CHAPTER 1

General Provisions and Definitions

Part 1

Short Title; Construction; General Provisions

**SECTION 37‑1‑101.** Short title.

 This title shall be known and may be cited as South Carolina Consumer Protection Code.

HISTORY: 1962 Code Section 8‑800.101; 1974 (58) 2879.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Arbitration Section 6, Application of Federal Arbitration Act.

S.C. Jur. Banks and Banking Section 108, Interest on Loans.

S.C. Jur. Cooperative Credit Unions Section 125, Interest on Loans.

S.C. Jur. Cooperative Credit Unions Section 138, South Carolina Consumer Protection Code.

LAW REVIEW AND JOURNAL COMMENTARIES

Internet solutions to consumer protection problems. 49 S.C. L. Rev. 887 (Summer 1998).

The narrow scope of federal preemption of state regulation in commercial credit transactions: A comment on Decohen v. Capital One, N.A. Tamara Mary Van Pala, 64 S.C. L. Rev. 1139 (Summer 2013).

United States Supreme Court Annotations

Consumer protection, State courts do not have exclusive jurisdiction over private Telephone Consumer Protection Act actions, see Mims v. Arrow Financial Services, LLC, 2012, 132 S.Ct. 740, 565 U.S. 368, 181 L.Ed.2d 881, on remand 468 Fed.Appx. 936, 2012 WL 1382531. Courts 489(9)

Notes of Decisions

Construction and application 1

1. Construction and application

Trial court’s ruling that South Carolina Consumer Protection Code (SCCPC) and Fair Debt Collections Practices Act (FDCPA) applied to plaintiff’s breach of contract action was improper, as unnecessary to court’s disposition of motions for summary judgment, where court did not rely on either SCCPC or FDCPA in reaching its decisions, and thus ruling would be vacated. Coastal Federal Credit Union v. Brown (S.C.App. 2016) 417 S.C. 544, 790 S.E.2d 417, rehearing denied. Appeal and Error 1172(1); Judgment 186

**SECTION 37‑1‑102.** Purposes; rules of construction.

 (1) This title shall be liberally construed and applied to promote its underlying purposes and policies.

 (2) The underlying purposes and policies of this title are:

 (a) to simplify, clarify and modernize the law governing retail installment sales, consumer credit and usury;

 (b) to provide rate ceilings to assure an adequate supply of credit to consumers;

 (c) to further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;

 (d) to protect consumer buyers, lessees, and borrowers against unfair practices by some suppliers of consumer credit, having due regard for the interests of legitimate and scrupulous creditors;

 (e) to permit and encourage the development of fair and economically sound consumer credit practices;

 (f) to conform the regulation of consumer credit transactions to the policies of the Federal Consumer Credit Protection Act; and

 (g) to make uniform the law, including administrative rules, among the various jurisdictions.

 (3) A reference to a requirement imposed by this title includes reference to a related rule of the administrator adopted pursuant to this title.

HISTORY: 1962 Code Section 8‑800.102; 1974 (58) 2879; 1980 Act No. 326, Section 1A.

CROSS REFERENCES

Contracts and agents, see Section 32‑1‑10 et seq.

Uniform Commercial Code, see Section 36‑1‑101 et seq.

Library References

Antitrust and Trade Regulation 127, 128.

Westlaw Topic No. 29T.

C.J.S. Credit Reporting Agencies; Consumer Protection Sections 34, 36.

C.J.S. Trade‑Marks, Trade‑Names, and Unfair Competition Sections 391 to 392, 434.

Attorney General’s Opinions

The South Carolina Consumer Protection Act incorporates the provisions of the Federal Truth in Lending Act as it existed on the effective date of the Consumer Protection Act. 1974‑75 Op.Atty.Gen., No 4208, p 253, 1975 WL 22505.

NOTES OF DECISIONS

In general 1

1. In general

The purpose of the South Carolina Consumer Protection Code is to clarify the law governing consumer credit and to protect consumer buyers against unfair practices by suppliers of consumer credit. Freeman v. J.L.H. Investments, LP (S.C. 2015) 414 S.C. 362, 778 S.E.2d 902. Consumer Credit 2

Legislature enacted the South Carolina Consumer Protection Code (SCCPC) and the South Carolina Regulation of Manufacturers, Distributors, and Dealers Act both for the purpose of consumer protection. Freeman v. J.L.H. Investments, LP (S.C. 2015) 414 S.C. 362, 778 S.E.2d 902. Antitrust and Trade Regulation 128; Consumer Credit 2

Purpose of South Carolina Consumer Protection Code is to clarify law governing consumer credit and to protect consumers against unfair practices by suppliers of consumer credit. Fanning v. Fritz’s Pontiac‑Cadillac‑Buick, Inc. (S.C. 1996) 322 S.C. 399, 472 S.E.2d 242, rehearing denied. Consumer Credit 2

An attorney, whose client was told by a consumer lender that the attorney was unacceptable to it, could not maintain a cause of action for violation of the Consumer Protection Code, Section 37‑1‑101 et seq., against the lender since the intent of the act, which provides for the forfeiture of the loan finance charge to the debtor’s benefit, is to protect consumers, not the attorneys who provide services at loan closings. Camp v. Springs Mortg. Corp. (S.C. 1993) 310 S.C. 514, 426 S.E.2d 304, rehearing denied.

