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ADMINISTRATOR

# The State of South Carolina

## Department of Consumer Affairs

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Administrative Interpretation No. 5.110-7703

### PROVISIONS CONCERNING NOTICE OF THE CONSUMER'S RIGHT TO CURE AND CURE OF DEFAULT APPLY TO SECURED SINGLE PAYMENT LOANS.

You have asked whether the Consumer Protection Code requires a lender to give notice of the right to cure and otherwise to comply with the Code's cure provisions in connection with a consumer loan involving a single payment.

The cure provisions of the South Carolina Consumer Protection Code, Sections 5.110 entitled "Notice of Consumer's Right to Cure" and 5.111 entitled "Cure of Default," are substantially the same as Sections 5.110 and 5.111 of the 1974 Official Text of the Uniform Consumer Credit Code. Subsection (1) of Section 5.110 provides in part:

With respect to a consumer credit transaction, after a consumer has been in default for ten(10) days for failure to make a required payment and has not voluntarily surrendered possession of goods that are collateral, a creditor may give the consumer the notice described in this section....  
(Emphasis added)

Subsection (1) of Section 5.111 provides in part:

With respect to a consumer credit transaction... after a default consisting only of the consumer's failure to make a required payment, a creditor, because of that default, may neither accelerate maturity of the unpaid balance of the obligation nor take possession of or otherwise enforce a security interest in goods that are collateral until twenty (20) days after a notice of the consumer's right to cure (Section 5.110) is given.... (Emphasis added)

Subsection (1) of Section 5.110 and Subsection (1) of Section 5.111 refer to a "consumer credit transaction" which is defined in Section 1.201, the general scope provision of the Consumer Protection Code, as "a consumer credit sale or consumer loan or a refinancing or consolidation thereof, or a consumer lease" [Subsection (7)(b)]. (Emphasis added)

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"Consumer loan" is defined in Consumer Protection Code Section 3.104, in part, as "a loan made by a person regularly engaged in the business of making loans in which... either the debt is payable in installments or a loan finance charge is made." (Emphasis added)

The drafters of the cure provisions did not limit the term "consumer credit transaction" to one that is payable in installments. Thus a single payment consumer loan is a consumer credit transaction subject to the cure provisions as they apply to that loan. As you pointed out, it is not possible for a creditor to accelerate maturity of the unpaid balance of an obligation when the due date for the single payment has passed because the debt has already matured. Likewise, if the single payment loan were unsecured, the creditor could not take possession of or otherwise enforce a security interest in goods that are collateral.

The Consumer Protection Code does not require a creditor to give the consumer the notice of the right to cure. It allows a creditor to give the notice (§5.110) and provides that a creditor may neither accelerate maturity nor enforce a security interest until twenty (20) days after a notice of the right to cure is given after default for failure to make a required payment (§5.111). Section 5.111 has no application to an unsecured single payment loan. However, with regard to a secured single payment loan, it is the opinion of this Department that the creditor may not take possession of or otherwise enforce a security interest in goods that are collateral until twenty (20) days after a notice of the consumer's right to cure is given.

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