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ADMINISTRATOR

# The State of South Carolina

## Department of Consumer Affairs

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July 11, 1977

Administrative Interpretation No. 5.106-7709

### THE GARNISHMENT PROVISIONS RELATE TO INVOLUNTARY DEDUCTIONS FROM EARNINGS AND NOT TO VOLUNTARY REQUESTS FOR DEDUCTIONS.

You have asked what recourse a creditor has against an employer who denies an employee's request to deduct part of his earnings and pay it to that creditor. You have also asked whether Consumer Protection Code Section 5.106 [S.C. Code §37-5-106(1976)] prohibits an employer from discharging an employee who has made such a request.

The facts you presented involve a bank which makes consumer loans both as instalment transactions and by lender credit card. If a consumer gets behind on his payments, the bank would like to make an arrangement with the consumer for reduced payments. The plan would involve the consumer's voluntarily authorizing deductions from his earnings which the employer would pay directly to the creditor. The authorization would be revocable. The bank would provide the authorization forms and communicate directly with the employer concerning implementation of the plan. If the employer refuses to participate in the plan, due to bookkeeping problems for example, the bank would like to know if it can require the employer to participate.

As you pointed out, Sections 2.410 and 3.403 [S.C. Code §§37-2-410 and 37-3-403(1976)], which prohibit creditors from taking assignments of earnings for payment or as security for payment of a debt arising out of a consumer credit transaction, do not prohibit an employee from authorizing deductions from his earnings if the authorization is revocable. Although Sections 2.410 and 3.403 do not prohibit an employee from authorizing deductions from his earnings if the authorization is revocable, neither do they require an employer to deduct the requested amount from the employee's earnings.

The Consumer Protection Code is basically a comprehensive consumer credit law which regulates suppliers of consumer credit. See Sections 1.102 and 1.201 [S.C. Code §§37-1-102 and 37-1-201(1976)]. The Consumer Protection Code, in

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general, does not attempt to regulate the employer-employee relationship. However, the General Assembly has expressed the strong public policy against garnishment of earnings for personal services. Consumer Protection Code Section 5.104 [S.C. Code 37-5-104(1976)]; S.C. Code §§15-39-410 and 15-39-420 (1976). The public policy of South Carolina is consistent with the federal policy expressed by Congress in Title III of the Consumer Credit Protection Act [15 U.S.C. §1671 et seq.] which restricts garnishment as a creditor's remedy to a prescribed proportion of an individual's earnings.

Apparently to further this public policy against garnishment of earnings for personal services, the General Assembly prohibited an employer from discharging an employee because a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment for the purpose of paying an alleged debt arising from a consumer credit transaction. Consumer Protection Code Section 5.106. This section, like Section 5.104, is similar to, but more prohibitive than, federal law. 15 U.S.C. §1674. The General Assembly also provided a remedy for the employee who is discharged in violation of Section 5.106. Consumer Protection Code Section 5.202(5) [S.C. Code §37-5-202 (1976) (as amended)]. Other than these sections, the Consumer Protection Code does not directly affect the employer-employee relationship.

It is the opinion of this Department that whether deductions from earnings must be made upon the employee's request depends upon law outside the Consumer Protection Code. See, e.g., S.C. Code §41-11-30 (1976) which provides that an employee's assignment of wages does not bind the employer without the employer's written consent or acknowledgment. Also, because we are of the opinion that this is outside the scope of the Consumer Protection Code, your question concerning what if any recourse the creditor has if the employer will not allow the employee to have payments deducted from his earnings cannot be answered by the Consumer Protection Code. Additionally, although we do not condone an employer's discharging an employee solely because that employee requested a deduction from his earnings on behalf of a creditor, such action by an employer in the fact situation presented is not governed by Section 5.106 but by law outside the Consumer Protection Code.

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