~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 16, 2010

**S. 1065**

Introduced by Senators Hayes, Malloy, Lourie, Thomas, Sheheen, Fair and Anderson

S. Printed 2/16/10--S.

Read the first time January 20, 2010.

**THE COMMITTEE ON BANKING AND INSURANCE**

To whom was referred a Bill (S. 1065) to amend Section 37‑3‑501, as amended, of the 1976 Code, relating to the definition of supervised loan, to provide that certain closed‑end credit, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Section 37‑3‑501(1) of the 1976 Code, as last amended by Act 67 of 2009, is further amended to read:

“Section 37-3-501. (1) ‘Supervised loan’ means a consumer loan in which the rate of the loan finance charge exceeds twelve percent per year as determined according to the provisions on the loan finance charge for consumer loans (Section 37‑3‑201). A supervised loan does not include ~~a mortgage loan as defined in Section 37‑22‑110(30).~~:

(a) a mortgage loan as defined in Section 37‑22‑110(30); or

(b) a closed‑end credit transaction, with an original repayment term of less than one hundred and twenty days, unsecured by any interest in the consumer’s personal property or secured by personal property, excluding motor vehicles that are free of any other liens or encumbrances, that does not have a market value that reasonably secures the amount of the loan, and the consumer:

(i) receives funds from and incurs interest or a fee payable to a creditor, and contemporaneously with, or any time after, the receipt of funds, provides a check or other payment instrument to the creditor who agrees with the consumer not to deposit or present the check or payment instrument; or

(ii) receives funds from and incurs interest or a fee payable to a creditor, and contemporaneously with, or any time after, the receipt of funds, authorizes the creditor to initiate a debit or debits to the consumer’s deposit account by electronic fund transfer or a remotely created check or remotely created consumer item as defined in 36‑3‑103(16).”

The provisions of subitem (b) do not apply to credit unions, bank holding companies, banks or financial institutions insured by the Federal Deposit Insurance Corporation.”

SECTION 2. Section 37‑3‑503(7) of the 1976 Code is amended to read:

“(7)(a) A licensee may conduct the business of making supervised loans only at or from any place of business for which he holds a license and not under any other name than that in the license. Sales or leases made pursuant to a lender credit card do not violate this subsection.

(b)(1) A person licensed to make supervised loans may not make or enter into a closed‑end credit transaction, with an original repayment term of less than one hundred and twenty days, unsecured by any interest in the consumer’s personal property or secured by personal property, excluding motor vehicles that are free of any other liens or encumbrances, that does not have a market value that reasonably secures the amount of the loan, and the consumer:

(i) receives funds from and incurs interest or a fee payable to a creditor, and contemporaneously with, or any time after, the receipt of funds, provides a check or other payment instrument to the creditor who agrees with the consumer not to deposit or present the check or payment instrument; or

(ii) receives funds from and incurs interest or a fee payable to a creditor, and contemporaneously with, or any time after, the receipt of funds, authorizes the creditor to initiate a debit or debits to the consumer’s deposit account by electronic fund transfer or a remotely created check or remotely created consumer item as defined in 36‑3‑103(16).

(2) The Board shall impose the following penalties for violation of this item:

(a) a fine of $500.00 for the first violation;

(b) a fine of $1,000.00 for the second violation;

(c) permanent revocation of license for the third violation.

(d) The board may not revoke a license issued pursuant to this chapter unless the licensee has been given notice and opportunity for hearing in accordance with the Administrative Procedures Act.

(3) In addition to the penalties required in item (2), the board or the court may order and impose civil penalties upon a person subject to the provisions of this article for violations of this article or its regulations in an amount not to exceed one thousand dollars for each violation. The board also may order repayment of unlawful or excessive fees charged to customers.”

(c) The provisions of subsection (b)(1) do not apply to credit unions, bank holding companies, banks or financial institutions insured by the Federal Deposit Insurance Corporation.”

SECTION 3. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

DAVID L. THOMAS for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**REVENUE IMPACT** 1/

This bill is expected to raise BFI earmarked funds by $41,400 in FY 2009-10, and by $12,375 in FY 2010-11. Conversely, it is expected to reduce AG earmarked funds by $22,125 in FY 2010-11. The bill would have no impact on state general fund revenue.

**Explanation**

The bill, as amended in subcommittee, further defines a “supervised loan” to provide that certain closed-end credit transactions are not supervised loans. It would not allow a supervised lender to also be licensed for deferred presentment lending to consumers in this State. The amendment also adds certain penalties for violation of licensing provisions for supervised loans.

