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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.

(C) A person may not engage in the business of deferred presentment services with a customer residing in this State, whether or not that person has a location in South Carolina, except in accordance with the provisions of this chapter and without having first obtained a license pursuant to 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 one thousand 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 one thousand dollars. The annual license renewal fee for an applicant with more than one location is one thousand dollars for the first location and two hundred fifty dollars for each additional location.

(E) One‑half of the renewal fees collected pursuant to subsection (D) must be credited to the Board of Financial Institutions for enforcement of this chapter and one‑half must be credited to the Attorney General to prosecute actions brought for violations of this chapter.

**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 34‑39‑175.** Deferred presentment transaction database.

(A) In order to prevent a person from having a deferred presentment transaction that exceeds the limit in Section 34‑39‑180(B) and Section 34‑39‑270(A), the Consumer Finance Division of the Board of Financial Institutions shall implement a common database with real‑time access through an internet connection for deferred presentment providers, as provided in this subsection. The board shall enter into a contract with a single source private vendor to develop and operate the database. By no later than February 1, 2010, the database must be accessible to the board and the deferred presentment providers to meet the requirements of this chapter and verify if a deferred presentment transaction is outstanding for a particular person. Deferred presentment providers shall submit the person’s data to the database provider before entering into a deferred presentment transaction and once a deferred presentment transaction has been paid in full, in a format the board requires by regulation, including the drawer’s name, social security number, or employment authorization alien number, address, driver’s license number, amount of the transaction, date of transaction, the date that the transaction is closed, and additional information required by the board. The database provider may impose the database verification fee authorized by Section 34‑39‑270(H) for data required to be submitted by a licensee. The board may adopt procedures to administer and enforce the provisions of this section and to ensure that the database is used by licensees in accordance with this section.

(B) The information provided in the database is limited for the use in determining if a customer is eligible or ineligible to enter into a new deferred presentment transaction and to describe the reason for the determination of eligibility or ineligibility.

**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 total amount advanced by a licensee to any customer at one time for deferred presentment or deposit may not exceed five hundred fifty dollars, exclusive of the fees allowed in Section 34‑39‑180(E). A licensee may not advance to a customer an amount for deferred presentment or deposit which causes this limit to be exceeded by the customer.

(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 principal amount of the transaction 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 payor 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 except for the imposition of a returned check charge. An individual who issues a personal check to a licensee under a deferred presentment agreement is not subject to criminal liability.

**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, except that the 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, wire transfer services, or the rental of postal boxes at rates not higher than allowed by the United States Postal Service are 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.

**SECTION 34‑39‑270.** Prohibited deferred presentment transactions; eligibility inquiries; notification of transactions.

(A) A licensee may not enter into a deferred presentment transaction with a person:

(1) who has an outstanding deferred presentment transaction;

(2) who has repaid a previous deferred presentment transaction with any licensee on the same business day;

(3) who has repaid a previous deferred presentment transaction with any licensee on the same business day or the previous business day if the transaction being requested would be the customer’s eighth or more transaction within a calendar year; or

(4) who has entered into an extended payment plan agreement with any licensee as provided in Section 34‑39‑280 which has not been paid in full or terminated.

(B) No eighth or subsequent deferred presentment transaction within a calendar year may be entered into on the same or subsequent business day of the repayment of the previous deferred presentment transaction.

(C) Before entering into a deferred presentment transaction with a person, a licensee shall verify whether the person is eligible to enter into the transaction by accessing the deferred presentment transaction database established pursuant to subsection (D).

(D) The board shall contract with a single third party database provider that is SAS 70 certified to establish and operate a deferred presentment transaction database for the purpose of verifying whether a person is eligible to enter into a deferred presentment transaction. The board should give full consideration to Section 11‑35‑5210 when selecting the third‑party database provider to establish and operate the deferred presentment transaction database required by this chapter. The board shall supervise the establishment and operation of the database and shall ensure that the database provider establishes and operates the database pursuant to the provisions of this section. The board shall have full access to the database and all records related to the database for purposes of supervising the establishment and operation of the database. If the database provider violates a provision of this section, the board shall terminate the contract and immediately substitute another qualified third party database provider. The database must have real‑time access through an internet connection and be accessible at all times to the board and licensees. The database provider shall establish and maintain a process for responding to transaction verification requests when technical difficulties prevent the licensee from accessing the database through the internet including, but not limited to, verification by telephone. The database must be established and operated so as to prevent a licensee from entering into a transaction that violates the provisions of this section.

(E) To conduct an inquiry as to whether a person is eligible to enter into a deferred presentment transaction, a licensee shall submit to the database provider such information as the board may require. The response to an inquiry to the database provider by a licensee must state only that a person is eligible or ineligible to enter into a transaction and describe the reason for that determination. The person seeking to enter into the transaction may make a direct inquiry to the database provider to request a more detailed explanation of the basis for the database provider’s determination that the person is ineligible to enter into the transaction.

