

1977 S.C. Op. Atty. Gen. 114 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-138, 1977 WL 24480

Office of the Attorney General

State of South Carolina

Opinion No. 77-138

May 4, 1977

*1 TO: Irvin D. Parker
Administrator
Department of Consumer Affairs

QUESTION

Are the provisions of Part 1 of Article 5 of the Consumer Protection Code as amended by Act 686 of 1976 applicable to all credit transactions which were made prior to January 1, 1975, the effective date of the Consumer Protection Code?

STATUTES, CASES AND AUTHORITIES

Act 1241 of 1974 (Consumer Protection Code).

Act 686 of 1976.

[Independent Insurance Co. v. Independent Life and Accident Insurance Co.](#), 218 S.C. 22, 61 S.E.2d 399 (1950).

[Windham v. Pace](#), 192 S.C. 271, 6 S.E.2d 270 (1930).

82 C.J.S. Statutes Section 384.

DISCUSSION

The South Carolina Consumer Protection Code became effective on January 1, 1975. However, to the extent that the Article on remedies and penalties limits the remedies of creditors, the Consumer Protection Code applies to all credit transactions made prior to that date. Section 9.101(3) of the Consumer Protection Code provides in part:

Transactions entered into before this act takes effect and the rights, duties, and interests flowing from them thereafter may be terminated, completed, consummated, or enforced as required or permitted by any statute, rule of law, or other law amended, repealed, or modified by this act as though the repeal, amendment, or modification had not occurred, but this act applies to . . .
(c) all credit transactions made before this act takes effect insofar as the Article on Remedies and Penalties (Article 5) limits the remedies of creditors.

Part 1 of Article 5 is entitled 'Limitations on Creditors' Remedies,' and pursuant to Section 9.101(3)(c) set out above, the provisions thereunder are applicable to all credit transactions made prior to the effective date of the Consumer Protection Code.

Act 686 of 1976 amended Part 1 of Article 5 by adding Sections 5.109–5.112 and amending Sections 5.103 and 5.108. Thus the issue presented is whether these amendments are applicable to credit transactions made prior to January 1, 1975.

The effect of an amendment to a statute is well settled in South Carolina. An amended statute will be construed as if the original statute were repealed and a new, independent act adopted in the amended form, unless a contrary intent is indicated. [Independent Insurance Co. v. Independent Life and Accident Insurance Co.](#), 218 S.C. 22, 61 S.E.2d 399 (1950); [Windham v. Pace](#), 192 S.C. 271, 6 S.E.2d 270 (1930); See 82 C.J.S. Statutes Section 384. The South Carolina Supreme Court made this point clear in the leading case of [Windham v. Pace](#), *supra*:

Hence, unless the contrary intent is clearly indicated, the amended statute is to be construed as if the original statute had been repealed, and a new and independent Act in the amended form adopted. (citations omitted) Under this rule of construction, the amendment becomes a part of the original statute, as if it had always been contained therein. 192 S.C. at 284, 6 S.E.2d at 275-76.

*2 It is presumed that the General Assembly has knowledge of existing statutes when it amends a statute. 82 C.J. S. Statutes Section 384. Given this presumption and the fact that the General Assembly did not indicate any contrary intent, it is obvious that the amendments to Part 1 of Article 5 of the Consumer Protection Code have the effect of being a part of the original statute as if they had always been contained therein. Of course, these amendments would not apply to creditors' remedies that were pursued prior to September 29, 1976, the effective date of the amendments. But as of September 29, 1976, the amendments to Part 1 of Article 5 of the Consumer Protection Code are applicable to all consumer credit transactions, regardless of when the consumer credit transaction was entered into.

CONCLUSION

It is the opinion of this office that Part 1 of Article 5 of the Consumer Protection Code as amended by Act 686 of 1976 is applicable to all consumer credit transactions, regardless of when these transactions were entered into.

James W. Johnson, Jr.
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