CHAPTER 7

Consumer Credit Counseling

**SECTION 37‑7‑101.** Definitions.

As used in this chapter:

(1) “Consumer” means consumer as defined in Section 37‑1‑301(10).

(2) “Credit counseling organization” means a person providing or offering to provide to consumers credit counseling services for a fee, compensation, or gain, or in the expectation of a fee, compensation, or gain, including debt management plans.

(a) The business of credit counseling is conducted in this State if the credit counseling organization, its employees, or its agents are located in this State or if the credit counseling organization solicits or contracts with debtors located within this State.

(b) This term does not include the following when acting in the regular course of their respective businesses and professions:

(i) attorneys at law;

(ii) banks, fiduciaries, credit unions, savings and loan associations, and savings banks as duly authorized and admitted to transact business in the State of South Carolina;

(iii) a certified public accountant providing credit counseling advice pursuant to an accounting practice;

(iv) title insurers and abstract companies doing escrow business;

(v) judicial officers or others acting pursuant to court order;

(vi) nonprofit faith‑based organizations;

(vii) counselors certified by the South Carolina Housing Authority to the extent engaged in counseling pursuant to Chapter 23, High‑Cost and Consumer Home Loans. These counselors must be certified by the Housing Authority pursuant to Section 37‑23‑40;

(viii) mortgage brokers, real estate brokers, salesmen, and property managers licensed pursuant to Title 40; and

(ix) consumer reporting agencies as defined by 15 U.S.C. Section 1681(a) (f) and any person or agency, or any affiliate or subsidiary of a consumer reporting agency, that obtains consumer reports from the agency under a certification pursuant to 15 U.S.C. Section 1681(e)(a) for the purpose of reselling the report, or information contained in or derived from the report, to a consumer, or monitoring information in the report on behalf of a consumer.

(3) “Credit counseling service” means:

(a) receiving or offering to receive funds from a consumer for the purpose of distributing the funds among the consumer’s creditors in full or partial payment of the consumer’s debts;

(b) improving or offering to improve a consumer’s credit record, history, or rating;

(c) negotiating or offering to negotiate to defer or reduce a consumer’s obligations with respect to credit extended by others.

(4) “Credit counselor” means an employee or agent of a credit counseling organization engaging in services described in item (3).

(5) “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 the term does not in itself impose on an assignee an 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.

(6) “Debt management plan” or “DMP” means a program in which an organization agrees to engage in debt settlement or debt pooling and distribution services on behalf of a consumer with the consumer’s creditors and under which the consumer gives money or control of his funds to the organization for distribution to the consumer’s creditors.

(7) “Debt settlement” means any action or negotiation initiated or taken by or on behalf of a consumer with a creditor of the consumer for the purpose of obtaining debt forgiveness of a portion of the credit extended by the creditor to the consumer or a reduction of payments, charges, or fees payable by the consumer.

(8) “Debtor” means the person or persons for whom the credit counseling service is performed.

(9) “Department” means the South Carolina Department of Consumer Affairs.

(10) “Licensee” means a person licensed pursuant to this chapter.

(11) “Nonprofit organization” means a person exempt from taxation pursuant to 26 U.S.C. Section 501(c)(3) of the Internal Revenue Code.

(12) “Person” means any individual, corporation, partnership, association, unincorporated organization, or other form of entity, however organized, including a nonprofit organization.

HISTORY: 2005 Act No. 111, Section 1, eff 6 month after approval by the Governor (became law without the Governor’s signature on June 2, 2005).

CROSS REFERENCES

Consumer credit counseling requirements, see Section S.C. Code of Regulations R. 28‑700.

RESEARCH REFERENCES

ALR Library

90 ALR 6th 1 , Validity, Construction, and Application of State Debt Adjusting Statutes.

Encyclopedias

111 Am. Jur. Proof of Facts 3d 205, Proof of Claim Involving Violation of Credit Repair Organizations Act, 15 U.S.C.A.Ss 1679 et Seq., or Similar State Enactment.

NOTES OF DECISIONS

Exemptions 1

1. Exemptions

Department of Consumer Affairs had authority to determine whether consumer credit counseling organization was exempt, under “attorney at law” exemption, from licensure requirements of Consumer Credit Counseling Act; Department was charged by the legislature with issuing licenses and was in the best position to implement the exemption. Lexington Law Firm v. South Carolina Dept. of Consumer Affairs (S.C. 2009) 382 S.C. 580, 677 S.E.2d 591. Antitrust And Trade Regulation 337

Consumer credit counseling organization was not entitled to “attorney at law” exemption from licensure requirements of Consumer Credit Counseling Act, since none of organization’s attorneys were licensed to practice law in state; legislature, in enacting Act, did not sanction unauthorized practice of law. Lexington Law Firm v. South Carolina Dept. of Consumer Affairs (S.C. 2009) 382 S.C. 580, 677 S.E.2d 591. Antitrust And Trade Regulation 218

