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CHAPTER 6.

 ADMINISTRATION

PART 1.

POWERS AND FUNCTIONS OF ADMINISTRATOR

**SECTION 37‑6‑101.** Short title.

This chapter shall be known and may be cited as South Carolina Consumer Protection Code ‑ Administration.

**SECTION 37‑6‑102.** Applicability.

This part applies to persons who in this State (1) make or solicit consumer credit sales, consumer leases, consumer loans, and consumer rental‑purchase agreements; or (2) directly collect payments from or enforce rights against debtors arising from sales, leases, loans, or agreements specified in subsection (1), wherever they are made.

**SECTION 37‑6‑103.** “Administrator” defined.

“Administrator” means the officer appointed by the Commission on Consumer Affairs to administer this title part 5 of this chapter.

**SECTION 37‑6‑104.** Powers of administrator; harmony with Federal regulations; reliance on rules; duty to report.

(1) In addition to other powers granted by this title, the Administrator within the limitations provided by law, may

(a) Receive and act on complaints, take action designed to obtain voluntary compliance with this title, or commence proceedings on his own initiative;

(b) Counsel persons and groups on their rights and duties under this title;

(c) Establish programs for the education of consumers with respect to credit practices and problems;

(d) Make studies appropriate to effectuate the purposes and policies of this title and make the results available to the public;

(e) Adopt, amend, and repeal substantive rules when specifically authorized by this title, and adopt, amend, and repeal procedural rules to carry out the provisions of this title;

(f) Maintain offices within this State; and

(g) Appoint any necessary attorneys, hearing examiners, clerks, and other employees and agents and fix their compensation, and authorize attorneys appointed under this section to appear for and represent the Administrator in court.

(2) In addition to other powers granted by this title, the Administrator shall enforce the Federal Truth in Lending Act to the fullest extent provided by law.

(3) To keep the Administrator’s rules in harmony with the Federal Consumer Credit Protection Act and the regulations prescribed from time to time pursuant to that Act by the Board of Governors of the Federal Reserve System and with the rules of administrators in other jurisdictions which enact the Uniform Consumer Credit Code. The Administrator, so far as is consistent with the purposes, policies and provisions of this title, shall

(a) Before adopting, amending, and repealing rules, advise and consult with administrators in other jurisdictions which enact the Uniform Consumer Credit Code; and

(b) In adopting, amending, and repealing rules, take into consideration:

(i) The regulations so prescribed by the Board of Governors of the Federal Reserve System; and

(ii) The rules of administrators in other jurisdictions which enact the Uniform Consumer Credit Code.

(4) Except for refund of an excess charge, no liability is imposed under this title for an act done or omitted in conformity with a rule of the Administrator notwithstanding that after the act or omission the rule may be amended or repealed or be determined by judicial or other authority to be invalid for any reason.

(5) The Administrator shall report annually on or before January first to the Governor and legislature on the operation of his office, on the use of consumer credit in the State, and on the problems of persons of small means obtaining credit from persons regularly engaged in extending sales or loan credit. For the purpose of making the report, the Administrator is authorized to conduct research and make appropriate studies, the report shall include a description of the examination and investigation procedures and policies of his office, a statement of policies followed in deciding whether to investigate or examine the offices of credit suppliers subject to this title, a statement of the number and percentages of offices which are periodically investigated or examined, a statement of the types of consumer credit problems of both creditors and debtors which have come to his attention through his examinations and investigations and the disposition of them under existing law, a statement of the extent to which the rules of the Administrator pursuant to this title are not in harmony with the regulations prescribed by the Board of Governors of the Federal Reserve System pursuant to the Federal Consumer Credit Protection Act or the rules of administrators in other jurisdictions which enact the Uniform Consumer Credit Code and the reasons for such variations, and a general statement of the activities of his office and of others to promote the purposes of this title. The report shall not identify the creditors against whom action is taken by the Administrator.

(6) The Administrator shall not bring class actions, initiate criminal actions or seek injunctive relief, as provided in this title, without prior approval of a majority of the Commission on Consumer Affairs, exclusive of members who are associated with any such business within the meaning of Section 8‑13‑20.

**SECTION 37‑6‑105.** Administrative powers with respect to supervised financial organizations.

(1) With respect to supervised financial organizations, the powers of examination and investigation (Sections 37‑3‑506, 37‑6‑106 and 37‑6‑118) and administrative enforcement (Section 37‑6‑108) shall be exercised by the official or agency to whose supervision the organization is subject. All other powers of the Administrator under this title may be exercised by him with respect to a supervised financial organization.

(2) If the Administrator receives a complaint concerning noncompliance with this title by a supervised financial organization he shall refer the complaint to the official or agency having supervisory authority over the organization concerned. The Administrator may, in connection with a complaint received by him concerning noncompliance with this title by a supervised financial organization, obtain specific relevant information about the supervised financial organization involved in the complaint from the appropriate supervisory agency or official. Nothing herein shall be construed to prohibit the Administrator from taking any legal action he is otherwise empowered to take under this title.

(3) The Administrator and any official or agency of this State having supervisory authority over a supervised financial organization are authorized and directed to consult and assist one another in maintaining compliance with this title. They may jointly pursue investigations, prosecute suits, and take other official action, as they deem appropriate, if either of them otherwise is empowered to take the action.

**SECTION 37‑6‑106.** Investigatory powers.

(1) If the Administrator has probable cause to believe that a person has engaged in an act which is subject to action by the Administrator, he may make an investigation to determine if the act has been committed, and, to the extent necessary for this purpose, may administer oaths or affirmations, and, upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(2) If the person’s records are located outside this State, the person at his option shall either make them available to the Administrator at a convenient location within this State or pay the reasonable and necessary expenses for the Administrator or his representative to examine them at the place where they are maintained. The Administrator may designate representatives, including comparable officials of the State in which the records are located, to inspect them on his behalf.

