

## Session 104 - (1981-1982)

### S\*0798 (Rat #0471, Act #0385 of 1982) General Bill, By Senate Banking and Insurance

A Bill to opt out of the Federal Depository Institutions Deregulation and Monetary Control Act of 1980, as amended, with respect to mortgages, business and agricultural loans, and other loan rate preemption provisions, so as to provide that such rates of interest shall be governed by South Carolina Law; to amend Section 37-1-109, Code of Laws of South Carolina, 1976, so as to specify the Sections of Title 37 that contain dollar amounts that are subject to adjustment and to delete Section 2 of Act 411 of 1980 which establishes a May 19, 1984, termination date for Section 37-1-109; to amend Section 37-1-201, as amended, so as to further provide for the territorial application of Title 37 and to prevent a creditor making a consumer credit transaction with a resident of South Carolina from evading the applicability of Title 37 by specifying that the laws of another state will govern the transaction; to amend Section 37-1-203, so as to eliminate the reference to county courts; to amend Section 37-1-202, as amended, so as to raise the exclusion for pawnbroker loans, to make technical amendments to Subsections (6), (7), and (8), to delete certain Subsections thereof, and to add a new Subsection excluding securities margin accounts from Title 37; to amend Section 37-1-301, as amended, so as to add certain new definitions and to amend and delete certain existing definitions; to amend Section 37-1-302, so as to further provide for the definition of the "Federal Consumer Credit Protection Act"; to amend Section 37-1-303, as amended, so as to provide a revised alphabetical index of definitions used in Title 37; to amend Section 37-2-104, so as to correct a typographical error and to revise Paragraph (b) of Subsection (2) dealing with real estate mortgages that are excluded from the definition of a consumer credit sale; to amend Section 37-2-106, so as to delete the reference to agricultural purpose credit; to amend Section 37-2-111, so as to correct a typographical error; to amend Section 37-2-109, so as to authorize exclusion of an appraisal fee from the computation of the credit service charge; to amend Section 37-2-201, so as to revise the permissible rates of credit service charge that can be lawfully made in a consumer credit sale; to amend Sections 37-2-202 and 37-3-202, as amended, so as to authorize appraisal fees and a one percent assumption fee as permissible additional charges; to amend Sections 37-2-203 and 37-3-203, so as to authorize a delinquency charge for non-precomputed credit transactions secured by mortgages on real estate and residential manufactured homes and to conform these Sections to the 1974 Official Text of the Uniform Consumer Credit Code; to amend Section 37-2-205, so as to correct a typographical error; to amend Section 37-2-207, as amended, so as to revise the permissible maximum rates that can be charged on revolving charge accounts; to repeal Section 37-2-211, relating to certain maximum credit service charges; to add Sections 37-2-305 and 37-3-305, requiring creditors entering into consumer credit transactions in South Carolina to file and post a maximum rate schedule; to add Section 37-2-306, so as to provide for certain notice provisions in regard to consumer credit sales; to amend Sections 37-2-405 and 37-3-402, so as to delete the references to agricultural credit and to provide exemptions for certain types of real estate transactions and transactions exempted by the Administrator of the Department of Consumer Affairs; to amend Section 37-2-409, so as to delete the reference to agricultural credit; to amend Section 37-2-413, so as to further provide for attorneys' fees with regard to consumer credit sales and consumer leases; to amend Section 37-3-104, as amended, relating to the definition of consumer loan, so as to further provide for such definition; to reenact Section 37-3-105, dealing with the extent Title 37 governs mortgage loans that are primarily for personal, family or household purposes; to amend Subsection (4) of Section 37-3-106, so as to correct a typographical error; to amend Section 37-3-109, as amended, so as to exclude appraisal fees from the calculation of the loan finance charge; to repeal Section 37-3-110, relating to lending institutions posting schedules of interest and finance charges; to amend Section 37-3-201, as amended, so as to provide the maximum rates that can be charged in a consumer loan; to add Section 37-3-306, so as to provide for certain notice provisions in regard to consumer loans and other loans; to amend Section 37-3-404, so as to further provide for attorneys' fees with regard to consumer loans; to amend Section 37-3-410, as amended, so as to add a new Paragraph (f) to Subsection (1) expanding the rights of consumers to assert claims and defenses against lenders; to amend Section 37-3-501, so as to raise the limit for supervised loans to consumer loans in excess of eighteen percent; to amend Sections 37-3-502 through 37-3-506, so as to use the term "State Board of Financial Institutions" in lieu of "Board of Bank Control"; to also amend Section 37-3-503, relating to licenses to make supervised loans, so as to revise the requirements for obtaining such licenses and to also amend Section 37-3-505, so as to further provide for the manner in which every licensee shall maintain records; to amend Section 37-3-601, relating to transactions that can be made subject to Title 37 by agreement of the parties, so as to delete the reference to "a loan primarily secured by a first lien which is a purchase money security interest in land"; to amend Section 37-3-605, dealing with the maximum permissible rates that can be lawfully made in a loan transaction that is not a consumer loan, so as to eliminate the exceptions for loans of twenty-five thousand dollars or less, loans that are primarily secured by a first lien which is a purchase money security interest in land, and loans made for agricultural purposes and to make such loans subject to new Chapter 10 of Title 37; to amend Section 37-5-108, as amended, relating to the doctrine of unconscionability, so as to set forth specific factors that a court must take into account in determining whether a consumer credit transaction is unconscionable, to add provisions relating to unconscionable debt collection