“Attorney at law” exemption from licensure requirements of Consumer Credit Counseling Act is limited to a listed business or profession when the credit counseling service is part of the regular course of that business; if a statutorily enumerated business provides credit counseling services not in the regular course of its business, the exemption is unavailable. Lexington Law Firm v. South Carolina Dept. of Consumer Affairs (S.C. 2009) 382 S.C. 580, 677 S.E.2d 591. Antitrust And Trade Regulation 218

Exemptions from licensure requirements of Consumer Credit Counseling Act were intended to exempt professions and businesses that are otherwise regulated; exempt are businesses otherwise licensed in state and non‑profit organizations. Lexington Law Firm v. South Carolina Dept. of Consumer Affairs (S.C. 2009) 382 S.C. 580, 677 S.E.2d 591. Antitrust And Trade Regulation 218

**SECTION 37‑7‑102.** Licensing requirement.

A person may not engage in credit counseling services in South Carolina, whether or not the person has any office, facility, agent, or other physical presence in South Carolina, unless the person obtains from the department a license issued pursuant to this chapter.

HISTORY: 2005 Act No. 111, Section 1, eff 6 month after approval by the Governor (became law without the Governor’s signature on June 2, 2005).

Library References

Consumer Credit 4.

Westlaw Topic No. 92B.

C.J.S. Interest and Usury; Consumer Credit Sections 412, 414 to 422, 426 to 429.

RESEARCH REFERENCES

ALR Library

90 ALR 6th 1 , Validity, Construction, and Application of State Debt Adjusting Statutes.

NOTES OF DECISIONS

Construction and application 1

1. Construction and application

Purpose of the Consumer Credit Counseling Act is to bring regulation and supervision to the world of credit counseling. Lexington Law Firm v. South Carolina Dept. of Consumer Affairs (S.C. 2009) 382 S.C. 580, 677 S.E.2d 591. Antitrust And Trade Regulation 218

**SECTION 37‑7‑103.** Surety bonds.

(A) A credit counseling organization may not offer or agree to offer credit counseling services in this State without first filing a surety bond with the department. The amount of the surety bond must equal or exceed the total amount of South Carolina clients’ funds in the applicant’s or licensee’s trust account at the time of application for license or renewal, as determined by the department, but the surety bond must be at least twenty‑five thousand dollars. The surety bond is conditioned upon the faithful accounting of all money collected upon accounts entrusted to a credit counseling organization engaged in the business of credit counseling or its employees and agents.

(B) The surety bond must be:

(1) approved by the department;

(2) executed by a surety company authorized by the laws of this State to transact business within this State;

(3) executed to the State of South Carolina;

(4) for the use of the State and any consumers with a cause of action against the credit counseling organization; and

(5) maintained for three years after revocation, denial, or failure to renew license.

HISTORY: 2005 Act No. 111, Section 1, eff 6 month after approval by the Governor (became law without the Governor’s signature on June 2, 2005).

Library References

Consumer Credit 4.

Westlaw Topic No. 92B.

C.J.S. Interest and Usury; Consumer Credit Sections 412, 414 to 422, 426 to 429.

**SECTION 37‑7‑104.** License application as credit counseling organization and credit counselor; contents; fee.

(A) A person required to be licensed as a credit counseling organization must submit to the department an application for a license on forms prescribed by the department. The applicant shall file an application with the department in writing, under oath:

(1) the name and address of each owner, officer, director, member, or partner of the applicant;

(2) a description of the ownership interest of any officer, director, member, partner, agent, or employee of the applicant in the affiliate or subsidiary of the applicant or in another entity that provides a service to the applicant or a consumer relating to the applicant’s credit counseling organization;

(3) a description of the applicant’s consumer education program;

(4) financial statements for the applicant as of the most recent fiscal year;

(5) a current copy of the applicant’s standard debt management plan;

(6) the surety bond required in Section 37‑7‑103;

(7) consent to a criminal records check; and

(8) a list of all employees engaged in credit counseling services.

(B) Each application for a license as a credit counseling organization must be accompanied by a nonrefundable fee of one hundred dollars for each business location, an investigation fee of fifty dollars, and the actual cost of obtaining criminal history record checks.

(C)(1) The application for a license as a credit counselor must include:

(a) the name and address of the applicant;

(b) the name of the employer credit counseling organization;

(c) consent to a criminal records check; and

(d) description of the applicant’s general fitness and character.

(2) The nonrefundable fee for an application for licensing as a credit counselor is forty dollars in addition to the actual cost of obtaining criminal history checks.

