~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 10, 2016

**H. 4090**

Introduced by Reps. Bedingfield, Sandifer, G.A. Brown, Ballentine and Loftis

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

Read the first time April 29, 2015.

**THE COMMITTEE ON**

**LABOR, COMMERCE AND INDUSTRY**

To whom was referred a Bill (H. 4090) to amend the Code of Laws of South Carolina, 1976, by adding Section 40‑29‑25 so as to provide actions that require a certificate of authority as a pawn broker, 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 deleting all after the enacting words and inserting:

/ SECTION 1. Chapter 39, Title 40 of the 1976 Code is amended by adding:

“Section 40‑39‑25. No person, other than a holder of a certificate of authority under this chapter, may:

(1) display a sign or other device in or about the premises of a business, in an advertising medium, or in printed matter, electronic media, or any other media:

(a) bearing a marking that resembles the emblem or sign commonly used by pawnbrokers; or

(b) using the words ‘pawnbroker,’ ‘pawnshop,’ or ‘pawn’; or

(2) hold himself out to the public to be a pawnbroker, either through advertising, soliciting, signs or otherwise.”

SECTION 2. Chapter 39, Title 40 of the 1976 Code is amended by adding:

“Section 40‑39‑55. (A) Effective July 1, 2021, and each fifth July first thereafter, the dollar amounts in Section 40‑39‑40(1) and the dollar amounts concerning loans in Section 40‑39‑100 must be adjusted by the department to reflect the percentage change for the five‑year period in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

(B) The administrator shall publish a notice in the State Register of the changes in dollar amounts before May first of each year in which dollar amounts are to change. A person must not be considered to violate the provisions of this chapter with respect to a transaction otherwise complying with those provisions if he relies on dollar amounts appearing in the last notice of the administrator announcing the dollar amounts current at that time.

(C) The dollar amounts may not change more than ten percent for each adjustment period.

(D) The dollar amounts in Section 40‑39‑50(A)(1) and Section 40‑39‑100(C) are subject to change in accordance with this section.”

SECTION 3. Chapter 39, Title 40 of the 1976 Code is amended by adding:

“Section 40‑39‑145. (A)(1) When an appropriate law enforcement official has probable cause to believe that property in the possession of a pawnbroker is misappropriated or stolen, he may place a written hold order on the property. The written hold order must impose a holding period not to exceed ninety days unless extended by court order. The appropriate law enforcement official may rescind, in writing, any hold order. An appropriate law enforcement official may place only one hold order on the property at any given time.

(2) A hold order must specify:

(a) the name and address of the pawnbroker;

(b) the name, title, and identification number of the representative of the appropriate law enforcement official or the court placing the hold order;

(c) the name and address of the appropriate law enforcement official or court to which such representative is attached and the number, if any, assigned to the claim regarding the property;

(d) a complete description of the property to be held, including model number and serial number if applicable;

(e) the name of the person reporting the property to be misappropriated or stolen, unless otherwise prohibited by law;

(f) the mailing address of the pawnbroker where the property is held; and

(g) the expiration date of the holding period.

(3) The pawnbroker or his representative must sign and date a copy of the hold order as evidence of receipt of the hold order and the beginning of the ninety‑day holding period.

(4)(a) Except as provided in subitem (b), a pawnbroker may not release or dispose of property subject to a hold order except pursuant to a court order, a written release from the appropriate law enforcement official, or the expiration of the holding period of the hold order.

(b) While a hold order is in effect, the pawnbroker shall, upon request, release the property subject to the hold order to the custody of the appropriate law enforcement official for use in a criminal investigation. The release of the property to the custody of the appropriate law enforcement official is not considered a waiver or release of the pawnbroker’s property rights or interest in the property. Upon completion of the criminal proceeding, the property must be returned to the pawnbroker unless the court orders another disposition, in which case the court additionally shall order the conveying customer to pay restitution to the pawnbroker in the amount received by the conveying customer for the property together with reasonable attorney’s fees and costs.

(B) Upon the expiration of the holding period, the pawnbroker shall notify, in writing, the appropriate law enforcement official by certified mail, return receipt requested, that the holding period has expired. If, on the tenth day after the written notice has been received by the appropriate law enforcement official, the pawnbroker has not received from a court an extension of the hold order on the property and the property is not the subject of a proceeding under this subsection, title to the property shall vest in and be deemed conveyed by operation of law to the pawnbroker, free of any liability for claims but subject to any restrictions contained in the pawn transaction contract and subject to this chapter.”

SECTION 4. Chapter 39, Title 40 of the 1976 Code is amended by adding:

“Section 40‑39‑155. A person aggrieved by the final administrative order may request a contested case hearing before the Administrative Law Court pursuant to the court’s rules of procedure. If the person fails to timely request a contested case hearing, the department may bring an action to enforce its order pursuant to Chapter 23, Title 1.”

