



The State of South Carolina Department of Consumer Affairs

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December 12, 2017

Administrative Interpretation No. 2.202, 3.202-1702

A TRANSACTION FEE IMPOSED BY THE DMV AS A PART OF THE ELECTRONIC LIEN AND TITLING PROGRAM IS AN OFFICIAL FEE THAT CAN BE ASSESSED BY A CREDITOR AS A PERMISSIBLE ADDITIONAL CHARGE IN A CONSUMER CREDIT TRANSACTION. THE FEE IMPOSED BY A THIRD PARTY TO CONDUCT THE ACTUAL FILING OF THE DOCUMENT, HOWEVER, SHALL EITHER BE ABSORBED BY THE CREDITOR OR INCLUDED IN THE FINANCE CHARGE.

Act 245 of the 2016 Legislative Session (H5089) established the Electronic Lien and Title (“ELT”) program through the Department of Motor Vehicles (“DMV”). The Department was asked to deliver an opinion on the transaction fee referenced in the Act, specifically:

- (1) Whether the new fee assessed by the DMV for electronic filing of liens and titles can be passed on to consumers as part of a credit transaction under the South Carolina Consumer Protection Code (“the Code”), S.C. Code Ann. § 37-1-101 *et seq.*¹ and
- (2) Whether a creditor can pass along costs incurred either by using a third-party system for this transaction or through implementation of its ELT interface.

The Department concludes that the DMV-required fee is a permissible additional charge and may be passed on to the consumer in a credit transaction; however, fees assessed by a third party or for implementing an in-house interface cannot be.

The Consumer Protection Code sets forth the fees creditors may charge and how such charges may be assessed and earned². Pursuant to sections 37-2-109 and 37-3-109, the “sum of all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit” are credit service/loan finance charges and must be treated accordingly. The term does not include additional charges as delineated in sections 37-2-202 and 37-3-202. Both sections reference “official fees and taxes.” “Official fees” are defined as fees and charges prescribed by law which actually are or will be paid to public

¹ Further reference to the South Carolina Code of Laws will be by Code section only.

^{2 2} See as examples §§37-2-201 through 208; 37-2-305; 37-2-307; 37-2-413,414; 37-2-705 through 707; 37-3-109, 37-3-202 through 208; 37-3-305; 37-3-404,405; 37-4-10; 37-4-107; 37-4-110; 37-7-109; 37-7-112; 37-10-102; 37-10-106. See also Title 37 purposes and policies at §37-1-102(2)(b),(c)-(e); See *SCDCA v. Rent-A-Center*, 345 S.C. 251, 547 S.E.2d 881 (Ct. App. 2001).

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officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan..." § 37-1-301 (17)(a)(i).

Act 245 amended Section 56-19-265 of the Code of Laws and, as stated above, set forth parameters for the DMV ELT program, including the maximum fees that can be collected in administration of the program. Specifically, Sections 56-19-265(D) and (E) mention a transaction fee. Subsection D refers to the fee in context of a "transaction fee" that the DMV can collect from persons transmitting or retrieving data "pursuant to this section." The fee is capped at five dollars per transaction. Subsection E goes on to permit persons transmitting or retrieving data from the DMV "pursuant to this section" to collect "transaction fees" from vehicle owners "notwithstanding Sections 37-2-202 and 37-3-202." The five dollar cap is mentioned again as well as a recognition of the fee imposed by the DMV being an "official fee."

When interpreting a law, we are meant to read the statute as a whole to determine the legislature's intent. Reading Section 56-19-265 as a whole, and specifically subsections D and E together, the Department interprets the section referencing one "transaction fee." This fee originates at the DMV, is imposed upon a creditor or other user of the ELT program and can be collected from the consumer by the creditor for distribution to, and retention by, the DMV. Such a fee is an additional permissible charge, excluded from a finance charge as an official fee, pursuant to Section 56-19-265(E) and Sections 37-2-202 and 37-3-202.

According to the guidelines issued by the DMV for the ELT program, the current transaction fee is \$2.50³. No other fee is mentioned in the Business Rules and Program Standards nor in the Policies or Lender/ DMV ELT Program contract.⁴ These documents provide additional support for the Department's conclusion that the law is solely referencing the DMV imposed transaction fee. Further, information on the ELT Program issued by the DMV requires users of the ELT program to "bear all costs for participation in the program such as costs incurred for computer hardware, labor, electronic interface system changes, and transaction processing⁵."

The DMV does not require a creditor to use a third party to complete the transaction.⁶ The creditor may choose to develop its own program to interface with the DMV. Any fee charged by a third party to a creditor for the purposes of facilitating the ELT transaction seems to be one only imposed in credit transactions. If a creditor wishes to pass such a processing fee along to the consumer, the fee shall either be included in the finance charge or absorbed by the creditor as a cost of doing business.

In summary, the transaction fee imposed by the DMV as a part of the ELT program is an official fee that can be assessed by a creditor as a permissible additional charge in a consumer

³ <http://www.scdmvonline.com/Business-Customers/Lienholders/Electronic-Lien-and-Title>

⁴ Both Sections 56-19-265(D) and (E) mention the creation of transaction fee standards.

⁵ <http://www.scdmvonline.com/Business-Customers/Lienholders/Electronic-Lien-and-Title/ELT-Lenders>

⁶ <http://www.scdmvonline.com/Business-Customers/Lienholders/Electronic-Lien-and-Title>



credit transaction. The fee imposed by a third party to conduct the actual filing of the document, however, shall either be absorbed by the creditor or included in the finance charge.

A handwritten signature in blue ink that reads "Carri Grube Lybarker". The signature is written in a cursive style and is positioned above a horizontal line.

Carri Grube Lybarker, Esq.
Administrator