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CHAPTER 4.

 INSURANCE

PART 1.

INSURANCE IN GENERAL

**SECTION 37‑4‑101.** Short title.

This chapter shall be known and may be cited as South Carolina Consumer Protection Code ‑ Insurance.

**SECTION 37‑4‑102.** Scope.

(1) Except as provided in subsection (2), this chapter applies to insurance provided or to be provided in relation to a consumer credit sale (Section 37‑2‑104), a consumer lease (Section 37‑2‑106), or a consumer loan (Section 37‑3‑104).

(2) The provision on cancellation by a creditor (Section 37‑4‑304) applies to loans the primary purpose of which is the financing of insurance. No other provision of this chapter applies to insurance so financed or to restricted loans.

**SECTION 37‑4‑103.** “Consumer credit insurance” defined.

In this title “consumer credit insurance” means insurance, other than insurance on property, by which the satisfaction of debt in whole or in part is a benefit provided, but does not include:

(a) insurance provided in relation to a credit transaction in which a payment is scheduled more than ten years after the extension of credit or insurance on which a payment is scheduled more than fifteen years after the extension of credit if the debt is secured by real estate;

(b) insurance issued as an isolated transaction on the part of the insurer not related to an agreement or plan for insuring debtors of the creditor; or

(c) insurance indemnifying the creditor against loss due to the debtor’s default.

**SECTION 37‑4‑104.** Creditor’s provision of and charge for insurance; excess amount of charge.

(1) Except as otherwise provided in this chapter and subject to the provisions on additional charges (Section 37‑2‑202 and Section 37‑3‑202) and maximum charges (in part 2 of Chapter 2 and parts 2 and 5 of Chapter 3), a creditor may agree to provide insurance, and may contract for and receive a charge for insurance separate from and in addition to other charges. A creditor need not make a separate charge for insurance provided or required by him. This title does not authorize the issuance of any insurance prohibited under any statute, or rule thereunder, governing the business of insurance.

(2) The excess amount of a charge for insurance provided for in agreements in violation of this chapter is an excess charge for the purposes of the provisions of the chapter on remedies and penalties (Chapter 5) as to effect of violations on rights of parties (Section 37‑5‑202) and of the provisions of the chapter on administration (Chapter 6) as to civil actions by the Administrator (Section 37‑6‑113).

**SECTION 37‑4‑105.** Conditions applying to insurance to be provided by creditor.

(A) If a creditor agrees with a debtor to provide insurance, the insurance shall be evidenced by an individual policy or certificate of insurance delivered to the debtor at the time of the transaction where the debtor is present at the creditor’s place of business.

If the debtor is not present at the creditor’s place of business at the time of the transaction, the individual policy or certificate of insurance must be sent to him at his address as stated by him, within thirty days after the term of the insurance commences under the agreement between the creditor and debtor or the creditor shall promptly notify the debtor of any failure or delay in providing the insurance.

(B) Each policy or certificate of credit life insurance or credit accident and sickness insurance shall set forth the following on the first page of the policy or attached thereto in a manner that is clear and conspicuous and achieves a grade level score of no higher than seventh grade on the Flesch‑Kincaid readability test:

(1) the name, address, and telephone number of the insurer and the process to be followed in submitting a claim;

(2) the name or names of the debtor, or in the case of a certificate, the identity by name or otherwise of the debtor;

(3) the age or date of birth of the debtor;

(4) the premium or amount payable by the debtor separately for credit life insurance and credit accident and sickness insurance;

(5) a description of the coverage including the amount and term of the coverage, and any exceptions, limitations, or restrictions;

(6) a statement that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness;

(7) a statement that, if the amount of insurance exceeds the amount necessary to discharge the indebtedness, any such excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to his estate;

(8) a conspicuous statement that the insured debtor shall have the right to cancel the insurance policy or group certificate and have all the premiums paid by or charged to the insured debtor refunded or credited, upon giving written notice to the insurer within thirty days from the date the insured debtor received the policy or certificate; and

(9) a conspicuous statement which reads as follows: “ For specific information about credit insurance issued in conjunction with your loan, contact your creditor or your insurance company. For general information about credit insurance or complaints regarding your credit insurance, please contact the South Carolina Department of Insurance at [current toll‑free number]”.