(3) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected, the administrator may apply to the Administrative Law Court for an order compelling compliance.

(4) The Administrator shall not make public the name or identity of a person whose acts or conduct he investigates pursuant to this section or the facts disclosed in the investigation, but this subsection does not apply to disclosures in actions or enforcement proceedings pursuant to this title.

**SECTION 37‑6‑107.** Application of part on administrative procedure and judicial review.

Except as otherwise provided, the Part on Administrative Procedure and Judicial Review (Part 4) of this chapter applies to and governs all administrative action taken pursuant to this chapter or the Part on Supervised Loans (Part 5) of the Chapter on Loans (Chapter 3).

**SECTION 37‑6‑108.** Administrative enforcement orders.

(A) After notice, the administrator may order a creditor, a person acting on his behalf, or a person subject to this title to cease and desist from engaging in violations of this title. A respondent aggrieved by an order of the administrator may request a contested case before the Administrative Law Court in accordance with the Administrative Law Court’s rules of procedure. The administrator may obtain an order from the Administrative Law Court for enforcement of his orders as provided in the Administrative Procedures Act and the Administrative Law Court’s rules of procedure. The proceeding for enforcement must be initiated by filing a petition with the Administrative Law Court in accordance with the Administrative Law Court’s rules of procedure, and copies of the request for a contested case hearing must be served upon all parties of record.

(B) The jurisdiction of the Administrative Law Court is exclusive, and its final order may be appealed as provided in Sections 1‑23‑610 and 1‑23‑380.

(C) A request for a contested case hearing pursuant to this section must be initiated within thirty days after a copy of the order of the administrator is received. If a request is not initiated, the administrator may move for an order from the Administrative Law Court for enforcement of his order upon a showing that the order was issued in compliance with this section, that a request for a contested case hearing was not initiated within thirty days after a copy of the order was received, and that the respondent is subject to the jurisdiction of the Administrative Law Court.

(D) For purposes of this section and Sections 37‑6‑117 and 37‑6‑118, a violation of the South Carolina Unfair Trade Practices Act arising out of the production, promotion, or sale of consumer goods, services, or interests in land is considered a violation of this title subject to action by the administrator before the Administrative Law Court.

(E) Unless otherwise specifically provided by law, the following administrative penalties may be levied against persons found to have engaged in violations of this title pursuant to subsection (A) of this section:

(1) If the violator is found to have violated repeatedly and intentionally any provision of this title, the violator must be fined in an amount not to exceed two thousand five hundred dollars and not to exceed ten thousand dollars for any transaction or occurrence or set of transactions or occurrences which violated multiple provisions of this title.

(2) If the violator is shown to have violated a previous lawful order of the tribunal of competent jurisdiction, the violator may be fined in an amount not to exceed five thousand dollars for each violation.

(3) The penalties in items (1) and (2) of this subsection are in addition to any other penalties provided by law or any other remedies provided by law.

(F) The administrative law judge may make findings and issue and enforce cease and desist orders regarding unconscionable conduct or unconscionable debt collection pursuant to this section, but the administrative law judge may not award damage, treble damage, or attorney’s fee remedies to affected customers in these hearings.

**SECTION 37‑6‑109.** Assurance of discontinuance.

If it is claimed that a person has engaged in conduct subject to an order by the Administrator (Section 37‑6‑108) or by a court (Sections 37‑6‑110 through 37‑6‑112), the Administrator may accept an assurance in writing that the person will not engage in the conduct in the future. If a person giving an assurance of discontinuance fails to comply with its terms, the assurance is evidence that prior to the assurance he engaged in the conduct described in the assurance.

**SECTION 37‑6‑110.** Injunctions against violations of title.

The Administrator may bring a civil action to restrain any person from violating this title and for other appropriate relief including but not limited to the following: to prevent a person from using or employing practices prohibited by this title, to reform contracts to conform to this title and to rescind contracts into which a creditor has induced a consumer to enter by conduct violating this title, even though a consumer is not a party to the action. An action under this section may be joined with an action under the provisions on civil actions by the Administrator (Section 37‑6‑113).

**SECTION 37‑6‑111.** Injunctions against unconscionable agreements and fraudulent or unconscionable conduct.

(1) The administrator may bring a civil action to restrain a person to whom this title applies from engaging in a course of:

(a) making or enforcing unconscionable terms or provisions of consumer credit transactions;

(b) fraudulent or unconscionable conduct in inducing consumers to enter into consumer credit transactions;

(c) conduct of any of the types specified in item (a) or (b) with respect to transactions that give rise to or that lead persons to believe will give rise to consumer credit transactions; or

(d) fraudulent or unconscionable conduct in the collection of debts arising from consumer credit transactions.

(2) In an action brought pursuant to this section the court may grant relief only if it finds:

(a) that the respondent has made unconscionable agreements or has engaged or is likely to engage in a course of fraudulent or unconscionable conduct;

(b) that the respondent’s agreements have caused or are likely to cause or the conduct of the respondent has caused or is likely to cause injury to consumers or debtors; and

(c) that the respondent has been able to cause or will be able to cause the injury primarily because the transactions involved are credit transactions.

(3) In applying (1)(a), (b), and (c), consideration shall be given to each of the factors specified in the provisions on unconscionability with respect to a transaction that is, gives rise to, or that a person leads the debtor to believe will give rise to, a consumer credit transaction (subsection (2) of Section 37‑5‑108), among others.

