



The State of South Carolina
Department of Consumer Affairs

2221 DEVINE STREET, STE 200
 PO BOX 5757
 COLUMBIA, SC 29250-5757

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MEMORANDUM

TO: Subscribers of Advanced Notice List; Interested Parties
 FROM: Carri Grube Lybarker *Carri Grube Lybarker*
 DATE: February 28, 2017
 RE: **DECLARATORY RULING 3.202-7608 REVIEW**

The South Carolina Consumer Protection Code (“the Code”), Section 37-1-101 *et seq.*, was created in 1974. Among its purposes are the requirement to simplify, clarify and modernize the law governing consumer credit; to conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act; and to make uniform law, including administrative rules. The Code is further meant to protect consumers from unfair practices and encourage businesses to maintain high standards of honesty, fair business practices and public responsibility in all business matters. See S.C. Code Ann. § 37-1-102; S.C. Code Ann. Regs. 28-3.

The South Carolina Department of Consumer Affairs (“Department”) is the administrator and enforcer of the Code as well as other regulatory statutes outside the Code. The Department is the sole state agency designated by the General Assembly to construe and provide official legal interpretations of the Code. See S.C. Code Ann. §§ 37-6-104(1)(b) and -506. The Administrator of the Department has the power to issue rules, declaratory rulings, and administrative interpretations of the Code. S.C. Code Ann. §§ 37-6-104(1)(e) and -409; S.C. Code Ann. Regs. 28-25, 26.

On October 1, 1976, the Department issued Declaratory Ruling 3.202-7608 (“1976 Ruling”), allowing non-credit insurance—such as single premium accidental death and dismemberment insurance—to be sold in licensed locations of finance companies if the sale is not made in connection with a loan and the sale complies with certain procedures set forth in the ruling. Specifically, the Department opined that the practice of selling single premium accidental death insurance was permissible under certain circumstances: the sale of services is a separate transaction, and otherwise not completed “in connection with” the loan; the sale is solicited simultaneously with the negotiations for a loan; the insurance application is a separate document, separately executed; the borrower knows that the insurance product is entirely optional and not required as a condition of the loan; the premium is not deducted from loan proceeds but is paid by an affirmative act of the borrower endorsing a check made payable solely

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to the borrower; and the policy is mailed directly to the insured-borrower with a conspicuous notice that the borrower may rescind the policy. After its release, the Department issued subsequent informal opinions regarding other products based upon the framework set forth in the 1976 Ruling.

In 2007, the Department received a request to reconsider the 1976 Ruling and issued a notice regarding this review. On October 30, 2008, the Department issued a written ruling (“2008 Ruling”) withdrawing the 1976 Ruling. The withdrawal stated that the original 1976 Ruling was based on erroneous application of state and federal law and was no longer considered valid. An appeal of the 2008 Ruling ensued. On November 1, 2010, while the appeal was pending before the Administrative Law Court, the Department issued a revised ruling (“2010 Ruling”) at the request of the Administrative Law Judge. The 2010 Ruling was meant to clarify the reasoning for the withdrawal of the 1976 Ruling. The 2010 Ruling was substituted for the 1976 Ruling as well as any opinions previously issued by the Department that were inconsistent with the 2010 Ruling. In 2014 an order in the matter was issued, continuing the stay of the withdrawal of the 1976 Ruling. At this time, the Department is providing notice of its intent to reconsider the 1976 Ruling based upon items previously raised in the 2008 and 2010 Rulings as well as changes in state law.

As stated previously, the Department initially withdrew the 1976 Ruling via its 2008 Ruling. Therein the Department indicated its belief that the 1976 Ruling was based upon erroneous application of state and federal law and a convoluted practice could not change the character of the transaction as being one made in connection with the underlying loan. See 2008 Ruling. The 2010 Ruling further expounded upon this position, stating the charges for the ancillary products sold in a loan office met the definition of a “loan finance charge” and did not constitute an additional permissible charge. The 2010 Ruling, however, failed to make a distinction between the UNIPAY noncredit life insurance product that prompted the issuance of the 1976 Ruling and other products for which the Department issued subsequent informal opinions permitting their sale based on the 1976 Ruling framework.

Chapter 3 of the Code, amended in 1999, added provisions concerning noncredit term life insurance sold in conjunction with loans, permitting charges for such products to be considered permissible additional charges. S.C. Code Ann. § 37-3-202(2)(d). Many of the conditions and terms that were listed in the 1976 Ruling were codified in this section. Id. Specifically, the statute provides conditions and parameters for noncredit term life insurance, such as notices that must be provided to the consumer, information on cancellation, and charges that can be assessed to the consumer. Id.

Unfortunately, in its prior attempts to withdraw the 1976 Ruling, the Department overlooked these statutory changes that arguably rendered the 1976 Ruling moot. The state law changes coupled with the factors specified in prior withdrawals, including the Department’s own records indicating the 1976 Ruling contradicted a Federal Reserve Board letter issued within a year of the Ruling, prompt the Department to reconsider the 1976 Ruling.



The Department is releasing the notice as information and with an invitation to comment. Interested persons may submit comments or questions in writing to Kelly Rainsford, Deputy for Regulatory Enforcement, South Carolina Department of Consumer Affairs, P.O. Box 5757, Columbia, SC 29250 or via e-mail to KRainsford@scconsumer.gov. To be considered, comments must be received no later than April 28, 2017.