(C) If a credit life or a credit accident and sickness insurance policy or certificate provides truncated or critical period coverage or any other type of similar coverage that does not provide benefits or coverage for the entire term or amount of the indebtedness, the credit life or credit accident and sickness insurance policy or certificate shall include a statement printed on the face of the policy or first page of the certificate which clearly describes the limited nature of the insurance.

(D) The provisions of subsections (B) and (C) do not apply to insurance for which no identifiable charge is made to the consumer.

**SECTION 37‑4‑106.** Unconscionability.

(1) In applying the provisions of this title on unconscionability (Sections 37‑5‑108 and 37‑6‑111) to a separate charge for insurance, consideration shall be given, among other factors, to

(a) Potential benefits to the debtor including the satisfaction of his obligations;

(b) The creditor’s need for the protection provided by the insurance; and

(c) The relation between the amount and terms of credit granted and the insurance benefits provided.

(2) If consumer credit insurance otherwise complies with this chapter and other applicable law, neither the amount nor the term of the insurance nor the amount of a charge therefor is in itself unconscionable.

**SECTION 37‑4‑107.** Maximum charge by creditor for insurance.

(1) Except as provided in subsection (2), if a creditor contracts for or receives a separate charge for insurance, the amount charged to the debtor for the insurance may not exceed the premium to be charged by the insurer, as computed at the time the charge to the debtor is determined, conforming to any rate filings required by law and made by the insurer with the Insurance Commissioner.

(2) A creditor who provides consumer credit insurance in relation to a revolving charge account (Section 37‑2‑108) or revolving loan account (Section 37‑3‑108) may calculate the charge to the debtor in each billing cycle by applying the current premium rate to

(a) the average daily unpaid balance of the debt in the cycle;

(b) the unpaid balance of the debt or a median amount within a specified range of unpaid balances of debt on approximately the same day of the cycle. The day of the cycle need not be the day used in calculating the credit service charge (Section 37‑2‑207) or loan finance charge (Section 37‑3‑201, Section 37‑3‑508 and Section 37‑3‑515), but the specified range shall be the range used for that purpose; or

(c) the unpaid balances of principal calculated according to the actuarial method.

**SECTION 37‑4‑108.** Refund or credit required; amount.

(1) Upon prepayment in full of a consumer credit sale or consumer loan by the proceeds of consumer credit insurance, the debtor or his estate is entitled to a refund of any portion of a separate charge for insurance which by reason of prepayment is retained by the creditor or returned to him by the insurer unless the charge was computed from time to time on the basis of the balances of the debtor’s account.

(2) This chapter does not require a creditor to grant a refund or credit to the debtor if any refund or credit due to the debtor under this chapter amounts to less than two dollars, and except as provided in subsection (1) does not require the creditor to account to the debtor for any portion of a separate charge for insurance because:

(a) The insurance is terminated by performance of the insurer’s obligation;

(b) The creditor pays or accounts for premiums to the insurer in amounts and at times determined by the agreement between them; or

(c) The creditor receives directly or indirectly under any policy of insurance a gain or advantage not prohibited by law.

(3) Except as provided in subsection (2), the creditor shall promptly make or cause to be made an appropriate refund or credit to the debtor with respect to any separate charge made to him for insurance if

(a) The insurance is not provided or is provided for a shorter term than for which the charge to the debtor for insurance was computed; or

(b) The insurance terminates prior to the end of the term for which it was written because of prepayment in full or otherwise.

(4) A refund or credit required by subsection (3) is appropriate as to amount if it is computed according to a method prescribed or approved by the Insurance Commissioner or a formula filed by the insurer with the Insurance Commissioner at least thirty days before the debtor’s right to a refund or credit becomes determinable, unless the method or formula is employed after the Insurance Commissioner notifies the insurer that he disapproves it. The rule of 78’s or sum of the digits method is a proper method of computing refunds.

**SECTION 37‑4‑109.** Existing insurance; choice of insurer.

If a creditor requires insurance, upon notice to the creditor the debtor shall have the option of providing the required insurance through an existing policy of insurance owned or controlled by the debtor, or through a policy to be obtained and paid for by the debtor, but the creditor may for reasonable cause decline the insurance provided by the debtor.