(F) A licensee shall notify the database provider immediately when the licensee enters into a deferred presentment transaction with a person. The licensee shall submit to the database provider such information as the board requires. When the transaction is paid in full, the licensee shall designate the transaction as closed and immediately notify the database provider. When the database provider receives notification that the transaction is paid in full, the database provider immediately shall designate the transaction as paid in full in the database. For purposes of this subsection, an item is paid in full when the payor bank makes final payment on the customer’s check pursuant to Section 36‑4‑215 or the customer has redeemed the check with a cash payment in full.

(G) A licensee shall notify a person seeking to enter into a deferred presentment transaction that the licensee shall access the database to verify whether the person is eligible to enter into a transaction. The licensee also shall notify the person that information related to a new transaction must be entered into the database.

(H) The database provider may charge a database verification fee to a licensee for an inquiry as to whether a person is eligible to enter into a deferred presentment transaction, if that transaction is consummated by the licensee. The fee must be established by the board as the actual cost of verifying a person’s eligibility, not to exceed one dollar. A licensee may charge a person seeking to enter into a deferred presentment transaction one‑half of the actual cost of the verification fee.

(I) Except as otherwise provided in this section, all personally identifiable information regarding a person contained within or obtained by way of the database is strictly confidential and is exempt from disclosure under the Freedom of Information Act. The database provider and licensees shall use the information collected pursuant to this section only as prescribed in this section and for no other purpose.

(J) A licensee may rely on the information contained in the database as accurate and is not subject to an administrative penalty or civil liability as a result of relying on inaccurate information contained in the database.

(K) A licensee will give a customer the right to rescind, at no cost, a deferred presentment transaction on or before the close of the following business day.

**SECTION 34‑39‑280.** Extended payment plans.

(A) Subject to the terms and conditions contained in this section, a customer who is unable to repay a deferred presentment transaction when due may elect once in any twelve month period to repay the deferred presentment transaction to the licensee by means of an extended payment plan. The twelve month period is measured from the date the customer enters into one extended payment plan with the licensee until the date that the customer enters into another extended payment plan with licensee.

(B) To request an extended payment plan, the customer, before the due date of the outstanding deferred presentment transaction, must request the plan and sign an amendment to the deferred presentment agreement that memorializes the plan’s terms.

(C) The extended payment plan’s terms must allow the customer, at no additional cost, to repay the outstanding deferred presentment transaction including any fee due in at least four substantially equal installments. Each plan installment must be due on or after a date on which the customer receives regular income. The customer may prepay an extended payment plan in full at any time without penalty. The licensee shall not charge the customer any interest or additional fees during the term of the extended payment plan. The licensee may, with each payment under the plan by a customer, provide for the return of the customer’s prior held check and require a new check for the remaining balance under the plan. Alternatively, the licensee may require the customer at the time the customer enters into the extended payment plan to provide multiple checks, one for each of the scheduled payments in the amount of those payments.

(D) If the customer fails to pay any extended payment plan installment when due, the customer shall be in default of the payment plan and the licensee immediately may accelerate payment on the remaining balance. Upon default, the licensee may take action to collect all amounts due.

(E) If a customer enters into an extended repayment plan, the licensee must enter that information into the database established in Section 34‑39‑175, and the customer and a licensee is prohibited from entering into a subsequent deferred presentment transaction until repayment in full of the original deferred presentment transaction.

(F) At each licensed location, a licensee shall prominently post a notice in at least twenty‑four point bold type, in a form established or approved by the board, informing persons that if they are unable to repay a deferred presentment transaction when due they shall be eligible to enter into one extended payment plan in a twelve month period. A licensee also shall notify a person of his right to an extended payment plan by displaying the following statement, in at least twelve point bold type, on the first page of each deferred presentment agreement: “If you are unable to repay a deferred presentment transaction when due, you are eligible to request one extended payment plan in a twelve month period.”

**SECTION 34‑39‑290.** Annual report and meeting concerning data.

(A) Based upon data provided by the database vendor, the Board of Financial Institutions annually shall report to the General Assembly the following information for loans made in South Carolina in the previous reporting year, specifically the number of:

(1) loans made in South Carolina by loan amount and the dollar amount of fees collected by loan amount;

(2) borrowers by loan amount and the number of borrowers by the number of times each borrower took out a loan;

(3) borrowers who chose to pay off their loans through an extended payment plan by loan amount;

(4) loans that were not paid off in the previous year by loan amount;

(5) loans on which the lender submitted the check for collection by loan amount and the number of loans on which the lender took action for collection; and

(6) the number of twenty‑four hour periods within which a successive loan is conducted after a prior loan is completed.

(B) The Senate Banking and Insurance Committee and the House of Representatives Labor, Commerce and Industry Committee must annually meet, jointly or separately, to hold a hearing concerning the data provided by the database vendor and the report submitted by the Board of Financial Institutions. The vendor and the Board of Financial Institutions must testify at the meeting and answer questions, including questions related to the data and the report.