

Consumer Alert

Providing consumers with knowledge to make informed decisions

A Publication of the South Carolina Department of Consumer Affairs

Philip S. Porter, Administrator/Consumer Advocate

YOU CAN'T REPOSSES MY CAR -- IT'S ON MY PROPERTY AND OTHER CONSUMER BELIEFS THAT ARE JUST NOT TRUE!!!!

I do not know how many people really think that monster alligators live in the New York City sewer system. It is clear, however, that certain stories get told and retold, and they have no factual basis. Consumer advocates try hard to educate people on their rights and duties, but we often find ourselves trying to make either gotten wrong or only half right. My friend Will Lund, the Maine Credit Superintendent had made a list of the most pernicious "urban myths" about consumer law in a recent newsletter of the Agency Administrators. His list was right on the mark, so I got his permission to borrow it. **AND NOW**, the top ten widely held beliefs about consumer law **ARE JUST NOT TRUE!**



Philip S. Porter

that certain stories get told and retold, and they have no factual basis. Consumer consumers on their rights and duties, but people unlearn information they have friend Will Lund, the Maine Credit pernicious "urban myths" about National Association of Consumer on the mark, so I got his permission to held beliefs about consumer law **THAT**

10.) "If my credit cards are lost or stolen, I'm liable for all the purchases the thief might make."

Federal law limits the exposure on any card to the lesser of the purchases or \$50 per card. Certain companies have capitalized on this widespread belief by agreeing to notify credit card companies, for a fee, that a card or cards are lost or stolen. A better type of insurance would be to keep a copy of your cards, their expiration dates, and toll free numbers locked away in a safe place.

I do not suggest a lax attitude about credit card billings. Check your billings carefully to make sure all the charges are yours even if the card is not missing. Report missing cards



promptly so that the card company can limit its liability and yours.

9.) "An auto lease is like any other rental. If I have problems with the car or problems paying, I can just bring it back."

Most automobile leases resemble installment sales transactions more than month-to-month rental contracts. The lessee has to commit to a stream of payments lasting the duration of the lease. In many cases, if the customer turns in the vehicle earlier than the contract calls for, he may be hit with punitive "early termination" or mileage penalties. The dealer may sell the vehicle at auction and treat the transaction similarly to a default in deficiency balances and the ruination of the lessee's credit reputation.

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8.) “The creditor told me that a voluntary repossession would look better on my credit report.”

When defaults occur, creditors and repo persons try to find the safest and easiest way to get their hands on the collateral. If a debtor is unable to continue making payments, he may want to turn the car back in just to get the matter over with and perhaps to get the collector to quit hassling him. If consumers think they are enhancing their credit record by turning in the car and being cooperative, they are mistaken. Most credit reporters list cars that the consumer brought in the same as the ones towed in by the repo person: as a “repossession.”

7.) “You can’t repossess my car, its on private property.”

Repossession can and do enter private property to repossess collateral. Unless they enter a dwelling or repossess in a way that breaches the peace (causes violence or a threat of violence) they are probably repossessing legally. The property owner may have a technical claim of trespass, but unless the property is disturbed in some way, the damages will be nominal.

6.) “It says here I’ve already won; they couldn’t say it if it weren’t true.

Scammers bilk consumers out of billions every year. Some are outright frauds, asking for entry fees or service charges to allow them to send the big prize. Some hide the truth in the fine print on the back. For example, the chances of winning the \$300,000 grand prize is 1:60,000,000, the chances of winning the \$1 second prize is 1:1 (i.e. a statistical certainty). How to claim the prize? You call on a claims line (a 900 number) for an average of three minutes at a charge of \$3.00 per minute. Such a deal!

5.) “My creditors can’t call me at work.”

This issue causes much confusion. One reason is that up until a few years ago one set of collection prohibitions applied to third party debt collectors (The Fair Debt Collection Practices Act) and one applied to the creditors themselves (The Consumer Protection Code).



In 1995 the General Assembly amended the Consumer Protection Code to make it more nearly track the federal law. None of the amendments directly prohibit calling a debtor employee at work. It is prohibited for the creditor to call the employer and discuss the debt with the employer or any third party. It is a violation to call the consumer anywhere repeatedly with an intent to harass. Consumers or their employers are also allowed to write the creditor and specifically ask that the creditor cease calling on the job.

4.) “If the car stops working, I can stop paying.”