SECTION 5. Section 40‑39‑10(3) of the 1976 Code is amended to read:

“(3) ‘Pledged goods’ means tangible personal property other than vehicles as defined in Section 56‑3‑20(1) required to be registered and licensed pursuant to Title 56, 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.”

SECTION 6. Section 40‑39‑20 of the 1976 Code is amended to read:

“Section 40‑39‑20. (A)(1) 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.

(2) No person may carry on the business of a pawnbroker in any location, whether or not the person has an office, facility, agent, or other physical presence in this State, without first having obtained a Certificate of Authority for each location from the Department of Consumer Affairs.

(B) 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~~ may make its ~~appropriate~~ recommendation on the issuance of the Certificate of Authority.

(C)(1) Before issuance of a certificate of authority, a criminal history background check must be conducted for all owners, partners, members, officers, directors, employees and other persons occupying a similar status or otherwise directly or indirectly controlling the pawnshop. The applicant pawnbroker is responsible for either:

(a) conducting, documenting, and attesting that a national criminal records check has been completed for each person; or

(b) submitting consent from each person to a national criminal records check and a set of fingerprints in a form acceptable to the administrator. Using the information supplied by the administrator to SLED, the applicant must undergo a national criminal records check, supported by fingerprints, by the Federal Bureau of Investigation. The results of these criminal records check must be reported to the administrator. The administrator shall keep all information pursuant to this section privileged, in accordance with applicable state and federal guidelines.

(2) A pawnbroker shall comply with the requirements of item (1) before hiring an employee.

(3) The applicant pawnbroker shall pay actual costs associated with the criminal history background checks required in this section.

(D) Upon the filing of an application for a certificate of authority, if the administrator concludes that the financial responsibility and experience of the applicant and its employees, members, partners, officers, and directors, if applicable, command the confidence of the community and warrants belief that the business may be operated honestly, fairly, and efficiently according to the purposes of this chapter and in accordance with all applicable state and federal laws, it shall issue a certificate of authority. If the administrator does not reach this conclusion, he shall refuse to issue the certificate of authority to the applicant and shall notify the applicant of the denial.

(E) 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.

(F)(1) A pawnbroker may not employ a person convicted of a felony to carry on the business of a pawnbroker or in any manner engage in the business of a pawnbroker, unless the person:

(a) is an employee of a pawnbroker on the effective date of this section and subsequently has not been convicted of a felony; or

(b) is not an employee of a pawnbroker on the effective date of this section and the felony conviction occurred more than ten years before the person’s application for employment.

(2) Subject to the provisions of item (1), a person who is convicted of a felony is not be eligible for employment with a pawnbroker or to engage in the business of a pawnbroker until a period of ten years after the conviction elapses without another felony conviction.”

SECTION 7. Section 40‑39‑30 of the 1976 Code is amended to read:

“Section 40‑39‑30. (A) 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.

(B) No pawnbroker may retain pledged goods in a location other than the location designated in the certificate of authority without first filing a notification with the department. A request made pursuant to this subsection must be on a form prescribed by the department.

(C) A pawnbroker conspicuously shall post the hours of operation and any closure at each location.”

SECTION 8. Section 40‑39‑40 of the 1976 Code is amended to read:

“Section 40‑39‑40. (A) No pawnbroker may charge or collect any fees, costs, or assessments of any kind or nature other than those specifically allowed under this chapter.

(B) A person who makes a pawn transaction in violation of this chapter:

(1) may not collect, receive, or retain any interest or charges on the loan in violation of this chapter; and

(2) has no right to possess the pledged goods.”

SECTION 9. Section 40‑39‑50 of the 1976 Code is amended to read:

“Section 40‑39‑50. (A) ~~Every~~ A 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:

(1) a bond in favor of the department to be executed by the person granted the certificate ~~and by two responsible sureties or~~ by a surety company licensed to do business in this State in the penal sum of ~~five~~ fifteen 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.~~; and

(2) proof of adequate insurance coverage for all pledged goods in the event of loss by fire, theft, burglary or otherwise, or liability to the pledgor.

(B) Within twenty‑one calendar days after the occurrence of an event that may affect pledged goods, including, but not limited to, fire, theft, or judicial proceedings, a pawnbroker shall file a written notice on a form prescribed by the department describing the event and its expected impact upon the business.”

SECTION 10. Section 40‑39‑70 of the 1976 Code is amended to read:

“Section 40‑39‑70. (A) ~~Every~~ A pawnbroker shall keep a record, at the time of any loan or purchase, 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 selling, pawning, or pledging the goods, articles, or things.

