Agency Name: Consumer Affairs

Statutory Authority: 37-2-410, 37‑2‑710, 37‑3‑403, 37‑6‑104, 37‑6‑402, 37‑6‑403, and 37‑6‑506

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- 04/26/2018 Received by Lt. Gov & Speaker 04/23/2019

H 04/26/2018 Referred to Committee

S 04/26/2018 Referred to Committee

- 05/11/2018 Withdrawn due to end of two-year session

- 01/08/2019 Resubmitted with no substantive changes

 - Received by Lt. Gov & Speaker 05/08/2019

H 04/11/2019 Committee Requested Withdrawal

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- 04/11/2019 Withdrawn and Resubmitted 05/08/2019

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 provided for in the Regulation

Document No. 4811

**DEPARTMENT OF CONSUMER AFFAIRS**

CHAPTER 28

Statutory Authority: 1976 Code Sections 37‑2‑410, 37‑2‑710, 37‑3‑403, 37‑6‑104, 37‑6‑402, 37‑6‑403, and 37‑6‑506

28-55. Employee’s Revocable Authorization of a Deduction of Earnings.

**Synopsis:**

 The South Carolina Department of Consumer Affairs proposes to promulgate R.28‑55 to provide a framework for the provision of an employee’s revocable authorization of a deduction of earnings.

 Sections 37‑2‑410, 37‑2‑710 and 37‑3‑403 prohibit the assignment of wages in consumer transactions, but permits an employee borrower to authorize a revocable deduction of earnings. Sections 37‑6‑104, 37‑6‑402, 37‑6‑403 and 37‑6‑506 allow the Department to promulgate regulations necessary to effectuate the purposes of Title 37.

 Notice of Drafting for the proposed regulation was published in the *State Register* on January 26, 2018.

**Instructions:**

 Add Regulation 28-55 as printed below.

**Text:**

28-55. Employee’s Revocable Authorization of a Deduction of Earnings.

 A. Definitions: Definitions shall be those contained in S.C. Code Ann. S. 37-1-100 et seq. (1976 as amended).

 B. No Assignment of Earnings. A creditor may not take an assignment of earnings of a consumer for payment or as security for payment of a debt arising out of a consumer credit transaction. An assignment of earnings is unenforceable by the creditor, including an assignee, and is revocable by the consumer.

 C. Revocable Payroll Deductions: An employee may authorize deductions from his earnings if the authorization is revocable. No deduction of earnings authorizing the debtor’s employer to withhold a specific amount from a debtor’s wages for payment of a debt arising out of a consumer sale, loan, lease or rental-purchase agreement shall be considered revocable and otherwise in compliance with Title 37 unless the consumer or, if authorized in writing by the consumer, the creditor notifies his or her employer of the payroll authorization in favor of the creditor and the authorization:

 (1) Is in a writing:

 (a) contained in a document separate from any contract or agreement;

 (b) executed at the same time as the underlying transaction;

 (c) bearing the debtor’s signature and date of signature; and

 (d) a completed copy of which is given to the debtor.

 (2) Contains the following terms in clear, easily understandable language:

 (a) The name and address of the creditor and the borrower;

 (b) A statement that by signing the authorization, the consumer is permitting his/ her employer to withhold the consumer’s earnings for payment of the debt to the creditor, unless the consumer revokes such authorization;

 (c) A description of the debt underlying the authorization, including the type of debt, date of the transaction, the amount of money advanced or paid, the interest and all other fees and charges paid or agreed to be paid by the consumer, the time when the debt, if any, matures and, if the debt is to be paid in installments, the amount and date of payment of each installment;

 (d) The total amount to be deducted and number of payments the consumer intends to pay by payroll deduction;

 (e) A statement that the failure of the consumer to notify the creditor of a revocation of the earnings deduction does not affect the status of the revocation. The creditor’s contact information for receiving notice of revocation, including street address and mailing address or e-mail address, must be provided. If the creditor chooses to provide the consumer a form for use in the consumer notifying the creditor of a revocation, an additional statement describing the purpose of the form and that the use of the form is optional;

 (f) The internet address and telephone number for the Department of Consumer Affairs;

 (g) The following statements in all caps, bold-face type, in a font larger than any other language on the contract and in immediate proximity to the space reserved for the consumer's signature on the agreement that reads as follows:

 (i) ‘THIS PAYROLL AUTHORIZATION IS NOT REQUIRED TO GET CREDIT OR TO GET CERTAIN TERMS OF CREDIT.’

 (ii) 'YOU MAY REVOKE THIS AUTHORIZATION WITHOUT PENALTY, FOR ANY REASON AND AT ANYTIME BY CONTACTING YOUR EMPLOYER. IF REVOKED, YOU NEED TO MAKE FUTURE PAYMENTS DIRECTLY TO US.’

 (iii) ‘IF YOU CHOOSE NOT TO NOTIFY US THAT YOU REVOKED YOUR AUTHORIZATION AND PAYMENT IS NOT RECEIVED WHEN DUE, YOU GIVE US PERMISSION TO CONTACT YOUR EMPLOYER TO FIND OUT WHY THE PAYMENT WAS NOT MADE.’

 D. Prohibitions: Regardless of when made, an authorization for the deduction of earnings is void if a creditor:

 (1) Fails to comply with the provisions of this regulation,

 (2) Requires the authorization to obtain credit or certain terms of credit,

 (3) Initiates, or attempts to initiate contact with the consumer’s employer pertaining to the authorization, except that a creditor may initiate contact with the employer:

 (a) after the debtor signs the payroll authorization to confirm the employer received notice of the authorization, intends to deduct the specified amount from the debtor’s earnings and has the necessary information to facilitate the payments. Any communication between the creditor and employer regarding the authorization shall be limited to confirmation of the employer’s intent to honor the employee’s request for a payroll deduction, the amount and due date for each installment and the form for use in the consumer notifying the creditor of a revocation, if applicable; and

 (b) if the creditor fails to receive timely payment pursuant to the authorization and has not received notice of revocation from the consumer, to determine the reason the payment was not made. This does not apply if the last payment received by the creditor was made by the consumer directly by a method other than payroll deduction; or

 (4) Attempts to utilize an authorization to solely collect payments due upon a consumer’s default, or otherwise deduct earnings in an unauthorized manner similar to wage garnishment or wage assignment.

 E. Nothing in this regulation affects an employer’s right to decline the employee’s request for a payroll deduction.

**Fiscal Impact Statement:**

 The Department of Consumer Affairs estimates the costs incurred by the State in complying with the proposed regulation will be approximately $0.

**Statement of Rationale:**

 Sections 37‑2‑410, 37‑2‑710 and 37‑3‑403 prohibit an assignment of earnings in consumer transactions but permits an employee to request a revocable, authorized deduction of earnings. Sections 37‑6‑104, 37‑6‑402, 37‑6‑403 and 37‑6‑506 allow the department to promulgate regulations necessary for the implementation of the South Carolina Consumer Protection Code. It is necessary to promulgate a regulation to clarify when an employee’s authorization would be deemed revocable, thus compliant with the South Carolina Consumer Protection Code.