In the old days, a used car seller could sell a consumer a clunker, and sell the installment obligation to a third party assignee or financier. When the car inevitably died the financier would tell the consumer that any defect in the car was between the dealer and the consumer, and the consumer still had an obligation to pay the finance contract. This



so called “holder in due course” doctrine has been eliminated for most consumer credit. A buyer can assert a breach of warranty against a financier, but it should be done with adequate notice to the financier after reasonable efforts, and the payments should continue while the dispute is being resolved. All too often, if the car stops working the consumer exercises the most appealing short term option, to stop making payments without notifying the financier. This may well end up in a repossession and may mess up the debtor’s credit for years.

3.) “My credit report is confidential.”

It is true that federal law restricts the use of consumer reports to a business need for the information related to credit, insurance, or employment. It is fairly common, however, for persons to access the information improperly by merely purporting to have such a legitimate business need. Most everyone has received a “pre-approved” credit solicitation from a bank or other creditor, which probably resulted from a limited report whereby the reporting agency

sends a list of persons with certain credit characteristics. Consumers sometimes complain about being denied credit in certain situations because of excessive “inquiries” only to find that merchants they had shopped but not decided to do business with had made the inquiries without their knowledge. Moreover, all sorts of data other than credit reports about individuals is freely bought and sold every day, legally and illegally. It may be information about your spending habits, your hobbies and interests and even if you have sent money to a bogus charity or sweepstakes.

2.) “If the Judge orders my Ex to pay the credit account, I am off the hook.”

An order to pay off credit by a Family Court may be valid and enforceable *between the spouses*. It can even result in a contempt citation if it is violated. Courts cannot impair the obligations on an existing contract with a third party, however. If, for example, a mortgage company accepts a note and mortgage from a husband and wife and the couple later splits up, and the wife asserts that the husband is obligated to pay under the order, the mortgage company will likely say “That’s a problem you have to work out between your husband and the court. What I see is your signature on the obligation and it is unpaid.”

And now for the number one consumer myth, widely believed, but is just not so!



1.) “I can return my car within three days of the date of purchase.”

This myth is so widely believed the Department actually gets calls from lawyers asking for a citation to the statute. The confusion may come from several other

Don't I have a 3-day Right to Cancel? *statutes that provide limited*

cooling of periods for other consumer related situations (see information below). As soon as you sign the contract on an automobile sale, you are obligated to make all the payments. Belief in this non-existent law is so prominent that California requires a notice on all auto sales contracts disclosing that there is no cooling off period.

Q. What Rights Are Available to South Carolina Consumers Under the 3 Day Cancellation Statute?

A. The consumer has several. Among them are:

- (1) A 3-day right to cancel a physical fitness services contract.
- (2) A 3-day right to cancel a door-to-door sale and a door-to-door credit sale.
- (3) A 3-day cancellation right on a non-purchase money residential mortgage, under Regulation Z of the Truth -in-Lending Act.
- (4) A 4-day cancellation right of a vacation timeshare lease plan.

These are probably by no means the only 3-day cancellation rights, but are important ones for consumers.

Top Ten Telemarketing Frauds

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|--------------------------|-----------------------|---------------------------|
| 1. Credit Card Offers | 2. Work-at Home Plans | 3. Prizes and Sweepstakes |
| 4. Advance Fee Loans | 5. Magazine Sales | 6. Buyers Clubs |
| 7. Nigerian Money Offers | 8. Telephone Slamming | 9. Travel Vacations |
| | 10. Credit Card Loss | |

FAST FACTS for Consumers

WHAT YOU DON'T KNOW ABOUT INSURANCE BASED CREDIT SCORING CAN COST YOU \$\$\$\$\$\$

Q WHAT IS INSURANCE BASED CREDIT SCORING?

A. Credit scoring is a concept developed more than 40 years ago by Fair, Isaac and Co., Inc. for use in consumer lending. It is designed to measure a person's creditworthiness, and is based on a score derived from a person's credit report. It later came into use in the insurance industry. Its usage by insurers in deciding whether to issue an insurance policy or how much the insured would pay for the policy has greatly increased in the last few years.

Q. ARE INSURANCE COMPANIES ALLOWED TO USE CREDIT SCORING?

A. The federal Fair Credit Reporting Act allows the use of credit reports, credit scores and investigative reports in the business of insurance provided proper disclosures are made to consumers and the consumer is made aware that within a month from the disclosure made to him he can request a free copy of the credit report from the credit reporting agency. It is being used in both automobile and homeowners insurance. Some insurers use credit scores developed by Fair, Isaac or similar entities, while others develop their own methodologies. These methodologies are considered commercially sensitive, and if they are filed at all with the regulatory authorities such as state departments of insurance, they are given confidential treatment.



