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Summary: Deferred presentment services

**HISTORY OF LEGISLATIVE ACTIONS**

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12/10/2008 Senate Referred to Committee on **Banking and Insurance**

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**VERSIONS OF THIS BILL**

[12/10/2008](file:///p:\pprever\2009-10\47_20081210.docx)

**A** **BILL**

TO AMEND CHAPTER 39 OF TITLE 34 OF THE 1976 CODE, RELATING TO DEFERRED PRESENTMENT SERVICES, BY ADDING SECTION 34‑39‑175, TO PROVIDE THAT THE CONSUMER FINANCE DIVISION OF THE BOARD OF FINANCIAL INSTITUTIONS MUST IMPLEMENT A DEFERRED PRESENTMENT LOAN TRACKING DATABASE AND TO PROVIDE FOR THE INFORMATION REQUIRED IN THE DATABASE; TO ADD SECTION 34‑39‑270, TO PLACE A LIMIT ON THE AMOUNT OF OUTSTANDING PRINCIPAL A BORROWER MAY HAVE, TO PROVIDE FOR A TWO DAY WAITING PERIOD BETWEEN LOANS, TO REQUIRE DEFERRED PRESENTMENT LENDERS TO VERIFY A CONSUMER’S ELIGIBILITY FOR A LOAN PRIOR TO ENTERING INTO A DEFERRED PRESENTMENT TRANSACTION, AND TO PROVIDE FOR THE PROCESS TO DETERMINE ELIGIBILITY; TO ADD SECTION 34‑39‑280, TO PROVIDE THAT UNDER CERTAIN CIRCUMSTANCES A BORROWER MAY UTILIZE A PAYMENT PLAN TO SATISFY OUTSTANDING LOANS, TO PROVIDE FOR THE CIRCUMSTANCES UNDER WHICH A PAYMENT PLAN MAY BE USED, AND THE REQUIREMENTS FOR A PAYMENT PLAN; TO ADD SECTION 34‑39‑290, TO PROVIDE THAT THE BOARD MUST MAKE ANNUAL REPORTS AND TO PROVIDE FOR THE CONTENTS OF THE REPORTS; TO AMEND SECTION 34‑39‑130, TO PROVIDE FOR THE APPLICABILITY OF CHAPTER 39; TO AMEND SECTION 34‑39‑150 TO PROVIDE THAT THE APPLICATION FEE FOR NEW LICENSES AND THE LICENSE RENEWAL FEES ARE EACH INCREASED FROM TWO HUNDRED FIFTY DOLLARS TO FIVE HUNDRED DOLLARS AND TO PROVIDE THAT HALF OF THE FEES MUST BE CREDITED TO THE ATTORNEY GENERAL’S OFFICE TO ESTABLISH A DIVISION TO ENFORCE THE PROVISIONS OF THIS ACT; TO AMEND SECTION 34‑39‑180, TO PROVIDE FOR A MAXIMUM LOAN AMOUNT THAT MAY NOT EXCEED THE LESSER OF TWENTY PERCENT OF THE BORROWER’S GROSS INCOME DURING THE TERM OF THE LOAN OR FIVE HUNDRED DOLLARS AND TO PROVIDE FOR CONSUMER WARNING STATEMENTS; AND TO AMEND SECTION 34‑39‑200 TO PROVIDE ADDITIONAL LIMITATIONS ON THE ACTIVITIES OF LICENSED DEFERRED PRESENTMENT PROVIDERS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 39, Title 34 of the 1976 Code is amended by adding:

“Section 34‑39‑175. (A) The Consumer Finance Division of the Board of Financial Institutions shall implement a common database with real‑time access through an internet connection for deferred presentment providers, as provided in this subsection. The board is authorized to enter into a contract with a single source private vendor to develop and operate the database. The database must be accessible to the board and the deferred presentment providers to verify if deferred presentment transactions are outstanding for a particular person. Deferred presentment providers shall submit that data before entering into a deferred presentment transaction and once a deferred presentment transaction has been paid in full, in a format the board requires by rule including the drawer’s name, social security number or employment authorization alien number, address, driver’s license number, amount of the transaction, date of transaction, the date that the transaction is closed, and additional information required by the board. The board may impose a fee not to exceed one dollar for each transaction for data required to be submitted by a licensee. A licensee may rely on the information contained in the database as accurate and is not subject to any administrative penalty or civil liability as a result of relying on inaccurate information contained in the database. The board may adopt rules to administer and enforce the provisions of this section and to ensure that the database is used by licensees in accordance with this section.

