Agency Name: Consumer Affairs

Statutory Authority: 37-2-305, 37‑3‑305, 37‑6‑104, 37‑6‑402, 37‑6‑403, and 37‑6‑506

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- 01/09/2018 Received by Lt. Gov & Speaker 05/09/2018

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Document No. 4732

**DEPARTMENT OF CONSUMER AFFAIRS**

CHAPTER 28

Statutory Authority: 1976 Code Sections 37‑2‑305, 37‑3‑305, 37‑6‑104, 37‑6‑402,

37‑6‑403, and 37‑6‑506

28‑4. Method of Operations.

28‑6. Application of Federal Truth in Lending Act.

28‑9. Other Cases ‑ Summary Procedure.

28‑30. Delinquent Notification Filing and Fee Payment.

28‑70. Filing and Posting Maximum Rate Schedules.

**Synopsis:**

The department proposes to amend Regulations 28‑4, 28‑6, 28‑9, 28‑30, and 28‑70. The purposes of these proposed amendments are to revise and edit regulatory language to conform to current operations and statutory requirements as well as to delete obsolete provisions. South Carolina Code sections 37‑6‑104 and 37‑6‑403 authorize the department to promulgate regulations necessary to effectuate the purposes of the chapter.

Notice of Drafting for the proposed regulations was published in the *State Register* on August 26, 2016. Comments were solicited for consideration in drafting the proposed regulation. The proposed regulation was published in the *State Register* on November 25, 2016.

**Instructions:**

Amend Regulations 28‑4, 28‑6, 28‑9, 28‑30, and 28‑70 as indicated below.

28‑4 No changes.

28‑4(A) Revised to correct number and names of Department Divisions.

28‑4(A)(1) Revised language to conform with current Administration Division functions.

28‑4(A)(2) Revised language to conform with current Consumer Services Division functions.

28‑4(A)(3) Revised language to conform with current Advocacy Division functions.

28‑4(A)(4) Revised subsection to describe the Public Information and Education Division.

28‑4(A)(5) Added a new subsection to describe the Identity Theft Unit.

28‑4(A)(6) Subsection relabeled. Previously was 28‑4(A)(4). Also revised for accuracy and

statutory changes.

28‑4(B) No changes.

28‑4(B)(1) Added language for complaint filing method.

28‑4(B)(2) Revised language to conform with Department information request policy.

28‑4(B)(3) No changes

28‑4(B)(4) No changes

28‑4(B)(5) Revised Division name.

28‑4(B)(6) No changes

28‑6(A) No changes.

28‑6(B) Deleted incorrect reference to promulgating agency.

28‑9(A) Clarified topics for which an informal complaint may be made.

28‑9(B) Revised language to include reference to Record Retention Policy.

28‑9(C) Revised language to more accurately reflect Department’s authority.

28‑9(D) No changes.

28‑9(D)(1) Revised language to clarify settlement agreements are permitted.

28‑9(D)(2) No changes.

28‑9(D)(3) No changes.

28‑9(D)(4) No changes.

28‑9(D)(5) No changes.

28‑9(D)(6) Added new subsection o reference criminal authority.

28‑9(D)(7) Added new catchall section to reflect Department authority outside of Consumer

Protection Code.

28‑9(E) No changes.

28‑30(A) Revised grace period downward.

28‑30(B) Revised language to reflect Department’s statutory enforcement authority.

28‑30(C) Revised credit grantor notification late penalty structure.

28‑70(A) Created subsections to reduce language duplication.

28‑70(A)(1) Added new subsection to reduce language duplication.

28‑70(A)(2) Deleted duplicate language, revised language to conform to statutory amendments and

relocated language relevant to the section’s topic.

28‑70(B) Added subsection for organization. Relocated language to (A)(2).

28‑70(C) Created subsections for organization.

28‑70(C)(1) Added subsections number. Deleted incorrect reference to federal agency.

28‑70(C)(2) Created new subsection number for organization. No change to language.

28‑70(C)(3) Created new subsection number for organization. No change to language.

28‑70(D) Revised language to clarify effective date of maximum rate schedule.

28‑70(E) No changes.

**Text:**

28‑4. Method of Operations.

A. Functional Areas: The Department of Consumer Affairs is divided into six functional divisions. These are Administration, Consumer Services, Consumer Advocacy, Public Information and Education, Identity Theft Unit and Legal.

(1) Administration: The Administration Division is responsible for providing administrative support to the Department of Consumer Affairs, including procurement, human resources, accounting and information technology. The Administrator position, the officer appointed by the Commission on Consumer Affairs to administer Title 37 and other statutes falling within the Department’s authority and otherwise manage the day to day operations of the agency, is located in this Division.

(2) Consumer Services: The Consumer Services Division is responsible for handling consumer complaints. Consumer complaint analysts receive, evaluate and process complaints arising out of the production, promotion or sale of consumer goods or services. Complaints that fall within the jurisdiction of another state or federal agency are referred to such agency. Analysts engage in voluntary complaint mediation of complaints not subject to the jurisdiction of any responsible agency.