HISTORY: 2005 Act No. 111, Section 1, eff 6 month after approval by the Governor (became law without the Governor’s signature on June 2, 2005).

Library References

Consumer Credit 4.

Westlaw Topic No. 92B.

C.J.S. Interest and Usury; Consumer Credit Sections 412, 414 to 422, 426 to 429.

**SECTION 37‑7‑105.** Continuing professional education requirements.

(A) Licensees must complete at least twelve hours of continuing professional education every two years. At least six of the twelve hours must be earned in a live instructional setting as opposed to a correspondence course or similar instructional method. If the organization is a sole proprietorship or partnership, owners and partners must complete the required twelve hours of continuing professional education every two years. If the organization is a limited liability company or corporation, any member or president, chief executive officer, or other officer who has ownership interest of twenty‑five percent or greater and who actively participates in the organization must complete the required twelve hours of continuing professional education every two years. The continuing professional education completed must be reported to the department every two years on a form approved by its showing the date and title of the courses taken, the teacher or sponsor of the course taken, and the hours of continuing professional education claimed for the course. If the course is taught in a classroom setting, fifty minutes of classroom contact equals one hour of continuing professional education. Course sponsors must maintain records of attendees for two years after the course.

(B) Documentation of attendance at the courses or correspondence courses completed must be maintained by the licensee and consists of a certificate of completion issued by the teacher or sponsor of the course showing the recommended number of hours of continuing professional education. This documentation is subject to inspection by the department for up to two years after the date of the course.

(C) The department shall:

(1) offer continuing professional education courses to assist licensees in obtaining the continuing professional education required by this chapter; and

(2) appoint two credit counselors and one representative of the department to a panel for two‑year terms to approve courses offered by sponsors other than the department as to their qualifications as continuing professional education. The panel may conduct its meetings by way of a conference call. The department shall develop a questionnaire to ascertain the interest and background of potential members of this panel.

(D) If a licensee fails to complete his continuing professional education in a timely manner, the license expires and the licensee shall pay a penalty not in excess of one hundred dollars to renew the license.

(E) A licensee may request an administrative hearing to appeal the expiration of its license for failure to complete the continuing professional education requirements. A license may be renewed without penalty within thirty days after the expiration if the licensee completes the professional education requirements.

HISTORY: 2005 Act No. 111, Section 1, eff 6 month after approval by the Governor (became law without the Governor’s signature on June 2, 2005).

CROSS REFERENCES

Consumer credit counseling requirements, see S.C. Code of Regulations R. 28‑700.

Library References

Consumer Credit 4.

Westlaw Topic No. 92B.

C.J.S. Interest and Usury; Consumer Credit Sections 412, 414 to 422, 426 to 429.

**SECTION 37‑7‑106.** Grounds for refusal to license, suspension, revocation or refusal to renew.

The department may refuse to license an applicant or suspend or revoke a license or refuse to renew a license issued pursuant to this chapter if it finds, after notice and a hearing pursuant to the Administrative Procedures Act, that the applicant or his agent has:

(1) been convicted of a felony or of an offense involving fraud or dishonest dealing or moral turpitude within the past ten years;

(2) violated a provision of this chapter;

(3) used fraud or deceit in procuring the issuance of a license or renewal pursuant to this chapter;

(4) indulged in a continuous course of unfair conduct;

(5) been involved in insolvency, bankruptcy, receivership, or assignment for the benefit of creditors by a licensee; or

(6) violated a reasonable rule or regulation made by the department pursuant to this chapter.

HISTORY: 2005 Act No. 111, Section 1, eff 6 month after approval by the Governor (became law without the Governor’s signature on June 2, 2005).

Library References

Consumer Credit 4.

Westlaw Topic No. 92B.

C.J.S. Interest and Usury; Consumer Credit Sections 412, 414 to 422, 426 to 429.

**SECTION 37‑7‑107.** Issuance or denial of license; contents and posting; renewal.

(A) Upon the filing of a complete application for a license, accompanied by the fee required, if the department finds that the financial responsibility and condition, character, qualifications, and general fitness of the applicant, and of the members if the applicant is a co‑partnership, association, or limited liability company, and of the officers and directors if the applicant is a corporation, are such as to command the confidence of the community and to warrant belief that the business may be operated honestly, fairly, and in accordance with all applicable state and federal laws, it shall license the applicant and issue a license. If the department does not so find, it shall refuse to license the applicant and shall notify him of the denial.

(B) Upon the receipt of the license, a licensee may engage in the business for which the license is issued. The issued license is nontransferable and nonassignable.

(C) Each license issued to a licensee must state the address or addresses at which the business is to be conducted and must state fully the name of the licensee and the date of the license. A copy of the license must be posted prominently in each place of business of the licensee.