(B) Before a pledge or purchase, the pawnbroker shall verify the identity of the pledgor or seller by reviewing a state‑issued or federally issued photographic identification card, including a United States military identification card, or a passport issued by the United States.

(C) A pawn or purchase transaction must be performed by the owner of the property, or his authorized agent, whose identity and agency relationship must be verified by the pawnbroker.”

SECTION 11. Section 40‑39‑80 of the 1976 Code is amended to read:

“Section 40‑39‑80. (A) ~~Every~~ A pawnbroker, at the time of each loan or purchase, shall deliver to the person selling, 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.

(B)(1) The pawn ticket for a pledge or purchase transaction must satisfy the requirements of the Truth in Lending Act and Regulation Z, must identify whether the transaction is a pawn or purchase, and at a minimum must include:

(a) the name and address of the pledgor or seller;

(b) the date of birth of the pledgor or seller;

(c) the driver’s license number or other state or federal government‑issued photographic identification number of the pledgor or seller;

(d) the transaction date;

(e) the transaction maturity date;

(f) the amount financed or purchase price;

(g) the finance charge;

(h) the total of payments;

(i) the annual percentage rate;

(j) a statement of the pledgor or seller that the pledgor or seller is the lawful owner of the pledged or sold property;

(k) the name and business address of the pawnbroker; and

(l) a complete and accurate description of the pledged or purchased goods including any applicable:

(i) brand name;

(ii) model number;

(iii) manufacturer’s serial number, if issued by the manufacturer and not intentionally defaced, altered or removed;

(iv) size;

(v) color, as apparent to the untrained eye, not applicable to diamonds;

(vi) precious metal type, weight, and content, if known or indicated;

(vii) gemstone color and shape, as apparent to the untrained eye, and number of stones;

(viii) type of action, caliber or gauge, number of barrels, barrel length and finish if the item is a firearm; and

(ix) any other unique markings, numbers, names, or letters.

(2) In addition to the requirements of item (1), the pledgor or seller shall sign the form after the pawnbroker confirms positive identification of the pledgor or seller.

(3) Notwithstanding the provisions of subsection (B)(1)(i) through (ix), in the case of multiple items of a similar nature delivered together in one transaction which do not bear serial or model numbers and which do not include precious metals or gemstones, such as musical or video recordings, books, and hand tools, the description of the items is adequate if it contains the quantity of items and a description of the type of items delivered.”

SECTION 12. Section 40‑39‑100 of the 1976 Code is amended to read:

“Section 40‑39‑100. (A) ~~Pawnbrokers~~ A pawnbroker 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~~ the maximum amount in subsection (C).

(B) 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.

(C) No pawnbroker may make a loan in excess of ~~two~~ fifteen thousand dollars. Every pawnbroker shall post ~~these~~ the 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.’”

SECTION 13. Section 40‑39‑120 of the 1976 Code is amended to read:

“Section 40‑39‑120. (A) ~~Each~~ A 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.

(B) If a pawnbroker’s certificate of authority is not renewed before June thirtieth, the administrator shall assess the pawnbroker in addition to the renewal in subsection (A). If a pawnbroker fails to renew his certificate of authority within thirty days after the date the certificate of authority expires or otherwise maintain a valid certificate of authority, the administrator shall require the pawnbroker to comply with the requirements for the initial issuance of a certificate of authority pursuant to this chapter, in addition to any assessment that has accrued.

(C) In the event of closure because of surrender or revocation of a certificate of authority, a pawnbroker shall, for the sole purpose of allowing a pledgor to redeem pledged goods, maintain usual business hours at the pawnshop for ninety days after the latest maturity date of a pawn transaction made at that pawnshop or transfer of pledged goods to a pawnbroker with a valid certificate of authority.”

SECTION 14. Section 40‑39‑140 of the 1976 Code is amended to read:

“Section 40‑39‑140. (A) No pawnbroker shall accept property from a pledgor or seller 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 or purchased by a pawnbroker must be returned on demand without fee to the third party owner.

(B)(1) If property in the possession of a pawnbroker was leased to a pledgor or seller when the pledgor or seller pledged or sold the property to the pawnbroker and the property did not have a permanent label or other conspicuous mark identifying it as the lessor’s property, the pawnbroker shall return the property to the lessor if the lessor:

(a) provides the pawnbroker with evidence that the property was the lessor’s property and was leased to the pledgor or seller at the time the property was pledged or sold to the pawnbroker; and

(b) pays the pawnbroker:

(i) the amount financed and the finance fee for the pawn transaction, if the property was pledged to the pawnbroker; or

(ii) the amount that the pawnbroker paid the seller if the property was sold to the pawnbroker.

(2) A pawnbroker is not liable to the pledgor or seller of property that is recovered by a lessor under item (1) for returning the property to a lessor.”