**SECTION 37‑1‑103.** Supplementary general principles of law applicable.

 Unless displaced by the particular provisions of this title, the Uniform Commercial Code and the principles of law and equity, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions.

HISTORY: 1962 Code Section 8‑800.103; 1974 (58) 2879.

LAW REVIEW AND JOURNAL COMMENTARIES

Consumer Protection and the Proposed “South Carolina Unfair Trade Practices Act.” 22 S.C. L. Rev. 767.

Uniform Consumer Credit Code. 25 S.C. L. Rev. 692.

**SECTION 37‑1‑104.** Construction against implicit repeal.

 This title being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if such construction can reasonably be avoided.

HISTORY: 1962 Code Section 8‑800.104; 1974 (58) 2879.

Library References

Antitrust and Trade Regulation 128.

Westlaw Topic No. 29T.

C.J.S. Credit Reporting Agencies; Consumer Protection Sections 34, 36.

C.J.S. Trade‑Marks, Trade‑Names, and Unfair Competition Section 392.

**SECTION 37‑1‑105.** Severability.

 If any provision of this title or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

HISTORY: 1962 Code Section 8‑800.105; 1974 (58) 2879.

Library References

Statutes 1535(20).

Westlaw Topic No. 361.

C.J.S. Statutes Sections 117, 129, 131 to 132, 139 to 140.

**SECTION 37‑1‑106.** Conflict with Consumer Finance Law.

 Except for Section 37‑3‑512 and except where Chapter 29 of Title 34 is amended by specific reference thereto, insofar as restricted lenders and restricted loans are concerned any inconsistency or conflict between any provision of this title and Chapter 29 of Title 34 shall be resolved in favor of Chapter 29 of Title 34, but Chapter 29 of Title 34 shall apply only to restricted loans and restricted lenders.

HISTORY: 1962 Code Section 8‑800.106; 1974 (58) 2879; 1976 Act No. 686 Section 60.

Library References

Antitrust and Trade Regulation 209.

Consumer Credit 3.1.

Westlaw Topic Nos. 29T, 92B.

C.J.S. Interest and Usury; Consumer Credit Sections 412 to 429, 446.

**SECTION 37‑1‑107.** Waiver; agreement to forego rights; settlement of claims.

 (1) Except as otherwise provided in this title, a buyer, lessee, or debtor may not waive or agree to forego rights or benefits under this title.

 (2) A claim by a buyer, lessee, or debtor against a creditor for an excess charge, other violation of this title, or civil penalty, or a claim against a buyer, lessee, or debtor for default or breach of a duty imposed by this title, if disputed in good faith, may be settled by agreement.

 (3) A claim, whether or not disputed, against a buyer, lessee, or debtor may be settled for less value than the amount claimed.

 (4) A settlement in which the buyer, lessee, or debtor waives or agrees to forego rights or benefits under this title is invalid if the court as a matter of law finds the settlement to have been unconscionable at the time it was made. The competence of the buyer, lessee, or debtor, any deception or coercion practiced upon him, the nature and extent of the legal advice received by him, and the value of the consideration are relevant to the issue of unconscionability.

HISTORY: 1962 Code Section 8‑800.107; 1974 (58) 2879; 1984 Act No. 261, Section 1.

Library References

Antitrust and Trade Regulation 297.

Westlaw Topic No. 29T.

**SECTION 37‑1‑108.** Effect of title on powers of organizations.

 (1) This title prescribes maximum charges for all creditors, except lessors and those excluded (Section 37‑1‑202), extending consumer credit including consumer credit sales (Section 37‑2‑104), and consumer loans (Section 37‑3‑104), and displaces existing limitations on the powers of those creditors based on maximum charges.

 (2) With respect to sellers of goods or services, lenders licensed under this title, consumer and sales finance companies, industrial banks and loan companies, and commercial banks and trust companies, this title displaces existing limitations on their powers based solely on amount or duration of credit.

 (3) Except as provided in subsection (1), this title does not displace limitations on powers of credit unions, savings banks, savings and loan associations, or other thrift institutions or insurance premium service companies whether organized for the profit of shareholders or as mutual organizations.

 (4) Except as provided in subsections (1) and (2), this title does not displace:

 (a) limitations on powers of supervised financial organizations (subsection (27) of Section 37‑1‑301) with respect to the amount of a loan to a single borrower, the ratio of a loan to the value of collateral, the duration of a loan secured by an interest in land, or other similar restrictions designed to protect deposits, or

 (b) limitations on powers an organization is authorized to exercise under the laws of this State or the United States.

