



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

August 5, 1975

ATTORNEY GENERAL OPINION NO. 75- 326

Mr. Earl J. Irish
Consumer Credit Commissioner
Suite 1114, 535 Kansas Avenue
Topeka, Kansas 66603

RE: Consumer Credit Code--Disclosure--Consumer Credit Sales

Synopsis: Disclosure of applicable truth in lending information is required where a lay-away plan involves four or more installments, the merchandise is held by the seller until either a specified portion or the full amount of the purchase price is paid, and the penalty for default or cancellation is loss of all or a portion of the deposit.

Violation of the disclosure requirement subjects a violator to criminal and civil liability.

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Dear Mr. Irish:

A primary purpose for enacting the Kansas uniform consumer credit code, K.S.A. 16a-1-101, et seq, was to conform state regulation of consumer credit transactions to the policies of the federal Truth in Lending Act. K.S.A. 16a-1-102(2)(f). The federal act is incorporated by reference within the Kansas code. K.S.A. 16a-3-206 declares in pertinent part:

"(1) A creditor shall disclose to the consumer the information required by the federal truth in lending act, as adopted under the provisions of this act, in accordance with its provisions, and shall in all respects comply with its provisions."

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K.S.A. 16a-1-302 states:

"In sections 1 through 131 [16a-1-101 through 16a-9-102] of this act "federal truth in lending act" means title I of the consumer credit protection act (public law 90-321; 82 stat. 146), as amended, and in effect on the effective date of this act, and includes regulations issued pursuant to such act and in effect on the effective date of this act. [L. 1973, ch. 85, §12; Jan. 1, 1974]."

The Truth in Lending Act, 15 U.S.C.A. §1601, et seq, is intended to assure meaningful disclosure of credit terms so that customers will avoid the uninformed use of credit. The act requires the Board of Governors of the Federal Reserve System to prescribe regulations to carry out the purposes of the legislation. These regulations are published at 12 CFR §226.1, et seq., commonly known as Regulation Z.

Regulation Z requires disclosure of specified information in certain consumer credit transactions, even though no discrete finance charge is imposed. The "four installment rule", 12 CFR §226.2(k), defines consumer credit as credit offered in certain sales for which either a finance charge is or may be imposed or which pursuant to an agreement "is or may be payable in more than four installments"; credit disclosures are required in these situations.

In Mourning v. Family Publications Service, 411 U.S. 356 (1973), the Supreme Court upheld the "four installment rule" as a valid exercise of administrative authority and found it to be reasonably related to its objective of preventing creditors from concealing finance charges within the cash price.

Official Board interpretations of the Truth in Lending Act are entitled to substantial weight. Thomas v. Myers-Dickson Furniture Co., 479 F.2d 740 (5th Cir. 1973); Taylor v. R. H. Macy & Co., 481 F.2d 178 (9th Cir. 1973). The Board has in the past grappled with the problem of lay-away plans as extensions of consumer credit to be governed by the "four installment rule". It has interpreted the act as not embracing lay-away plans which provide for a total refund. 12 CFR §226.201 states:

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"(a) Many vendors offer Lay-Away Plans under which they retain the merchandise for a customer until the cash price is paid in full and the customer has no contractual obligation to make payments and may, at his option, revoke a purchase made under the plan and request and receive prompt refund of any amounts paid toward the cash price of the merchandise.

(b) A purchase under such a Lay-Away Plan shall not be considered an extension of credit subject to the provisions of Regulation Z."

By negative implication, it follows that a lay-away plan under which the customer upon revocation receives no refund of amounts previously paid toward the purchase of the merchandise would be an extension of consumer credit subject to the provisions of Regulation Z. This conclusion is confirmed by Federal Reserve Board Letter No. 502, July 12, 1971, by Griffith L. Garwood, Chief, Truth in Lending Section. Particularly pertinent are the following passages:

"Layaway plans payable under agreement in more than 4 instalments (sic) in which the customer is unable to obtain the refund mentioned above, even though they involve no separate charge, are subject to Regulation Z...