(4) In an action brought pursuant to this section, a charge or practice expressly permitted by law is not in itself unconscionable.

**SECTION 37‑6‑112.** Temporary relief.

With respect to an action brought to enjoin violations of the title (Section 37‑6‑110) or unconscionable agreements or fraudulent or unconscionable conduct (Section 37‑6‑111), the Administrator may apply to the court for appropriate temporary relief against a respondent, pending final determination of proceedings. If the court finds after a hearing held upon notice to the respondent that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in conduct sought to be restrained, it may grant any temporary relief or restraining order it deems appropriate.

**SECTION 37‑6‑113.** Civil actions by Administrator.

(A) After demand, the administrator may bring a civil action against a creditor or a person subject to this title to recover actual damages sustained and excess charges paid by one or more consumers who have a right to recover explicitly granted by this title. In a civil action pursuant to this subsection, penalties must not be recovered by the administrator. The court shall order amounts recovered pursuant to this subsection to be paid to each consumer or set off against his obligation. A consumer’s action, except a class action, takes precedence over a prior or subsequent action by the administrator with respect to the claim of that consumer. A consumer’s class action takes precedence over a subsequent action by the administrator with respect to claims common to both actions, but the administrator may intervene. An administrator’s action on behalf of a class of consumers takes precedence over a consumer’s subsequent class action with respect to claims common to both actions. Whenever an action takes precedence over another action pursuant to this subsection, the latter action may be stayed to the extent appropriate while the precedent action is pending and dismissed if the precedent action is dismissed with prejudice or results in a final judgment granting or denying the claim asserted in the precedent action. A defense available to a creditor in a civil action brought by a consumer is available to him in a civil action brought pursuant to this subsection.

(B) The administrator may bring a civil action against a creditor, a person acting in his behalf, or a person subject to this title to recover a civil penalty of no more than five thousand dollars for repeatedly and intentionally violating this title. A civil penalty pursuant to this subsection must not be imposed for a violation of this title occurring more than two years before the action is brought.

(C) The administrator may bring a civil action or an administrative action, as provided in Section 37‑6‑108, against a creditor for failure to file notification in accordance with the provisions on notification pursuant to Section 37‑6‑202 or to pay fees in accordance with the provisions on fees pursuant to Section 37‑6‑203 to recover the fees the defendant has failed to pay and a civil penalty in an amount determined by the court not exceeding the greater of three times the amount of fees the defendant has failed to pay or one thousand dollars.

**SECTION 37‑6‑115.** Debtors’ remedies not affected.

The grant of powers to the Administrator in this chapter does not affect remedies available to debtors under this title or under other principles of law or equity.

**SECTION 37‑6‑116.** Venue.

The Administrator may bring actions or proceedings in a court in a county in which an act on which the action or proceeding is based occurred or in a county in which respondent resides or transacts business.

**SECTION 37‑6‑117.** Administrative responsibilities respecting consumer protection generally.

In addition to his powers and responsibilities relating to consumer credit transactions the Administrator shall:

(a) Receive complaints of individuals pertaining to any consumer transaction arising out of the production, promotion or sale of consumer goods and services; endeavor to determine the probable basis and merit of such complaint and advise the complainant of such determination;

(b) Subject to the provisions of Section 37‑6‑118, refer to the appropriate state or federal agency any complaint which is under the jurisdiction of such agency, for appropriate action.

(c) Endeavor to bring about a voluntary adjustment of any such complaint not within the jurisdiction of any regulatory or enforcement agency;

(d) Cooperate with and assist the South Carolina and United States Attorney General and all state and local agencies performing consumer protection functions in carrying out their legal enforcement responsibilities for the protection of consumers;

(e) Initiate and encourage programs to inform consumers of market practices and schemes which are fraudulent, deceptive or illegal; how to detect and avoid abusive consumer transactions; and of remedies and relief available to consumers;

(f) Undertake activities to encourage business and industry to maintain high standards of honesty, fair business practices, and public responsibility in the production, promotion and sale of consumer goods and services;

(g) Study the operation of consumer protection laws and recommend to the Governor and the legislature new laws and amendments to laws which would promote the protection of legitimate interests of consumers within this State.

(h) A state agency to which a written consumer complaint is referred pursuant to paragraph (b) of this section shall have the same power and responsibility with respect to such complaint as is provided in paragraphs (a), (b) and (d) of this section and shall endeavor to effect a voluntary settlement of any such complaint arising out of a transaction with a person who is subject to the regulatory or enforcement jurisdiction of such agency.

(i) With the approval of the Commission on Consumer Affairs, bring an individual action for a consumer who might have a cause of action for damages resulting from the use of or employment by another person of an unfair or deceptive method, act, or practice, as provided in Section 39‑5‑140, when he considers such action is necessary to protect the consumer’s interest, the actual damages sought are two thousand five hundred dollars or less, and either the individual has written evidence that two attorneys licensed to practice law in this State have reviewed the case and have declined to represent the individual in pursuing the cause of action, or an attorney licensed to practice law in this State, after reviewing the facts of the case, in writing has requested that the administrator bring an action on behalf of the consumer under this section.

(j) Develop a written pamphlet that explains the rights and responsibilities of consumers who obtain from a licensed lender consumer loans under this title and Title 34 for distribution in all licensed consumer loan offices. Such pamphlet shall include the names, addresses, and telephone numbers of state agencies responsible for enforcing the provisions of this title and Title 34. Such pamphlet shall be given to a consumer at the time the initial loan by a licensed lender is made whenever the amount financed is two thousand dollars or less and shall be readily available to all consumers at all times in each licensed consumer loan office. The administrator shall consult with, and seek input from representatives of consumers, the consumer finance industry, and the Director of the Consumer Finance Division of the Board of Financial Institutions. Each licensed lender shall be responsible for reproducing and distributing the pamphlet finally approved and authorized by the administrator. The pamphlet developed under this subsection shall be provided to consumers as of January 1, 1996.