SECTION 15. Section 40‑39‑150 of the 1976 Code is amended to read:

“Section 40‑39‑150. (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~~ issue an administrative order requiring the pawnbroker to cease and desist from the action and may suspend, revoke, or refuse to issue a certificate of authority by order.

(B) The ~~administrative law judge~~ administrator also may ~~impose~~ issue an administrative order imposing administrative ~~fines~~ penalties 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.~~ A determination by the administrator in this subsection is subject to the appellate process in the Administrative Procedures Act.”

SECTION 16. A county or municipality may enact ordinances that are in compliance with, but not more restrictive than the provisions of this act, except that local ordinances may not require the payment of a fee or tax related to a pawn transaction or purchase unless authorized pursuant to this chapter or restrict hours of operation other than between midnight and 6:00 a.m. An ordinance that conflicts with this act is void. This act does not affect the authority of a county or municipality to establish land use controls or require a pawnbroker to obtain a local occupational license.

SECTION 17. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

WILLIAM E. SANDIFER III for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 40‑29‑25 SO AS TO PROVIDE ACTIONS THAT REQUIRE A CERTIFICATE OF AUTHORITY AS A PAWN BROKER; BY ADDING SECTION 40‑29‑55 SO AS TO PROVIDE FOR THE PERIODIC ADJUSTMENT OF CERTAIN MONETARY REQUIREMENTS IN A CERTAIN MANNER; BY ADDING SECTION 40‑29‑145 SO AS TO HOLD ORDERS ON PROPERTY IN THE POSSESSION OF A PAWNBROKER SUSPECTED TO HAVE BEEN MISAPPROPRIATED OR STOLEN; BY ADDING SECTION 40‑29‑155 SO AT TO PROVIDE A PERSON AGGRIEVED BY THE FINAL ADMINISTRATIVE ORDER OF THE DEPARTMENT OF CONSUMER AFFAIRS MAY REQUEST A CONTESTED CASE HEARING BEFORE THE ADMINISTRATIVE LAW COURT, AND TO PROVIDE THE DEPARTMENT MAY BRING AN ACTION TO ENFORCE ITS ORDER IF THE PERSON FAILS TO TIMELY REQUEST A CONTESTED CASE HEARING; TO AMEND SECTION 40‑39‑10, RELATING TO DEFINITIONS CONCERNING THE REGULATION OF PAWNBROKERS BY THE DEPARTMENT, SO AS TO REVISE THE DEFINITION OF “PLEDGED GOODS” SPECIFICALLY TO EXCLUDE CERTAIN VEHICLES; TO AMEND SECTION 40‑39‑20, RELATING TO REGULATIONS OF PAWN BROKERS, SO AS TO REVISE REQUIREMENTS CONCERNING BACKGROUND CHECKS AND TO PROHIBIT THE EMPLOYMENT OF A PERSON CONVICTED OF A FELONY TO ENGAGE IN THE WORK OF A PAWNBROKER, SUBJECT TO CERTAIN EXCEPTIONS; TO AMEND SECTION 40‑39‑30, RELATING TO THE REQUIREMENT OF A CERTIFICATE OF AUTHORITY FOR EACH BUSINESS LOCATION OF A PAWNBROKER, SO AS TO PROVIDE A PAWNBROKER MAY RETAIN NO PLEDGED GOODS IN A LOCATION OTHER THAN THE LOCATION DESIGNATED IN THE CERTIFICATE OF AUTHORITY WITHOUT FIRST FILING A NOTIFICATION WITH THE DEPARTMENT ON A FORM PRESCRIBED BY THE DEPARTMENT, AND TO PROVIDE A PAWNBROKER CONSPICUOUSLY SHALL POST THE HOURS OF OPERATION AND ANY CLOSURE AT EACH LOCATION; TO AMEND SECTION 40‑39‑40, RELATING TO THE PROHIBITION ON UNAUTHORIZED FEES, SO AS TO PROVIDE A PAWNBROKER THAT COLLECTS SUCH UNAUTHORIZED FEES MAY NOT COLLECT, RECEIVE, OR RETAIN ANY INTEREST OR CHARGES ON THE LOAN IN VIOLATION OF THIS CHAPTER AND HAS NO RIGHT TO POSSESS THE PLEDGED GOODS; TO AMEND SECTION 40‑39‑50, RELATING TO BONDS AND OTHER EVIDENCE OF FINANCIAL RESPONSIBILITY REQUIRED FOR A CERTIFICATE OF AUTHORITY, SO AS TO REVISE AND DELETE SOME EXISTING REQUIREMENTS AND TO PROVIDE WITHIN TWENTY‑ONE CALENDAR DAYS AFTER THE OCCURRENCE OF AN EVENT THAT MAY AFFECT PLEDGED GOODS, A PAWNBROKER SHALL FILE A WRITTEN NOTICE ON A FORM PRESCRIBED BY THE DEPARTMENT DESCRIBING THE EVENT AND ITS EXPECTED IMPACT UPON THE BUSINESS; TO AMEND SECTION 40‑39‑70, RELATING TO RECORD KEEPING REQUIREMENTS, SO AS TO INCLUDE SALES AMONG THE AFFECTED TRANSACTIONS, TO REQUIRE VERIFICATION OF THE IDENTITY OF A PLEDGOR OR SELLER IN A CERTAIN MANNER, AND TO PROVIDE A PAWN OR PURCHASE TRANSACTION MUST BE PERFORMED BY THE OWNER OF THE PROPERTY, OR HIS AUTHORIZED AGENT, WHOSE IDENTITY AND AGENCY RELATIONSHIP MUST BE VERIFIED BY THE PAWNBROKER; TO AMEND SECTION 40‑39‑80, RELATING TO THE ISSUANCE OF A MEMORANDUM OR NOTE AT THE TIME OF PAWNING OR PLEDGING, SO AS TO CHARACTERIZE THE MEMORANDUM OR NOTE AS A “PAWN TICKET” AND TO PROVIDE DETAILED, RELATED REQUIREMENTS; TO AMEND SECTION 40‑39‑100, RELATING TO PERMISSIBLE CHARGES ON LOANS BY PAWNBROKERS, SO AS TO REVISE THE MAXIMUM PERMISSIBLE AMOUNT; TO AMEND SECTION 40‑39‑120, RELATING TO THE RENEWAL OF A CERTIFICATE OF AUTHORITY, SO AS TO PROVIDE PENALTIES FOR FAILING TO TIMELY RENEW, AND TO PROVIDE REQUIREMENTS FOR A PAWN SHOP THAT MUST CLOSE BECAUSE OF A SURRENDER OR REVOCATION OF ITS CERTIFICATE OF AUTHORITY; TO AMEND SECTION 40‑39‑140, RELATING TO THE ACCEPTANCE OF PROPERTY OWNED BY A THIRD PARTY, SO AS TO PROVIDE CIRCUMSTANCES IN WHICH A PAWNBROKER MUST RETURN PLEDGED PROPERTY THAT HAD BEEN LEASED BY A SELLER OR PLEDGOR TO THE LESSOR OF THE PROPERTY, AND TO PROVIDE A PAWNBROKER IS NOT LIABLE TO THE PLEDGOR OR SELLER OF PROPERTY THAT IS RECOVERED BY A LESSOR FOR RETURNING THE PROPERTY TO A LESSOR; AND TO AMEND SECTION 40‑39‑150, RELATING TO FINES AND PENALTIES FOR VIOLATIONS, SO AS TO TRANSFER CERTAIN AUTHORITY CONCERNING THESE FINES AND PENALTIES FROM THE ADMINISTRATIVE LAW COURT TO THE DEPARTMENT.