(D) A license issued pursuant to this section expires on December thirty‑first of each year. A license must be renewed by filing with the department, at least thirty days before the expiration of the license, a complete renewal application, containing the information the department requires to determine the existence and effect of any material changes from the information contained in the applicant’s original application, annual reports, or previous renewal application. Each credit counseling organization renewal application must be accompanied by a nonrefundable fee of one hundred dollars for each business location. Each credit counselor renewal application must be accompanied by a nonrefundable fee of forty dollars.

HISTORY: 2005 Act No. 111, Section 1, eff 6 month after approval by the Governor (became law without the Governor’s signature on June 2, 2005).

Library References

Consumer Credit 4.

Westlaw Topic No. 92B.

C.J.S. Interest and Usury; Consumer Credit Sections 412, 414 to 422, 426 to 429.

**SECTION 37‑7‑108.** Requirements for engaging in credit counseling services or debt management plans; preparation and contents of budget analysis; notice regarding services.

A credit counseling organization, through its credit counselors, may not engage in credit counseling services or a debt management plan unless:

(1) the licensee provides the consumer with a credit education program designed to improve the financial literacy of the consumer;

(2) a thorough and written budget analysis is compiled and a copy delivered to the debtor. A licensee may not accept an account unless a written and thorough budget analysis indicates that the services are suitable for the debtor and that the debtor can reasonably meet the requirements of the budget analysis. The budget analysis must contain all of the following information about the debtor:

(a) name and address;

(b) marital status and number of dependents;

(c) amount and source of all employment compensation, payments from government programs, child support and alimony payments, and other income;

(d) number of exemptions claimed in the debtor’s most recent federal income tax return;

(e) gross income for each pay period, type and amount of all payroll deductions, and net income for pay period;

(f) monthly home mortgage or rental payment. If the home mortgage payment does not include an escrow for real estate taxes, the budget analysis must contain the amount and due dates of the real estate taxes on the property;

(g) type and amount of all other fixed periodic payments;

(h) type and amount of food, clothing, utility, vehicle, insurance, and all other living expenses;

(i) a list of each creditor the licensee reasonably expects to participate in the plan and a list of each creditor the licensee reasonably expects not to participate in the plan;

(j) a list of DMPs the debtor is currently participating in with a party exempt pursuant to Section 37‑7‑101(2)(b), if applicable;

(k) if the debtor is currently participating in a debt management plan with a party exempted pursuant to Section 37‑7‑101(2)(b), written documentation of all the DMPs;

(l) a description of and amount owed for garnishments and judgments; and

(m) periodic amount available for payment toward a debt management plan;

(3) the organization provides a written document to the consumer in a form the consumer may keep that clearly and conspicuously contains the following statements and nothing else:

(a) that credit counseling services are not suitable for all consumers and that consumers may request information about other ways, including bankruptcy, to deal with indebtedness; and

(b) that the credit counseling services offered by the provider do not include secured debt, including a brief description of the most common type of secured debt such as mortgages and car loans, unless that service is offered.

HISTORY: 2005 Act No. 111, Section 1, eff 6 month after approval by the Governor (became law without the Governor’s signature on June 2, 2005).

CROSS REFERENCES

Consumer credit counseling requirements, see S.C. Code of Regulations R. 28‑700.

Library References

Antitrust and Trade Regulation 218.

Consumer Credit 4.

Westlaw Topic Nos. 29T, 92B.

C.J.S. Interest and Usury; Consumer Credit Sections 412, 414 to 422, 426 to 429.

**SECTION 37‑7‑109.** Debt management plan; fee; form for consent of creditors; notice of plan to creditors; presumed consent.

(A) Upon establishing a debt management plan for a debtor, a licensee may charge and receive a setup fee as established by the department by regulation. If, within forty‑five days of establishing the debt management plan, the lack of consent from the debtor’s creditors causes the DMP to be no longer suitable for the debtor, the fee must be returned to the debtor and the debtor’s account closed.

(B) Consent from the debtor’s creditors must be recorded on a separate form to be kept in the debtor’s file. The form must contain:

(1) a list of all the creditors;

(2) the manner in which consent was sought;

(3) the date of each contact;

(4) the name of the person contacted, if available;

(5) the response obtained from the person contacted;

(6) revised or special conditions or arrangements that condition the consent; and

(7) the date on which the required consent was secured.

(C) The consent of a creditor may be sought by sending a notice of a debt management plan to a creditor by appropriate means, including by telephone, facsimile, electronic mail, or first class mail. If the creditor does not respond within fourteen days after the sending of the notice, it is presumed that the creditor has given consent.

(D) If a payment under the debt management plan is sent to a creditor, acceptance of the payment or plan is presumed seven days after sending the payment.

