

1975 S.C. Op. Atty. Gen. 253 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4209, 1975 WL 22506

Office of the Attorney General

State of South Carolina

Opinion No. 4209

December 4, 1975

*1 The Equal Credit Opportunity Act pre-empts the South Carolina Consumer Finance Act prohibition against dual loans when each party to a marriage voluntarily applies for separate accounts with the same creditor.

TO: Everett H. Whitley

Director

Consumer Finance Division

South Carolina State Board of Bank Control

QUESTION PRESENTED:

To what extent, if any, does the Equal Credit Opportunity Act, pre-empt the provisions of the South Carolina Consumer Finance Act prohibiting dual loans.

STATUTES, CASES, ETC:

Sections 8-797, 8-800.22, 1962 Code of Laws of South Carolina (1974 Supp.). South Carolina Consumer Finance Act; Title 15, Sections 1691-1691(e), U.S.C.A. 12 C.F.R. 202, Regulation B, Equal Credit Opportunity Act.

DISCUSSION OF ISSUES:

Section 8-800.10(d) of the South Carolina Consumer Finance Act provides:

No licensee shall induce or permit any person, nor any husband and wife, jointly or severally, to become obligated directly or contingently, or both, under more than one contract of loan at the same time, for the purpose of or with the result of obtaining a higher rate of interest or greater charge than would otherwise be permitted by this Chapter.

This prohibition was designed to prohibit the lender from inducing the husband and wife to enter into dual loans, so as to allow the lender to collect the initial charges on two contracts as opposed to initial charges on only one contract. These initial charges are non-refundable under the provisions of the Consumer Finance Act.

The question which has arisen is does the Equal Credit Opportunity Act, [Title 15, Section 1691 et. seq., U.S.C.A. \(1975 Supp.\)](#) conflict with the dual loans prohibition contained in South Carolina's Consumer Finance Act?

[Section 1691\(c\)](#) of the Equal Credit Opportunity Act ([Title 15, U.S.C.A. § 1691\(c\)](#)) provides:

Any provision of State law which prohibits the separate extension of consumer credit to each party to a marriage shall not apply in any case where each party to a marriage voluntarily applies for separate credit loan from the same creditor. Provided, that in any case where such a State law is so preempted, each party to the marriage shall be solely responsible for the debt so contracted.

The separate extension of credit provision has been interpreted by Section 202.8 of Regulation B.

(a) Separate extension of consumer credit. Any provision of State law which prohibits the separate extension of consumer credit to each spouse shall not apply in any case where each spouse voluntarily applies for separate credit from the same creditor. In any case where such a State law is preempted, each spouse shall be solely responsible for the debt so contracted.

(b) Finance charges and loan ceilings. When each spouse separately and voluntarily applies for and obtains a separate account with the same creditor, the accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or permissible loan ceilings under the laws of any State or of the United States. Permissible loan ceilings under the laws of any State or of the United States shall be construed to permit each spouse to be separately and individually liable up to the amount of the loan ceiling less the amount for which both spouses are jointly liable. For example, in a State with a permissible loan ceiling of \$1,000, if a married couple were jointly liable for \$250, each spouse could subsequently become individually liable for \$750.

*2 [Section 1691\(c\)](#) of the Equal Credit Opportunity Act specifically pre-empts the state prohibition of dual loans when each spouse 'separately' applies for separate accounts with a creditor. However, the \$7,500.00 loan ceiling of the South Carolina Consumer Finance Act is applicable under Regulation B, Section 202.9(b) where a creditor has extended credit to a couple which is jointly liable and subsequently extends separate credit to each party.

Furthermore, Section 202.11(b) of Regulation B, must be noted, for it clearly expresses the intent that only those State laws inconsistent with Equal Credit Opportunity are preempted. The dual loan prohibition prohibits dual loans ' . . . for the purpose of or with the result of obtaining a higher rate of interest or greater charge . . . ' Therefore, a creditor cannot induce a couple to enter into separate loans if the party does not wish to become individually liable on separate accounts, where the creditor's purpose is to receive the higher interest and charges.

CONCLUSION

The Equal Credit Opportunity Act pre-empts State law prohibiting dual loans when each party to a marriage voluntarily applies for separate credit, from the same creditor.

Patricia O. Brehmer
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