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CHAPTER 39.

 DEFERRED PRESENTMENT SERVICES

**SECTION 34‑39‑110.** Short title.

This chapter may be cited as the “South Carolina Deferred Presentment Services Act”.

**SECTION 34‑39‑120.** Definitions.

As used in this chapter, unless the context clearly requires otherwise, the term:

(1) “Board” means the State Board of Financial Institutions.

(2) “Check” means a check signed by the maker and made payable to a person licensed pursuant to this chapter. The name of the maker must be preprinted on the face of the check. “Counter checks” and checks without the name of the maker preprinted on the face of the check may not be accepted by a licensee.

(3) “Deferred presentment services” means a transaction pursuant to a written agreement involving the following combination of activities in exchange for a fee:

(a) accepting a check dated on the date it was written; and

(b) holding the check for a period of time before presentment for payment or deposit.

(4) “Licensee” means a person licensed to provide deferred presentment services pursuant to this chapter.

(5) “Person” means an individual, group of individuals, partnership, association, corporation, or other business unit or legal entity.

(6) “Location” means the entire space in which deferred presentment services are provided. The space must be completely separated from any space where goods or services are sold or leased. The location must be separately staffed and must not have a common entrance with any other business not permitted by this chapter.

**SECTION 34‑39‑130.** Licensure requirements.

(A) A person may not engage in the business of deferred presentment services without first obtaining a license pursuant to this chapter. A separate license is required for each location from which the business is conducted. The licensee shall post its license to engage in the business of deferred presentment services at each location licensed pursuant to this chapter.

(B) A person engaged in the business of deferred presentment services on the effective date of this chapter may continue to engage in the business without a license until the board has acted upon the application for a license, but the application must be filed within sixty days after the effective date of this chapter.

**SECTION 34‑39‑140.** Applicability of chapter; exceptions.

This chapter does not apply to:

(1) a bank, savings institution, credit union, or farm credit system organized under the laws of the United States or any state; and

(2) a person principally engaged in the bona fide retail sale of goods or services who, either as an incident to or independently of a retail sale or service and not holding itself out to be a deferred presentment service, from time to time cashes checks, drafts, or money orders without a fee or other consideration.

**SECTION 34‑39‑150.** Application for licensure.

(A) An application for licensure pursuant to this chapter must be in writing, under oath, and on a form prescribed by the board. The application must set forth all of the following:

(1) the legal name and residence and business addresses of the applicant and, if the applicant is a partnership, association, or corporation, of every member, officer, managing employee, and director of it;

(2) the location of the registered office of the applicant;

(3) the registered agent of the applicant if the applicant is required by other law to have a registered agent;

(4) the addresses of the locations to be licensed; and

(5) other information concerning the financial responsibility, background experience, and activities, such as other partnerships, associations, and corporations located at or adjacent to the licensed location of the applicant and its members, officers, managing employees, and directors as the board requires.

(B) Upon receipt of an application in the form prescribed by the board, accompanied by the required fee, the board shall investigate whether the qualifications for licensure are satisfied. If the board finds that the qualifications are satisfied, it shall issue to the applicant a license to engage in the deferred presentment services business. If the board fails to issue a license, it shall notify the applicant of the denial and the reasons for it. The provisions of the Administrative Procedures Act apply to the appeal of the denial of a license.

(C) The application must be accompanied by payment of an application fee of two hundred fifty dollars and an investigation fee of five hundred dollars. These fees are not refundable or abatable. If the license is granted, however, payment of the application fee satisfies the fee requirement for the first license year or its remainder.

(D) A license expires annually and may be renewed upon payment of a license fee of two hundred fifty dollars. The annual license renewal fee for an applicant with more than one location is two hundred fifty dollars for the first location and fifty dollars for each additional location.

**SECTION 34‑39‑160.** Qualifications for licensure.

To qualify for a license issued pursuant to this chapter, an applicant shall have:

(1) a minimum net worth, determined in accordance with generally accepted accounting principles, of at least twenty‑five thousand dollars available for the operation of each location; and

(2) the financial responsibility, character, experience, and general fitness so as to command the confidence of the public and to warrant belief that the business is operated lawfully, honestly, fairly, and efficiently.

**SECTION 34‑39‑170.** Restrictions on advancement of monies on security of check; posting of fees charged for deferred presentment services.

(A) A licensee may not advance monies on the security of a check unless the account on which the presented check is drawn is a legitimate, open, and active account.

(B) A licensee, in every location conducting business under a license issued pursuant to this chapter, conspicuously shall post and at all times display a notice stating the fee charged for deferred presentment services. A licensee shall file with the board a statement of the fees charged at every location licensed for deferred presentment services.

(C) A licensee shall endorse in the name of the licensee every check, draft, or money order presented by the licensee for payment or deposit.

**SECTION 34‑39‑180.** Restrictions and requirements for deferred presentment or deposit of check.

(A) A licensee may defer the presentment or deposit of a check for up to thirty‑one days pursuant to the provisions of this section.

(B) The face amount of a check taken for deferred presentment or deposit may not exceed three hundred dollars, exclusive of the fees allowed in Section 34‑39‑180(E).

(C) Each check must be documented by a written agreement signed by both the customer and the licensee. The written agreement must contain the name or trade name of the licensee, the transaction date, the amount of the check, and a statement of the total amount of fees charged, expressed both as a dollar amount and as an effective annual percentage rate (APR). The written agreement must authorize expressly the licensee to defer presentment or deposit of the check until a specific date, not later than thirty‑one days from the date the check is accepted by the licensee.

(D) The board shall require each licensee to issue a standardized consumer notification and disclosure form in compliance with state and federal truth‑in‑lending laws before entering into a deferred presentment agreement.

