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CHAPTER 39.

 PAWNBROKERS

**SECTION 40‑39‑10.** Definitions.

 The following definitions apply for purposes of this chapter:

 (1) "Person" means an individual, partnership, corporation, joint venture, trust, association, or any other legal entity however organized.

 (2) "Pawnbroker" means any person engaged in the business of lending money on the security of pledged goods, or engaged in the business of purchasing tangible personal property on condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time.

 (3) "Pledged goods" means tangible personal property other than choses in action, title, securities, or printed evidences of indebtedness, which property is deposited with or otherwise actually delivered into the possession of a pawnbroker in the course of his business in connection with a pawn transaction.

 (4) "Pawnshop" means the location at which or premises in which a pawnbroker regularly conducts business.

 (5) "Month" means that period of time from one date in a calendar month to the corresponding date in the following calendar month, but if there is no corresponding date, then the last day of the following month, and when computations are made for a fraction of a month, a day is one‑thirtieth of a month.

 (6) "Administrator" means the administrator of the Department of Consumer Affairs.

 (7) "Pawn transaction" means the pledging with a pawnbroker under this chapter of a single item of goods or tangible personal property as security for a loan of money. Items that are usually sold as a set are considered a single item and must be included in the same transaction, and a pledged item together with items that are accessories to the pledged item are considered a single item and must be included in the same transaction. A separate pawn transaction retains its separate character when it is renewed, unless the parties agree otherwise.

HISTORY: 1988 Act No. 491, Section 2.

**SECTION 40‑39‑20.** Department of Consumer Affairs to regulate pawnbrokers; certificate of authority to operate pawnbroker business; persons ineligible for certificate of authority.

 All pawnbrokers conducting business in this State are under the authority of and regulated by the Department of Consumer Affairs, the administrator of which has the authority to promulgate regulations as he considers necessary to carry out the conditions and intent of this chapter. No person may carry on the business of a pawnbroker in any location in this State without first having obtained a Certificate of Authority for each location from the Department of Consumer Affairs. Upon receipt of the application for the Certificate of Authority, the Department of Consumer Affairs shall notify the law enforcement agency having jurisdiction where the applicant intends to do business. The law enforcement agency shall conduct a criminal background investigation of the applicant and upon its completion shall make the results of the investigation known to the administrator of the Department of Consumer Affairs along with its appropriate recommendation on the issuance of the Certificate of Authority.

 A person convicted of a felony may not be issued a Certificate of Authority to carry on the business of a pawnbroker or in any manner engage in the business of a pawnbroker, except that any person who is in the business of a pawnbroker on July 1, 1988, and who has been convicted of a felony before this date may be issued a Certificate of Authority and upon receiving it may continue in the business of a pawnbroker but if this person is convicted of a felony on or after July 1, 1988, he may not thereafter be issued a Certificate of Authority or carry on the business of a pawnbroker after the date of this subsequent felony conviction.

HISTORY: 1988 Act No. 491, Section 2.

**SECTION 40‑39‑30.** Certificate of authority required for each business location; penalties.

 No person may carry on the business of a pawnbroker in any location other than the one designated in his Certificate of Authority, under penalty of administrative fine, revocation of his Certificate of Authority, or other action by the administrator pursuant to regulation or criminal prosecution as set out in this chapter.

HISTORY: 1988 Act No. 491, Section 2.

**SECTION 40‑39‑40.** Unauthorized fees prohibited.

 No pawnbroker may charge or collect any fees, costs, or assessments of any kind or nature other than those specifically allowed under this chapter.

HISTORY: 1988 Act No. 491, Section 2.

**SECTION 40‑39‑50.** Bond or evidence of financial responsibility required; proof of net worth; liability insurance.

 Every person seeking a Certificate of Authority to carry on the business of a pawnbroker shall at the time of application for his certificate file with the Department of Consumer Affairs a bond in favor of the department to be executed by the person granted the certificate and by two responsible sureties or a surety company licensed to do business in this State in the penal sum of five thousand dollars to be approved by the administrator. The bond must be conditioned for the faithful performance of the duties and obligations pertaining to the business so authorized. In lieu of the above, other evidence of financial responsibility approved by the administrator must be submitted, including, but not limited to, letters of credit or certificates of deposit. Each applicant shall also file proof of his net worth which must be a minimum of thirty‑five thousand dollars until that time as liability insurance covering the contents of the pawn location is secured by the pawnbroker. The amount of the liability insurance required must be set by regulations promulgated by the administrator.

