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## Department of Consumer Affairs

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Administrative Interpretation No. 1.201-7506

SETTING ASIDE SUBSECTIONS (3), (4) AND (5) OF SECTION 1.201 OF THE SOUTH CAROLINA CONSUMER PROTECTION CODE (ACT 1241, 1974 ACTS), CONCERNING THE ENFORCEABILITY OF CONTRACTS IN SOUTH CAROLINA COURTS, SUBSECTION 1.201(2) IS THE EXCLUSIVE PROVISION FOR TERRITORIAL APPLICATION OF THE CODE TO "OPEN END CREDIT" TRANSACTIONS, SO THAT SUBSECTION 1.201(1) DOES NOT APPLY TO "OPEN END CREDIT" TRANSACTIONS.

ALSO, SUBSECTION (2) OF SECTION 1.201 MAY BE READ AS IF IT STATED IN PART "MAILED FROM A POINT WITHIN OR PERSONALLY DELIVERED IN THIS STATE".

Subsections 1.201(1) and (2) of the South Carolina Consumer Protection Code (Act 1241 of 1974) provide that:

(1) Except as otherwise provided in this section, this Act applies to consumer credit transactions made in this State. For purposes of this Act, a consumer credit transaction is made in this State if (a) a signed writing evidencing the obligation or offer of the consumer is received by the creditor in this State; or (b) the creditor induces the consumer who is a resident of this State to enter into the transaction by face-to-face solicitation in this State.

(2) With respect to consumer credit transactions entered into pursuant to open end credit this Act applies if the consumer's communication or indication of his intention to establish the arrangement is received by the creditor in this State. If no communication or indication of intention is given by the consumer before the first transaction, this Act applies if the creditor's communication notifying the consumer of the privilege of using the arrangement is mailed or personally delivered in this State.

The question has arisen as to whether subsection 1.201(2) is the exclusive provision for territorial application of the Code to "open end credit" transactions, so that subsection 1.201(1) does not apply to "open end credit" transactions.

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Subsection 1.201(2) is the exclusive provision for territorial application of the Consumer Protection Code to open end credit transactions when disregarding subsections (3), (4) and (5). Subsection 1.201(1) states the general rule that the Act applies to consumer credit transactions made in this State except as otherwise provided in this section. Subsections 1.201(1)(a) and (b) list the two situations in which a consumer credit transaction is made in this State. Subsection 1.201(2) states that this Act applies to consumer credit transactions entered into pursuant to open end credit in either of two situations. The Act applies to open end credit transactions in these two situations without regard to the general definition of consumer credit transactions made in this State. Subsection 1.201(2) is an exception to subsection 1.201(1) and is thus the exclusive provision applying to open end credit transactions.

A question has also arisen as to whether the second sentence of subsection 1.201(2) containing the phrase "mailed or personally delivered in this State" should be interpreted as if it read "mailed from a point within or personally delivered in this State."

Subsection 1.201(2) defines open end credit transactions to which the Act applies to include those in which the creditor's notification is mailed in this State. "Creditor" is defined in Subsection 1.201(7)(c) as the person who grants credit in a consumer credit transaction. In the case of credit granted pursuant to a credit card (a type of open end transaction), the creditor is the card issuer rather than another person honoring the card. Subsection 1.201(2) is interpreted to apply to a creditor who mails notice from a point within this State, to be consistent with the intent that subsections (1) and (2) minimize operational difficulties of creditors with interstate operations (Official Comment 2, 1968 Official Text, UCCC).

Based upon the foregoing, it is the opinion of this office that subsection 1.201(2) applies to open end consumer credit transactions to the exclusion of subsections 1.201(1)(a) and (b). Also, subsection 1.201(2) can be interpreted as if it read "mailed from a point within or personally delivered in this State."

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