HISTORY: 1962 Code Section 8‑800.108; 1974 (58) 2879; 1976 Act No. 686 Section 3; 1984 Act No. 261, Section 2.

Library References

Antitrust and Trade Regulation 209.

Consumer Credit 10.

Westlaw Topic Nos. 29T, 92B.

C.J.S. Interest and Usury; Consumer Credit Sections 428 to 436, 440 to 442, 526.

**SECTION 37‑1‑109.** Change of dollar amounts used in the Consumer Protection Code.

 (1) From time to time the dollar amounts in this title shall 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, 1967=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 1976 is the Reference Base Index.

 (2) The designated dollar amounts shall change on July first of each even‑numbered 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, but

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

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

 (3) If the Index is revised, the percentage of change pursuant to this section shall 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 shall 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.

 (4) The administrator, as defined in Section 37‑1‑301, shall publish a notice in the State Register:

 (a) On or before April thirtieth of each year in which dollar amounts are to change, the changes in dollar amounts required by subsection (2); and

 (b) Promptly after the changes occur, changes in the index required by subsection (3) including, if applicable, the numerical equivalent of the Reference Base Index under a revised Reference Base Index and the designation or title of any index superseding the index.

 (5) A person shall not be deemed to have violated this title with respect to a transaction otherwise complying with this title if he relies on dollar amounts either determined according to subsection (2) or appearing in the last regulation of the administrator announcing the then current dollar amounts.

 (6) The dollar amounts in the following sections of this title are subject to change in accordance with this section: 37‑2‑104(1)(e), 37‑2‑106(1)(b), 37‑2‑203(1), 37‑2‑407(1), 37‑2‑705(1)(a) and (b), 37‑3‑104(1)(d), 37‑3‑203(1), 37‑3‑510, 37‑3‑511, 37‑3‑514, 37‑5‑103(2), (3), and (4), 37‑10‑103, and 37‑23‑80.

HISTORY: 1980 Act No. 411, Section 1; 1982 Act No. 385, Sections 3, 57(2)(g); 1984 Act No. 261, Section 3; 1985 Act No. 121, Section 1; 2001 Act No. 82, Section 1, eff July 20, 2001; 2003 Act No. 42, Section 2.B, eff January 1, 2004.

CROSS REFERENCES

Delinquency charges, see Section 37‑3‑203.

Consumer Finance Act regulations, dollar amount changes, see S.C. Code of Regulations R. 15‑63.

Consumer Protection Code regulations, adjustment of dollar amounts, see S.C. Code of Regulations R. 28‑62.

Library References

Consumer Credit 10.

Westlaw Topic No. 92B.

C.J.S. Interest and Usury; Consumer Credit Sections 428 to 436, 440 to 442, 526.

Part 2

Scope and Jurisdiction

**SECTION 37‑1‑201.** Territorial application.

 (1) Except as otherwise provided in this section, this title applies to consumer credit transactions made in this State. For purposes of this title, a consumer credit transaction is made in this State if:

 (a) a signed writing evidencing the obligation or offer of the consumer is received by the creditor in this State; or

 (b) the creditor induces the consumer who is a resident of this State to enter into the transaction by offering or advertising in this State by any means, including, but not limited to, face‑to‑face solicitation, mail, brochure, print, radio, television, Internet, or any other electronic means.

 (2) With respect to consumer credit transactions entered into pursuant to open‑end credit this title applies if the consumer’s communication or indication of his intention to establish the arrangement is received by the creditor in this State. If no communication or indication of intention is given by the consumer before the first transaction, this title applies if the creditor’s communication notifying the consumer of the privilege of using the arrangement is mailed or personally delivered in this State.

 (3) The subdivision on limitations on creditors’ remedies (Part 1) of the chapter on remedies and penalties (Chapter 5) applies to actions or other proceedings brought in this State to enforce rights arising from consumer credit transactions or extortionate extensions of credit, wherever made.

 (4) A consumer credit transaction to which this title does not apply entered into with a person who is a resident of this State at the time of the transaction is valid and enforceable in this State to the extent that it is valid and enforceable under the laws of the jurisdiction applicable to the transaction.

 A creditor may not enforce rights against the consumer with respect to the provisions of agreements which violate the provisions on limitations on agreements and practices (Part 4) of the chapter on credit sales (Chapter 2) or of the chapter on loans (Chapter 3).

 (5) Except as provided in subsections (3), (4), and (8), a consumer credit transaction made in another jurisdiction is valid and enforceable in this State according to its terms to the extent that it is valid and enforceable under the laws of the jurisdiction applicable to the transaction.

 (6) For the purposes of this title, the residence of a consumer is the address given by him as his residence in a writing signed by him in connection with a credit transaction. Until he notifies the creditor of a new or different address, the given address is presumed to be unchanged.