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

SECTION 2. Chapter 39, Title 34 of the 1976 Code is amended by adding:

“Section 34‑39‑270. (A) A licensee may not enter into a deferred presentment transaction with a person who has:

(1) one or more outstanding deferred presentment transactions that are equal to the maximum loan amount permitted by this chapter; or

(2) had a deferred presentment transaction closed out with any licensee in the previous two full business days;

(B) Before entering into a deferred presentment transaction with a person, a licensee shall verify whether the person is eligible to enter into the transaction by inquiring of the person, checking the licensee’s records, and accessing the deferred presentment transaction database established pursuant to subsection (C) and Section 34‑39‑175.

(C) The board shall contract with a single third party database provider to establish and operate a deferred presentment transaction database for the purpose of verifying whether a person is eligible to enter into a deferred presentment transaction. The board shall supervise the establishment and operation of the database and shall ensure that the database provider establishes and operates the database pursuant to the provisions of this section. The board shall have full access to the database and all records related to the database for purposes of supervising the establishment and operation of the database. If the database provider violates a provision of this section, the board shall terminate the contract. The database must have real‑time access through an internet connection and be accessible at all times to the board and licensees. The database provider shall establish and maintain a process for responding to transaction verification requests when technical difficulties prevent the licensee from accessing the database through the internet including, but not limited to, verification by telephone. The database must be set up so as to notify the board if a licensee or a person enters into a transaction in violation of the provisions of this section.

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

(E) A licensee shall notify the database provider immediately when the licensee enters into a deferred presentment transaction with a person. The licensee shall submit to the database provider such information as the board requires. When the transaction is closed, the licensee shall designate the transaction as closed and immediately notify the database provider. When the database provider receives notification that the transaction is closed, the database provider immediately shall designate the transaction as closed in the database.

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

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

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

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

Section 34‑39‑280. (A) Subject to the terms and conditions contained in this section, a customer may pay any outstanding deferred presentment transaction by means of an extended payment plan.

(B) A licensee must enter into a written plan agreement with the customer if the customer, on or before the deferred presentment transaction’s due date, requests a plan and signs an amendment to the written agreement that memorializes the plan’s terms.

(C) The plan’s terms must allow the customer, at no additional cost, to repay the deferred presentment transaction in sixty days. Each plan installment must coincide with a date on which the customer receives regular income. The customer may prepay a plan in full at any time without penalty. If the customer fails to pay any plan installment when due, the plan is terminated and the licensee immediately may accelerate and collect the unpaid transaction balance.

(D) A licensee must notify the customer of his plan rights by displaying the following statement, in at least 12‑point bold type, on the first page of the written agreement:

‘You should use a deferred presentment transaction only for a short‑term credit need. If you have a long‑term credit need, you should consider a less costly way to borrow money or seek the advice of a nonprofit credit counselor. You may repay this contract through an extended payment plan. If you choose this right, then you must, on or before the date this contract is due, ask for an extended payment plan. You will be asked to sign a new agreement for this extended payment plan. The extended payment plan must let you repay this contract in equal installments over the next sixty days. There will be no additional cost. Each extended payment plan installment must match with a date on which you receive regular income. You may prepay an extended payment plan in full at any time without penalty. If you fail to pay an extended payment plan installment when due, the extended payment plan will end and we may collect immediately the unpaid contract balance.’

Section 34‑39‑290. Based upon data provided by the database vendor, the Board of Financial Institutions annually shall report to the General Assembly the following information for loans made in South Carolina in the previous reporting year, specifically the number of:

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

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

(3) borrowers who chose to pay off their loans through an Extended Payment Plan by loan amount;

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

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

SECTION 3. Section 34‑39‑130 of the 1976 Code is amended by adding at the end:

“(C) A person may not engage in the business of deferred presentment services with a customer residing in this State, whether or not that person has a location in South Carolina, except in accordance with the provisions of this chapter and without having first obtained a license pursuant to this chapter.

(D)(1) A licensee pursuant to this chapter may not offer, arrange, act as an agent for, or assist a deferred deposit originator in any way in the making of a deferred deposit transaction unless the deferred deposit originator complies with all applicable federal and state laws and regulations including this chapter.

