



IRVIN D. PARKER
ADMINISTRATOR
AND
CONSUMER ADVOCATE

The State of South Carolina
Department of Consumer Affairs

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

February 25, 1981

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Administrative Interpretation No. 3.404-8101

CONSUMER PROTECTION CODE DOES NOT AUTHORIZE INSURANCE PREMIUM SERVICE COMPANIES TO CHARGE ATTORNEY'S FEES.

You asked for an interpretation of the Consumer Protection Code as it relates to consumer loans made by insurance premium service companies. Specifically, you asked whether Consumer Protection Code Section 37-3-404 (Cum. Supp. 1980) permits agreements between insurance premium service companies and consumers to contain a provision for payment of reasonable attorney's fees in certain circumstances. Section 37-3-404 says:

[W]ith respect to a consumer loan the agreement may provide for the payment by the debtor of reasonable attorney's fees not in excess of 15 percent of the unpaid debt after default and referral to an attorney not a salaried employee of the lender. ...

When an insurance premium service company finances an insurance premium for an individual primarily for a personal, family or household purpose, the company makes a "consumer loan" as defined in Consumer Protection Code Section 37-3-104 (Cum. Supp. 1980). Administrative Interpretation No. 3.104-7504 of March 26, 1975. Although these loans are generally governed by the Consumer Protection Code, certain aspects of them are excluded from its coverage. Consumer Protection Code Section 37-1-202(6) (1976) provides that:

This title does not apply to ... rates and charges for advancing insurance premiums by insurance agents or insurance premium service companies authorized to advance such premiums under the insurance laws of this State.

South Carolina Code Sections 38-27-10 through 38-27-140 (1976 as amended) comprise Chapter 27 on insurance premium service companies in Title 38 on insurance. As you pointed out, there is no specific authorization for charging attorney's fees in the event of default in this chapter although certain other charges are specified and limited. See §38-27-90 as amended.

In our opinion, an attorney's fee is a "charge" under the Consumer Protection Code. Administrative Interpretation No. 3.404-8003 of March 31, 1980 at page 2. When the General Assembly excluded rates and charges for insurance premium service agreements from the Consumer Protection Code we believe that it intended all charges relating to such agreements

TELEPHONES (AREA CODE 803)

ADMINISTRATION
758-3017

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758-2040
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758-7546

NOTIFICATION
758-8587

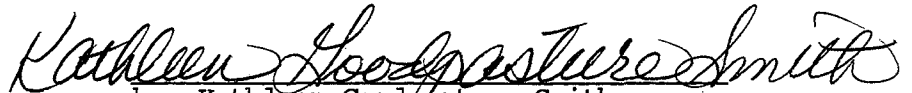
CONSUMER ADVOCACY
758-8996

Administrative Interpretation No. 3.404-8101
February 25, 1981
Page 2

to be governed by the insurance laws of South Carolina rather than the Consumer Protection Code. This interpretation is consistent with our earlier interpretation (No. 3.404-8003) concerning restricted loans in which we concluded that charges for attorney's fees in connection with restricted loans are governed by the Consumer Finance Law, Act 988 of 1966, and not the Consumer Protection Code. In our opinion, the exclusion for rates and charges on insurance premium service company loans is analogous to the exclusion for rates and charges on restricted loans in Section 37-1-202(7) (Cum. Supp. 1980).

In summary, it is the opinion of this Department that whether attorney's fees may be charged in connection with an insurance premium service company's consumer loans, and if so any limitations on such charges, are two questions that are governed by the insurance laws of South Carolina rather than the Consumer Protection Code.

Roy C. Hams
Deputy Administrator



by: Kathleen Goodpasture Smith
Counsel to the Administrator

KGS/sws