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AND  
CONSUMER ADVOCATE

# The State of South Carolina

## Department of Consumer Affairs

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May 7, 1979

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Administrative Interpretation No. 3.203-7906

"CURRENT INSTALLMENT" MEANS AN UNPAID INSTALLMENT WHICH HAS OR WILL BECOME DUE WITHIN THE LENGTH OF ONE COMPUTATIONAL PERIOD BUT WHICH IS NOT DELINQUENT.

Section 3.203(3) [and §2.203(3)] of the South Carolina Consumer Protection Code provides that:

No delinquency charge may be collected on an installment which is paid in full within ten days after its scheduled due date eventhough an earlier maturing installment or a delinquency charge on an earlier installment may not have been paid in full. For purposes of this subsection payments are applied first to current installments and then to delinquent installments.

The subsection is taken from and is identical to the same subsection in the 1968 Official Text of the Uniform Consumer Credit Code.

A question has arisen as to what is a "current installment". The term is not defined in the statute. We have found no court decision on the point. The Uniform Consumer Credit Code State Administrators whose states adopted this version of the Uniform Consumer Credit Code have reached no consensus as to the meaning of the term. Thus the term must be construed with reference to the purpose of the enactment.

The provision was intended to rectify the abusive practice of some creditors of collecting a yield of up to 60% per annum on missed installment amounts through the device of letting such installments remain delinquent (instead of deferring) and applying each succeeding installment retroactively to the preceding installment period and collecting a "delinquency" charge on each such installment although they were all made on or about the payment date established in the contract. (Compounding delinquency charges)

The second sentence of the subsection is an attempt to buttress and clarify the first sentence. Thus the meaning of "current installments" must be determined by reference to the first sentence.

TELEPHONES [AREA CODE 803]

ADMINISTRATION  
758-3017

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758-7546

NOTIFICATION  
758-8587

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The first sentence prohibits collecting a delinquency charge on an installment which is "paid... within ten days after its scheduled installment due date."

The emphasized language is somewhat ambiguous. It can be read as prohibiting a delinquency charge on an installment which is paid between the scheduled due date and the tenth day thereafter. Such a reading however would produce the absurd result of permitting a delinquency charge on an installment which is paid before its scheduled due date while prohibiting delinquency charges on the same installment if paid one to ten days late.

In the event that an earlier maturing installment has not been paid, this construction would reinstate the abuse described above when consumers pay their bills a day or so ahead of schedule instead of on or after the due date.

A more logical and reasonable interpretation of the sentence is that it prohibits collection of a delinquency charge on an installment which is paid in full at any time before it becomes more than ten days past due. Stated another way a delinquency charge can be collected only when an installment is more than ten days past due.

An installment paid a day or so before its due date is clearly not an event which the legislature intended to give rise to a delinquency charge, whether or not an earlier maturing installment remains unpaid.

The second sentence was intended to buttress that policy and purpose. It names two types of installments: "current installments" and "delinquent installments". There is a third kind of installment not mentioned -- a "future installment". It seems reasonably clear that a "delinquent installment" is one that is more than ten days past due so that a delinquency charge can be collected. Conversely, then, a "current installment" must be one which is not more than ten days past due. But since this definition would apply to "current" as well as all "future" installments, a further delineation is necessary.

Based upon the foregoing it is the opinion of this office that the subsection permits collecting a delinquency charge only in the event that a payment is received more than ten days after the due date of the most recent scheduled installment, whether or not an earlier maturing installment remains unpaid. For these purposes payments received by a creditor are to be applied first to an unpaid installment which has been due not more than ten days or will become due within thirty days if the computational period is one month, or within seven days if the computational period is one week. If such "current installment" has been paid the payment may then be applied to any installment which is more than ten days past due.

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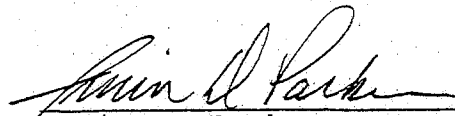
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We have considered the argument that restricting creditors to a one-time charge for installments which remain delinquent is unfair in that it forces a creditor to make an interest-free loan of the delinquent installment as long as the debtor chooses not to pay it.

The argument has no merit for the reason that the creditor is restricted to a "one-time" charge only where he opts to charge the flat charge of 5% or \$5.00. He may, in lieu of that charge, contract for and receive a delinquency charge not exceeding the deferral charge that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent pursuant to Subsection (1)(b) of Consumer Protection Code Section 3.203.



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