**SECTION 37‑4‑110.** Charge for insurance in connection with a deferral, refinancing or consolidation; duplicate charges.

(1) A creditor may not contract for or receive a separate charge for insurance in connection with a deferral (Section 37‑2‑204 or Section 37‑3‑204), a refinancing (Section 37‑2‑205 or Section 37‑3‑205), or a consolidation (Section 37‑2‑206 or Section 37‑3‑206), unless:

(a) the debtor agrees at or before the time of the deferral, refinancing, or consolidation that the charge may be made;

(b) the debtor is or is to be provided with insurance for an amount or a term, or insurance of a kind, in addition to that to which he would have been entitled had there been no deferral, refinancing, or consolidation;

(c) the debtor receives a refund or credit on account of any unexpired term of existing insurance in the amount that would be required if the insurance were terminated (Section 37‑4‑108); and

(d) the charge does not exceed the amount permitted by this chapter (Section 37‑4‑107).

The provisions of this subsection do not apply to insurance for which no identifiable charge is made to the debtor.

(2) A creditor may not contract for or receive a separate charge for insurance which duplicates insurance with respect to which the creditor has previously contracted for or received a separate charge.

(3) A creditor may not contract for or receive a separate charge for insurance in connection with a deferral (Section 37‑2‑204 or Section 37‑3‑204), a refinancing (Section 37‑2‑205 or Section 37‑3‑205), or a consolidation (Section 37‑2‑206 or Section 37‑3‑206), unless:

(a) the creditor offers the debtor a choice to continue disability or life insurance coverage, if the debtor does not qualify for disability or life insurance in connection with the deferral, refinancing, or consolidation, up to the amount of the insurance coverage remaining at the time of the deferral, refinancing, or consolidation and for an additional period not to exceed the length of the term of the original insurance. If the insurance coverage upon the original loan has not lapsed, the creditor must offer the debtor the choice to continue such coverage. The election of the debtor must be evidenced by an affirmatively signed, clear and conspicuous statement. Coverage may not be required upon deferral, refinancing, or consolidation. Such continued insurance may be subject to earlier termination according to insurance termination provisions of the policy or certificate that apply generally without regard to whether the insurance relates to a transaction that is or is not a deferral, refinancing, or consolidation; provided, however, that if:

(i) a debtor’s insurance under a group policy is terminated due to a termination of the group policy; and

(ii) a plan is made available to provide coverage to the same class of debtors, but subject to submission of evidence of individual insurability, then the evidence of individual insurability requirement shall be waived with respect to all debtors whose insurance terminates due to termination of the original group policy or of the class eligibility, at least to the extent of the amount and term of the insurance in effect immediately before the original coverage is terminated;

(b) incontestability and waiting periods for insurance coverage, up to the amount of the coverage remaining at the time of the deferral, refinancing, or consolidation and for an additional period not to exceed the length of the term of the original insurance, are based upon the date on which the insurer originally insured the debtor with respect to the insurance coverage on the indebtedness that is deferred, refinanced, or consolidated, if the insurance coverage upon the original loan has not lapsed; and

(c) insurance coverage, up to the amount of the coverage remaining at the time of the deferral, refinancing, or consolidation and for an additional period not to exceed the length of the term of the original insurance, on the indebtedness that is deferred, refinanced, or consolidated is not subject to evidence of insurability, if the insurance coverage upon the original loan has not lapsed.

The provisions of this subsection do not apply to insurance for which no identifiable charge is made to the debtor.

**SECTION 37‑4‑111.** Cooperation between Administrator and Insurance Commissioner.

The Administrator and the Insurance Commissioner are authorized and directed to consult and assist one another in maintaining compliance with this chapter. They may jointly pursue investigations, prosecute suits, and take other official action, as may seem to them appropriate, if either of them is otherwise empowered to take the action. If the Administrator is informed of a violation or suspected violation by an insurer of this chapter, or of the insurance laws, rules, and regulations of this State, he shall advise the Insurance Commissioner of the circumstances.