The provisions of this subsection do not apply if consumer‑industry appeals, arbitration or mediation panels or boards, whose decisions are binding on the participating business, are available in this State for the product or service concerned, provided such business complies with the decision of the panel or board.

**SECTION 37‑6‑118.** Investigation of unfair trade practices in consumer transactions.

(1) Whenever the Administrator receives a complaint against a person pertaining to any consumer transaction arising out of the production, promotion or sale of consumer goods and services, and ‑

(a) the person against whom the complaint is made fails to respond to a written inquiry made by the Administrator concerning the complaint within the time limitation set forth in the inquiry, or

(b) the Administrator has probable cause to believe that the person complained of has or is engaged in market practices or a course of conduct which is fraudulent, illegal, deceptive or unfair, the Administrator may, subject to Section 37‑6‑105, conduct an investigation of the complaint pursuant to Section 37‑6‑106 to determine if that person has engaged in such market practices or course of conduct. Upon receiving written notice of an action brought by an individual or the Attorney General of South Carolina pursuant to Chapter 5 of Title 39 or of an unfair trade practice action by the Federal Trade Commission to investigate the facts complained of or to seek sanctions against the person that is the subject of the complaint, the Administrator shall automatically stay any pending investigation undertaken by him. Any action by the Administrator shall be dismissed if the other action is dismissed with prejudice or results in a final judgment granting or denying the claim asserted.

(2) The Administrator shall notify the person whose conduct is investigated of his findings of fact and conclusions, separately stated. The notice shall be in writing and mailed by certified or registered mail to the address of the principal office of the person investigated or to such other address as that person may designate in writing.

(3) Upon written request, filed within twenty days after the notice is mailed, the person is entitled to a hearing on any finding or conclusion of the Administrator. Such proceedings shall be deemed a contested case within the meaning of item (2) of Section 1‑23‑310.

(4) The findings and conclusions of the Administrator, when and as they become final, either by failure to request a hearing as provided for in subsection (3) or by exhausting administrative and judicial remedies, shall be filed in the office of the Administrator as a part of an education and information program provided for in paragraph (e) of Section 37‑6‑117.

(5) The provisions of this section shall not apply if consumer‑industry appeals, arbitration or mediation panels or boards, whose decisions are binding on the participating business, are available in South Carolina for the product or service concerned, provided such business complies with the decision of the panel or board.

PART 2.

NOTIFICATION AND FEES

**SECTION 37‑6‑201.** Applicability.

This part applies to a person engaged in this State in making consumer credit sales, consumer leases, consumer loans, or consumer rental‑purchase agreements and to a person having an office or place of business in this State who takes assignments of and undertakes direct collection of payments from or enforcement of rights against debtors arising from these sales, leases, or loans.

**SECTION 37‑6‑202.** Notification.

(1) Persons subject to this part shall file notification with the Administrator within thirty days after commencing business in this State, and, thereafter, on or before January thirty‑first of each year. The notification shall state:

(a) Name of the person;

(b) Name in which business is transacted if different from (a);

(c) Address of principal office, which may be outside this State;

(d) Address of all offices or retail stores, if any, in this State at which consumer credit sales, consumer leases, or consumer loans are made, or in the case of a person taking assignments of obligations, the offices or places of business within this State at which business is transacted;

(e) If consumer credit sales, consumer leases, or consumer loans are made otherwise than at an office or retail store in this State, a brief description of the manner in which they are made;

(f) Address of designated agent upon whom service of process may be made in this State (Section 37‑1‑203); and

(2) If information in a notification becomes inaccurate after filing, no further notification is required until the following January thirty‑first.

**SECTION 37‑6‑203.** Fees.

[Section effective until July 1, 2009. See, also, section effective July 1, 2009.]

A person required to file notification shall pay on or before January thirty‑first of each year to the administrator an annual fee of ninety dollars for that year, for each address in this State listed in the notification; provided, that the fee for any one person must be not less than ninety dollars; provided, further, that a person who does not extend credit pursuant to written contracts and a person whose annual gross volume of business does not exceed one hundred fifty thousand dollars is exempt from any fee and from the notification requirements of Section 37‑6‑202. A person engaged in making consumer credit sales or consumer leases who is also engaged in making consumer rental‑purchase agreements is only required to pay one ninety dollar fee for each location.

**SECTION 37‑6‑203.** Fees.

[Section effective July 1, 2009.]

A person required to file notification shall pay on or before January thirty‑first of each year to the administrator an annual fee of one hundred twenty dollars for that year, for each address in this State listed in the notification. The fee for any one person must be not less than one hundred twenty dollars. A person who does not extend credit pursuant to written contracts and a person whose annual gross volume of business does not exceed one hundred fifty thousand dollars is exempt from any fee and from the notification requirements of Section 37‑6‑202. A person engaged in making consumer credit sales or consumer leases who is also engaged in making consumer rental‑purchase agreements is only required to pay one one hundred twenty dollar fee for each location. The Department of Consumer Affairs shall retain thirty dollars of each fee to offset the cost of administration and enforcement of this chapter.