HISTORY: 1988 Act No. 491, Section 2.

**SECTION 40‑39‑60.** Actions on bond.

 If any person is aggrieved by the misconduct of any licensed pawnbroker and recovers judgment against him thereafter, he may, after the return unsatisfied, either in whole or in part, of any execution issued upon the judgment, maintain an action in his own name upon the bond of the pawnbroker in any court having jurisdiction of the amount claimed.

HISTORY: 1988 Act No. 491, Section 2.

**SECTION 40‑39‑70.** Record of loan and of goods pawned and pledged.

 Every pawnbroker shall keep a record, at the time of any loan, containing an account and description of the goods, articles, or things pawned, pledged, or purchased, the amount of money loaned thereon, the time of pledging them, the charges, or the rate of interest to be paid on the loan, and the name and residence of the person pawning or pledging the goods, articles, or things.

HISTORY: 1988 Act No. 491, Section 2.

**SECTION 40‑39‑80.** Issuance of memorandum or note at time of pawning or pledging.

 Every pawnbroker at the time of each loan shall deliver to the person pawning or pledging any articles, at no charge, a memorandum signed by the pawnbroker and the person pawning or pledging any articles containing the substance of the entry required by Section 40‑39‑70. If the memorandum is lost, the pledgor may receive a duplicate upon payment of a fee not exceeding three dollars. The administrator may prescribe the form to be used.

HISTORY: 1988 Act No. 491, Section 2.

**SECTION 40‑39‑90.** Books to be kept open for inspection.

 Records kept by pawnbrokers pursuant to this chapter must at all reasonable times be open to the inspection by court officials, law enforcement officers, the administrator of the Department of Consumer Affairs, and their designees. Any loan records identifying any individual must be handled in a confidential manner at all times.

HISTORY: 1988 Act No. 491, Section 2.

**SECTION 40‑39‑100.** Charges on loans.

 Pawnbrokers may charge interest on loans not exceeding the following amounts:

 (1) at the rate of two dollars and fifty cents per thirty‑day period for each ten dollars loaned for the first fifty dollars loaned;

 (2) at the rate of two dollars per thirty‑day period for each ten dollars loaned on that portion of the loan exceeding fifty dollars but not exceeding one hundred dollars;

 (3) at the rate of one dollar and fifty cents per thirty‑day period for each ten dollars loaned on that portion of the loan exceeding one hundred dollars but not exceeding two hundred dollars;

 (4) at the rate of one dollar per thirty‑day period for each ten dollars loaned on that portion of the loan exceeding two hundred dollars but not exceeding one thousand dollars;

 (5) at the rate of fifty cents per thirty‑day period for each ten dollars loaned on that portion of the loan exceeding one thousand dollars but not exceeding two thousand dollars.

 No pawnbroker may separate or divide a pawn transaction into two or more transactions for the purpose or with the effect of obtaining a total pawn interest rate in excess of that authorized for an amount financed equal to the total of the amounts financed in the resulting transactions.

 No pawnbroker may make a loan in excess of two thousand dollars. Every pawnbroker shall post these rates in a form which is prescribed by the administrator. The following statement must be included in the posted rate schedule:

 "Consumers: All pawnbrokers operating in South Carolina are required by law to post a schedule showing the maximum rate of LOAN FINANCE CHARGES stated as dollars for each ten dollars for each thirty‑day period that the pawnbroker intends to charge for various types of pawn transactions. The purpose of this requirement is to assist you in comparing the maximum rates that pawnbrokers charge, thereby furthering your understanding of the terms of pawn transactions and helping you to avoid the uninformed use of credit.

 NOTE: Pawnbrokers are prohibited only from granting credit at rates higher than those specified above. A pawnbroker may be willing to grant you credit at rates that are lower than those specified, depending on the amount, terms, collateral, and your credit worthiness."

HISTORY: 1988 Act No. 491, Section 2.

**SECTION 40‑39‑110.** Vesting of title to pledged property.

 If any loan remains unpaid for a period of sixty days from the due date or any renewal or extension thereof, the title of the borrower or pledgor to the property pledged to secure the loan shall vest in the pawnbroker, without advertising, sale, or accountability to the pledgor, if the pawn ticket or memorandum delivered to the borrower in accordance with Section 40‑39‑80, contains on the back thereof a notice to that effect, and if a printed or written notice of the impending forfeiture is mailed to the pledgor at the address given on the pawn ticket, at least ten days prior to the forfeiture date. This notice must contain a description of the article pledged, and the amount due thereon as of the date of the notice. No notice is required on loans of fifty dollars or less.