 (7) For purposes of this section:

 (a) “Consumer” means the buyer, lessee, or debtor to whom credit is granted in a consumer credit transaction.

 (b) “Consumer credit transaction” means a consumer credit sale or consumer loan or a refinancing or consolidation thereof, a consumer lease, or a consumer rental‑purchase agreement.

 (c) “Creditor” means the person who grants credit in a consumer credit transaction or, except as otherwise provided, an assignee of a creditor’s right to payment, but use of the term does not in itself impose on an assignee any obligation of his assignor. In the case of credit granted pursuant to a credit card, the “person who grants credit” is the card issuer and not another person honoring the credit card.

 (d) “Open‑end credit” means an arrangement pursuant to which:

 (i) a creditor may permit a consumer, from time to time, to purchase or lease on credit from the creditor or pursuant to a credit card, or to obtain loans from the creditor or pursuant to a credit card,

 (ii) the amounts financed and the finance and other appropriate charges are debited to an account,

 (iii) the finance charge, if made, is computed on the account periodically, and

 (iv) the consumer has the privilege of paying in full or in installments.

 (8) With respect to a consumer credit sale or consumer loan to which this title does not otherwise apply, if, pursuant to solicitation in this State, a consumer who is a resident of this State sends a signed writing evidencing the obligation or offer of the consumer to a creditor in another state and receives the goods or services purchased or the cash proceeds of the loan in this State:

 (a) the creditor may not contract for or receive charges exceeding those permitted by this title;

 (b) the provisions on Powers and Functions of Administrator (Part 1 of Chapter 6 of this title) shall apply as though the consumer credit sale or consumer loan were entered into in this State.

 (9) Notwithstanding other provisions of this section:

 (a) except as provided in subsection (3), this title does not apply if the consumer is not a resident of this State at the time of a consumer credit transaction and the parties have agreed that the law of his residence applies;

 (b) this title applies if the consumer is a resident of this State at the time of a consumer credit transaction and the parties have agreed that the law of his residence applies.

 (10) Each of the following agreements or provisions of an agreement by a consumer who is a resident of this State at the time of a consumer credit transaction is invalid with respect to the transaction:

 (a) that the law of another jurisdiction apply;

 (b) that the consumer consents to be subject to the process of another jurisdiction;

 (c) that the consumer appoints an agent to receive service of process;

 (d) that fixes venue;

 (e) that the consumer consents to the jurisdiction of the court that does not otherwise have jurisdiction.

 (11) The following provisions of this title specify the applicable law governing certain cases:

 (a) applicability (Section 37‑6‑102) of the Part on Powers and Functions of Administrator (Part 1) of the Chapter on Administration (Chapter 6);

 (b) applicability (Section 37‑6‑201) of the Chapter on Notification and Fees (Part 2) of the Chapter on Administration (Chapter 6).

HISTORY: 1962 Code Section 8‑800.121; 1974 (58) 2879; 1976 Act No. 686 Section 4; 1980 Act No. 475, 1982 Act No. 385, Section 4; 1984 Act No. 355, Section 2; 1985 Act No. 121, Section 2; 2016 Act No. 244 (H.5040), Section 1, eff June 5, 2016.

Effect of Amendment

2016 Act No. 244, Section 1, in (1)(b), expanded how a creditor may induce a consumer to enter into a transaction.

CROSS REFERENCES

Notice of consumer’s right to cure default delivered or mailed to consumer at residence, see Section 37‑5‑110.

Requirement that in an action by a creditor against a consumer arising from a consumer credit transaction be brought in the county of the consumer’s residence, see Section 37‑5‑113.

Library References

Consumer Credit 1, 3.1.

Westlaw Topic No. 92B.

C.J.S. Interest and Usury; Consumer Credit Sections 406, 412 to 429, 446.

**SECTION 37‑1‑202.** Exclusions.

 Except as otherwise provided, this title does not apply to:

 (1) extensions of credit to government or governmental agencies or instrumentalities;

 (2) the sale of insurance by an insurer, except as otherwise provided in the chapter on insurance (Chapter 4) [Sections 37‑4‑101 et seq.];

 (3) transactions under public utility, municipal utility or common carrier tariffs if a subdivision or agency of this State or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment;

 (4) transactions made pursuant to and in compliance with Chapter 39 of Title 40;.

 (5) licensing or examining restricted lenders [Section 37‑3‑501(4)];

 (6) rates and charges for advancing insurance premiums by insurance agents which shall be governed by the applicable provisions of Chapter 51 of Title 38 [Sections 38‑51‑10 et seq.]; or insurance premium service companies which shall be governed by the applicable provisions of Chapter 27 of Title 38 [Sections 38‑27‑10 et seq.];

 (7) rates and charges on restricted loans [Section 37‑3‑501(3)]; which shall be subject to the applicable provisions of Title 34;

 (8) loans, sales, or leases made primarily for agricultural purposes; except as otherwise provided in Chapter 10 [Sections 37‑10‑101 et seq.] of this title;

 (9) loans to or on behalf of students pursuant to a government supported educational loan program;

 (10) federally chartered credit unions;

 (11) transactions in securities or commodities accounts with broker‑ dealers registered under Article 4 of Chapter 1, Title 35 or with the Securities and Exchange Commission.