**SECTION 37‑6‑204.** Notification; persons making consumer rental‑purchase agreements.

In lieu of the notification requirements of Section 37‑6‑202, persons engaged in this State in making consumer rental‑purchase transactions shall:

(1) File notification with the Administrator within thirty days after commencing business in this State, and, thereafter, on or before January thirty‑first of each year. The notification must state:

(a) Name of the person;

(b) Name in which business is transacted if different from (a);

(c) Address of principal office, which may be outside this State;

(d) An indication that the creditor engages in the business of making consumer rental‑purchase agreements;

(e) Address of all offices or stores, if any, in this State at which consumer rental‑purchase transactions are made, or in the case of a person taking assignments of obligations, the offices or places of business within this State at which business is transacted;

(f) An indication of which addresses listed in (c) and (e) above engage in making consumer credit sales or cash sales of merchandise in addition to consumer rental‑purchase agreements;

(g) If consumer rental‑purchase transactions are made otherwise than at an office or retail store in this State, a brief description of the manner in which they are made;

(h) Address of designated agent upon whom service of process may be made in this State (Section 37‑1‑203); and

(2) If information in a notification becomes inaccurate after filing, no further notification is required until the following January thirty‑first.

PART 3.

COUNCIL OF ADVISORS ON CONSUMER CREDIT

**SECTION 37‑6‑301.** Council of Advisors on Consumer Credit.

(1) There is hereby created the Council of Advisors on Consumer Credit consisting of sixteen members, who shall be appointed by the Governor. One of the advisors shall be designated by the Governor as chairman. In appointing members of the Council, the Governor shall seek to achieve a fair representation from the various segments of the consumer credit industry and the public.

(2) The term of office of each member of the Council is four years. Of those members first appointed, four shall be appointed for a term of one year, four for a term of two years, four for a term of three years, and four for a term of four years. A member chosen to fill a vacancy arising otherwise than by expiration of term shall be appointed for the unexpired term of the member whom he is to succeed. A member of the Council is eligible for reappointment.

(3) Members of the Council shall serve without compensation but are entitled to reimbursement of expenses incurred in the performance of their duties.

**SECTION 37‑6‑302.** Function of Council; conflict of interest.

The Council shall advise and consult with the Administrator concerning the exercise of his powers under this title and may make recommendations to him. Members of the Council may assist the Administrator in obtaining compliance with this title. Since it is an objective of this part to obtain competent representatives of creditors and the public to serve on the Council and to assist and cooperate with the Administrator in achieving the objectives of this title, service on the Council shall not in itself constitute a conflict of interest regardless of the occupations or associations of the members.

**SECTION 37‑6‑303.** Meetings.

The Council and the Administrator shall meet together at a time and place designated by the chairman at least twice each year. The Council may hold additional meetings when called by the chairman.

PART 4.

ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

**SECTION 37‑6‑401.** Applicability and scope; conflict with Administrative Procedures Act.

This part applies to the administrator, prescribes the procedures to be observed by him in exercising his powers under this title, and supplements the provisions of the part on Powers and Functions of Administrator (Part 1) of this chapter and of the part on Supervised Loans (Part 5) of the Chapter on Loans (Chapter 3). A conflict between the provisions of this part and the Administrative Procedures Act pursuant to Chapter 23, Title 1 or the rules governing practice before the Administrative Law Court must be resolved in favor of the Administrative Procedures Act and the rules governing practice before the Administrative Law Court.

**SECTION 37‑6‑402.** “Contested case”; “license”; “licensing”; “party”; “rule” defined.

In this part

(1) “Contested case” means a proceeding including, but not restricted to, a proceeding initiated pursuant to the provisions on administrative enforcement orders as provided in Section 37‑6‑108(A) and licensing matters in which the legal rights, duties, or privileges of a party are required by law to be determined after an opportunity for hearing.

(2) “License” means a license authorizing a person to make supervised loans pursuant to the provisions on authority to make supervised loans (Section 37‑3‑502) and restricted loans pursuant to Chapter 29 of title 34 (the South Carolina Consumer Finance Act).

(3) “Licensing” includes the Board of Bank Control’s process respecting the grant, denial, revocation, suspension, annulment, withdrawal, or amendment of a license.

(4) “Party” means the Administrator and each person named or admitted as a party, or who is aggrieved by action taken and seeks to be admitted as a party.

(5) “Rule” means each rule authorized by this title that applies generally and implements, interprets or prescribes law or policy, or each statement by the Administrator that applies generally and describes the Administrator’s procedure or practice requirements or the organization of his office. The term includes the amendment or repeal of a prior rule but does not include

(a) Statements concerning only the internal management of the Administrator’s office and not affecting private rights or procedures available to the public;

(b) Declaratory rulings issued pursuant to the provisions of declaratory rulings by Administrator (Section 37‑6‑409);

(c) Intra‑office memoranda.

**SECTION 37‑6‑403.** Public information; adoption of rules; availability of rules and orders.

(1) In addition to other rule‑making requirements imposed by law, the Administrator shall:

(a) Adopt as a rule a description of the organization of his office, stating the general course and method of the operations of his office and the methods whereby the public may obtain information or make submissions or requests;

(b) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the Administrator or his office;

(c) Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the Administrator in the discharge of his functions.

(d) Make available for public inspection all final orders, decisions and opinions.

(2) No rule, order, or decision of the Administrator is valid or effective against any person or party, nor may it be invoked by the Administrator for any purpose, until it has been made available for public inspection as herein required. This provision is not applicable in favor of any person or party who has actual knowledge thereof.

**SECTION 37‑6‑404.** Procedure for adoption of rules.

(1) Prior to the adoption, amendment, or repeal of any rule, the Administrator shall

(a) Give at least twenty days’ notice of his intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, and the time when, the place where, and the manner in which interested persons may present their views therein. The notice shall be mailed to all persons who have made timely request of the Administrator for advance notice of his rule‑making proceedings and shall be published in a newspaper of general circulation in the State.