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

SECTION 1. Chapter 29, Title 40 of the 1976 Code is amended by adding:

“Section 40‑29‑25. No person, other than a holder of a certificate of authority under this chapter, may:

(1) display a sign or other device in or about the premises of a business, in an advertising medium, or in printed matter, electronic media, or any other media:

(a) bearing a marking that resembles the emblem or sign commonly used by pawnbrokers;

(b) calculated to deceive; or

(c) using the words ‘pawnbroker,’ ‘pawnshop,’ or ‘pawn’; or

(2) hold himself out to the public to be a pawnbroker, either through advertising, soliciting, signs or otherwise.”

SECTION 2. Chapter 29, Title 40 of the 1976 Code is amended by adding:

“Section 40‑29‑55. (A) From time to time the dollar amounts in this chapter must change, as provided in this section, according to and to the extent of changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers: U. S. City Average, All Items, 1996=100, compiled by the Bureau of Labor Statistics, United States Department of Labor, and hereafter referred to as the Index. The Index for December of 2013 is the Reference Base Index.

(B)(1) The designated dollar amounts shall change on July first of every fifth year if the percentage of change, calculated to the nearest whole percentage point, between the index at the end of the preceding year and the reference base index is ten percent or more; provided, however:

(a) the portion of the percentage change in the Index in excess of a multiple of ten percent must be disregarded and the dollar amounts shall change only in multiples of ten percent of the amounts appearing in this chapter; and

(b) the dollar amounts may not change if the amounts required by this section are those currently in effect as a result of earlier application of this section.