Q. ARE THERE LIMITS ON ITS USAGE?

A. Faced with increasing use of credit scores, many states are attempting to put some limits on the practice. This is usually accomplished in insurance departments' regulations or bulletins. South Carolina law has explicitly allowed the use of credit scoring in automobile insurance for decades, although it had little or no impact on consumers prior to 1999. From 1974 to 1999, insurance companies had to base automobile insurance premiums on classifications established by the South Carolina Department of Insurance. Since this has become a hot topic in the state, insurers use of credit scoring in automobile insurance will be curtailed in January, 2003 when a Department of Insurance bulletin takes effect (a bulletin is the insurance department's interpretation of the law and provides guidelines to insurers). Among the changes:

- **Insurance companies can no longer use credit scoring as the sole factor in denying coverage.**
- **Insurers will be required to describe to the department how credit information will be used.**

Q. ARE THERE CONCERNS ABOUT CREDIT SCORING?

A. Hana Williamson, staff attorney at the Department of Consumer Affairs says that chief among concerns about credit scoring is how it impacts the poor, minorities, the disabled and the elderly. In an emergency, a person of means may pay cash to get his transmission fixed, but a person of average means may have to use a credit card, and take months to pay off the debt. This may have a negative

impact on that person's credit score, even though he is careful in paying off the debt. Some scoring models afford great weight to the fact that a person has not recently utilized credit. Many elderly persons do not like to borrow money, yet they pay their bills on time. A model which looks at a person's credit history might have a negative impact on that segment of the population. Persons who are disabled, ailing or face large medical bills may juggle the way in which they pay their bills or may utilize credit available on their credit cards more than a credit scoring model considers optimal.

Q. DO ALL INSURANCE COMPANIES USE THE SAME SCORING METHODS?

A. There does not seem to be an appropriate level of uniformity in the application of credit scoring. For example, insurers may have different corrective procedures than others, or may even have no corrective procedures. Some insurers may apply a credit score only to the initial rating process but not at renewal, and therefore would not take into account improvements in the credit history. With respect to homeowners insurance for a household with more than one resident, it is unclear whose score will be used. Some insurers may wish to use a credit score as a sole factor in underwriting or rating; some accord different weights to the score. This may produce a situation whereby a person with a proven bad driving record might pay less for automobile insurance than a person with a low credit score, but an accident-free and ticket-free record.

Q. WHAT DO CONSUMERS NEED TO KNOW?

A. If you have been denied coverage, non-renewed or canceled, your insurance company must provide the reason you did not meet their underwriting standards in clear and concise language. If you run several credit reports in a short period of time for mortgage loans, etc. or if you apply for a credit card shortly before you apply for auto insurance you may receive a lower credit score. Under the Equal Credit Opportunity Act, a credit scoring system may not use certain characteristics like race, sex, marital status, national origin, or religion as factors.

Q. HOW CAN CONSUMERS FIND THEIR CREDIT SCORES AND THEIR CREDIT REPORT?

A. Your credit score may be different depending on the source you contact as companies weigh factors differently. One source, Score Power service, developed by Fair Isaac and Equifax, will provide your credit score for \$12.95 at either www.myfico.com or www.equifax.com. Your credit report is a listing of events in your credit history. To obtain a copy of your credit report for a fee, contact one of the three major credit reporting agencies:

Equifax: (800) 685-1111

Experian: (888) 397-3742

Trans World (800) 916-8800



South Carolina Department of Consumer Affairs • 3600 Forest Drive Suite 300 Columbia SC 29204 • e-mail: scdca@dca.state.sc.us • 803.734.4200 or toll free statewide: 1.800.922.1594 • website: www.state.sc.us/consumer.

CONSECO SETTLEMENT AGREEMENT ANNOUNCED

State Consumer Advocate Philip S. Porter announced recently that Conseco Financial Corporation has agreed to settle the department's action against them regarding debt collection violations. He said that the South Carolina Consumer Protection Code prohibits certain methods of collection.

He also stated that chief among consumer complaints against **Conseco were: (1) repeated contact with friends, relatives or employers to discuss the debt; (2) contacting the consumer at unreasonable hours; (3) making repeated calls to harass the consumer, or using profane language and threats; and (4) making false or misleading statements regarding the debt.**

Porter said that if you use credit cards, owe money on a personal loan, or are paying on a home mortgage, you are a "debtor." If you fall behind in repaying your creditors, or an error is made on your accounts, you may be contacted by a "debt collector." In either situation state law requires that debt collectors treat you fairly. Of course, the law does not erase any legitimate debt that you owe.