HISTORY: 1962 Code Section 8‑800.122; 1974 (58) 2879; 1976 Act No. 686 Sections 5‑8, 69; 1979 Act No. 7 Section 5 [Repealed by 1982 Act No. 385 Section 57(1)]; 1979 Act No. 19; 1980 Act No. 326 Section 7; 1981 Act No. 6, Section 1B [Repealed by 1982 Act No. 385 Section 57(1)]; 1982 Act No. 385 Sections 6 and 57(1); 1988 Act No. 491, Section 1; 2005 Act No. 110, Section 4, eff January 1, 2006.

CROSS REFERENCES

Loan finance charges on agricultural loans under $25,000, see Section 37‑10‑104.

Library References

Consumer Credit 4, 8 to 20.

Westlaw Topic No. 92B.

C.J.S. Interest and Usury; Consumer Credit Sections 412, 414 to 422, 426 to 465, 523 to 529, 548 to 553.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Cooperative Credit Unions Section 96, The Scope of State Power.

S.C. Jur. Cooperative Credit Unions Section 138, South Carolina Consumer Protection Code.

Attorney General’s Opinions

The maximum legal rate chargeable on pawnbroker loans in excess of $50.00 is 12% APR. The governmental agency having the responsibility of assuring that the 12% APR rate is not exceeded is the Department of Consumer Affairs, and its Administrator, acting on behalf of the Commission on Consumer Affairs. 1976‑77 Op.Atty.Gen., No 77‑326, p 261, 1977 WL 24665.

NOTES OF DECISIONS

In general 1

1. In general

Consumer Protection Code section requiring creditors to file maximum rate schedules with Department of Consumer Affairs to be able to charge interest in excess of 18 percent applies to restricted lenders licensed under Consumer Finance Act; section that would otherwise exclude restricted lenders from filing requirement uses language “except as otherwise provided.” Bell Finance Co., Inc. v. South Carolina Dept. of Consumer Affairs (S.C.App. 1988) 297 S.C. 111, 374 S.E.2d 918. Consumer Credit 4

**SECTION 37‑1‑203.** Jurisdiction and service of process.

 (1) Subject to constitutional and statutory jurisdictional limitations, the courts of this State may exercise jurisdiction over any person with respect to any conduct in this State governed by this title or with respect to any claim arising from a transaction subject to this title. In addition to any other method provided by statute, personal jurisdiction may be acquired in a civil action or proceeding instituted in a court by the service of process in the manner provided by this section.

 (2) If a person is not a resident of this State or is a corporation not authorized to do business in this State and engages in any conduct in this State governed by this title, or engages in a transaction subject to this title, he may designate an agent upon whom service of process may be made in this State. The agent shall be a resident of this State or a corporation authorized to do business in this State. The designation shall be in writing and filed with the Secretary of State. If no designation is made and filed or if process cannot be served in this State upon the designated agent, process may be served upon the Secretary of State, but service upon him is not effective unless the plaintiff or petitioner forthwith mails a copy of the process and pleading by registered or certified mail to the defendant or respondent at his last reasonably ascertainable address. An affidavit of compliance with this section shall be filed with the clerk of the court on or before the return day of the process, if any, or within any further time the court allows.

HISTORY: 1962 Code Section 8‑800.123; 1974 (58) 2879; 1982 Act No. 385, Section 5; 2016 Act No. 244 (H.5040), Section 2, eff June 5, 2016.

Effect of Amendment

2016 Act No. 244, Section 2, in (1) and (2), substituted “person” for “creditor”, and in (1), deleted “over a creditor” following “personal jurisdiction”.

Library References

Consumer Credit 18.

Westlaw Topic No. 92B.

C.J.S. Interest and Usury; Consumer Credit Sections 447, 452 to 459, 548 to 550.

LAW REVIEW AND JOURNAL COMMENTARIES

Personal jurisdiction in cyberspace: Something more is required on the electronic stream of commerce. 49 S.C. L. Rev. 925 (Summer 1998).

Part 3

Definitions

**SECTION 37‑1‑301.** General definitions.

 In addition to definitions appearing in subsequent articles, in this title:

 (1) “Actuarial method” means the method, defined by rules adopted by the administrator, of allocating payments made on a debt between principal or amount financed and loan finance charge or credit service charge pursuant to which a payment is applied first to the accumulated loan finance charge or credit service charge and the balance is applied to the unpaid principal or unpaid amount financed.

