



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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Administrative Interpretation No. 2.102-7601

BANK PURCHASING "CONSUMER PAPER" MERELY BUYS SELLERS RIGHTS, WHICH ARE COVERED BY SALES ARTICLE OF CONSUMER PROTECTION CODE.

When a bank takes an assignment of a retail instalment sale contract it merely steps into the shoes of the seller. It purchases only those rights which a seller has contracted for. The seller in a consumer credit sale may contract for rights only in accord with the provisions on the Consumer Protection Code relating to "consumer credit sales" (Section 2.104).

Therefore, an assignee-bank has only those rights which the dealer lawfully contracts for. With respect to a consumer credit sale the dealer can lawfully contract for a credit service charge not in excess of the ceiling set forth in Sections 2.201, 2.207 or 2.211, whichever is appropriate. The assignee-bank may not assess or collect any other or separate amount. Section 2.403 prohibits the seller from taking a negotiable instrument. He can assign one only illegally. An assignee taking such an instrument with knowledge of its illegality is not a holder in due course but is not prohibited from receiving it for what it is worth. No "origination fee" may be charged separately since such a "fee" is included in the term "credit service charge" [Section 2.104] and must be treated for all purposes (including rebate upon prepayment) as a part of the credit service charge.


Irvin D. Parker
Administrator