A debt collector may contact the consumer in person, by mail, telephone, telegram or fax. However a debt collector may not contact you at inconvenient times or places, such as before 8 a.m. or after 9 p.m., unless you agree. A debt collector also may not contact you at work if the collector knows that your employer prohibits such calls and the employer or consumer asks the creditor to stop such calls in writing. Additionally, debt collectors may not harass or abuse the consumer or any third parties they contact. Most of all, debt collectors have no business discussing the status of the account with third parties.

Finally, Porter said that Conseco has agreed to provide for its collection team, specialized training regarding collection procedures in South Carolina, and pay a settlement fee of thirty thousand dollars (\$30,000) as part of the settlement. "I am encouraged by the steps the company has undertaken" Porter said, "but the company must know, as must all debt collectors, that abusive debt collection will not be tolerated in South Carolina."

Sweepstakes

Don't pay if it's free or you have won. It's another danger sign of fraud, if you are asked to pay a fee to get something free, claim a prize or win a vacation. If you really won a sweepstakes, you pay taxes directly to the government, not through the company.


SCDCA AWARDS AND ACHIEVEMENTS

Education Coordinator, Sherry King, was recognized recently as one of four recipients of the Florence Hall Award from the Clemson Extension Service. The award recognizes outstanding accomplishments of Extension Agents and others, in serving the needs of their clients. **King** was sited for her efforts in the **Be Smart partnership** between **SCDCA, Clemson Extension, SC Department of Health and Human Services, and the Aging Network**. This program empowers senior citizens, statewide, to protect their financial records, Medicare benefits, and themselves from being victims of consumer fraud. South Carolina’s Be Smart program was also selected, over **eight states for the Southeastern Area Agency on Aging Association's highest honor which will be presented in Kentucky in October**.

Chief Investigator, William Kadlowec, was presented with the **2002 Lance Thomas Achievement Award** during the annual meeting of the National Odometer and Title Fraud Enforcement Association’s (NOTFEA) annual meeting in Anaheim, California. Kadlowec was cited for his dedicated service to NOTFEA and excellence in odometer fraud enforcement. Lance Thomas was a longtime investigator at the Department of Transportation in Washington.

CONSUMER SERVICES

Amounts Recovered for Consumers in August Include :

\$18,500	Auto dealer paid off loan on vehicle traded in	
\$ 4,323	Business refunded prepayment penalty	
\$ 3,496	Credit Card charges reversed - account fraudulently opened	
\$ 3,150	Business refunded cost of laptop computer never received	
\$ 2,445	Consumer received refund for internet purchase never delivered	
\$ 1,183	Defective mattress replaced by business	
\$ 805	Internet order for rifle cancelled/business made refund	
\$45,651	Total Amount Recovered for Consumers in August, 2002	

Fiscal Year to Date Total **\$187,187.60**

During 2001 -2002 the department recovered \$1,067,799 in either refunds or adjustments for consumers

Did you know...?

Recalls for cars, drugs, medical devices, food, seafood, toys, baby and play equipment and household products are posted regularly on the Federal Consumer Information Center website: www.pueblo.gsa.gov



- Q. What is LifeSmarts?**
A. A game show style competition open to all teens in grades 9-12. This program is a flexible classroom or group activity.
- Q. How do teams compete?**
A. Teams of four or five teens compete in district and state matches. The state winners go on to compete regionally and nationally.
- Q. When does the competition begin?**
A. The on-line competition begins September 23.
- Q. How can I get more information?**
A. Contact Sherry G. King at 800.922.1594 (toll free in SC) or email: king@dca.state.sc.us

Consumer Alert:

A Publication of The South Carolina Department of Consumer Affairs – Public Information and Education Staff
Brandolyn Thomas Pinkston
Deputy, Public Information and Education
Sherry Gore King
Education Coordinator
Anna Albers
Information Resource Consultant
Regenia Gatewood
Administrative Assistant

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Consumer Affairs**

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Charleston

Wayne Sims
Columbia, SC

South Carolina Department of Consumer Affairs
3600 Forest Drive, Suite 300
P.O. Box 5757
Columbia, SC 29250
www.state.sc.us/consumer
800.922.1594 (toll free in SC)