HISTORY: 2005 Act No. 111, Section 1, eff 6 month after approval by the Governor (became law without the Governor’s signature on June 2, 2005).

CROSS REFERENCES

Consumer credit counseling requirements, see S.C. Code of Regulations R. 28‑700.

Library References

Antitrust and Trade Regulation 218.

Consumer Credit 4.

Westlaw Topic Nos. 29T, 92B.

C.J.S. Interest and Usury; Consumer Credit Sections 412, 414 to 422, 426 to 429.

**SECTION 37‑7‑110.** Written contract; contents; required disclosures; cancellation of plan.

(A) A written contract is required. A service that requires any payment, fee, or other consideration may not be provided by a credit counseling organization for a consumer unless a written and dated contract for the purchase of those services, which meets the requirements of subsections (B) and (C), has been signed by the consumer. This section does not apply to the setup fee described in Section 37‑7‑109(A).

(B) A contract referred to in subsection (A) does not meet the requirements of this subsection unless it includes in writing:

(1) the name, address, and phone number of the consumer and licensee;

(2) a reasonable estimate of all payments and fees to be made by the consumer to the credit counseling organization over the term of the contract, including a maximum amount;

(3) a schedule of payments, including the amount and due date of each payment, that the consumer shall make to the licensee for disbursement to the consumer’s creditors, and the terms applicable to any late payment of, or default on, the amount;

(4) full and detailed description of the services to be performed by the credit counseling organization including all guarantees of performance and an estimate of the date by which the performance of the services to be performed by the organization are to be completed or the length of the period necessary to perform those services. This period must not exceed five years from the original date of entering the contract;

(5) a list of each participating creditor of the consumer to which payments are to be made by the licensee under the debt management plan. At the time of execution of the DMP, a licensee shall have a good faith belief that the creditors listed in the DMP are to participate in the DMP. A licensee shall advise the consumer of changes by the creditor in accepting payments under the DMP within two business days upon learning of the changes. The listing must include the:

(a) amount owed to each creditor;

(b) amount of each payment;

(c) date on which each payment is to be made; and

(d) anticipated payoff date for each creditor;

(6) a list of each creditor not participating in the DMP; and

(7) a conspicuous statement in bold‑face type, in immediate proximity to the space reserved for consumer’s signature on the contract, that reads as follows: ‘You may cancel this contract without penalty or obligation for any reason and at any time by giving ten days’ written notice of rescission to the licensee. Once your services are canceled, you are entitled to a refund of all unexpended funds you have paid to the credit counseling organization’.

(C) The written contract must also contain a disclosure that the:

(1) licensee also may receive compensation from the consumer’s creditors for providing credit counseling services to the consumer;

(2) licensee may not require, as a condition of entering into a DMP, a consumer to purchase any other product or service, or solicit or offer to sell any other product or service to the consumer during the term of the DMP;

(3) licensee may not require a voluntary contribution from a consumer for a service provided by the licensee to the consumer; and

(4) consumer may contact the department if the consumer has complaints about the credit counseling services received. The current phone number for the department must be included in the contract.

(D) The licensee must cancel a debt management agreement upon consumer request at any time for any reason. A consumer must give at least ten days’ notice to the licensee of a request to cancel. A consumer who cancels a debt management agreement is entitled to a full refund of all unexpended funds that the consumer has paid to the licensee.

HISTORY: 2005 Act No. 111, Section 1, eff 6 month after approval by the Governor (became law without the Governor’s signature on June 2, 2005).

CROSS REFERENCES

Consumer credit counseling requirements, see S.C. Code of Regulations R. 28‑700.

Library References

Antitrust and Trade Regulation 218.

Consumer Credit 4.

Westlaw Topic Nos. 29T, 92B.

C.J.S. Interest and Usury; Consumer Credit Sections 412, 414 to 422, 426 to 429.

**SECTION 37‑7‑111.** Funds paid to licensee for distribution to creditors; trust accounts; duties and responsibilities.

(A) Funds paid to the licensee by or on behalf of a consumer for disbursement to the consumer’s creditors must be deposited in a trust account established by the licensee for the benefit of debtors.