(3) Consumer Advocacy: The Consumer Advocacy Division is responsible for evaluating rate and other requests submitted to various regulatory agencies, recommending intervention to the Consumer Advocate, preparing the presentation of the consuming public’s case and representing the public in hearings and in court as appropriate. The Division is also responsible for monitoring regulations of regulatory agencies, reporting on their findings and evaluation of the impact of such regulations on the public, and responding to requests for legislative assistance.

(4) Public Information and Education: The Public Information and Education Division is the main education portal for businesses and consumers. Communications staff are responsible for coordinating, developing and implementing agency outreach programs, for disseminating information on consumer credit laws, protection, and advocacy matters to the news media and the general public.

(5) Identity Theft Unit: The Identity Theft Unit provides education and outreach to consumers on how to deter, detect, and defend against identity theft. Staff assists consumers in mitigating instances of identity theft and provides education to businesses and agencies on complying with state identity theft laws and enforces such statutes.

(6) Legal: The Legal Division is responsible for maintaining a constant review of consumer protection law and formulating recommendations for legislative proposals. It is also responsible for providing legal advice and information to the Divisions of the Department of Consumer Affairs, for rule‑making and investigations. It monitors rules, regulations, and interpretations of other Code state administrators and of appropriate Federal agencies and formulates appropriate rules, regulations, declaratory rulings and other interpretations of law. This Division is also responsible for conducting litigation and administrative enforcement actions under the provisions of the South Carolina Consumer Protection Code and other statutes enforced by the Department.

B. Public Access: The public has access to the Department of Consumer Affairs in three ways. These are through the complaint procedures, the information procedures and the formal rule‑making and petition procedures.

(1) The public has access to the Department through the complaint procedure by virtue of an online complaint system, a statewide toll‑free WATS line, or by utilization of the regular telephone network of the Department. Telephone numbers for the WATS line and the regular system are published in the news media and other appropriate informational sources at regular intervals. Informal complaints may also be submitted to the Department in writing either utilizing the Department’s regular complaint form or in an appropriate letter or other writing.

(2) Requests for information may be made to the Public Information and Education Division . Any final order, decision, opinion, rule, regulation, written statement of policy or interpretation formulated, adopted or used by the Administrator on the discharge of his functions or any other matter to which the public has access by virtue of the Freedom of Information Act may be inspected at the Office of the Administrator at any reasonable time, during normal office hours. Voluminous requests or requests for material two years old or older may result in a longer response time for retrieval, copying or sorting. Reasonable charges may be imposed to recover expenses of materials and time for retrieval, copying or sorting of information.

(3) All requests for information which require an answer in the nature of an interpretation, statement of official policy or position of the Department must be submitted in writing.

(4) Submissions or suggestions designed to improve the operation of the Department of Consumer Affairs should be submitted in writing to the Office of Administrator of Consumer Affairs, without regard to the division or activity to which they may pertain.

(5) Requests for publications which may from time to time be issued by the Department should be addressed to the Public Information and Education Division. Reasonable charges may be imposed to recover expenses of materials and time for retrieval, copying or sorting of publications.

(6) Requests, submissions or any other communication of any nature may be made in writing to the Office of the Administrator of Consumer Affairs.

28‑6. Application of the Federal Truth in Lending Act.

A. All persons upon whom the Federal Truth in Lending Act imposes duties or obligations shall make or give to the consumer the disclosures, information and notices required of him by that Act and in all respects comply with that Act.

B. The term “Federal Truth in Lending Act” means Title I of the Consumer Credit Protection Act [15 U.S.C. Section 1601 et seq.] as amended from time to time and the regulations promulgated thereunder, as amended from time to time.

28‑9. Other Cases ‑ Summary Procedure.

A. Informal Complaint: Informal complaints pertaining to actions subject to the Department’s jurisdiction may be made to the Administrator in writing and need not be in any particular form. Such matters may be disposed of by correspondence or other informal communication.

B. Record of Informal Complaints: A record shall be kept of each informal complaint listing the allegations and all action taken including any final disposition, subject to the Department’s Record Retention Policy.

C. Investigation: If it appears from an informal complaint or other information brought to the attention of the Administrator that there is probable cause to believe that a person is committing or has committed an act or omission in violation of the Code, the Administrator may order an investigation to determine if the Act is being or has been committed.

D. Summary Action: If, after investigation, the Administrator determines that a person is committing or has committed any act or omission in violation of the Code, he may take one or more of the following actions, as the situation may warrant:

(1) Enter into an agreement with the person to settle the matter via a non‑hearing resolution or otherwise accept an assurance in writing that the person in violation of the Code will not engage in that conduct in the future;

(2) Bring an administrative action;

(3) Bring civil action for injunctive relief as provided in Sections 37‑6‑110, 37‑6‑111 and 37‑6‑112 of the Code;

(4) Bring a civil action as provided in Section 37‑6‑113 of the Code;

(5) Bring an individual action for a consumer as provided in Section 37‑6‑117 of the Code;

(6) Bring a criminal action as provided in Section 37‑6‑104 of the Code;

(7) Engage in an action as permitted by law.

