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ADMINISTRATOR

# The State of South Carolina

## Department of Consumer Affairs

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November 14, 1977

Declaratory Ruling No. 3.601-7712

INVENTORY LOAN SECURED BY FIRST MORTGAGE ON LAND  
SUBJECT TO CONSUMER PROTECTION <sup>Code</sup> BY AGREEMENT.

You have asked for a declaratory ruling with respect to the following statement of facts and questions:

### I. Statement of Facts

A sole proprietor who is a resident of South Carolina and operates an auto parts business in South Carolina wishes to borrow from a South Carolina commercial bank an amount of \$37,000, to be repaid in equal monthly installments of principal and interest, over a period of five years. The loan will be secured by a first mortgage on the premises (lot and building) of the auto parts business. The proceeds of the loan will be used to purchase inventory for resale in the auto parts business.

### II. Questions

- A. May the borrower and the bank agree, pursuant to the provisions of Section 3.601 of the Act, that the loan shall be subject to the provisions of the Act applying to consumer loans?
- B. If the answer to the above is Yes, may the bank receive a loan finance charge, calculated according to the actuarial method, not exceeding 12% per year on the unpaid balance of the principal pursuant to Section 3.201 of the Act?

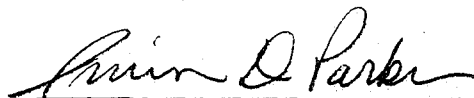
Section 3.601 reads as follows except in the case of a loan primarily secured by a first lien which is a purchase money security interest in land, the parties to a loan other than a consumer loan may agree in a writing signed by the parties that the loan is subject to the provisions of this

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Act applying to consumer loans. If the parties so agree, the loan is a consumer loan for all purposes of this Act except for purposes of loan finance charges for supervised loans (Sections 3.508 and supervised loans pursuant to a lender credit card Section 3.515).

Since the loan in question will be used to purchase inventory for resale in the auto parts business, it is a "loan other than a consumer loan" (See Section 3.104). Inasmuch as the loan is not made to purchase land, it is not "a loan primarily secured by a first lien which is a purchase money security interest in land," therefore, Section 3.601 is applicable to the transaction and permits the parties to agree in a writing signed by the parties that the loan is subject to the provisions in the Act applying to consumer loans. If the parties so agree, the loan will be subject to all of the provisions of the Consumer Protection Code which apply to consumer loans with the exception that Sections 3.508 and 3.515 are inapplicable.

It is the position of the Department that the parties to the loan as set forth in the Statement of Facts may agree in writing that the loan is subject to the provisions of the South Carolina Consumer Protection Code applying to consumer loans as provided in Section 3.601 of the Code. The maximum rate of loan finance charge which the parties may contract for is that maximum prescribed in Section 3.201 of the Act which provides that "a lender may contract in writing for and receive a loan finance charge, calculated according to the actuarial method, not exceeding 12% per year on the unpaid balances of the principal."



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