(2) If the Index is revised, the percentage of change pursuant to this section must be calculated on the basis of the revised Index. If a revision of the Index changes the Reference Base Index, a revised Reference Base Index must be determined by multiplying the Reference Base Index then applicable by the rebasing factor furnished by the Bureau of Labor Statistics. If the Index is superseded, the Index referred to in this section is the one represented by the Bureau of Labor Statistics as reflecting most accurately changes in the purchasing power of the dollar for consumers.

(3) The administrator shall publish a notice in the State Register of the:

(a) changes in dollar amounts required by item (1)(b), which must be published before May first; and

(b) changes in the Index required by item (1)(c) including, if applicable, the numerical equivalent of the reference base Index under a revised reference base Index and the designation or title of an Index superseding the Index, and this notice promptly must be published after the changes occur.

(4) A person may not be considered to have violated this chapter with respect to a transaction otherwise complying with this chapter if he relies on dollar amounts either determined according to item (1)(b) or appearing in the last notice of the administrator announcing the then current dollar amounts.

(C) The dollar amounts may not change more than ten percent for each adjustment period.

(D) The dollar amounts in Section 40‑39‑50(A)(1) and Section 40‑39‑100(C) are subject to change in accordance with this section.”

SECTION 3. Chapter 29, Title 40 of the 1976 Code is amended by adding:

“Section 40‑29‑145. (A)(1) When an appropriate law enforcement official has probable cause to believe that property in the possession of a pawnbroker is misappropriated or stolen, he may place a written hold order on the property. The written hold order must impose a holding period not to exceed ninety days unless extended by court order. The appropriate law enforcement official may rescind, in writing, any hold order. An appropriate law enforcement official may place only one hold order on the property at any given time.

(2) A hold order must specify:

(a) the name and address of the pawnbroker;

(b) the name, title, and identification number of the representative of the appropriate law enforcement official or the court placing the hold order;

(c) the name and address of the appropriate law enforcement official or court to which such representative is attached and the number, if any, assigned to the claim regarding the property;

(d) a complete description of the property to be held, including model number and serial number if applicable;

(e) the name of the person reporting the property to be misappropriated or stolen, unless otherwise prohibited by law;

(f) the mailing address of the pawnbroker where the property is held; and

(g) the expiration date of the holding period.

(3) The pawnbroker or his representative must sign and date a copy of the hold order as evidence of receipt of the hold order and the beginning of the ninety‑day holding period.

(4)(a) Except as provided in subitem (b), a pawnbroker may not release or dispose of property subject to a hold order except pursuant to a court order, a written release from the appropriate law enforcement official, or the expiration of the holding period of the hold order.

(b) While a hold order is in effect, the pawnbroker shall, upon request, release the property subject to the hold order to the custody of the appropriate law enforcement official for use in a criminal investigation. The release of the property to the custody of the appropriate law enforcement official is not considered a waiver or release of the pawnbroker’s property rights or interest in the property. Upon completion of the criminal proceeding, the property must be returned to the pawnbroker unless the court orders another disposition, in which case the court additionally shall order the conveying customer to pay restitution to the pawnbroker in the amount received by the conveying customer for the property together with reasonable attorney’s fees and costs.

(B) Upon the expiration of the holding period, the pawnbroker shall notify, in writing, the appropriate law enforcement official by certified mail, return receipt requested, that the holding period has expired. If, on the tenth day after the written notice has been received by the appropriate law enforcement official, the pawnbroker has not received from a court an extension of the hold order on the property and the property is not the subject of a proceeding under this subsection, title to the property shall vest in and be deemed conveyed by operation of law to the pawnbroker, free of any liability for claims but subject to any restrictions contained in the pawn transaction contract and subject to this chapter.”

SECTION 4. Chapter 29, Title 40 of the 1976 Code is amended by adding:

“Section 40‑29‑155. A person aggrieved by the final administrative order may request a contested case hearing before the Administrative Law Court pursuant to the court’s rules of procedure. If the person fails to timely request a contested case hearing, the department may bring an action to enforce its order pursuant to Chapter 23, Title 1.”

SECTION 5. Section 40‑39‑10(3) of the 1976 Code is amended to read:

“(3) ‘Pledged goods’ means tangible personal property other than vehicles as defined in Section 56‑3‑20(1) required to be registered and licensed pursuant to Title 56, 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.”

SECTION 6. Section 40‑39‑20 of the 1976 Code is amended to read:

“Section 40‑39‑20. (A)(1) 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.

(2) No person may carry on the business of a pawnbroker in any location, whether or not the person has an office, facility, agent, or other physical presence in this State, without first having obtained a Certificate of Authority for each location from the Department of Consumer Affairs.

(B) 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~~ may make its ~~appropriate~~ recommendation on the issuance of the Certificate of Authority.