(E) A licensee shall not charge, directly or indirectly, a fee or other consideration in excess of fifteen percent of the face amount of the check for accepting a check for deferred presentment or deposit. The fee or other consideration authorized by this subsection may be imposed only once for each written agreement. Records must be kept by each licensee with sufficient detail to ensure that the fee or other consideration authorized by this subsection may be imposed only once for each written agreement.

(F) A check accepted for deferred presentment or deposit pursuant to this chapter may not be repaid from the proceeds of another check accepted for deferred presentment or deposit by the same licensee or an affiliate of the licensee. A licensee shall not renew or otherwise extend presentment of a check or withhold the check from deposit, for old or new consideration, for a period beyond the time set forth in the written agreement with the customer.

(G) If a check is returned to the licensee from a payer financial institution due to insufficient funds, closed account, or stop payment order, the licensee may pursue all legally available civil means to collect the check including, but not limited to, the imposition of a returned check charge as provided in Section 34‑11‑70(a), except that the service charge imposed by the licensee shall not exceed the lesser of ten dollars or the fee imposed by the financial institution on the licensee for the returned check. An individual who issues a personal check to a licensee under a deferred presentment agreement is not subject to criminal penalty.

**SECTION 34‑39‑190.** Maintenance of books, accounts and records; examination.

(A) A person subject to the provisions of this chapter shall maintain in its offices books, accounts, and records, as the board may reasonably require and establish by regulation. The books, accounts, and records must be kept with sufficient detail to ensure that the provisions of Section 34‑39‑180(E) are met. The books, accounts, and records must be maintained separately from other business in which the person is engaged and must be retained for at least three years.

(B) The board may examine the books, accounts, and records to determine compliance with this chapter and with the regulations adopted pursuant to it. The licensee examined pursuant to this section must pay the cost of the examination to the board.

**SECTION 34‑39‑200.** Limitations on activities by persons required to be licensed by chapter.

A person required to be licensed pursuant to this chapter may not:

(1) charge fees in excess of those authorized by this chapter;

(2) engage in the business of:

(i) making loans of money or extension of credit;

(ii) discounting notes, bills of exchange, items, or other evidences of debt; or

(iii) accepting deposits or bailments of money or items, except as expressly provided by Section 34‑39‑180;

(3) use or cause to be published or disseminated advertising communication which contains false, misleading, or deceptive statements or representations;

(4) conduct business at premises or locations other than locations licensed by the board;

(5) engage in unfair, deceptive, or fraudulent practices, including unconscionable conduct in violation of Section 37‑5‑108;

(6) alter or delete the date on a check accepted by the licensee;

(7) accept an undated check or a check dated on a date other than the date on which the licensee accepts the check;

(8) require a customer to provide security for the transaction or require the customer to provide a guaranty from another person;

(9) engage in the retail sale of goods or services, other than deferred presentment services and Level I check‑cashing services as defined in Section 34‑41‑10, at the location licensed pursuant to this chapter, provided, however, that a sale of money orders, postage stamps, payment of utility bills with no additional fee to the customer, vending machines for food or beverage, facsimile services, Western Union services, or postal boxes at rates not higher than allowed by the United States Postal Service is not the sale of goods or services prohibited by this subsection;

(10) be licensed pursuant to Section 12‑21‑2720(a)(3) to operate a video poker machine; or

(11) permit others to engage in an activity prohibited by this section at a location licensed pursuant to this chapter.

**SECTION 34‑39‑210.** Suspension or revocation of license.

(A) The board may suspend or revoke a license issued pursuant to this chapter if, after notice and opportunity for hearing, the board issues written findings that the licensee has:

(1) violated this chapter or applicable state or federal law;

(2) made a false statement on the application for a license under the chapter;

(3) refused to permit investigation by the board as authorized by this chapter;

(4) failed to comply with an order of the board;

(5) demonstrated incompetency or untrustworthiness to engage in the business of deferred presentment services; or

(6) been convicted of a felony or misdemeanor involving fraud, misrepresentation, or deceit.

(B) The board may not suspend or 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.

**SECTION 34‑39‑220.** Orders to cease and desist violations of chapter; hearing.

If the board determines that a person subject to the provisions of this chapter has violated this chapter or regulations adopted pursuant to it, the board, upon notice and opportunity for hearing in accordance with the Administrative Procedures Act, may order the person to cease and desist from the violations and to comply with this chapter. The board may designate a hearing officer or hearing panel to conduct hearings or take other action as necessary pursuant to this section and may seek the assistance of the Attorney General or the Department of Consumer Affairs in enforcing compliance with this chapter. The board may enforce compliance with an order issued pursuant to this section by the imposition and collection of civil penalties authorized in this chapter.

**SECTION 34‑39‑230.** Civil penalties; repayment of unlawful or excessive fees.

The board may order and impose civil penalties upon a person subject to the provisions of this chapter for violations of this chapter 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.

**SECTION 34‑39‑240.** Wilful violations; referral for criminal prosecution.

The board, upon a determination that a violation of Section 34‑39‑130 is wilful, may refer the violation to the Attorney General or to the appropriate circuit solicitor for criminal prosecution. A wilful violation of Section 34‑39‑130 is a Class B misdemeanor, and each transaction involving unlawful deferred presentment constitutes a separate offense.

**SECTION 34‑39‑250.** Chapter not subject to other statutes governing imposition of interest, fees, loan charges, or extension of credit.

The business of deferred presentment services conducted in accordance with this chapter is not subject to or controlled by any other state statute governing the imposition of interest, fees, or loan charges, or the extension of credit.

**SECTION 34‑39‑260.** Promulgation of regulations.

The board may promulgate regulations pursuant to the Administrative Procedures Act necessary to carry out the purposes of this chapter, to provide for the protection of the public, and to assist licensees in interpreting and complying with this chapter.