Based on information provided by the Consumer Finance Division (CFD) of the Board of Financial Institutions (BOFI), we expect prohibiting deferred presentment licensees from transacting supervised loans to result in the shift of approximately 138 Deferred Presentment licensees to supervised lenders in FY 2009-10, which would generate $41,400 in new fee proceeds earmarked to the CFD within the BOFI in current fiscal year. Going forward, rate differentials in applicable license application, investigation, examining and renewal fees (as apportioned) for those firms are expected to raise BOFI earmarked funds by a net amount of $12,375 in FY 2010-11. Additionally, the Office of the Attorney General (AG) is allocated one-half of annual license renewal fees for deferred presentment licenses pursuant to Section 34-39-150(E). Because of the shift in license type, AG earmarked funds would be reduced by $22,125 in FY 2010-11 (based on a total loss of $44,250 in renewal fees). Since deferred presentment fees do not apply to the state’s general fund, the bill would not impact general fund revenue.

*Approved By:*

William C. Gillespie

Board of Economic Advisors

1/ This statement meets the requirement of Section 2-7-71 for a state revenue impact by the BEA, or Section 2-7-76 for a local revenue impact or Section 6-1-85(B) for an estimate of the shift in local property tax incidence by the Office of Economic Research.

**A** **BILL**

TO AMEND SECTION 37‑3‑501, AS AMENDED, OF THE 1976 CODE, RELATING TO THE DEFINITION OF SUPERVISED LOAN, TO PROVIDE THAT CERTAIN CLOSED‑END CREDIT TRANSACTIONS ARE NOT SUPERVISED LOANS; AND TO AMEND SECTION 37‑3‑503, RELATING TO A LICENSE TO MAKE SUPERVISED LOANS, TO PROVIDE THAT CERTAIN LICENSED DEFERRED PRESENTMENT PROVIDERS MAY NOT CONDUCT THE BUSINESS OF MAKING SUPERVISED LOANS, TO PROVIDE PENALTIES, AND TO PROVIDE NECESSARY DEFINITIONS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 37‑3‑501(1) of the 1976 Code, as last amended by Act 67 of 2009, is further amended to read:

“(1) ‘Supervised loan’ means a consumer loan in which the rate of the loan finance charge exceeds twelve percent per year as determined according to the provisions on the loan finance charge for consumer loans (Section 37‑3‑201). A supervised loan does not include ~~a mortgage loan as defined in Section 37‑22‑110(30).~~:

(a) a mortgage loan as defined in Section 37‑22‑110(30); or

(b) a closed‑end credit transaction, unsecured by any interest in the consumer’s personal property and excluding any credit card transaction under an open‑end consumer credit plan with a finance charge exceeding an annual percentage rate of thirty‑six percent, and the consumer:

(i) receives funds from and incurs interest or a fee payable to a creditor, and contemporaneously with, or any time after, the receipt of funds, provides a check or other payment instrument to the creditor who agrees with the consumer not to deposit or present the check or payment instrument; or

(ii) receives funds from and incurs interest or a fee payable to a creditor, and contemporaneously with, or any time after, the receipt of funds, authorizes the creditor to initiate a debit or debits to the consumer’s deposit account by electronic fund transfer or a remotely created check.”

SECTION 2. Section 37‑3‑503(7) of the 1976 Code is amended to read:

“(7)(a) A licensee may conduct the business of making supervised loans only at or from any place of business for which he holds a license and not under any other name than that in the license. Sales or leases made pursuant to a lender credit card do not violate this subsection.

(b)(1) A person licensed to perform deferred presentment services, or a person that is affiliated with the deferred presentment licensee, may not conduct the business of making supervised loans. A deferred presentment licensee or any person affiliated with the deferred presentment licensee who violates this section is permanently prohibited from making deferred presentment loans and supervised loans. For purposes of this subsection, ‘affiliated with’ means a parent company, a wholly or partially owned subsidiary, or a person that controls, is controlled, or is under common control with another company.

(2) The provisions of this subsection apply to any person or his affiliates licensed to conduct business pursuant to the South Carolina Deferred Presentment Services Act as of June 1, 2009, and to any person and his affiliates licensed pursuant to the South Carolina Deferred Presentment Services Act after that date.”

SECTION 3. This act takes effect upon approval by the Governor. Any person that is in violation of SECTION 2 must surrender his license within thirty days of the effective date of this act.

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