(C)(1)(a) Before issuance of a certificate of authority, a criminal history background check must be conducted for all owners, partners, members, officers, directors, employees and other persons occupying a similar status or otherwise directly or indirectly controlling the pawnshop. The applicant pawnbroker is responsible for either:

(i) conducting, documenting, and attesting that a national criminal records check has been completed for each person; or

(ii) submitting consent from each person to a national criminal records check and a set of fingerprints in a form acceptable to the administrator.

(b) Using the information supplied by the administrator to SLED, the applicant must undergo a national criminal records check, supported by fingerprints, by the Federal Bureau of Investigation. The results of these criminal records check must be reported to the administrator. The administrator shall keep all information pursuant to this section privileged, in accordance with applicable state and federal guidelines.

(2) A pawnbroker shall comply with the requirements of item (1) before hiring an employee.

(3) The applicant pawnbroker shall pay actual costs associated with the criminal history background checks required in this section.

(D) Upon the filing of an application for a certificate of authority, if the administrator concludes that the financial responsibility and experience of the applicant and its employees, members, partners, officers, and directors, if applicable, command the confidence of the community and warrants belief that the business may be operated honestly, fairly, and efficiently according to the purposes of this chapter and in accordance with all applicable state and federal laws, it shall issue a certificate of authority. If the administrator does not reach this conclusion, he shall refuse to issue the certificate of authority to the applicant and shall notify the applicant of the denial.

(E) 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.

(F)(1) A pawnbroker may not employ a person convicted of a felony to carry on the business of a pawnbroker or in any manner engage in the business of a pawnbroker, unless the person:

(a) is an employee of a pawnbroker on the effective date of this section and subsequently has not been convicted of a felony; or

(b) is not an employee of a pawnbroker on the effective date of this section and the felony conviction occurred more than ten years before the person’s application for employment.

(2) Subject to the provisions of item (1), a person who is convicted of a felony is not be eligible for employment with a pawnbroker or to engage in the business of a pawnbroker until a period of ten years after the conviction elapses without another felony conviction.”

SECTION 7. Section 40‑39‑30 of the 1976 Code is amended to read:

“Section 40‑39‑30. (A) 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.

(B) No pawnbroker may retain pledged goods in a location other than the location designated in the certificate of authority without first filing a notification with the department. A request made pursuant to this subsection must be on a form prescribed by the department.

(C) A pawnbroker conspicuously shall post the hours of operation and any closure at each location.”

SECTION 8. Section 40‑39‑40 of the 1976 Code is amended to read:

“Section 40‑39‑40. (A) No pawnbroker may charge or collect any fees, costs, or assessments of any kind or nature other than those specifically allowed under this chapter.

(B) A person who makes a pawn transaction in violation of this chapter:

(1) may not collect, receive, or retain any interest or charges on the loan in violation of this chapter; and

(2) has no right to possess the pledged goods.”

SECTION 9. Section 40‑39‑50 of the 1976 Code is amended to read:

“Section 40‑39‑50. (A) ~~Every~~ A 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:

(1) a bond in favor of the department to be executed by the person granted the certificate ~~and by two responsible sureties or~~ by 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.~~; and

(2) proof of adequate insurance coverage for all pledged goods in the event of loss by fire, theft, burglary or otherwise, or liability to the pledgor.

(B) Within twenty‑one calendar days after the occurrence of an event that may affect pledged goods, including, but not limited to, fire, theft, or judicial proceedings, a pawnbroker shall file a written notice on a form prescribed by the department describing the event and its expected impact upon the business.”

SECTION 10. Section 40‑39‑70 of the 1976 Code is amended to read:

“Section 40‑39‑70. (A) ~~Every~~ A pawnbroker shall keep a record, at the time of any loan or purchase, 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 selling, pawning, or pledging the goods, articles, or things.

(B) Before a pledge or purchase, the pawnbroker shall verify the identity of the pledgor or seller by reviewing a state‑issued or federally issued photographic identification card, including a United States military identification card, or a passport issued by the United States.

(C) A pawn or purchase transaction must be performed by the owner of the property, or his authorized agent, whose identity and agency relationship must be verified by the pawnbroker.”

SECTION 11. Section 40‑39‑80 of the 1976 Code is amended to read:

“Section 40‑39‑80. (A) ~~Every~~ A pawnbroker, at the time of each loan or purchase, shall deliver to the person selling, 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.