**SECTION 37‑4‑112.** Administrative action of Insurance Commissioner.

(1) To the extent that his responsibility under this chapter requires, the Insurance Commissioner shall issue rules with respect to insurers, and with respect to refunds (Section 37‑4‑108), forms, schedules of premium rates and charges (Section 37‑4‑203), and his approval or disapproval thereof and, in case of violation, may make an order for compliance.

(2) Each provision of the part on administrative procedures and judicial review (part 4) of the chapter on administration (Chapter 6) which applies to and governs administrative action taken by the Administrator also applies to and governs all administrative action taken by the Insurance Commissioner pursuant to this section.

PART 2.

CONSUMER CREDIT INSURANCE

**SECTION 37‑4‑201.** Term of insurance; medical evidence of insurability disclosure requirements.

(1) Consumer credit insurance provided by a creditor may be subject to the furnishing of evidence of insurability satisfactory to the insurer. Whether or not such evidence is required, the term of the insurance shall commence no later than when the debtor becomes obligated to the creditor or when the debtor applies for the insurance, whichever is later, except as follows:

(a) if any required evidence of insurability is not furnished until more than thirty days after the term would otherwise commence, the term may commence on the date when the insurer determines the evidence to be satisfactory; or

(b) if the creditor provides insurance not previously provided covering debts previously created, the term may commence on the effective date of the policy.

(2) If evidence of insurability is required, and the insured’s eligibility is to be determined by inquiries about existing or past medical conditions, the medical conditions inquired about shall be clearly and conspicuously disclosed in plain language on forms promulgated or approved by the Department of Insurance which achieve a grade level score of no higher than seventh grade on the Flesch‑Kincaid readability test. The disclosure shall be made in a clear and conspicuous manner in bold type, with space for the insured to personally acknowledge the disclosure by a dated signature or initial immediately adjacent to the disclosure. Insurance coverage shall not be denied on the basis of any medical condition not so disclosed. Coverage shall not be denied if the insured’s dated acknowledgment does not appear on the form.

(3) The originally scheduled term of the insurance shall extend at least until the due date of the last scheduled payment of the debt, except as follows:

(a) if the insurance relates to a revolving charge account or revolving loan account, the term need extend only until the payment of the debt under the account and may be sooner terminated after at least thirty days’ notice to the debtor; or

(b) if the consumer chooses to purchase insurance for less than the term of the consumer credit transaction and if the debtor is advised in writing that the insurance will be written for a specified shorter time as described in subitems (ii) and (iii) below, the term need extend only until the end of the specified time:

(i) For all closed‑end credit transactions in which the debtor’s age at loan maturity would not exceed any applicable age limit, the debtor shall be given a disclosure that the insurance is for the length of the loan.

(ii) The disclosure may allow the consumer to affirmatively sign a statement that the term of the insurance is less than the length of the loan, in which event, the coverage shall be for the duration so agreed to and the disclosure must clearly and conspicuously indicate the length of the insurance coverage and that the length of the insurance coverage is less than the term of the loan.

(iii) All insurance may be subject to a provision by which the insurance terminates when the insured debtor attains a specified age, which shall not be less than sixty‑six years; provided, that any premium paid by or charged to a debtor for a period of coverage beyond such termination age shall result in coverage being continued until the end of the period for which the premium payment or charge is made.

(iv) The disclosures must achieve a grade level score of no higher than seventh grade on the Flesch‑Kincaid readability test.

(4) The term of the insurance shall not extend more than fifteen days after the originally scheduled due date of the last scheduled payment of the debt unless it is extended without additional cost to the debtor or as an incident to a deferral, refinancing, or consolidation.

**SECTION 37‑4‑202.** Amount of insurance.

(1) Except as provided in subsection (2),

(a) In the case of consumer credit insurance providing life coverage, the amount of insurance may not initially exceed the debt and, if the debt is payable in installments, may not at any time exceed the greater of the scheduled or actual amount of the debt. For purposes of credit coverage, the “approximate amount of the debt” is defined as follows: (1) the periodic installment payment multiplied by the number of scheduled periodic installment payments for a loan with a term of sixty months or less; (2) the amount necessary to liquidate the remaining debt in a single lump sum payment, excluding all unearned interest and other unearned finance charges, plus six monthly installment payments for a loan with a term in excess of sixty months. In the case of a consumer lease contract, the residual value of the consumer credit lease may be included in the debt; however, the lessor shall not require the lessee to buy insurance covering the residual value of the leased item; or

(b) In the case of any other consumer credit insurance, the total amount of periodic benefits payable may not exceed the total of scheduled unpaid installments of the debts, and the amount of any periodic benefit may not exceed the original amount of debt divided by the number of periodic installments in which it is payable.

