

1980 S.C. Op. Atty. Gen. 129 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-79, 1980 WL 81961

Office of the Attorney General

State of South Carolina

Opinion No. 80-79

July 11, 1980

***1 SUBJECT: Banks and Banking, Insurance, Interest, Loans, Statutes**

The monthly maintenance fee permitted under [Section 34-29-140 of the South Carolina Code of Laws \(1976\)](#), as amended by Act No. 392 of 1980, is insurable under Section 34-29-160.

TO: Everett H. Whitler

Director

Consumer Finance Division

Corporate Board of Financial Institutions

QUESTION PRESENTED:

Is the maintenance fee permitted for restricted loans under the Consumer Finance Law, [Section 34-29-140 of the South Carolina Code of Laws \(1976\)](#), as amended by Act No. 392 of 1980, insurable under Section 34-29-160?

CITATION OF AUTHORITIES:

[Sections 34-29-10\(f\), 34-29-140, 34-29-160, Code of Laws of South Carolina \(1976\)](#), as amended;

1971 [Op. Atty. Gen. 164](#), No. 71-3192 (September 28, 1971);

Letter of July 2, 1980, from Assistant General Counsel of State of South Carolina Department of Insurance regarding insurability of maintenance fees for loans made pursuant to [Section 34-29-160 of the South Carolina Code of Laws \(1976\)](#) (Restricted Loans);

[Annot., 91 A.L.R.2d 1344 \(1963\)](#).

DISCUSSION:

Act No. 392 of 1980 amended [Section 34-29-140 of the Code](#) to provide, *inter alia*:

(i) in addition to all other charges authorized under this section a licensee may charge and add to the gross note a maintenance fee of one dollar per month for the term of the loan for each loan account. . . .

In order to determine whether the monthly maintenance fee is insurable, this amendment must be construed with [Section 34-29-160](#) which permits insurance to be required of the borrower, either insuring the property securing the loan, or the life and earning capacity of the borrower.

Under [§ 34-29-160](#) ‘reasonable insurance’ may be sold to and required of the borrower as security for a loan made by a restricted lender, but—

All insurance sold or provided pursuant to this section shall bear a reasonable and bona fide relation to the existing hazard or risk of loss . . .

This statute further provides that:

Life insurance shall be in an amount not to exceed the approximate amount of the loan and for a term not exceeding the approximate term of the loan contract. (Emphasis added.)

Accident and health insurance is not to exceed an amount which approximately equals the amount of each periodic installment payment to be made under the loan contract. This language gives the statutory limitations regarding the amount of insurance that may be required of a borrower by a restricted lender. First, the amount of insurance should bear a reasonable and bona fide relation to the existing hazard or risk of loss and, secondly, the amount of insurance should not exceed the approximate 'amount of the loan' (or in the case of accident and health insurance, the amount of each periodic installment payment).

The term 'amount of the loan' is defined by [Section 34-29-10\(f\)](#) as follows:

*2 Amount of the loan shall mean the cash advanced, plus other authorized charges. (Emphasis added.)

Act No. 392 of 1980 created another category of authorized charges (i.e., monthly maintenance fee) on restricted loans regulated under the South Carolina Consumer Finance Law. Therefor, in considering these three sections in pari materia, it is clear that the monthly maintenance fee is a part of the 'amount of the loan', which can be insured under [Section 34-29-160](#).

The legislative purpose in linking the amount of the insurance limits to the approximate amount of the loan appears to be to prevent lenders from requiring excessive insurance from borrowers. See [Annot., 91 A.L.R.2d 1344 \(1963\)](#) and 1971 [Op. Atty. Gen. 164, No. 71-3192](#) (September 28, 1971). By amending the statute governing authorized charges to be added to the gross note without providing for any exception or exclusion from the provisions of [§ 34-29-160](#), we must conclude that the legislature intended that these new charges should also be a part of 'the amount of the loan' for such insurance purposes.

Practical considerations support this construction as well. If the accident and health policy purchased by the borrower is based on the amount of the loan less the monthly maintenance fee then the benefits would also be one dollar less than the amount of each payment. In other words, a disabled borrower would have to come up with additional funds in order to stay current on his obligation. In addition, if the borrower dies and the loan becomes delinquent, then the death benefit would not be sufficient to pay off the entire amount owed.

In reaching our conclusion, we are also guided by the advice of the Office of the General Counsel, Department of Insurance, that the borrower would have an insurable interest in any fees that he is required to pay as a part of a loan, and, therefore, he is not precluded under general insurance laws from obtaining this type insurance (Attachment A).

CONCLUSION:

It is the opinion of this office that the monthly maintenance fee provided for by [Section 34-29-140](#), as amended by Act No. 392 of 1980, is insurable under [Section 34-29-160](#).

Richard B. Kake, Jr.
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