(B)(1) The pawn ticket for a pledge or purchase transaction must satisfy the requirements of the Truth in Lending Act and Regulation Z, must identify whether the transaction is a pawn or purchase, and at a minimum must include:

(a) the name and address of the pledgor or seller;

(b) the date of birth of the pledgor or seller;

(c) the driver’s license number or other state or federal government‑issued photographic identification number of the pledgor or seller;

(d) the transaction date;

(e) the transaction maturity date;

(f) the amount financed or purchase price;

(g) the finance charge;

(h) the total of payments;

(i) the annual percentage rate;

(j) a statement of the pledgor or seller that the pledgor or seller is the lawful owner of the pledged or sold property;

(k) the name and business address of the pawnbroker; and

(l) a complete and accurate description of the pledged or purchased goods including any applicable:

(i) brand name;

(ii) model number;

(iii) manufacturer’s serial number, if issued by the manufacturer and not intentionally defaced, altered or removed;

(iv) size;

(v) color, as apparent to the untrained eye, not applicable to diamonds;

(vi) precious metal type, weight, and content, if known or indicated;

(vii) gemstone color and shape, as apparent to the untrained eye, and number of stones;

(viii) type of action, caliber or gauge, number of barrels, barrel length and finish if the item is a firearm; and

(ix) any other unique markings, numbers, names, or letters.

(2) In addition to the requirements of item (1), the pledgor or seller shall sign the form after the pawnbroker confirms positive identification of the pledgor or seller.

(3) Notwithstanding the provisions of subsection (B)(1)(i) through (ix), in the case of multiple items of a similar nature delivered together in one transaction which do not bear serial or model numbers and which do not include precious metals or gemstones, such as musical or video recordings, books, and hand tools, the description of the items is adequate if it contains the quantity of items and a description of the type of items delivered.”

SECTION 12. Section 40‑39‑100 of the 1976 Code is amended to read:

“Section 40‑39‑100. (A) ~~Pawnbrokers~~ A pawnbroker 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~~ the maximum amount in subsection (C);

(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.

(B) 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.

(C) No pawnbroker may make a loan in excess of ~~two~~ twenty‑five thousand dollars. Every pawnbroker shall post ~~these~~ the 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.’”

SECTION 13. Section 40‑39‑120 of the 1976 Code is amended to read:

“Section 40‑39‑120. (A) ~~Each~~ A 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.

(B) If a pawnbroker’s certificate of authority is not renewed before June thirtieth, the administrator shall assess the pawnbroker in addition to the renewal in subsection (A). If a pawnbroker fails to renew his certificate of authority within thirty days after the date the certificate of authority expires or otherwise maintain a valid certificate of authority, the administrator shall require the pawnbroker to comply with the requirements for the initial issuance of a certificate of authority pursuant to this chapter, in addition to any assessment that has accrued.

(C) In the event of closure because of surrender or revocation of a certificate of authority, a pawnbroker shall, for the sole purpose of allowing a pledgor to redeem pledged goods, maintain usual business hours at the pawnshop for ninety days after the latest maturity date of a pawn transaction made at that pawnshop or transfer of pledged goods to a pawnbroker with a valid certificate of authority.”

SECTION 14. Section 40‑39‑140 of the 1976 Code is amended to read:

“Section 40‑39‑140. (A) No pawnbroker shall accept property from a pledgor or seller 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 or purchased by a pawnbroker must be returned on demand without fee to the third party owner.

(B)(1) If property in the possession of a pawnbroker was leased to a pledgor or seller when the pledgor or seller pledged or sold the property to the pawnbroker and the property did not have a permanent label or other conspicuous mark identifying it as the lessor’s property, the pawnbroker shall return the property to the lessor if the lessor:

(a) provides the pawnbroker with evidence that the property was the lessor’s property and was leased to the pledgor or seller at the time the property was pledged or sold to the pawnbroker; and

(b) pays the pawnbroker:

(i) the amount financed and the finance fee for the pawn transaction, if the property was pledged to the pawnbroker; or

(ii) the amount that the pawnbroker paid the seller if the property was sold to the pawnbroker.

(2) A pawnbroker is not liable to the pledgor or seller of property that is recovered by a lessor under item (1) for returning the property to a lessor.”

SECTION 15. Section 40‑39‑150 of the 1976 Code is amended to read:

“Section 40‑39‑150. (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~~ issue an administrative order requiring the pawnbroker to cease and desist from the action and may suspend, revoke, or refuse to issue a certificate of authority by order.

(B) The ~~administrative law judge~~ administrator also may ~~impose~~ issue an administrative order imposing administrative ~~fines~~ penalties 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.~~”

SECTION 16. A county or municipality may enact ordinances that are in compliance with, but not more restrictive than the provisions of this act, except that local ordinances may not require the payment of a fee or tax related to a pawn transaction or purchase unless authorized pursuant to this chapter or restrict hours of operation other than between midnight and 6:00 a.m. An ordinance that conflicts with this act is void. This act does not affect the authority of a county or municipality to establish land use controls or require a pawnbroker to obtain a local occupational license.

SECTION 17. This act takes effect upon approval by the Governor.

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