteen days, may the bank retain \$15 ("minimum charge"), \$8.87 (finance charge contracted for), or \$4.43 (earned finance charge) if the printed contract calls for a minimum charge of \$15 upon prepayment?

To answer your first question, the bank is limited to contracting for a finance charge of no more than 36% annual percentage rate applied to \$300 for 30 days or, as you calculated, \$8.87 (or \$8.88 if rounded up).

To answer your second question, if the customer prepays the loan after 15 days, you may retain no more than \$8.87 even if the printed contract document provides for a minimum charge of \$15 on prepayment. We reach these conclusions for the following reasons.

There is no authority under the Consumer Protection Code to contract for a "minimum loan finance charge." The amount of a finance charge that may be contracted for is not related to any minimum charge that may be retained upon prepayment. Section 37-3-201 limits the loan finance charge that may be contracted for to a percentage dependent upon the status of the lender and the size of the loan. This is in contrast to Consumer Protection Code Section 37-2-201 (1976) governing credit service charges which provides in subsection (6):

TELEPHONES (AREA CODE 803)

ADMINISTRATION
758-3017

CONSUMER COMPLAINTS
758-2040
WATS 1-800-922-1594

PUBLIC INFORMATION
758-7546

NOTIFICATION
758-8587

CONSUMER ADVOCACY
758-8996

Notwithstanding subsection (2) [containing maximum annual percentage rates], the seller may contract for and receive a minimum credit service charge of not more than \$5 when the amount financed does not exceed \$75, or \$7.50 when the amount financed exceeds \$75.
(Emphasis added)

That subsection is the same as Section 2.201(6) of the Official 1968 Text of the Uniform Consumer Credit Code. Official Comment (4) says:

Subsection (6) of this section permits minimum charges equal to those for which the CCPA [Consumer Credit Protection Act of which the Truth in Lending Act is a part] requires no annual percentage rate disclosure. The CCPA does not set limits on the amounts of minimum charges, but does require annual percentage rate disclosure when the minimum charges exceed those permitted by subsection (6). Subsection (6) also sets limits on the amounts of minimum charges.

Thus minimum finance charges are permitted for consumer credit sales equal to the amounts for which no annual percentage rate disclosure is required. But a lender, unlike a seller, is limited in all transactions to the maximum finance charge permitted for a particular loan depending upon the status of the lender as either a supervised lender (in which case the graduated rate scale applies) or a non-supervised lender (with an 18% maximum annual percentage rate). In your example, the lender is a supervised financial organization and therefore is entitled to make loan finance charges according to the graduated rate scale which permits a maximum 36% annual percentage rate on a \$300 loan. CPC §§37-1-301(17), 37-3-502, 37-3-201 (Cum. Supp. 1979 as amended)].

Although there is authority to contract for a "minimum charge" not exceeding \$15 upon prepayment of a consumer loan when the loan finance charge earned at prepayment is less than this minimum charge, this is not authority to retain a separate charge or an amount higher than the loan finance charge permitted for that loan if the full finance charge were earned. A contrary interpretation would lead to the inconsistent and illogical result that a consumer who pays an obligation early (in your illustration on the fifteenth day) would pay more than if he waited until the payment were due (in your illustration on the thirtieth day). Such an absurdity will not be attributed to the legislature if another construction is possible which does not lead to the absurd result. See Adams v. Pitts, 140 F. Supp. 618, 621 (D.S.C. 1956), Stephens v. Hendricks, 226 S.C. 79, 83 S.E.2d 634, 641 (1954).

The rules of construction in the Consumer Protection Code itself also lead us to this interpretation. Section 37-1-102(1) requires us to liberally construe the Consumer Protection Code and apply it to promote its underlying purposes and policies which include protecting consumers against unfair practices and permitting and encouraging the development

Administrative Interpretation No. 3.210-8015

December 19, 1980

Page 3

of fair and economically sound consumer credit practices. CPC §37-1-102 (2)(d),(e). Penalizing a consumer for prepaying an obligation is certainly not fair and would invite abuse by unscrupulous creditors who might encourage unknowing consumers to pay such obligations early. A penalty is also contrary to the provision that a consumer may prepay a consumer credit transaction in full at any time without penalty. §§37-2-209 (1976), 37-3-209 (Cum. Supp. 1979).

The purpose of Section 37-3-210's allowance of a "minimum charge" upon prepayment of a loan in some circumstances is to compensate the lender when a loan is paid off so early that the earned finance charge is considered to be inadequate to reimburse him for making the loan. Fifteen dollars was apparently considered to be reasonable compensation and most finance charges exceed that amount. In those instances when a finance charge is less than \$15, however, reasonable compensation, in our opinion, is the finance charge itself.

In summary, it is the opinion of the Department that subsection (2) of Section 37-3-210 may be read as if it said:

Upon prepayment of a consumer loan, whether or not precomputed, except a consumer lease or one pursuant to a revolving loan account, the creditor may collect or retain a minimum charge not exceeding \$15 (or the loan finance charge contracted for if less than \$15), if the minimum charge was contracted for and the loan finance charge earned at the time of prepayment is less than the minimum charge contracted for. (Parenthetical language added)

Irvin D. Parker
Administrator

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