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March 26, 1975

Administrative Interpretation No. 2.416-7503

A CREDITOR MUST GIVE TO EACH PERSON HAVING AN EXISTING REVOLVING CHARGE CONTRACT A NOTICE IN EACH OF TWO BILLING CYCLES PRIOR TO THE DATE A CHANGE IS TO BECOME APPLICABLE TO FUTURE PURCHASES.

Section 2.416(3)(e) of the South Carolina Consumer Protection Code (Act 1241 of 1974) provides that:

The notice specified in subsection (2) is not required if (e) the change applies only to purchases made or obligations incurred after a date specified in a notice of the change given in two billing cycles prior to the effective date of the change.

The question has arisen as to whether Section 2.416(3)(e) requires a notice to be given in each of two billing cycles and, if so, must such notice be given to both active and inactive account customers?

Section 2.416 is a provision which enables a seller, without prior express consent, to change the terms of a contract. Such a right did not exist at common law. This statutory enablement is, therefore, in derogation of the common law and as such must be strictly construed.

Subsection (3)(e) sets forth the required procedure for effecting such a change which will apply only to future purchases. It requires notice to the buyer to be "given in two billing cycles prior to the effective date of the change." (Emphasis added)

The stated purpose of this requirement is to give to a buyer such "adequate notice" as to "manifest agreement" by the overt act of making a subsequent purchase. (See Official Comment 4, 1968 Official Text, UCCC.)

The subsection either requires two notices - one in each of two billing cycles; or it requires one notice - at least two billing cycles prior to the effective date of the change.

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Two separate notices - one in each of two billing cycles, is rather obviously more adequate than is one notice up to two months before a change, which notice may easily be overlooked or forgotten. It would appear that an intent to provide for two notices can be found in the use of the phrase "in two billing cycles." One could not give a notice "in" two billing cycles without giving notice twice.

Based upon the foregoing, it is the position of this office that unless a creditor gives to a debtor a notice in each of two billing cycles prior to the date a change is to become applicable to future purchases, the change does not become effective as to such debtor.

In regard to the collateral question as to whether such notice must be given to both active and inactive account customers, it is the position of this office that the provision relates to individual accounts and not to general store practice. Thus each person who has an existing contract with the seller must be given the requisite notice before the change can be made applicable to his contract.



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