 (2) “Administrator” means the administrator designated in the Article (Chapter 6) on Administration (Section 37‑6‑103).

 (3) “Agreement” means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance.

 (4) “Agricultural purpose” means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products. “Agricultural products” includes agricultural, horticultural, vitacultural and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof including processed and manufactured products and any and all products raised or produced on farms and any processed or manufactured products thereof.

 (5) “Alternative mortgage loan” means a loan secured by a first or junior lien on real estate other than a loan that:

 (a) is a fully amortized loan repayable by the direct reduction method; and

 (b) has a fixed nonvariable loan finance charge.

 Alternative mortgage loans include, without limitation, renegotiable and variable rate mortgages, adjusted and graduated payment mortgages, shared appreciation mortgages, reverse annuity mortgages and any combination of the foregoing.

 (5A) “Assumption” means and occurs when a creditor expressly agrees in writing with a subsequent transferee of the collateral for the debt (1) to accept that transferee as a primary obligor on the note or other instrument evidencing the credit, irrespective of whether the creditor agrees to release the original debtor and irrespective of whether the creditor has the right in the contract evidencing the debt to renegotiate the terms of the indebtedness, or (2) that the transferee takes the collateral subject to the lien of the transferor but is not personally liable for repayment of the debt.

 (6) “Billing cycle” means the time interval between periodic billing statement dates.

 (7) “Card holder” means a person to whom a credit card is issued or who has agreed with the card issuer to pay obligations arising from the issuance to or use of the card by another person.

 (8) “Card issuer” means a person who issues a credit card.

 (9) “Conspicuous” means a term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the court.

 (10) “Consumer” means the buyer, lessee, or debtor to whom credit is extended in a consumer credit transaction. In addition, for purposes of Chapters 10, 11, 13, and 15 of this title, as well as Sections 37‑5‑108, 37‑6‑108, 37‑6‑117(i), and 37‑6‑118, the term also includes:

 (1) a natural person who is a purchaser or lessee or prospective purchaser or lessee in any transaction arising out of the production, promotion, sale, or lease of consumer goods or services; or

 (2) a natural person who is the object of a solicitation or offer relating to a contest, game, or prize offer subject to Chapter 15.

 (11) “Consumer credit transaction” means a consumer credit sale (Section 37‑2‑104) or consumer loan (Section 37‑3‑104) or a refinancing or consolidation thereof, a consumer lease (Section 37‑2‑106), or a consumer rental‑purchase agreement (Section 37‑2‑701).

 (12) “Credit” means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

 (13) “Creditor” means the person who grants credit in a credit transaction or, except as otherwise provided, an assignee of a creditor’s right to payment, but use of the term does not in itself impose on an assignee any obligation of his assignor. In case of credit granted pursuant to a credit card, “creditor” means the card issuer and not another person honoring the credit card. For purposes of Chapters 1, 5, and 6 and Part 7 of Chapter 2, the term “creditor” also means a lessor in a consumer rental‑purchase agreement (Section 37‑2‑701).

 (14) “Debtor” means any person who is an obligor in a credit transaction, including any cosigner, comaker, guarantor, endorsee or surety, and the assignee of any obligor, and also includes any person who agrees to assume the payment of a credit obligation.

 (15) “Earnings” means compensation paid or payable to an individual or for his account for personal services rendered or to be rendered by him, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension, retirement or disability program.

 (16) “Lender credit card or similar arrangement” means an open‑end credit arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises:

 (a) by the lender’s honoring a draft or similar order for payment of money drawn or accepted by the debtor;

 (b) by the lender’s payment or agreement to pay the debtor’s obligations; or

 (c) by the lender’s purchase from the obligee of the debtor’s obligations.

 An open‑end credit agreement under which a person can effect an immediate advance by check or other draft qualifies as a lender credit card or similar arrangement.

 (17)(a) “Official fees” means:

 (i) fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest related to a consumer credit sale, consumer lease, or consumer loan; or

 (ii) premiums payable for insurance in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease or loan, if the premium does not exceed the fees and charges described in this subitem which would otherwise be payable.

 (b) “Official fees” does not mean:

 (i) effective April 1, 2000, a premium payable for insurance in lieu of perfecting a security interest when the security interest is a purchase money security interest as defined in Section 36‑9‑107, for which, in accordance with Section 36‑9‑302(1)(d), perfection by the filing of a financing statement is not required; or

 (ii) a premium payable for insurance in lieu of perfecting a security interest when the collateral is such that it cannot be used as a security for a loan pursuant to the Federal Credit Practices Rule or Section 37‑5‑108 of the South Carolina Code of Laws, annotated.

 (18) “Organization” means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative or association.

 (19) “Payable in installments” means that payment is required or permitted by agreement to be made in ‑

 (a) two or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which a credit service charge is made;

 (b) four or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which no credit service charge is made, or

 (c) two or more periodic payments with respect to a debt arising from a consumer loan.