(2) If consumer credit insurance is provided in connection with a revolving charge account or revolving loan account the amounts payable as insurance benefits may be reasonably commensurate with the amount of debt as it exists from time to time. If consumer credit insurance is provided in connection with a commitment to grant credit in the future, the amounts payable as insurance benefits may be reasonably commensurate with the total from time to time of the amount of debt and the amount of the commitment.

**SECTION 37‑4‑203.** Filing and approval of rates and forms.

(1) A creditor may not use a form or a schedule of premium rates or charges, the filing of which is required by this section, if the Insurance Commissioner has disapproved the form or schedule and has notified the insurer of his disapproval. A creditor may not use a form or schedule unless

(a) The form or schedule has been on file with the Insurance Commissioner for ninety days, or has earlier been approved by him; and

(b) The insurer has complied with this section with respect to the insurance.

(2) Except as provided in subsection (3), all policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders relating to consumer credit insurance, delivered or issued for delivery in this State, and the schedule of premium rates or charges pertaining thereto, shall be filed by the insurer with the Director of Insurance. Within ninety days after the filing of any form or schedule, he shall disapprove it if the premium rates or charges are unreasonable in relation to the benefits provided under the form, or if the form contains provisions which are unjust, unfair, inequitable or deceptive, or encourage misrepresentation of the coverage, or are contrary to any provision of the Insurance Code or of any rule or regulation promulgated thereunder.

(3) If a group policy has been delivered in another state, the forms to be filed by the insurer with the Insurance Commissioner are the group certificates and notices of proposed insurance. He shall approve them if

(a) They provide the information that would be required if the group policy were delivered in this State; and

(b) The applicable premium rates or charges do not exceed those established by his rules or regulations.

(4) Premium rates and rate levels shall be calculated to produce and maintain a ratio of losses incurred, or reasonably expected to be incurred, to premiums earned, or reasonably expected to be earned, of approximately fifty percent.

(5) Until January 1, 2001, credit life insurance premiums for each one hundred dollars of indebtedness are considered reasonable and may be charged if they are not greater than the amounts given in the following table times the number of years, or fraction of a year, that the indebtedness covered by insurance is scheduled to continue, subject to a minimum charge of three dollars:

 Decreasing Balance Level Balance

 Individual $ .65 $1.30

 Joint Insurance $1.08 $2.16

Effective January 1, 2001, credit life insurance premiums for each one hundred dollars of indebtedness are considered reasonable and may be charged if they are not greater than the amounts given in the following table times the number of years, or fraction of a year, that the indebtedness covered by insurance is scheduled to continue:

 Decreasing Balance Level Balance

 Individual $ .57 $1.14

 Joint Insurance $ .95 $1.89

Effective January 1, 2003, credit life insurance premiums for each one hundred dollars of indebtedness are considered reasonable and may be charged if they are not greater than the amounts given in the following table times the number of years, or fraction of a year, that the indebtedness covered by insurance is scheduled to continue:

 Decreasing Balance Level Balance

 Individual $ .55 $1.10

 Joint Insurance $ .91 $1.83

**SECTION 37‑4‑204.** Minimum charges and retentions.

Notwithstanding any other provision of law, credit life, property, and accident and health insurance premiums charged by supervised lenders under the Consumer Protection Code or by restricted lenders under the consumer finance law are each subject to a minimum charge and a minimum retention of three dollars.

The provisions of this section do not require a creditor to grant a refund or credit of a life, accident and health, or property insurance premium on any contract to the debtor if any refund or credit due to the debtor under this section is less than three dollars.

**SECTION 37‑4‑205.** Payment on legitimate insurance claim; damages; fees; costs.

No person may act or attempt in a consumer credit transaction to prevent the filing or receiving of payment on a legitimate insurance claim. In an action in which it is found that a person has violated this section, the court shall award to the consumer the actual damages and consequential damages, if any, and to his attorneys their reasonable fees and costs. In determining attorney’s fees and costs, the amount of recovery on behalf of the consumer is not controlling.

