OFFICIAL OPINION NO. 79-10, Revolving Credit: Applicability of Federal Truth-in-Lending Notice Requirements in Implementing Senate Bill 32

April 11, 1979

The Honorable George H. Shanard
State Senator
Post Office Box 1023
Mitchell, South Dakota 57301

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Revolving Credit: Applicability of Federal Truth-in-Lending Notice Requirements in Implementing Senate Bill 32

Dear Senator Shanard:

You have requested an official opinion based on the following situation:

FACTS:

Recently, the South Dakota Legislature enacted and the Governor signed into law Senate Bill 32 which increased the maximum allowable credit service charges on revolving credit accounts from 1% per month to 1.5% per month. The bill also provides that a minimum charge may be made on any unpaid balances.

Typically, a revolving credit agreement provides that a customer may make purchases from time to time from a retail seller and defer payment for such purchases until he receives a billing statement from the seller (usually sent monthly). The customer agrees in exchange for such privileges to either pay for his purchases in full within a given period of time after receiving his billing statement or to incur a finance charge, which is determined by applying a periodic rate, or “credit service charge” as it is denoted in Senate Bill 32, to the customer's unpaid balance. The amount of this periodic rate is established by state law, as evidenced by Senate Bill 32. While most revolving credit agreements are similar in their use of the above format, they may vary slightly as to other incidental terms, depending upon the individual sellers.

Under federal law (Truth-in-Lending, Regulation Z § 226.7(f)), a retail seller may increase the periodic rate to be applied to a customer's unpaid balance or impose a minimum finance

charge on customer accounts only if he first mails or delivers to the customer a written disclosure of such increase or minimum finance charge "at least 15 days prior to the beginning date of the billing cycle in which the increase is to be imposed on his account." Such written disclosure serves to notify customers of the new periodic rate to be applied to their purchase after the effective date of the disclosure along with the imposition of a minimum finance charge, and allows the retail seller to adopt the increased periodic rate and minimum finance charge without incurring liability under federal law.

Based upon the above facts you have asked the following question:

QUESTION:

Must a South Dakota retail seller who increases the "credit service charge" applied to the accounts of his customers and imposes a minimum finance charge pursuant to Senate Bill 32 comply with federal Truth-in-Lending notice provisions (Regulation Z § 226.7(f))?

The answer to your question is a qualified YES. In order to define and limit the situations in which compliance with federal Truth-in-Lending notice provisions is required, it will be necessary to examine and contrast the scope and coverage of the federal Truth-in-Lending statutes (Regulation Z) with the scope and coverage of the newly enacted state legislation, Senate Bill 32.

Scope and Coverage of Truth-in-Lending Regulation Z

The federal Truth-in-Lending legislation and accompanying regulations are primarily *consumer* protection laws. Only credit extended by a seller to a natural person for personal, family, household and agricultural uses not exceeding twenty-five thousand dollars ($25,000) is covered under Regulation Z (Regulation Z § 226.2(k)), 15 U.S.C.A. § 1602. Business and commercial credit, credit to governmental units, transactions in securities and commodities regulated by the Securities and Exchange Commission, transactions under certain public utility tariffs, and credit transactions over twenty-five thousand dollars ($25,000) are *not* covered (Regulation Z § 226.3, 15 U.S.C.A. 1603).

In summary, the federal Truth-in-Lending Act applies only in a seller- consumer setting, not in a seller-businessman setting. It is an act of limited coverage.

Although limited in coverage, the federal Truth-in-Lending law does supersede any inconsistent credit disclosure and notice provisions of state laws. 15 U.S.C.A. § 1610. States are free to impose more stringent disclosure and notice requirements if they choose, but sellers in all states must comply with the federal minimum notice requirements for credit transactions covered under Regulation Z (i.e. seller-consumer credit transactions). 15 U.S.C.A. § 1633. Thus the maximum finance charge rate is set by *state law*, but notice requirements relating to changes in the finance charge are subject to federal Truth-in-Lending requirements in consumer credit transactions.

Under Regulation Z § 226.7(f), any increase in finance charges in consumer credit transactions must be preceded by proper notice:

Change in terms. Not later than fifteen (15) days prior to the beginning date of the billing cycle in which any change is to be made in the terms previously disclosed to the customer of an open end credit account, the creditor shall mail or deliver a written disclosure of such change to each customer required to be furnished a statement under paragraph (b) of this Section (1). Such disclosure shall be mailed or delivered to each other customer who subsequently activates his account no later than the date of mailing or delivery of the next required billing statement on his account. However, if the periodic rate or rates, or any minimum, fixed, check service, transaction, activity or similar charge is increased, the creditor shall mail or deliver a written disclosure of such increase to each customer at least 15 days prior to the date of the billing cycle in which the increase is imposed on his account . . . Regulation Z § 226.7(f).

The above notice requirement applies to all consumer credit transactions within the scope and coverage of Truth-in-Lending, Regulation Z.

Scope and Coverage of Senate Bill 32

Senate Bill No. 32 amends SDCL, Chapter 54-11. The scope of the state statute is broader than the federal Truth-in-Lending law inasmuch as the state is not restricted by the "consumer-only" limitation of the federal act.

Senate Bill 32 merely changes the maximum permissible credit service charge *rate*. It contains no specific notice provisions for implementing the change and no general notice provisions are found in SDCL 54-11. The federal Truth-in-Lending notice provisions are called into play where there are no state notice provisions to ensure that state changes in

credit service charge rates are not implemented without proper notice to consumer customers. 15 U.S.C.A. § 1633.

CONCLUSION:

Based on the foregoing, it is my opinion that a South Dakota retail seller who increases the "credit service charge" applied to the accounts of his customers and imposes a minimum finance charge pursuant to Senate Bill 32 must comply with federal Truth-in-Lending notice provisions (Regulation Z § 226.7(f)) *ONLY IF* his customer is a "natural person to whom credit has been extended for personal, family, household, or agricultural purposes."

Respectfully submitted,

Mark V. Meierhenry
Attorney General

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(1) Paragraph (b) requires periodic statements to be mailed to all customers whose balance is in excess of one dollar ($1), or to whose account a finance charge has been imposed, except for accounts deemed uncollectible or accounts in the process of collection.