practices, and to authorize the award of certain damages and attorneys' fees under certain conditions; to amend Section 37-5-110, dealing with the right to cure, so as to exclude single payment consumer credit obligations and to eliminate a reference to a nonexistent Subsection (3); to amend Section 37-5-111, which deals further with the right to cure, so as to exclude single payment consumer credit obligations, to require that the creditor plead and prove that either the notice of cure has been given or is not required and making a creditor liable for conversion for improper failure to comply with the notice of cure provisions; to add to Chapter 5 of Title 37 Section 37-5-113, relating to venue in litigation involving consumer credit transactions and Sections 37-5-114 and 37-5-115, relating to complaints and default judgments in litigation involving consumer credit transactions; to repeal Section 37-5-201, relating to interests in land; to amend Section 37-5-202, as amended, so as to make failure to file and post a maximum rate charge schedule as required by Sections 37-2-305 and 37-3-305 a specific violation of the South Carolina Consumer Protection Code, and to provide for those situations where a creditor shall not be subject to such penalty provisions; to amend Section 37-5-203, relating to a creditor's civil liability for violation of disclosure provisions, so as to further provide for those situations where a creditor shall not have such liability; to repeal Section 37-5-204, which deals with the right of rescission by consumers in certain types of real estate mortgage transactions and is inconsistent with parallel provisions in the Federal Truth-in-Lending Act; to amend Section 37-6-104, as amended, so as to further provide for the manner in which and parties against which the Administrator may bring class actions, initiate criminal actions or seek injunctive relief; to amend Section 37-6-105, as amended, relating to investigatory powers with respect to supervised financial institutions, so as to add a reference to new Section 37-6-118; to amend Section 37-6-117, which deals with the administrative responsibilities under Title 37, so as to include appropriate reference to new Section 37-6-118, to authorize state agencies to which consumer complaints have been referred to attempt to mediate a voluntary resolution of this dispute, and to authorize the Administrator of the Department of Consumer Affairs to bring legal actions on behalf of consumers under certain circumstances; to add Section 37-6-118, so as to allow the Administrator of the Department of Consumer Affairs the power to investigate and, after a hearing and appeal, the right to publicize the names of businesses that engage in fraudulent, illegal, deceptive or unfair market practices in South Carolina, and to provide exceptions; to repeal Section 37-6-416, relating to the interest rate on certain judgments; to add a new Chapter 10 to Title 37 containing Section 37-10-101 defining the scope of the Chapter as regulating designated loan transactions other than certain consumer loan transactions, Section 37-10-102 which regulates assumption fees and establishes certain requirements for real estate mortgage transactions and the attorneys' fees associated therewith where the primary purpose of the loan is for personal, family or household purposes, and which also provides for certain disclosures in regard to loan acceleration or renegotiation provisions, Section 37-10-103 which regulates the right of prepayment and restricts the use of variable rates in real estate mortgage transactions of one hundred thousand dollars or less, Section 37-10-104 which establishes a maximum rate of eighteen percent per annum on loans for agricultural purposes of less than twenty-five thousand dollars, Section 37-10-105 which sets forth the statutory penalties for violation of the provisions in Chapter 10 and Section 37-10-106 which sets certain maximum rates of interest and provides for the legal rate of interest in certain cases; to repeal the following provisions of law as being inconsistent with Title 37 or are otherwise unnecessary or obsolete: Sections 34-13-10 through 34-13-40, 34-13-120, 34-25-110 through 34-25-140, 34-31-30, 34-31-31, 34-31-40, 34-31-50, 34-31-60, 34-31-70, 34-31-80, 34-31-90, 34-31-100, Act 7 of 1979, Act 379 of 1980, Act 6 of 1981, Sections 29-3-60, 29-3-210 through 29-3-240, 38-9-240; to amend Section 29-3-40, dealing with advancements made by mortgagees, so as to delete language restricting the rate of interest on such advances to the legal rate; to amend Section 34-1-110, so as to eliminate the restriction on the power of the Board of Financial Institutions to authorize state financial institutions to charge the same rates as federal financial institutions making loans in South Carolina and give to the State Board of Financial Institutions authority to authorize consumer finance companies to charge equivalent rates authorized by other lenders operating in South Carolina; to amend Section 34-5-90, relating to powers of bank conservators, so as to delete the language restricting the interest rate on funds borrowed by a conservator to the legal rate; to amend Section 35-1-1560, so as to eliminate any statutory limitations on the rate of interest that can be charged on securities margin accounts; to amend Section 36-9-404, as amended, so as to require that any secured party that collects a termination statement filing fee from a debtor in a transaction in which consumer goods are listed as collateral in the financing statement must file a termination statement when the obligation is repaid within the earlier of thirty days after the repayment or ten days after demand for filing by the debtor; and to amend Section 40-39-100, which deals with charges on pawnbroker loans to raise the dollar limitation in the Section from fifty to three hundred dollars; to delete certain provisions of Act 411 of 1980 and Act 433 of 1980, to officially designate certain provisions of law as specific Sections of the 1976 Code; and to provide that the South Carolina Department of Consumer Affairs shall conduct a study of the effects of this Act and report its findings to the General Assembly.-at