(B) A credit counseling organization shall:

(1) maintain separate records of account for each debtor to whom the licensee provides credit counseling services;

(2) deposit a payment from a debtor not later than one business day after receipt of the payment;

(3) disburse funds paid by or on behalf of a debtor to the debtor’s creditors within five business days after receipt of the funds;

(4) correct misdirected payments resulting from an error by the licensee;

(5) upon request, give a debtor signed, dated receipts for funds received from a debtor under a DMP, or provide a means by which the consumer may view the status of the account electronically;

(6) keep all debtor funds separate and apart at all times from funds belonging to the licensee or any of its officers, employees, or agents and use debtor funds for no purpose other than paying bills, invoices, or accounts of the debtor;

(7) reconcile the trust account at least once a month. The reconciliation must ascertain the actual cash balance in the account and compare it with the sum of the escrow balances in each debtor’s account. If the licensee has more than one trust account, each account must be scheduled and reconciled individually; and

(8) render an accounting to the debtor at least once every three months which must itemize the total amount received from the debtor, the total amount paid each creditor, the total amount each creditor has agreed to accept as payment in full on any debt owed by the debtor, the amount of charges deducted, and any amount held in the trust account on behalf of the debtor. A licensee also shall provide an accounting to a debtor within seven days after written demand, but no more than three times for each six‑month period.

HISTORY: 2005 Act No. 111, Section 1, eff 6 month after approval by the Governor (became law without the Governor’s signature on June 2, 2005).

CROSS REFERENCES

Consumer credit counseling requirements, see S.C. Code of Regulations R. 28‑700.

Library References

Consumer Credit 4.

Westlaw Topic No. 92B.

C.J.S. Interest and Usury; Consumer Credit Sections 412, 414 to 422, 426 to 429.

**SECTION 37‑7‑112.** Fees.

A licensee may not charge a consumer a fee except as established by the department by regulation.

HISTORY: 2005 Act No. 111, Section 1, eff 6 month after approval by the Governor (became law without the Governor’s signature on June 2, 2005).

Library References

Consumer Credit 4.

Westlaw Topic No. 92B.

C.J.S. Interest and Usury; Consumer Credit Sections 412, 414 to 422, 426 to 429.

**SECTION 37‑7‑113.** Individualized counseling and education session.

A licensee shall provide the consumer with an individualized counseling and education session that at a minimum addresses the following topics: managing household finances, managing credit and debt, budgeting, and personal savings strategies.

HISTORY: 2005 Act No. 111, Section 1, eff 6 month after approval by the Governor (became law without the Governor’s signature on June 2, 2005).

Library References

Antitrust and Trade Regulation 218.

Consumer Credit 4.

Westlaw Topic Nos. 29T, 92B.

C.J.S. Interest and Usury; Consumer Credit Sections 412, 414 to 422, 426 to 429.

**SECTION 37‑7‑114.** Records; maintenance and preservation.

(A) Each credit counseling organization shall maintain and preserve in its licensed offices complete and accurate books, accounts, and records as the department may reasonably require to determine if the credit counseling organization is complying with the provisions of this chapter and rules and regulations adopted in furtherance of the provisions of this chapter. The books, accounts, and records must be maintained apart and separate from another business in which the organization is involved and must be retained for at least three years after the DMP is terminated.

(B) The records must contain all consumer information including, but not limited to, the debt management plan and extensions to it, payments, disbursements, charges, and correspondence.

(C) If the credit counseling organization’s records are located outside the State, it shall provide the records to the department within three business days or, at the department’s discretion, pay reasonable and necessary expenses for the department to examine them at the place where they are maintained.

HISTORY: 2005 Act No. 111, Section 1, eff 6 month after approval by the Governor (became law without the Governor’s signature on June 2, 2005).

CROSS REFERENCES

Consumer credit counseling requirements, see S.C. Code of Regulations R. 28‑700.

Library References

Consumer Credit 4.

Records 3, 13.

Westlaw Topic Nos. 92B, 326.

C.J.S. Interest and Usury; Consumer Credit Sections 412, 414 to 422, 426 to 429.

C.J.S. Records Sections 37 to 39.

**SECTION 37‑7‑115.** Annual reports; occurrences triggering other reports.

(A) Each credit counseling organization licensed pursuant to this chapter annually, on or before April fifteenth, shall file a written report with the department relating to the credit counseling organization business conducted during the preceding calendar year. The report shall be made under oath and shall be on a form prescribed by the department.

(B) Within ten business days after the occurrence of any of the following events a licensee shall file a written report with the department describing the event and its expected impact upon the licensee’s business:

(1) the filing of bankruptcy, reorganization, or receivership proceedings by or against the licensee;

(2) the institution of a revocation, suspension, or other proceeding against the licensee by a governmental authority which is related to the licensee’s credit counseling organization in any state;

(3) felony indictments or convictions of the licensee or any of its members, partners, directors, officers, trustees, beneficiaries, or principles, if known;

(4) any action taken by the Internal Revenue Service against a nonprofit licensee, its officers, directors, employees, agents, or other disqualified persons with respect to the organization within the meaning of Section 4958 of the Internal Revenue Code of 1986, as amended, including the imposition of penalties or excise taxes or the change, suspension, or revocation of the organization’s tax exempt status;

(5) opening a new business location within this State; and

(6) other events the department may prescribe by regulation.

