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October 6, 2014

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Via Electronic and Interagency Mail

[REDACTED]

Administrative Interpretation 39.130-1402

RE: Opinion Request- Sale of Deferred Presentment Accounts

Dear [REDACTED]

You have requested an opinion regarding the sale of deferred presentment accounts to a third party who is not licensed as a deferred presentment provider. Deferred Presentment Transactions are governed by the South Carolina Deferred Presentment Services Act ("the Act"), S.C. Code Ann. sections 34-39-110 *et seq.*¹ From the information you have provided, the following question has been posed and will be addressed herein in the form of a general answer that could change depending on specific circumstances:

Whether a deferred presentment provider licensed pursuant to the Act can sell or otherwise assign defaulted, returned, unpaid or otherwise uncollectable accounts to a third party who is not licensed to provide deferred presentment services?

As stated above, the Act governs the regulation of persons offering and/or providing deferred presentment services to South Carolina consumers. Specifically, § 34-39-130 prohibits any person from engaging in the business of "deferred presentment services" without first obtaining a license to do so. *See* § 34-39-130 (A), (C). "Deferred presentment services" is defined as a transaction where, pursuant to a written agreement, a fee is charged for delaying deposit or presentment of a check dated for the day written. *See* § 34-39-120(3)(a)-(b). A "licensee" is defined as "a person licensed to provide deferred presentment services pursuant to this chapter." *See* § 34-39-120(4).

Deferred presentment providers shall only provide such services in accordance with the Act's provisions. *See* § 34-39-130(C). The Act sets forth procedures with which a licensee must abide as well as prohibitions. This includes parameters for the acceptance and deferred deposit of a check; the maintenance of books, account and records and examiner access thereto; and

¹ Further reference to the South Carolina Code of Laws will be by Code section only.

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utilization of the deferred presentment database. *See* §§ 34-39-130(C); 34-39-170; 34-39-175; 34-39-180; 34-39-190; 34-39-270; 34-39-280.

The cardinal rule of statutory construction is to ascertain and effectuate the Legislature's intent from the plain language of the statute. Burns v. State Farm Mut. Auto Ins. Co., 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989). The words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. Hitachi Data Svs. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843,846 (1992). Further, the statute must be read as a whole and given a "practical, reasonable and fair interpretation consonant with the purpose, design and policy of lawmakers." Greenville Baseball, Inc. v. Bearden, 200 S.C. 363, 368, 20 S.E.2d 813, 815-816 (1942). Statutes must be read as a whole and sections which are part of the same general statutory scheme must be construed together and each given effect, if it can be done by any reasonable construction. Higgins v. State, 307 S.C. 446, 415 S.E.2d 799 (1992).

The plain language of the Act makes clear the requirements and prohibitions contained therein are the obligation of a "licensee." *See* §§ 34-39-130(C); 34-39-170; 34-39-175; 34-39-180; 34-39-190; 34-39-200; 34-39-270; 34-39-280. With regards to payments a consumer is making under a deferred presentment contract/ transaction, section 34-39-175 requires licensees to utilize the deferred presentment transaction database, entering data at the commencement of the transaction and upon the transaction being paid in full. While this provision does not define "paid in full", section 34-39-270(F) which pertains to a licensee's notification of the database upon final payment from the consumer, provides clarification. Specifically, section 34-39-270(F) states:

For purposes of this subsection, an item is paid in full when the payor bank makes final payment on the customer's check pursuant to Section 36-4-215 or the customer has redeemed the check with a cash payment in full.

In the scenario you provided, a person licensed under the Act is attempting to sell what it deems as "uncollectable" deferred presentment transaction accounts to a third party who is not licensed pursuant to the Act. The Act's provisions clearly contemplate the deferred presentment transaction retaining its character from commencement until final payment and have placed requirements on a licensee accordingly, thus the Department concludes such a sale would constitute a violation of the Act.

Should a licensee sell an account where final payment has not yet been received, the licensee would not be permitted to enter the transaction as "paid in full" as the terms of 34-39-270(F) were not yet met. Further, upon the sale or assignment, the original lender/ licensee no longer has a right to collect payment from the consumer, or otherwise has any rights under the deferred presentment transaction. The responsibility of entering the final payment status of the transaction falls upon the assignee/buyer. According to the Act, this person must be a licensee. Reading the statutory language in a different manner would result in inaccurate data in the

deferred presentment transaction system, thus frustrating the verification requirement licensees must abide by pursuant to section 34-39-270(A)(1-3),(B) and consumer protections intended by the Legislature.

I hope this fully answers your question. Please do not hesitate to contact me directly at 803-734-4233 should you need any further information.

Best Regards,



Carri Grube Lybarker, Esq.