02/16/82 Senate Introduced, read first time, placed on calendar without reference SJ-7

02/17/82 Senate Read second time SJ-19

02/17/82	Senate	Ordered to third reading with notice of amendments SJ-19
03/04/82	Senate	Debate interrupted SJ-27
03/10/82	Senate	Amended SJ-23
03/10/82	Senate	Debate interrupted SJ-25
03/11/82	Senate	Amended SJ-3
03/11/82	Senate	Read third time and sent to House SJ-4
03/16/82	House	Introduced and read first time HJ-1404
03/16/82	House	Referred to Committee on Labor, Commerce and Industry HJ-1409
03/25/82	House	Committee report: Favorable with amendment Labor, Commerce and Industry HJ-1824
03/31/82	House	Debate interrupted HJ-1904
04/07/82	House	Debate interrupted HJ-2019
04/13/82	House	Debate adjourned until Tuesday, April 27, 1982 HJ-2125
04/27/82	House	Objection HJ-2616
05/06/82	House	Special order, set for Tues., May 11, 1982 at 12:30 p.m. (Under H-3916) HJ-2828
05/11/82	House	Amended HJ-2890
05/11/82	House	Debate interrupted HJ-2893
05/12/82	House	Amended HJ-2906
05/12/82	House	Read second time HJ-2928
05/13/82	House	Read third time HJ-2981
05/13/82	House	Returned HJ-2981
05/13/82	Senate	Non-concurrence in House amendment SJ-3
05/19/82	House	House insists upon amendment and conference committee appointed Reps. Reps. Cobb, Crocker & Woods HJ-3025
05/19/82	Senate	Conference committee appointed Sens. Williams, Lindsay, Moore SJ-3
05/20/82	House	Conference report received HJ-3111
05/20/82	House	Conference report adopted HJ-3116
05/20/82	Senate	Conference report received SJ-7
05/20/82	Senate	Conference report adopted SJ-7
05/20/82	Senate	Ordered enrolled for ratification SJ-12
05/26/82	Senate	Ratified R 471 SJ-63
05/31/82		Signed By Governor
05/31/82		Effective date 30 days after approval
05/31/82		Act No. 385
06/15/82		Copies available