

OFFICIAL OPINION NO. 74-25, Legal interest rate on revolving credit accounts (S. B. 10) (SL 1974, Ch. 306).

STATE OF SOUTH DAKOTA
OFFICE OF
THE ATTORNEY GENERAL

June 28, 1974

James V. Guffey, Secretary
Department of Commerce and Consumer Affairs
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 74-25

Legal interest rate on revolving credit accounts (S. B. 10) (SL 1974, Ch. 306).

Dear Mr. Guffey:

You have requested an official opinion from this office based upon the following questions:

1. The Act (SB 10) establishes an annual percentage rate of 12%; however, no reference is made to the application of a maximum finance charge. Federal law permits the use of a maximum finance charge of up to 50 cents without including this charge in the annual rate. Can such a finance charge be included in addition to a 12% per annum interest rate?

The federal law you are referring to USCA 15 §1601-otherwise known as the Consumer Credit Protection Act-does not allow what you call a 50 cent maximum finance charge. USCA 15 §1637(b) (H) provides that if the total finance charge exceeds 50 cents, then the total finance charge must be expressed as an annual percentage rate. In other words, if the total finance charge does not exceed 50 cents, then disclosure of the finance charge may be made in an amount figure; if the total finance charge exceeds 50 cents, it must be disclosed in the form of an annual percentage rate.

Although the federal law provides that it does not in any manner annul, alter or affect state laws relating to the type, amounts, or rates of charges (USCA 15 §1610(b)), the definition of finance charge in the federal act may provide some guidance in this matter.

USCA 15 §1610:

(a) Except as otherwise provided in this section, the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit, including any of the following types of charges which are applicable:

(1) Interest, time price differential, and any amount payable under a point, discount, or other system of additional charges.

(3) Loan fee, finder's fee or similar charge.

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(4) Fee for an investigation or credit report.

(5) Premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss.

The term finance charge as used in the federal law is only defined in SL 1974, Ch. 305 §1(6) which is an act regulating installment sales contracts and does not pertain to revolving credit accounts. The provision for charges allowed on the extension of credit in connection with revolving credit accounts is the provision for and definition of "interest."

SDCL 54-3-1-interest defined:

Interest is the compensation allowed for the use, or forbearance, or detention of money or its equivalent.

The broadness of this definition indicates an intent to call all charges in connection with the extension of credit, "Interest."

According to *Rollinger v. J. C. Penney Co.*, (1970) 86 S.D. 154, 192 N.W. 2d 699, revolving charge account agreements which result in charges exceeding the maximum legal interest are in violation of usury statutes and subject to applicable penalties. This decision, in addition to the statutory definition of interest, indicates that all charges on the extension of credit come under the term "interest."

SDCL 54-3-7 provides that the highest lawful rate of interest is 10% simple interest. SL 1974, Ch. 306, the subject of this opinion creates an exemption to that statute and provides a maximum of 12% interest that is chargeable on "revolving credit accounts."

It is, therefore, our opinion that since SDCL 54-3-7 provides for the exaction of charges in the form of interest; since *Rollinger v. J.C. Penney Co.*, supra, provides that revolving credit accounts are subject to the statutory maximum legal interest rates; and in view of the fact that the Federal Consumer Credit Protection Act does not alter or affect state laws as to types and amounts of rates charged, until the Legislature expressly provides otherwise, revolving credit accounts are subject to the 12% maximum legal interest rate of S.B. 10 and no other additional minimum or maximum "finance charge" is applicable or allowable.

2. S.B. 10 by its terms applies to "revolving credit accounts" which are defined as "an agreement prescribing terms of transactions which may be made thereunder from time to time pursuant to which a creditor gives to a purchaser the privilege of using a credit card or other means of credit confirmation or identification primarily for the purpose of purchasing consumer goods, as that term is defined in §57-35-27, from any person, which may include the creditor, and under which an interest charge may be periodically imposed." What types of consumer transactions would S.B. 10 cover? Specifically, would the provisions of S.B. 10 apply to a sale of farm fertilizer and/or other goods under a revolving charge account.

SL 1974, Ch. 306 applies to those consumer transactions in which the creditor (retail seller) gives to the purchaser the privilege of using a credit card or other means of credit confirmation or identification primarily for the purpose of purchasing consumer goods as that term is defined in SDCL 57-35-27.

SDCL 57-35-27 reads as follows:

Goods are "consumer goods" if they are used or bought for use primarily for personal family, or household purposes.

This definition of consumer goods indicates that only goods purchased for primarily personal, family, or household purposes qualify as consumer goods. Specifically, farm fertilizer, if bought for use in commercial agriculture production, is not a consumer good since it is not being used or bought for use for personal, family or household purposes. If, however, the fertilizer were bought for a family lawn, or family garden, the fertilizer would fall under the definition of consumer goods. By the phrasing of your question in the terms of

"farm fertilizer" it seems you are referring to a product used in commercial farm production and that use would not qualify the fertilizer as a consumer good. Since farm fertilizer would not be defined as a consumer good because of its use, it would not qualify under the SL 1974, Ch. 306.

In view of the foregoing, the answer to your first question is, NO; the answer to your second question is, NO.

Respectfully submitted,

Kermit A. Sande
Attorney General