(b) Afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In case of substantive rules, opportunity for oral hearing must be granted if requested by twenty‑five persons, by a governmental subdivision or agency, or by an association having not less than twenty‑five members. The Administrator shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule the Administrator, if requested to do so by an interested person either prior to adoption or within thirty days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein his reasons for overruling the considerations urged against its adoption.

(2) No rule is valid unless adopted in substantial compliance with this section. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this section must be commenced within two years from the effective date of the rule.

**SECTION 37‑6‑405.** Filing and taking effect of rules.

(1) The Administrator shall file in the office of the Secretary of State a certified copy of each rule adopted by him. The Secretary of State shall keep a permanent register of the rules open to public inspection.

(2) Each rule hereafter adopted is effective twenty days after filing, except that, if a later date is specified in the rule, the later date is the effective date.

**SECTION 37‑6‑406.** Publication of rules.

(1) The Secretary of State shall compile, index, and publish all effective rules adopted by the Administrator. Compilations shall be supplemented or revised as often as necessary.

(2) Compilations shall be made available upon request to agencies and officials of this State free of charge and to other persons at prices fixed by the Secretary of State to cover mailing and publication costs.

**SECTION 37‑6‑407.** Petition for adoption of rules.

An interested person may petition the Administrator requesting the promulgation, amendment, or repeal of a rule. The Administrator shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within thirty days after submission of a petition, the Administrator either shall deny the petition in writing, stating his reasons for the denials, or shall initiate rule‑making proceedings in accordance with the provisions on procedure for adoption of rules (Section 37‑6‑404).

**SECTION 37‑6‑408.** Declaratory judgment on validity or applicability of rules.

The validity or applicability of a rule may be determined in an action for declaratory judgment in the court of common pleas for Richland County if it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff. The Administrator shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the Administrator to pass upon the validity or applicability of the rule in question.

**SECTION 37‑6‑409.** Declaratory rulings by Administrator.

The Administrator shall provide by rule for the filing and prompt disposition of petitions or declaratory rulings as to the applicability of any statutory provision or of any rule of the Administrator. Rulings disposing of petitions have the same status as decisions or orders in contested cases.

**SECTION 37‑6‑410.** Contested cases; notice; hearing; records.

(1) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(2) The notice shall include:

(a) A statement of the time, place, and nature of the hearing;

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(c) A reference to the particular provisions of the statutes and rules involved;

(d) A short and plain statement of the matters asserted. If the Administrator or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter upon application a more definite and detailed statement shall be furnished.

(3) Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

(4) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(5) The record in a contested case shall include:

(a) All pleadings, motions, intermediate rulings;

(b) Evidence received or considered;

(c) A statement of matters officially noticed;

(d) Questions and offers of proof, objections, and rulings thereon;

(e) Proposed findings and exceptions;

(f) Any decision, opinion, or report by the officer presiding at the hearing;

(g) All staff memoranda or data submitted to the hearing officer or members of the office of the Administrator in connection with their consideration of the case.

(6) Oral proceedings or any part thereof shall be transcribed on request of any party, but at his expense.

(7) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

**SECTION 37‑6‑411.** Rules of evidence; official notice.

In contested cases:

(1) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in nonjury civil cases in the court of common pleas of this State shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The Administrator shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

(2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original;

(3) A party may conduct cross‑examinations required for a full and true disclosure of the facts;

(4) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the Administrator’s specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The Administrator’s experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

**SECTION 37‑6‑412.** Decisions and orders.

A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with rules of the Administrator, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. In every decision or order, regardless whether adverse or not, a copy of the decision or order shall be delivered or mailed by certified mail to each party and to the attorneys of record.

**SECTION 37‑6‑413.** Licenses.

(1) When the grant or denial of a license is required to be preceded by notice and opportunity for hearing, the provisions of this part concerning contested cases apply.

(2) No revocation, suspension, annulment, or withdrawal of a license is lawful unless, prior to the institution of proceedings by the Board of Bank Control, it gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license.

**SECTION 37‑6‑414.** Contested case hearings before the Administrative Law Court.

(A) A person who has exhausted all administrative remedies available before the administrator and who is aggrieved by the administrator’s determination is entitled to a contested case hearing before the Administrative Law Court as provided in Section 1‑23‑600(D) and judicial review as provided in Sections 1‑23‑380(B) and 1‑23‑610. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate action or ruling of the Administrative Law Court is reviewable immediately if review of the final decision of the Administrative Law Court would not provide an adequate remedy.

(B) Contested case proceedings are instituted by filing a request for a contested case hearing with the Administrative Law Court according to the rules of procedure of the Administrative Law Court. Copies of the request for a contested case hearing must be served upon the administrator and all parties of record. The final decision of the administrative law judge may be appealed as provided for in Sections 1‑23‑380 and 1‑23‑610.

**SECTION 37‑6‑415.** Repealed by 2005 Act No. 128, Section 24, eff July 1, 2005.

PART 5.

DEPARTMENT OF CONSUMER AFFAIRS

**SECTION 37‑6‑501.** Department of Consumer Affairs; Commission on Consumer Affairs; Administrator.

There is hereby created

(a) The Department of Consumer Affairs;

(b) The Commission on Consumer Affairs; and

(c) The Office of Administrator of Consumer Affairs.

**SECTION 37‑6‑502.** Members of Commission on Consumer Affairs; terms; vacancies.

The Commission on Consumer Affairs shall be composed of nine members, one of whom shall be the Secretary of State as an ex officio member; four members shall be appointed by the Governor with advice and consent of the Senate and the remaining four members shall be elected by the General Assembly. Members of the Commission shall elect a Chairman. Terms of the members shall be four years unless otherwise stipulated in this section, and upon the expiration of the terms, the Governor shall appoint a member and the General Assembly shall elect one member respectively. With the exception of the ex officio member, any vacancy in the office of a member shall be filled by the Governor by appointment for the unexpired term. Members of the Commission shall be eligible for reappointment. No person associated with any businesses regulated by the Commission on Consumer Affairs shall be eligible to serve on the Commission as defined by Section 8‑13‑20 of the Code of Laws of South Carolina.

