

6315 Liberty



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

October 10, 1997

The Honorable W. Jeffrey Young  
Member, House of Representatives  
988 Heather Lane  
Sumter, South Carolina 29154

Re: Informal Opinion

Dear Representative Young:

Attorney General Condon has forwarded your opinion request to me for reply. You note that situations have arisen in which a consumer is late in making an installment payment in a consumer credit transaction, the finance company then sends the consumer a right to cure notice as provided for in Section 37-5-110 of the South Carolina Code of Laws, the consumer then makes a partial payment of the installment but is then late again in making a subsequent payment. The question is whether under the South Carolina Consumer Protection Code, a finance company is required to send the consumer another notice of the right to cure when the consumer is late in making the subsequent payment.

To answer this question, the South Carolina Consumer Protection Code must be analyzed. The Consumer Protection Code is found in Title 37 of the South Carolina Code of Laws. The sections relevant to your question are Sections 37-5-111(2) and 37-5-110(2) of the South Carolina Code of Laws. Section 37-5-111(2) reads in pertinent part as follows:

With respect to defaults on the same obligation ..., after a creditor has once given notice of consumer's right to cure (§ 37-5-110), this section gives the consumer no right to cure and imposes no limitation on the creditor's right to proceed against the consumer or goods that are collateral or which are rented or the lessor's right to recover the property. ... (emphasis added).

Request Letter,

Section 37-5-110(2) provides in pertinent part:

(1) With respect to a secured or unsecured consumer credit transaction payable in two or more installments, after a consumer has been in default for ten days for failure to make a required payment and has not voluntarily surrendered possession of goods that are collateral, a creditor may give the consumer the notice described in this section. A creditor gives notice to the consumer under this section when he delivers the notice to the consumer or mails the notice to him at his residence [§ 37-1-201(6)].

(2) ... A notice in substantially the following form complies with this subsection:

....

... If you are late again in making your payments, we may exercise our rights without sending you another notice like this one. ... (emphasis added).

The issue of whether the Consumer Protection Code requires that a consumer receive notice of the right to cure each time the consumer defaults on the same obligation has not been addressed by the courts of this State. However, since the South Carolina Consumer Protection Code is derived from the Uniform Consumer Credit Code, it is helpful to turn to other states who have adopted the Uniform Consumer Credit Code to determine how their courts have interpreted the relevant provisions.

In Griffin v. Chrysler Credit Corp., 553 A.2d 653 (Me. 1989), the Supreme Judicial Court of Maine analyzed those provisions of the Maine Consumer Protection Code pertaining to notice of a consumer's right to cure. In this case, Griffin financed the purchase of an automobile through the Chrysler Credit Corporation. Under the retail installment contract, Griffin agreed to make 48 monthly payments of \$202.41. When Chrysler did not receive the October 1983 payment, it sent Griffin a notice of default and right to cure. The total charges listed on the notice were \$232.77, reflecting \$30.36 in late fees. In November of 1983, Griffin paid \$202.41. Throughout the following 15 months, Griffin continued to be late in his payments. Finally, in February of 1985, Chrysler repossessed the car. Griffin then sued Chrysler alleging that Chrysler had breached the retail installment contract and violated provisions of the Maine Consumer Protection Code by repossessing the car.

On appeal, Griffin argued that the November 1983 notice was insufficient to support the February 1985 repossession and maintained that his November 1983 payment amounted to cure and thus required a new notice of default and right to cure before

repossession. The court found it unnecessary to resolve whether Griffin had to pay the additional late charges in the November 1983 payment in order to cure because the statute did not entitle Griffin to a second notice. The court found that the language of Section 5-111(2)<sup>1</sup> was clear:

With respect to defaults on the same obligation ..., after a creditor has once given notice of consumer's right to cure, as provided in section 5-110, this section gives the consumer no right to cure and imposes no limitations on the creditor's right to proceed against the consumer or goods that are collateral.

The court went on to find that if there was any doubt that only one notice was required, section 5-110(2)<sup>2</sup> removed it in delineating the contents of a satisfactory notice:

A notice in substantially the following form complies with this subsection:

\* \* \* \* \*

If you are late again in making your payments, we may exercise our rights without sending you another notice like this one.

The court concluded that based upon the clear language of the statutes, Chrysler was obligated to send Griffin only one notice of the right to cure.

Using the Griffin case as a guide, it is my opinion that the South Carolina Consumer Protection Code does not require a finance company to send a consumer a notice of the right to cure each and every time the consumer is late in making payment on the same obligation. This conclusion is clear from the language of Section 37-5-111(2) which states "[W]ith respect to defaults on the same obligation ..., after a creditor has once given notice of consumer's right to cure (§ 37-5-110), this section gives the consumer no right to cure and imposes no limitation on the creditor's right to proceed against the consumer or goods that are collateral or which are rented or the lessor's right to recover the property" and the language of Section 37-5-110(2) which requires the phrase "[I]f you

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<sup>1</sup> South Carolina's version of this statute is found in Section 37-5-111(2) of the Code of Laws.

<sup>2</sup> South Carolina's version of this statute is found in Section 37-5-110(2) of the Code of Laws.

The Honorable W. Jeffrey Young

Page 4

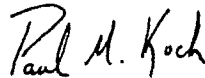
October 10, 1997

are late again in making your payments, we may exercise our rights without sending you another notice like this one" be included in the notice of the right to cure. Further, the fact that a consumer may make a partial payment of the obligation or even cure the default does not change this conclusion.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General