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December 20, 1974

Administrative Interpretation No. 6.202-7402

NEW BUSINESSES SUBJECT TO 6.201 MUST FILE NOTIFICATION WITHIN THIRTY DAYS AFTER COMMENCING BUSINESS AND THEREAFTER, ALONG WITH OLD BUSINESSES, ON OR BEFORE JANUARY THIRTY-FIRST OF EACH YEAR.

Section 6.201(1) of the South Carolina Consumer Protection Code (Act 1241 of 1974) provides that:

Persons subject to this part shall file notification with the Administrator within thirty days after commencing business in this State, and, thereafter, on or before January thirty-first of each year . . .

The question has arisen as to whether Part 2 of Article 6, (Notification and Fees) is applicable to businesses which were established prior to the effective date of Act 1241, 1974 Acts.

Part 2 of Article 6 contains only three sections. Section 6.201 states to whom the Part is applicable. Section 6.202 states when Notification is to be filed and what information it is to contain. Section 6.203 states the amount of fee creditors are required to pay.

The first Section, pertaining to "applicability," states that it is applicable to "persons engaged in this State" in any of the four kinds of credit business stated therein. There is no hint here of a "grandfather clause" for persons doing business in this State prior to the effective date of the Act.

The second Section specifying what information must be filed and when it must be filed, provides that persons must file "within thirty days after commencing business in this State, and, thereafter, on or before January thirty-first of each year."

The third Section states the amount of fee each creditor should remit with his notification.

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The language found in the second Section stating that certain persons are to do so "within thirty days after commencing business in the State . . ." has led one State Attorney General (Iowa) to conclude that the Part applies only to persons commencing business less than thirty days before the effective date of the Act. Such conclusion is based solely upon his observation that only such new businesses could file "within thirty days after commencing business." Such a construction would render the Part unconstitutional in any state and would thus attribute an absurdity to the General Assembly. Such interpretations can be indulged in only if no other reasonable construction suggests itself.

Section 1.102(2)(g) of the Act states that one of the purposes of the Act is "to make uniform the law, including administrative rules, among the various jurisdictions."

Of the eight or so states which have enacted these provisions not one has had either its courts or its administering agency place such a construction on that Section as did the Iowa Attorney General. All have uniformly construed and applied the provisions as requiring new businesses to whom the Part applies (Section 6.201) to file within thirty days after commencing business and all persons to whom the Part applies to file annually on or before January thirty-first.

Based upon the foregoing it is the opinion of this office that Part 2 of Article 6 (Notification and Fees) is applicable to all "persons engaged in this State in making consumer credit sales, consumer leases, or consumer loans and to a person having an office or place of business in this State who takes assignments of and undertakes direct collection of payments from or enforcement or rights against debtors arising from these sales, leases or loans" without regard to who such creditor may be or when he may have commenced business in this State.


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