If a layaway plan is subject to Regulation Z, the creditor must make the applicable disclosures to the consumer. In that case any separate layaway charge would be considered a finance charge. In addition, the fact that refunds of amounts paid toward the cash price will not be made to the customer upon default should be disclosed in accordance with Section 226.8(b)(4) of Regulation Z as a default charge. The fact that merchandise will be held by the creditor until paid for should be disclosed as a security interest under Section 226.8(b)(5)." (Emphasis in original)

We concur with and adopt the Board's analysis. However, one aspect of this matter as it pertains to Kansas requires further examination.

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K.S.A. 16a-1-301(11) defines consumer credit sales to mean, inter alia, a sale of goods, services, or an interest in land in which "either the debt is payable in installments or a finance charge is made." The phrase "payable in installments" is defined in K.S.A. 16a-1-301(28). It means, inter alia, that payment is required or permitted by agreement to be made in "four or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which no finance charge is made." (Emphasis supplied)

Hence, although the threshold for disclosure under the federal act and regulations is "more than four installments", Kansas imposes the disclosure obligation when "four or more" installments are involved. This dissimilarity is permissible; we find no impediment to adoption by the state of the stricter requirement.

15 U.S.C.A. §1610(a) states:

"(a) This subchapter does not annul, alter, or affect, or exempt any creditor from complying with, the laws of any State relating to the disclosure of information in connection with credit transactions, except to the extent that those laws are inconsistent with the provisions of this subchapter or regulations thereunder, and then only to the extent of the inconsistency."

Further explication is found at 12 CFR §226.6(b), which states in pertinent part:

"(b) Inconsistent State requirements. With respect to disclosures required by this part, State law is inconsistent with the requirements of the Act [section 1601 et seq. of this title] and this part, within the meaning of section III(a) of the Act [section 1610(a) of this title], to the extent that it

(1) Requires a creditor to make disclosures different from the requirements of this part with respect to form, content, terminology, or time of delivery;..."

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The Kansas statute is not inconsistent with the federal law. It in no way modifies the nature of the disclosure; it merely enlarges somewhat the class of transactions in which the disclosure must be provided.

A state regulation in the exercise of its police powers is not deemed displaced by federal law in the same area unless that was the clear and manifest purpose of Congress. Florida Avocado Growers v. Paul, 373 U.S. 132 (1963); Rice v. Santa Fe Elevator Corp., 331 U.S. 218 (1946). Congress plainly indicates within the provisions of the act that it does not seek to pre-empt this field. Beyond this, the legislative history of the bill reveals that the "intent is not to pre-empt the entire field of consumer credit but rather to encourage as much state legislation in this area as is possible so that the federal law will no longer be necessary." S. Rep. No. 392, 90th Cong., 1st Sess. 8 (1967).

In summary, we conclude that the Kansas consumer credit code requires disclosure of applicable truth in lending information where a lay-away plan involves four or more installments, the merchandise is held by the seller until either a specified portion or the full amount of the purchase price is paid, and the penalty for default or cancellation is loss of all or a portion of the deposit. Whether a finance charge denominated as such is imposed is immaterial.

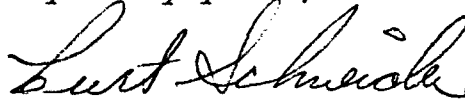
Failure to provide the required disclosure subjects a violator to both civil and criminal liability. K.S.A. 16a-5-302 declares it a class A misdemeanor for one willfully and knowingly to fail "to provide information which he is required to disclose under the provisions of the federal truth in lending act..."

Violation of disclosure requirements also opens a violator to civil liability under K.S.A. 16a-5-203. In Mourning v. Family Publications Service, supra, the Court explicitly held that imposition of the minimum sanction under 15 U.S.C.A. §1640, the federal counterpart of 16a-5-203, was proper in cases where no finance charge is involved but where a regulation requiring disclosure has been violated.

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I trust this opinion will assist you. If you require additional information or further clarification, please feel free to contact me.

Very truly yours,

A handwritten signature in cursive script that reads "Curt Schneider". The signature is written in dark ink and is positioned above the typed name.

CURT T. SCHNEIDER
Attorney General

CTS/ TFW/cgm