(C) A credit counselor licensed pursuant to this chapter shall file a report with the department within ten days of the occurrence of:

(1) felony indictments or convictions involving breach of trust, moral turpitude, fraud, or dishonest dealing; and

(2) other events the department may prescribe by regulation.

(D) Within thirty days of judgment against the licensee in a civil action relating to the DMP of a consumer who is a resident of South Carolina, a licensee shall file a written report with the department describing the event and its expected impact upon the licensee’s business. The licensee shall advise the department within thirty days of any settlement or the result of any judgment entered.

(E) If a licensee fails to make a report required by this section, the department may require the licensee to pay a late penalty of fifty dollars for each day the report is overdue.

HISTORY: 2005 Act No. 111, Section 1, eff 6 month after approval by the Governor (became law without the Governor’s signature on June 2, 2005).

Library References

Consumer Credit 4.

Westlaw Topic No. 92B.

C.J.S. Interest and Usury; Consumer Credit Sections 412, 414 to 422, 426 to 429.

**SECTION 37‑7‑116.** Prohibited acts.

(A) A licensee may not:

(1) obtain an agreement from a consumer waiving a right the consumer has pursuant to this chapter;

(2) charge a fee to a consumer if the consumer enters into a debt management plan with the licensee to rescind a DMP contract;

(3) advertise in a statement or representation with regard to the rates, terms, or conditions of credit counseling service in a manner that is false, misleading, or deceptive;

(4) require as a part of the agreement between the licensee and consumer the purchase of stock, insurance, commodity, service, or other property or interest in them;

(5) directly or indirectly accept payment or other consideration from a person for referring applicants to that organization;

(6) offer to pay or give any cash, fee, gift, bonus, premiums, reward, or other compensation to a person for referring a prospective customer to the licensee;

(7) unreasonably disclose information to third parties regarding the amounts owed by a consumer;

(8) make a fraudulent, deceptive, or misleading representation to obtain information about a consumer, to solicit business with a consumer, or otherwise in connection with providing services for or on behalf of any consumer;

(9) use unconscionable means to obtain a contract with a consumer or collect or attempt to collect a debt owed to the seller;

(10) engage in any unfair or deceptive act or practice in connection with a credit counseling service provided to a consumer, offering or establishing a term or condition in a contract with a consumer for providing the service, or any advertisement, or solicitation relating to the service;

(11) collect a payment from a consumer before the payment being earned as specifically defined in the contract between the licensee and the consumer;

(12) operate another business at the licensed location without authorization from the department;

(13) execute a contract or agreement to be signed by the consumer unless the contract or agreement is fully and completely filled in and finished;

(14) make loans to debtors;

(15) issue credit cards or act as an agent in procuring customers for a credit card company or a financial institution;

(16) purchase any debt or obligation of a consumer;

(17) receive or charge a fee in the form of a promissory note or other negotiable instrument other than check or a draft;

(18) represent that it is authorized or competent to furnish legal advice or perform legal services unless supervised by an attorney as required by South Carolina law; or

(19) compensate its employees on the basis of a formula that incorporates the number of consumers the employee signs to a debt management plan.

(B) A violation of this section renders an agreement between the licensee and the consumer void.

HISTORY: 2005 Act No. 111, Section 1, eff 6 month after approval by the Governor (became law without the Governor’s signature on June 2, 2005).

Library References

Antitrust and Trade Regulation 218.

Consumer Credit 4.

Westlaw Topic Nos. 29T, 92B.

C.J.S. Interest and Usury; Consumer Credit Sections 412, 414 to 422, 426 to 429.

**SECTION 37‑7‑117.** Violations and penalties; civil action by consumer; limitations.

(A) A person who violates this chapter is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than six months, or both. If it is determined by a court of competent jurisdiction that a violation is wilful, the court may impose a fine of not less than five hundred fifty dollars for each violation.

(B) A consumer injured or damaged by an act in violation of this chapter or regulation promulgated pursuant to it, whether or not there is a criminal conviction for the violation, may file a civil action to recover damages based on the violation with the following available remedies:

(1) actual damages;

(2) punitive damages; and

(3) the costs of the action, including reasonable attorney’s fees.

(C) An action brought pursuant to this chapter must be commenced within three years from the latest of the:

(1) consumer’s last transmission of funds to the credit counseling organization;

(2) credit counseling organization’s last disbursement to the consumer’s creditors;

(3) credit counseling organization’s last accounting to the consumer; or

(4) date on which the consumer reasonably discovered or reasonably should have discovered the facts giving rise to the consumer’s claim.

HISTORY: 2005 Act No. 111, Section 1, eff 6 month after approval by the Governor (became law without the Governor’s signature on June 2, 2005).