**SECTION 37‑6‑503.** Quorum; meetings.

A majority of the members shall constitute a quorum. The Commission shall meet monthly on such date as it may designate and may meet at such other times as it may deem necessary, or when called by the chairman or by a majority of its members, and shall counsel and advise with the Administrator on any and all phases of the operations and functions of the Department.

**SECTION 37‑6‑504.** Bonds of Commission members.

Each member of the Commission other than ex officio shall, before entering upon the duties of his office, give bond to the State in the sum of twenty‑five thousand dollars with a sufficient surety, to be approved by the State Treasurer, for the faithful performance of all duties required of him under the law during the term of his office. The premium of such bond shall be paid by the State.

**SECTION 37‑6‑505.** Compensation and expenses of Commission members.

Each member of the Commission other than ex officio shall receive such compensation and official expenses as provided by law for members of state boards and commissions.

**SECTION 37‑6‑506.** Powers and duties of Commission.

(1) The Commission shall be the policymaking and governing authority of the Department of Consumer Affairs and shall appoint the Administrator and be responsible for enforcement of this title.

(2) The Commission, through the Administrator, shall see that the provisions of this title are faithfully administered and enforced and to that end it may adopt, amend and repeal rules and regulations, not inconsistent with law, to interpret and explain provisions of this title, carry out the purposes and policies of this title, to prevent circumvention or evasion thereof or to facilitate compliance therewith.

(3) No provision of this title or of any statute to which this title refers which imposes any penalty on any creditor shall apply to any act done, or omitted to be done, in conformity with any rule or regulation so adopted, amended or repealed or in conformity with any written order, opinion, interpretation or statement of the Commission or of the Administrator, notwithstanding that such rule, regulation, order, opinion, interpretation or statement may, after such act or omission, be amended, or rescinded or be determined by judicial or other authority to be erroneous or invalid for any reason.

**SECTION 37‑6‑507.** Qualifications of Administrator.

The Administrator shall be a person of good moral character, at least thirty years of age, a resident taxpayer of this State, and shall be thoroughly familiar with this title and the consumer transactions to which it pertains. The Commission may also require additional qualifications. The Administrator, while serving as such, shall not directly or indirectly be financially interested in or associated with any other person subject to the jurisdiction of the Commission or the Administrator thereof. The Administrator shall serve at the pleasure of the Commission.

**SECTION 37‑6‑508.** Deputy Administrator.

The administrator, with the approval of the commission, may designate such deputies as he determines necessary to assist him in performing the duties he is required to perform under this title. Any deputy shall satisfy and meet the same qualifications, including bond, required for the administrator.

**SECTION 37‑6‑509.** Oath and bond of Administrator.

The Administrator shall take the oath of office prescribed for all State officers. Before entering upon the duties of his office, he shall give bond to the State for the benefit of any person aggrieved by his unlawful or wrongful actions, and such bond shall be in the sum of fifty thousand dollars, with sufficient surety, to be approved by the State Treasurer, for the faithful performance of all the duties required of him under the law during the term of his office. The premium of the bond shall be paid by the State.

**SECTION 37‑6‑510.** Personnel.

The Administrator shall prepare in writing a manual of necessary employee positions for the Department, including job classifications, personnel qualifications, duties, maximum and minimum salary schedules, and other personnel information for approval by the Commission before appointing any personnel. The Deputy Administrator and other employees of the Department shall serve at the pleasure of the Administrator.

**SECTION 37‑6‑511.** Department to maintain file for each creditor of rate schedules filed by creditor; certified copies; fees.

The Department of Consumer Affairs shall maintain a file for each creditor containing the original and all revised rate schedules filed by the creditor. A certified copy of each filing showing the date and time that it was received shall be sent to the creditor making the filing at the time of its receipt. A fee of ten dollars for each rate schedule filed by a creditor shall be payable to the Department of Consumer Affairs for its services in maintaining the rate schedule files and providing one certified copy of each rate filing to the creditor. Provided, That each creditor shall be required to pay a minimum annual fee of ten dollars. Additional certified copies of a filing shall be provided at a charge of four dollars per copy.

**SECTION 37‑6‑512.** Advisory committee of persons with cognizable handicaps.

The Administrator of the Department of Consumer Affairs acting as the Consumer Advocate may appoint an advisory committee of persons with cognizable handicaps to provide advice to the Consumer Advocate in regard to protecting the rights of consumers with these types of handicaps with particular attention to the manner in which consumers with these handicaps interact with those entities regulated by the Public Service Commission. Nothing herein shall require the Consumer Advocate to take a position or undertake an action that is contrary to his general duty to protect and represent the interests of the general public and consumers.

PART 6.

DIVISION OF CONSUMER ADVOCACY

**SECTION 37‑6‑601.** Division of Consumer Advocacy created.

There is created within the Department of Consumer Affairs the Division of Consumer Advocacy with duties and organizations as provided in this chapter.

**SECTION 37‑6‑602.** Consumer Advocate; qualifications.

The Consumer Advocate may be the Administrator of Consumer Affairs or he may be appointed by the administrator with the approval of the Commission on Consumer Affairs. The Consumer Advocate must be an attorney qualified to practice in all courts of this State with a minimum of three years’ practice experience.

