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January 20, 1975

Administrative Interpretation 2.104-7502

WHERE A VENDOR DOES NOT REGARD A PAST DUE ACCOUNT IN DEFAULT BUT CONTINUES TO EXTEND CREDIT AND IMPOSE CHARGES PERIODICALLY FOR DELAYING PAYMENT OF THE ACCOUNT FROM TIME TO TIME UNTIL PAID, HE IS ENGAGED IN MAKING CONSUMER CREDIT SALES.

Section 2.104(1) of the South Carolina Consumer Protection Code (Act 1241 of 1974) provides that:

Except as provided in subsection (2), "consumer credit sale" is a sale of goods, services, or an interest in land in which (a) credit is granted by a person who regularly engages as a seller in credit transactions of the same kind, (b) the buyer is a person other than an organization, (c) the goods, services or interest in land are purchased primarily for a personal, family or household purpose, (d) either the debt is payable in instalment(s) or a credit service charge is made, and (e) with respect to a sale of goods or services, the amount financed does not exceed twenty-five dollars.

The question has arisen as to whether transactions in which a service charge is imposed on past due "open accounts" or thirty day accounts are "consumer credit sales" within the meaning of Section 2.104.

Some persons extend credit under a plan which requires that all purchases during the billing period be paid for in full within a given time period after the billing date, with no privilege of paying in instalments. If a bill is not paid within that stipulated period of time, a service charge is imposed periodically on the unpaid balance until the account is paid in full.

Sections 1.102 and 6.104 require that our Act be construed so as to keep it in conformity with the policies of the Federal Consumer Credit Protection Act.

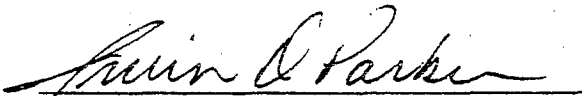
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Section 226.401 of Regulation Z, 12 CFR 226, expresses the policy relating to this question as follows:

When in the ordinary course of business a vendor's billings are not paid in full within that stipulated period of time, and under such circumstances the vendor does not, in fact, regard such accounts in default, but continues or will continue to extend credit and imposes charges periodically for delaying payment of such accounts from time to time until paid, the charge so imposed comes within the definitions of a "finance charge" [Section 226.2(q)] applicable in each case to the amount of the unpaid balance of the account. Under such circumstances the credit so extended comes within the "open end credit" in Section 226.2(r), the vendor is a creditor as defined in Section 226.2(m), and the disclosures required for open end credit accounts under Section 226.7 shall be made.

Based upon the foregoing, it is the opinion of this office that where a vendor does not, in fact, regard an account in default, but continues to extend credit and impose charges periodically for delaying payment of the account from time to time until paid, the transactions are "consumer credit sales" within the meaning of Section 2.104.


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