**SECTION 37‑4‑206.** Required disclosures; need for debtor to sign.

Notwithstanding the requirements of Sections 37‑2‑202(2), 37‑3‑202(2), 37‑4‑110(1)(e), and 37‑4‑201(3)(b) required disclosures must be given and acknowledged, but need not be signed by the debtor, in a transaction that meets all of the following requirements:

(a) the plan is an open‑end loan or open‑end credit plan;

(b) the insurance election or change is made by the debtor at a time after the plan documents are initially completed and the plan is established;

(c) the premiums or insurance charges are to be added to the account monthly on an outstanding balance basis;

(d) the insurance election or change is requested by the debtor by telephone or other electronic means;

(e) the consumer has the ability to cancel the credit insurance at any time; and

(f) the consumer is given a clear and conspicuous disclosure in plain language on the first statement in which the additional charge is included stating that there has been an increase in the insurance premium and that the coverage may be canceled at any time. In lieu of providing the disclosure on the first statement in which the additional charge is included, a separate disclosure may be mailed to the consumer no later than in conjunction with the mailing of the first statement in which the additional charge is included.

**SECTION 37‑4‑207.** Misrepresentation of medical condition as basis for voiding insurance.

A policy or certificate may not be declared void and the insurer may not avoid liability based upon a misrepresentation made by the insured, with respect to information provided regarding medical conditions or health history required in furnishing evidence of insurability, that is not causally related to the contingency or event by which the policy claim arises.

**SECTION 37‑4‑208.** Amount charged for nonfiling insurance coverage.

The amount charged for nonfiling insurance coverage may not exceed seventy‑five percent of the official fee as defined in Section 37‑1‑301(17).

**SECTION 37‑4‑209.** Combining disclosures.

Nothing in this chapter shall be construed to prohibit the creditor from combining disclosures required in this chapter with other disclosures required under state and federal law, in order to avoid redundancy.

**SECTION 37‑4‑210.** What constitutes disability.

Disability shall not be defined more restrictively than the inability of the insured to engage in his own occupation during the first year of disability or for the length of the benefit period if less than one year. After the first year of disability, disability shall not be defined more restrictively than the inability of the insured to engage in the substantial duties of any gainful occupation for substantially equivalent remuneration to the insured’s own occupation. Substantially equivalent remuneration means not less than seventy‑five percent of the insured’s base wage, exclusive of overtime and bonus, as of the date disability commences.

PART 3.

PROPERTY AND LIABILITY INSURANCE

**SECTION 37‑4‑301.** Property insurance.

(1) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless:

(a) The insurance covers a substantial risk of loss or damage to property, all or part of which is related to the credit transaction;

(b) The amount, terms, and conditions of the insurance are reasonable in relation to the character and value of the property insured or to be insured; and

(c) The term of the insurance is reasonable in relation to the terms of credit.

(2) The term of the insurance is reasonable if it is customary and does not extend substantially beyond a scheduled maturity.

(3) Any charge for insurance against loss of or damage to property may be subject to a minimum charge of two dollars.

**SECTION 37‑4‑302.** Insurance on creditor’s interest only.

If a creditor contracts for or receives a separate charge for insurance against loss of or damage to property, the risk of loss or damage not willfully caused by the debtor is on the debtor only to the extent of any deficiency in the effective coverage of the insurance, even though the insurance covers only the interest of the creditor.

**SECTION 37‑4‑303.** Liability insurance.

A creditor may not contract for or receive a separate charge for insurance against liability unless the insurance covers a substantial risk of liability rising out of the ownership or use of property related to the credit transaction.

**SECTION 37‑4‑304.** Cancellation by creditor.

A creditor shall not request cancellation of a policy of property or liability insurance except after the debtor’s default or in accordance with a written authorization by the debtor, and in either case the cancellation does not take effect until written notice is delivered to the debtor or mailed to him at his address as stated by him. The notice shall state that the policy may be cancelled on a date not less than ten days after the notice is delivered, or, if the notice is mailed, not less than thirteen days after it is mailed.