 If any periodic payment other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other periodic payment, excluding the down payment, the consumer credit sale, consumer lease or consumer loan is “payable in installments”.

 (20) “Person” includes a natural person or an individual, and an organization.

 (21) “Person related to” with respect to an individual means:

 (a) the spouse of the individual;

 (b) a brother, brother‑in‑law, sister, sister‑in‑law of the individual;

 (c) an ancestor or lineal descendant of the individual or his spouse;

 (d) any other relative, by blood or marriage, of the individual or his spouse who shares the same home with the individual.

 “Person related to” with respect to an organization means:

 (a) a person directly or indirectly controlling, controlled by or under common control with the organization;

 (b) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization;

 (c) the spouse of a person related to the organization;

 (d) a relative by blood or marriage of a person related to the organization who shares the same home with him.

 (22) “Presumed” or “presumption” means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

 (23) “Residence” means any real property in which the debtor in a credit transaction secured by a first or junior lien on real property resides or expects to reside. It includes a parcel of unimproved land on which the debtor at the time the credit transaction granting the lien is consummated resides or expects to reside.

 (24) “Residential manufactured home” means a structure, transportable in one or more sections, which is at least eight body feet wide, thirty‑two body feet long, and which is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air‑conditioning and electrical systems contained therein, and which structure is or will be used as a residence.

 (25) “Residential real property” means real estate improved or to be improved by a structure or structures designed primarily for dwelling, as opposed to business or commercial use.

 (26) “Seller credit card” means an arrangement pursuant to which a person gives to a buyer or lessee the privilege of using a credit card, letter of credit or other credit confirmation or identification primarily for the purpose of purchasing or leasing goods or services from that person, a person related to that person, or others licensed or franchised to do business under his business or trade name or designation.

 (27) “Supervised financial organization” means a person, other than an insurance company or other organization primarily engaged in an insurance business:

 (a) organized, chartered or holding an authorization certificate under the laws of this State or of the United States which authorize the person to make loans and to receive deposits, including a savings, share, certificate or deposit account, or to advance or service insurance premiums;

 (b) subject to supervision by an official or agency of South Carolina or of the United States.

 (28) “Debt collector” means any person who collects, attempts to collect, directly or indirectly, debts due or asserted to be owed or due another. The term also includes a creditor who collects, attempts to collect, directly or indirectly, his own debts.

 (29) “Licensee” means a person licensed pursuant to this title.

 (30) “Cash advance” means the amount of cash or its equivalent that the borrower actually receives or is paid out at his direction or on his behalf.

HISTORY: 1962 Code Section 8‑800.131; 1974 (58) 2879; 1976 Act No. 686 Sections 9, 67; 1982 Act No. 385, Section 7; 1985 Act No. 121, Sections 3, 4; 1991 Act No. 142, Section 1; 1995 Act No. 135, Sections 5, 6; 1999 Act No. 66, Section 8; 2009 Act No. 67, Section 4.A, eff January 1, 2010.

CROSS REFERENCES

Duty of a creditor that has seller credit cards or similar arrangements to post a copy of required rate schedules for service charges, see Section 37‑2‑305.

Mortgages for future advances under alternative mortgage loan transactions, see Section 29‑3‑50.

Role of the administrator with respect to changes of dollar amounts under this title, see Section 37‑1‑109.

Library References

Consumer Credit 8 to 20.

Westlaw Topic No. 92B.

C.J.S. Interest and Usury; Consumer Credit Sections 428 to 465, 523 to 529, 548 to 553.

RESEARCH REFERENCES

ALR Library

73 ALR 6th 425 , Regulation of Consumer Loans Under Uniform Consumer Credit Code.

NOTES OF DECISIONS

In general 1

1. In general

Coobligors, who had sold mobile home yet remained liable on sales contract, could not recover in conversion under consumer protection code for secured creditor’s alleged wrongful repossession, since coobligors did not have title or right to possession of mobile home at time of alleged conversion. Crane v. Citicorp Nat. Services, Inc. (S.C. 1993) 313 S.C. 70, 437 S.E.2d 50. Consumer Credit 4

**SECTION 37‑1‑302.** Definition of “Federal Consumer Credit Protection Act”.

 In this title “Federal Consumer Credit Protection Act” means the Consumer Credit Protection Act (Public Law 90‑321: 82 Stat. 146), as amended from time to time, and includes regulations issued under the act. Title I of the Federal Consumer Credit Protection Act is referred to throughout this title as the “Federal Truth‑in‑Lending Act”.

HISTORY: 1962 Code Section 8‑800.132; 1974 (58) 2879; 1982 Act No. 385, Section 8; 2016 Act No. 244 (H.5040), Section 3, eff June 5, 2016.

Effect of Amendment

2016 Act No. 244, Section 3, substituted “under the act” for “from time to time by the Board of Governors of the Federal Reserve System”; and made other nonsubstantive changes.

