

OFFICIAL OPINION NO. 69-62, Comparison in Federal and State Truth in Lending Acts

STATE OF SOUTH DAKOTA
OFFICE OF
THE ATTORNEY GENERAL

July 3, 1969

Charles Seaman
Superintendent of Banks
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 69-62

Comparison in Federal and State Truth in Lending Acts

Dear Mr. Seaman:

You have requested an opinion as to whether or not compliance with the Federal Truth in Lending Act of the Federal Regulations, Title 12, Chapter II, Part 226, Regulation Z, insofar as the Regulation Z requirements in regard to "finance charge" and "annual percentage rate" would be full compliance with House Bill 605 as passed by the 1969 Legislature and the requirement thereunder cited as 6.04A06-1 (2) of the South Dakota Code wherein it is required that

". . . the instruments given to the borrower pursuant to 6.04A06 shall clearly set forth the following: . . . (2) the amount of interest to be charged set forth in dollars and cents, and the approximate simple annual rate of interest; . . ."

The answer to your question is in the AFFIRMATIVE.

The Federal Regulation, *supra*, at Section 226.4(A) defines finance charge as follows, to-wit:

"GENERAL RULE. Except as otherwise provided in this section, the amount of the finance charge in connection with any transaction shall be determined as the sum of all charges payable directly or indirectly by the customer, and imposed directly or indirectly by the creditor as an incident to or as a condition of the extension of credit, whether paid or

payable by the customer, the seller, or any other person on behalf of the customer, to the creditor or to a third party, including any of the following types of charges: . . ."

The state statute uses in place of "finance charge" the word "interest" and it is defined in Black's Law Dictionary, 4th Edition, as being "the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money."

It is my opinion that the South Dakota Legislature, in the passage of House Bill 605, intended to pass a statute which would be consistent with: the Federal Truth in Lending Statute. It is my opinion that in defining the word "interest" in its broadest sense, so that it is one and the same, with the word "finance charge" contained in Regulation Z of the Federal Statute for truth in lending, merely enhances the value of House Bill 605 to let borrowers and customers know the cost of their credit so that they can compare their cost with those of other credit sources and avoid the uninformed use of credit.

Having concluded, as hereinbefore mentioned, that the intent of the Legislature was to use the word-"interest" to be one and the same with "finance charge," it necessarily follows that the requirement under House Bill 605, wherein it refers to "the approximate simple annual rate of interest" will necessarily be one and the same with the requirement in Regulation Z of Federal Truth in Lending Act, entitled Annual Percentage Rate.

Therefore, compliance with reference to these two portions of Regulation Z in the Federal Truth in Lending Act will also be in compliance with the South Dakota Statute House Bill 605.

Respectfully submitted,

Gordon Mydland
Attorney General