HISTORY: 1988 Act No. 491, Section 2.

**SECTION 40‑39‑120.** Fee for certificate of authority; revocation of certificate; renewal.

 Each pawnbroker applying for a Certificate of Authority shall tender to the department a fee of two hundred seventy‑five dollars plus all other applicable fees required by other agencies to process the application. The administrator may revoke any Certificate of Authority if the pawnbroker has violated this chapter or any regulation or order lawfully made pursuant to this chapter, or if facts or conditions exist which would clearly have justified the administrator in refusing to grant a Certificate of Authority had these facts or conditions been known to exist at the time the application for Certificate of Authority was made. The administrator may promulgate regulations for obtaining and revoking the Certificate of Authority. Certificates of Authority must be renewed on a yearly basis. Applications for renewal must be accompanied by a renewal fee of two hundred seventy‑five dollars.

HISTORY: 1988 Act No. 491, Section 2.

**SECTION 40‑39‑130.** Pawnbrokers to comply with federal law; enforcement powers of administrator.

 All pawnbrokers shall comply with the Federal Truth in Lending Act. The administrator has the administrative enforcement powers set forth in Section 108 of the Federal Truth in Lending Act.

HISTORY: 1988 Act No. 491, Section 2.

**SECTION 40‑39‑140.** Acceptance of property owned by third party.

 No pawnbroker shall accept property from a pledgor upon which there is evidence of ownership by a third party without first taking reasonable steps to ascertain its true ownership. Any such item accepted for pawn by a pawnbroker must be returned on demand without fee to the third party owner.

HISTORY: 1988 Act No. 491, Section 2.

**SECTION 40‑39‑150.** Authority to impose administrative fines; penalties for violation of Sections 40‑39‑20 and 40‑39‑30.

 (A) Upon finding that an action of a pawnbroker is in violation of the provisions of this chapter or of a law or regulation of this State or of the federal government or an agency of the state or federal government, the administrator may file a request with the Administrative Law Court for a contested case hearing in which the administrator may seek an order requiring the pawnbroker to cease and desist from the action.

 (B) The administrative law judge also may impose administrative fines of up to seven hundred fifty dollars for each offense upon persons violating any of the provisions of this chapter up to a maximum of fifteen thousand dollars for the same set of transactions or occurrences. Each violation constitutes a separate offense. In addition, a person violating the provisions of Sections 40‑39‑20 and 40‑39‑30 is guilty of a misdemeanor and, upon conviction, must be punished by a fine not exceeding one thousand dollars or by imprisonment for a term not exceeding sixty days, or both. The administrative law judge may revoke or suspend a pawnbroker's certificate of authority in addition to the penalties provided in this section.

HISTORY: 1988 Act No. 491, Section 2; 1991 Act No. 142, Section 26; 2005 Act No. 128, Section 11.

**SECTION 40‑39‑160.** Violations of Sections 40‑39‑80, 40‑39‑100, 40‑39‑110, and 40‑39‑130; pledgor's cause of action against pawnbroker.

 (1) If a pawnbroker violates Section 40‑39‑80, 40‑39‑100, 40‑39‑110, or 40‑39‑130, the pledgor has a cause of action to recover from the pawnbroker actual damages and the right in an action other than a class action to recover from the person violating these provisions a penalty in an amount to be determined by the court of not less than one hundred nor more than one thousand dollars. No action pursuant to this subsection may be brought more than one year after the scheduled or accelerated maturity of the debt.

 (2) A pledgor is not obligated to pay a charge in excess of that allowed by this chapter, and has a right of refund of any excess charge paid within ten days of written demand. A refund may not be made by reducing the consumer's obligation by the amount of the excess charge unless the pawnbroker has notified the pledgor that the pledgor may request a refund and the pledgor has not so requested within ten days thereafter.

 (3) In an action in which it is found that a pawnbroker has violated this chapter, the court shall award to the pledgor the costs of the action and to the pledgor's attorney reasonable fees. In determining attorney's fees the amount of recovery on behalf of the consumer is not controlling.

 (4) Liability to the pledgor for violation of Section 40‑39‑130 is in lieu of and not in addition to his liability under the Federal Truth in Lending Act. No action with respect to the same violation may be maintained pursuant to both subsection (1) of this section and the Federal Truth in Lending Act.

HISTORY: 1988 Act No. 491, Section 2.