

1977 S.C. Op. Atty. Gen. 261 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-326, 1977 WL 24665

Office of the Attorney General

State of South Carolina

Opinion No. 77-326

October 18, 1977

*1 TO: Everett H. Whitley
Director
Consumer Finance Division
State Board of Financial Institutions

QUESTIONS

1. What is the maximum legal rate which a pawnbroker may charge on loans in excess of \$50.00?
2. What government agency has the responsibility of assuring that such charges are not exceeded?

AUTHORITIES INVOLVED

§§ 40-39-100, 34-29-20, 37-1-201(1), 37-1-201(7)(b), 37-3-104(1), 37-1-202(4), 37-6-506(1), 37-6-506(2), Code of Laws of South Carolina (1976). § 3.201(1) Act No. 686, Statutes at Large of South Carolina (1976).

DISCUSSION

You have asked for an opinion as to the maximum rate which a pawnbroker may charge on loans exceeding \$50.00. In order to answer this question, it is necessary to determine which of several laws governs such pawnbroker loans. Sections 40-39-10 through 40-39-130 of the South Carolina Code (1976) are the statutes dealing specifically with pawnbrokers. These statutes, however, are very limited in their treatment of the charges which pawnbrokers may demand on loans. In fact, only § 40-39-100 of the Code addresses the subject:

Pawnbrokers may demand or receive on loans not in excess of fifty dollars a charge at the rate of one dollar per thirty-day period for each ten dollars loaned; provided, that a minimum charge of fifty cents may be collected for loans under ten dollars. (emphasis added).

Inasmuch as § 40-39-100 is restricted in its application to loans of \$50.00 or less, the matter of allowable charges on loans exceeding \$50.00 is an open question.

The Consumer Finance Law (§§ 34-29-10 to 34-29-260 of the Code), is designed to regulate and prescribe allowable rates for persons engaged in the business of making cash advances of relatively small amounts, i.e., \$7,500.00 or less. Pawnbrokers, however, are specifically exempted from the provisions of this law by § 34-29-20 South Carolina Code (1976):

(b) This chapter does not apply to any person doing business under authority of and as permitted by any law of this State or of the United States relating to . . . licensed pawnbrokers.

Consequently, maximum rates allowable on pawnbroker loans are not covered by the Consumer Finance Law.

Title 37 of the South Carolina Code (1976), also known as the South Carolina Consumer Protection Code (hereinafter 'CPC'), was enacted by the General Assembly in 1974. Except where otherwise provided, the CPC applies to all consumer credit transactions made in this State. South Carolina Code § 37-1-201(1) (1976). A 'consumer credit transaction' is defined as 'a consumer credit sale or consumer loan or a refinancing or consolidation thereof, or a consumer lease.' South Carolina Code § 37-1-201(7)(b) (1976). The CPC defines 'consumer loan' as follows:

... a loan made by a person regularly engaged in the business of making loans in which:

(a) the debtor is a person other than an organization;

(b) the debt is incurred primarily for a personal, family or household purpose;

*2 (c) either the debt is payable in installments or a loan finance charge is made; and

(d) either the principal does not exceed twenty-five thousand dollars or the debt is secured by an interest in land. § 37-3-104(1) South Carolina Code (1976).

Because of the small, personal nature of most pawnbroker loans, it will be assumed for purposes of this opinion that the usual pawnbroker loan is a 'consumer loan' within the meaning of the foregoing definition.

Section 37-1-202 of the South Carolina Code (1976) provides that the CPC 'does not apply to . . . (4) the rates and charges and the disclosure of rates and charges of a licensed pawnbroker established in accordance with a statute or ordinance concerning these matters.' (emphasis added). By adding the phrase 'established in accordance with a statute or ordinance concerning these matters', it appears that the legislature intended to extend the exclusion from CPC coverage only to those pawnbroker loans for which rates and charges are prescribed elsewhere by statute or ordinance. The clear implication given by § 37-1-202(4) is that pawnbroker rates and charges are covered by the CPC if they are not covered by another statute or ordinance. As a practical matter, therefore, loans of \$50.00 or less would not come within the maximum charge provisions of the CPC, since such loans are dealt with in § 40-39-100 of the South Carolina Code (1976). However, as to the rates and charges allowable on pawnbroker loans in excess of \$50.00, it is the opinion of this office that the maximum charge provisions of the CPC are controlling.

Section 3.201(1) of the CPC [Act No. 686, Statutes at Large of South Carolina (1976)] provides that '(w)ith respect to a consumer loan . . . a lender may contract in writing for and receive a loan finance charge, calculated according to the actuarial method, not exceeding twelve percent per year on the unpaid balances of the principal.' This means that an Annual Percentage Rate ('APR') exceeding 12% is illegal. The maximum legal rate thus allowable on pawnbroker loans in excess of \$50.00 is 12% APR.

You have also asked which government agency has the responsibility of assuring that such charges are not exceeded. The CPC provides for the creation of the Department of Consumer Affairs, the Commission on Consumer Affairs, and the Office of Administrator of Consumer Affairs. § 37-6-501 South Carolina Code (1976). Responsibility to see that the CPC is enforced is delegated to the Commission on Consumer Affairs in § 37-6-506 of the Code:

(1) The Commission shall be the policy making and governing authority of the Department of Consumer Affairs and shall appoint the Administrator and be responsible for enforcement of this title.

Day-to-day enforcement of the CPC is left to the Administrator of Consumer Affairs, and the Department over which he presides, as extensions of the Commission:

(2) The Commission, through the Administrator, shall see that the provisions of this title are faithfully administered and enforced and to that end it may adopt, amend and repeal rules and regulations, not inconsistent with law, to interpret and explain provisions of this title, carry out the purposes and policies of this title, to prevent circumvention or evasion thereof or to facilitate compliance therewith. § 37-6-506(2) South Carolina Code (1976). (emphasis added).

*3 As the maximum charge provision for consumer loans (12% APR) is a provision of the CPC, the Administrator of Consumer Affairs and the Department of Consumer Affairs, acting on behalf of the Commission, have the responsibility to see that the 12% APR maximum charge provision is not exceeded on pawnbroker loans in excess of \$50.00.

CONCLUSION

It is therefore the opinion of this office that the maximum legal rate chargeable on pawnbroker loans in excess of \$50.00 is 12% APR. Moreover, the governmental agency having the responsibility of assuring that the 12% APR rate is not exceeded is the Department of Consumer Affairs, and its Administrator, acting on behalf of the Commission on Consumer Affairs.

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