E. Initiation of Formal Proceedings: The Administrator may initiate formal or investigative proceedings upon any matter arising out of an informal complaint.

28‑30. Delinquent Notification Filing and Fee Payment.

A. Except in the case of willful or repeated violations of Sections 37‑6‑202 and 37‑6‑203, notification filings and fees which are not more than 15 days delinquent will be accepted without penalty.

B. Willful or repeated violations will be disposed of pursuant to the provisions of the Code, including Sections 37‑6‑108, 37‑6‑110, 37‑6‑113 (Civil Actions) and 37‑6‑118.

C. In all other cases delinquent filings must be accompanied by a penalty equal to the amount indicated as follows:

|  |  |
| --- | --- |
| Payment Received | Penalty |
| 16 to 30 days late | 50% of delinquent fee |
| 31 to 60 days late | 100% of delinquent fee |
| 61 to 90 days late | 200% of delinquent fee |
| 91 or more days late | subject to action by the Department |

28‑70. Filing and Posting Maximum Rate Schedules.

A. Every creditor [Section 37‑1‑301(13)] other than an assignee of a credit obligation making consumer credit sales [Section 37‑2‑104] in this State, and intending to impose a credit service charge in excess of 18% per annum in this State, and every creditor [Section 37‑1‑301(13)] making supervised loans [Section 37‑3‑501(1)] or restricted loans [Section 37‑3‑501(3)] in this State, shall:

(1) file with the Department of Consumer Affairs a rate schedule as shown on the Department’s internet website. The original of the rate schedule shall be filed together with a fee of forty dollars per location, and

(2) post in one conspicuous place in every place of business in this State in which offers to make consumer credit sales, supervised loans or restricted loans , a maximum rate schedule issued by the Department of Consumer Affairs pursuant to Subsection (A)(1). No posted rate schedule shall contain any statement, stamp of approval, or any language or symbol which suggests or implies that the posted rate(s) are suggested, or individually approved by the Department of Consumer Affairs or any other agency of State or Federal government.

B. A creditor that has issued seller credit cards [Section 37‑1‑301(26)] or a creditor that has issued lender credit cards or similar arrangements [Section 37‑1‑301(16)] shall not be required to post a required rate schedule for such transactions in any place of business which is authorized to honor such transactions; provided that the creditor shall include a conspicuous statement of the maximum rate it intends to charge for these transactions in the initial disclosure statement required to be provided for the debtor by the Federal Truth‑In‑Lending Act and notifies the debtor of any change in the maximum rate on or before the effective date of the change; provided further that a creditor that has issued lender credit cards or similar arrangements shall nevertheless post the required rate schedule for such transactions at its central office (if financial transactions with consumers take place at the central office) and branch offices other than branch offices which are free standing automatic teller machines.

C. (1) The rate schedule required to be filed and posted by Sections A. and B. shall contain a list of the maximum credit service charges [Section 37‑2‑109] (in the case of consumer credit sales) or maximum loan finance charges [Section 37‑3‑109] (in the case of supervised or restricted consumer loans) stated as an annual percentage rate, determined in accordance with the Federal Truth‑In‑Lending Act as amended from time to time, and any regulations promulgated thereunder, including Regulation Z, as amended from time to time, that the creditor intends to charge for consumer credit transactions in each of the following categories of consumer credit:

(a) Unsecured credit sales or loans;

(b) Secured credit sales or personal loans, other than those secured by real estate;

(c) Credit sales secured by real estate or real estate mortgage loans;

(d) Open‑end (revolving) credit;

(e) All other.

(2) The creditor may include as many subcategories as it chooses under each of the specified categories .

(3) If a creditor with multiple locations wishes to charge different maximum rates for different locations, a separate maximum rate schedule shall be filed for each location which charges maximum rates which vary from the schedule filed and posted for the main or central location.

D. A rate schedule filed shall be effective for all consumer credit extended the date the maximum rate schedule certificate is issued by the Administrator or when the creditor complies with all requirements of 37‑2‑305 or 37‑3‑305, as applicable, whichever is later.

E. A rate schedule filed and posted as required by Section 37‑2‑305, Section 37‑3‑305, and this Regulation shall remain effective until January 31st of each year. A creditor wishing to change any of the maximum rates shown on a schedule previously filed and posted or to add or delete the prescribed categories or subcategories shall file with the Department of Consumer Affairs a revised schedule together with a fee of forty dollars per location.

**Fiscal Impact Statement:**

The department estimates the costs incurred by the State in complying with the proposed regulation will be approximately $0.

**Statement of Rationale:**

The South Carolina Consumer Protection Code specifically provides for the Department to promulgate regulations necessary to effectuate the purposes of the Code and these changes are being made to conform regulations to current statutory law.