Library References

Antitrust and Trade Regulation 388, 1013.

Consumer Credit 17 to 20.

Westlaw Topic Nos. 29T, 92B.

C.J.S. Credit Reporting Agencies; Consumer Protection Sections 110, 116, 119.

C.J.S. Interest and Usury; Consumer Credit Sections 443 to 465, 529, 548 to 553.

C.J.S. Monopolies Sections 188 to 189, 191 to 194, 257 to 258.

**SECTION 37‑7‑118.** Violation of Unfair Trade Practices Act.

A violation of a provision of this chapter is considered a violation of Section 39‑5‑20 of the South Carolina Unfair Trade Practices Act. A remedy pursuant to Section 39‑5‑20 of the South Carolina Unfair Trade Practices Act is cumulative of and in addition to those available pursuant to this chapter.

HISTORY: 2005 Act No. 111, Section 1, eff 6 month after approval by the Governor (became law without the Governor’s signature on June 2, 2005).

Library References

Antitrust and Trade Regulation 218, 282.

Westlaw Topic No. 29T.

C.J.S. Credit Reporting Agencies; Consumer Protection Sections 94, 101 to 102.

C.J.S. Trade‑Marks, Trade‑Names, and Unfair Competition Sections 432 to 433.

**SECTION 37‑7‑119.** Cease and desist orders; penalties for noncompliance; revocation of license; increase of bond.

(A) Upon the finding that an action of a licensee may be in violation of this chapter, or of a law or regulation of this State or of the federal government or an agency of them, the department, after reasonable notice to the licensee and an opportunity for the licensee to be heard, shall order it to cease and desist from the action.

(B) If the licensee fails to appeal the cease and desist order of the department in accordance with Section 37‑7‑120 and continues to engage in the action in violation of the department’s order, he is subject to a penalty of not less than one thousand nor more than two thousand five hundred dollars, in the discretion of the department, for each action he takes in violation of the department’s order. The penalty provision of this section is in addition to and not instead of other provisions of law applicable to a licensee for the licensee’s failure to comply with an order of the department.

(C) The department, upon the finding that a credit counseling organization has engaged intentionally or repeatedly in a course of conduct in violation of this chapter, may revoke the license temporarily or permanently, in its discretion, after reasonable notice to the organization and an opportunity for it to be heard and may increase a credit counseling organization’s bond by a maximum of twenty‑five thousand dollars to ensure that the public is protected adequately. The department also may impose upon persons violating the provisions of this chapter administrative fines of not more than five hundred dollars for each offense or not more than five thousand dollars for the same set of transactions or occurrences. Each violation constitutes a separate offense. The department, if it determines that the required bond must be increased, shall state in writing the reasons for the increase and immediately serve it upon the licensee. The credit counseling organization shall provide the new bond within thirty days or the department shall revoke the license of the credit counseling organization.

HISTORY: 2005 Act No. 111, Section 1, eff 6 month after approval by the Governor (became law without the Governor’s signature on June 2, 2005).

Library References

Antitrust and Trade Regulation 382(1).

Consumer Credit 4, 17, 18.

Westlaw Topic Nos. 29T, 92B.

C.J.S. Credit Reporting Agencies; Consumer Protection Section 110.

C.J.S. Interest and Usury; Consumer Credit Sections 412, 414 to 422, 426 to 429, 443 to 459, 548 to 551.

**SECTION 37‑7‑120.** Appeals.

Within thirty days after the final decision of the department and by written notice to the department, an aggrieved party may appeal the decision pursuant to Article 3, Chapter 23, Title 1, the Administrative Procedures Act.

HISTORY: 2005 Act No. 111, Section 1, eff 6 month after approval by the Governor (became law without the Governor’s signature on June 2, 2005).

Library References

Antitrust and Trade Regulation 343.

Consumer Credit 18.

Westlaw Topic Nos. 29T, 92B.

C.J.S. Credit Reporting Agencies; Consumer Protection Section 97.

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

**SECTION 37‑7‑121.** Regulations.

The department may promulgate regulations necessary to effectuate the purposes of this chapter.

HISTORY: 2005 Act No. 111, Section 1, eff 6 month after approval by the Governor (became law without the Governor’s signature on June 2, 2005).

**SECTION 37‑7‑122.** Use of application and renewal fees.

All application and renewal fees collected by the department may be retained by the department and used to implement the provision of this chapter.

HISTORY: 2005 Act No. 111, Section 1, eff 6 month after approval by the Governor (became law without the Governor’s signature on June 2, 2005).

Library References

Consumer Credit 4.

Westlaw Topic No. 92B.

C.J.S. Interest and Usury; Consumer Credit Sections 412, 414 to 422, 426 to 429.