**SECTION 37‑6‑603.** Staff and expenses.

The Division of Consumer Advocacy must be staffed and equipped to perform the functions prescribed in Section 37‑6‑604. The expenses of the office must be paid from appropriations provided annually in the state General Appropriations Act.

**SECTION 37‑6‑604.** Functions and duties of division.

(A) The functions and duties of the Division of Consumer Advocacy are:

(1) to provide legal representation of the consumer interest before the state and federal regulatory agencies which undertake to fix rates or prices for consumer products or services or to enact regulations or establish policies related thereto and to provide legal representation of the consumer interest concerning insurance matters, certificates of need for health facilities and services as required for an activity under Section 44‑7‑160, and other health‑related provisions;

(2) to monitor existing regulations, rate structures, and policies of that agency of special interest to consumers and report to the public through the news media proposed changes therein under consideration and the effect of those changes on the lives of the citizens of the State; and

(3) to evaluate and act upon requests from consumers concerning the matters set forth in items (1) and (2), except that any proceedings initiated by the Consumer Advocate must be brought on behalf of the public at large and not for individuals; initiation or continuation of any proceedings is in the sole discretion of the Consumer Advocate.

(B) The annual report required of the Commission on Consumer Affairs must include a report on the activities of the Division of Consumer Advocacy.

(C) After January 1, 2005, the division must not represent consumers in matters arising under Title 58. Matters or appeals under Title 58 that are pending on January 1, 2005, shall be transferred to the Office of Regulatory Staff.

**SECTION 37‑6‑605.** Access to records of state agencies and insurance companies.

In the performance of his assigned functions, the Consumer Advocate shall have reasonable access to records of all state agencies which are not classified by law as confidential, and all state agencies must cooperate with the Consumer Advocate in the performance of his duties. In addition, the Consumer Advocate must have reasonable access to confidential records and information if he enters a proprietary agreement to ensure their confidentiality. The South Carolina Department of Insurance and Consumer Advocate also shall have access to records, information, and data of the insurance companies as well as all of their sister affiliates, subsidiaries, and parent companies. During the course of a ratemaking or other proceeding initiated before the South Carolina Department of Insurance, the Consumer Advocate, as a party of record, may request in writing, in addition to all other methods of discovery as provided by law, the issuance of an order compelling a witness or company to either produce or allow inspection of documentary evidence relevant to the matter. If an order is not issued, the aggrieved party may appeal. The written request, in addition to showing a general relevance and reasonable scope of the evidence sought, must also specify with particularity the books, accounts, papers, records, or other materials of the business desired and the facts expected to be proved thereby. In lieu of a written request, the request for such an order may be made orally upon the record at the hearing, for good cause shown. Any objections to the issuance of the order must be filed within three days of being notified of the written request or the order. Any objections so filed must list the specific grounds for objection. Objections must be ruled on within ten days or the objection is denied.

**SECTION 37‑6‑606.** Petitions filed by advocate with regulatory agencies in interest of consumers.

(A) Except as provided in Section 37‑6‑604(C), whenever the Consumer Advocate determines that it would be in the interest of consumers affected by regulatory agencies, he may file with the appropriate regulatory agency a petition requesting the regulatory agency to commence or complete a proceeding respecting any organization whose operations substantially affect the consumer interest.

(B) The petition must state facts which claim to establish the need for the proceeding and a brief description of the substance of the order or amendment desired as a result of the proceeding.

(C) The regulatory agency may hold a public hearing or may conduct an investigation or proceeding as the regulatory agency considers appropriate in order to determine whether or not the petition should be granted.

(D) Within sixty days after the filing of the petition described in subsection (A), the regulatory agency must either grant or deny the petition. If the agency grants the petition, it must promptly commence or complete the proceeding, as requested by the petition. If the agency denies the petition, it must publish the reasons for the denial.

(E) If the regulatory agency denies the petition made under this section or, if it fails to grant or deny the petition within sixty days, the petitioner may commence a civil action in the circuit court to compel the regulatory agency to commence or complete the proceeding as requested in the petition. The action may be filed by the petitioner thirty days after the denial of the petition or, if the agency fails to grant or deny the petition within sixty days, within thirty days after the expiration of the sixty‑day period.

(F) If the petitioner demonstrates to the satisfaction of the court that the failure of the agency to commence or complete the proceeding as requested in the petition was unreasonable, the court must order the agency to commence or complete the proceeding as requested in the petition.

(G) In any action under this section, the court has no authority to compel the agency to take any action other than the commencement or completion of a proceeding.

(H) The remedies under this section are in addition to and not in lieu of other remedies provided by law.

**SECTION 37‑6‑607.** Advocate may maintain actions for judicial review.

With the exception of matters arising under Title 58, the Consumer Advocate is considered to have an interest sufficient to maintain actions for judicial review and may, as of right and in the manner prescribed by law, intervene or otherwise participate in any civil proceeding which involves the review or enforcement of an agency action that the Consumer Advocate determines may substantially affect the interests of consumers.

**SECTION 37‑6‑608.** Temporary staff; compensation.

To the extent necessary to carry out the consumer advocacy responsibilities, the Consumer Advocate may employ, in addition to a regular staff, temporary, professional, technical, or research specialists to assist in preparing and presenting cases. The compensation paid to these persons may be commensurate with compensation generally paid by the regulated industry for these specialists but must not exceed the appropriation made for such purposes.

**SECTION 37‑6‑609.** Discretion as to Consumer Advocate’s decisions.

Decisions of the Consumer Advocate respecting whether, when, or how to initiate, continue, or intervene in proceedings under Sections 37‑6‑601 to 37‑6‑608, are in the sole discretion of the Consumer Advocate, except as modified by order of a court of competent jurisdiction.