Library References

Consumer Credit 30.

Westlaw Topic No. 92B.

C.J.S. Interest and Usury; Consumer Credit Sections 466 to 468, 510, 512 to 513, 515.

**SECTION 37‑1‑303.** Index of definitions in title.

 Definitions in this title and the sections in which they appear are:

 “Actuarial method” ‑ Section 37‑1‑301(1)

 “Administrator” ‑ Section 37‑1‑301(2)

 “Administrator” ‑ Section 37‑6‑103

 “Agreement” ‑ Section 37‑1‑301(3)

 “Agricultural purpose” ‑ Section 37‑1‑301(4)

 “Alternative mortgage loan” ‑ Section 37‑1‑301(5)

 “Amount financed” ‑ Section 37‑2‑111

 “Assumption” ‑ Section 37‑1‑301(5A)

 “Billing cycle” ‑ Section 37‑1‑301(6)

 “Card holder” ‑ Section 37‑1‑301(7)

 “Card issuer” ‑ Section 37‑1‑301(8)

 “Cash price” ‑ Section 37‑2‑110

 “Cash Advance” ‑ Section 37‑1‑301(30)

 “Conspicuous” ‑ Section 37‑1‑301(9)

 “Consumer” ‑ Section 37‑1‑301(10)

 “Consumer credit insurance” ‑ Section 37‑4‑103

 “Consumer credit sale” ‑ Section 37‑2‑104

 “Consumer credit transaction” ‑ Section 37‑1‑301(11)

 “Consumer lease” ‑ Section 37‑2‑106

 “Consumer loan” ‑ Section 37‑3‑104

 “Contested case” ‑ Section 37‑6‑402(1)

 “Credit” ‑ Section 37‑1‑301(12)

 “Credit Insurance Act” ‑ Section 37‑4‑103

 “Creditor” ‑ Section 37‑1‑301(13)

 “Credit service charge” ‑ Section 37‑2‑109

 “Debt Collector” ‑ Section 37‑1‑301(28)

 “Debtor” ‑ Section 37‑1‑301(14)

 “Earnings” ‑ Section 37‑1‑301(15)

 “Federal Truth‑in‑Lending Act” ‑ Section 37‑1‑302

 “Goods” ‑ Section 37‑2‑105(1)

 “Home solicitation sale” ‑ Section 37‑2‑501

 “Lender” ‑ Section 37‑3‑107(1)

 “Lender credit card or similar arrangement” ‑ Section 37‑1‑301(16)

 “License” ‑ Section 37‑6‑402(2)

 “Licensee” ‑ Section 37‑1‑301(29)

 “Licensing” ‑ Section 37‑6‑402(3)

 “Loan” ‑ Section 37‑3‑106

 “Loan finance charge” ‑ Section 37‑3‑109

 “Merchandise certificate” ‑ Section 37‑2‑105(2)

 “Official fees” ‑ Section 37‑1‑301(17)

 “Organization” ‑ Section 37‑1‑301(18)

 “Party” ‑ Section 37‑6‑402(4)

 “Payable in installments” ‑ Section 37‑1‑301(19)

 “Person” ‑ Section 37‑1‑301(20)

 “Person related to” ‑ Section 37‑1‑301(21)

 “Precomputed” (loan) ‑ Section 37‑3‑107(2)

 “Precomputed” (sale) ‑ Section 37‑2‑105(7)

 “Presumed” or “presumption” ‑ Section 37‑1‑301(22)

 “Principal” ‑ Section 37‑3‑107(3)

 “Residence” ‑ Section 37‑1‑301(23)

 “Residential manufactured home” ‑ Section 37‑1‑301(24)

 “Residential real property” ‑ Section 37‑1‑301(25)

 “Restricted lender” ‑ Section 37‑3‑501(4)

 “Restricted loan” ‑ Section 37‑3‑501(3)

 “Revolving charge account” ‑ Section 37‑2‑108

 “Revolving loan account” ‑ Section 37‑3‑108

 “Rule” ‑ Section 37‑6‑402(5)

 “Sale of an interest in land” ‑ Section 37‑2‑105(6)

 “Sale of goods” ‑ Section 37‑2‑105(4)

 “Sale of services” ‑ Section 37‑2‑105(5)

 “Seller” ‑ Section 37‑2‑107

 “Seller credit card” ‑ Section 37‑1‑301(26)

 “Services” ‑ Section 37‑2‑105(3)

 “Supervised financial organization” ‑ Section 37‑1‑301(27)

 “Supervised lender” ‑ Section 37‑3‑501(2)

 “Supervised loan” ‑ Section 37‑3‑501(1).

HISTORY: 1962 Code Section 8‑800.133; 1974 (58) 2879; 1976 Act No. 686 Section 10; 1982 Act No. 384, Section 9; 1995 Act No. 135, Section 7.