(2) This prohibition does not apply to the arranger, agent, or assistant to a state or federally chartered bank, thrift, savings association, or credit union if, upon review of the entire circumstances, the state or federally chartered bank, thrift, savings association, or credit union:

(a) initially advanced the loan proceeds to the customer;

(b) maintained a preponderant economic interest in the loan after its initiation; and

(c) developed the deferred deposit transaction product or products on its own without involvement of the licensee.

(3) If a licensee offers, arranges, acts as an agent for, or assists a state or federally chartered bank, thrift, savings association, or credit union in the making of a deferred deposit transaction and the licensee demonstrates that the standards in item (2)(a), (b), and (c) are met, the licensee must comply with all other provisions of this chapter to the extent that they are not preempted by other federal or state law.”

SECTION 4. Section 34‑39‑150(C) and (D) of the 1976 Code is amended to read:

“(C) The application must be accompanied by payment of an application fee of ~~two hundred fifty~~ five hundred dollars and an investigation fee of five hundred dollars. These fees are not refundable or abatable. If the license is granted, however, payment of the application fee satisfies the fee requirement for the first license year or its remainder.

(D) A license expires annually and may be renewed upon payment of a license fee of ~~two hundred fifty~~ five hundred dollars. The annual license renewal fee for an applicant with more than one location is ~~two hundred fifty~~ five hundred dollars for the first location and ~~fifty~~ one hundred dollars for each additional location. The Board of Financial Institutions shall disburse one‑half of the license fees collected to the South Carolina Attorney General’s Office to establish and maintain a division to enforce the provisions of this chapter.”

SECTION 5. Section 34‑39‑180 of the 1976 Code is amended to read:

“Section 34‑39‑180. ~~(A)~~ ~~A licensee may~~ ~~defer the presentment or deposit of a check. for up to thirty‑one days pursuant to the provisions of this section.~~

~~(B)~~(A) The total amount advanced by all licensees to any customer for deferred presentment or deposit may not exceed the lesser of twenty percent of the customer’s gross income during the term of the loan or five hundred dollars, exclusive of the fees allowed in Section 34‑39‑180(F). A licensee may not advance to a customer an amount for deferred presentment or deposit which causes this limit to be exceeded by that customer.

(B) Each check must be documented by a written agreement signed by both the customer and the licensee. The written agreement must contain the name or trade name of the licensee, the transaction date, the amount of the check, and a statement of the total amount of fees charged, expressed both as a dollar amount and as an effective annual percentage rate (APR). The written agreement must authorize expressly the licensee to defer presentment or deposit of the check until a specific date, not later than thirty‑one days from the date the check is accepted by the licensee. The written agreement also must contain plain language developed by the board which sufficiently informs the customer regarding the nature of deferred presentment services, the deferred presentment service process, the customer’s rights pursuant to this chapter, information to file complaints with the South Carolina Department of Consumer Affairs and the South Carolina Attorney General’s Office, and other information the board may require.

(C) The board shall require each licensee to issue a standardized consumer notification and disclosure form in compliance with state and federal truth‑in‑lending laws before entering into a deferred presentment agreement with a customer.

(D) A licensee ~~shall~~ may not charge, directly or indirectly, a fee or other consideration in excess of fifteen percent of the ~~face~~ amount ~~of the check~~ advanced for accepting a check for deferred presentment or deposit. The fee or other consideration authorized by this subsection may be imposed only once for each written agreement. Records must be kept by each licensee with sufficient detail to ensure that the fee or other consideration authorized by this subsection ~~may be~~ is imposed only once for each written agreement.

(E) A check accepted for deferred presentment or deposit pursuant to this chapter ~~may~~ must not be repaid from the proceeds of another check accepted for deferred presentment or deposit by the same licensee or an affiliate of the licensee. A licensee ~~shall~~ may not renew or otherwise extend presentment of a check or withhold the check from deposit, for old or new consideration, for a period beyond the time set forth in the written agreement with the customer.

(F) If a check is returned to the licensee from a payer financial institution due to insufficient funds, closed account, or stop payment order, the licensee may pursue all legally available civil means to collect the check including, but not limited to, the imposition of a returned check charge as provided in Section 34‑11‑70(a), except that the service charge imposed by the licensee ~~shall~~ may not exceed the lesser of ten dollars or the fee imposed by the financial institution on the licensee for the returned check. An individual who issues a personal check to a licensee under a deferred presentment agreement is not subject to criminal penalty.”

SECTION 6. Section 34‑39‑200 of the 1976 Code is amended to read:

“Section 34‑39‑200. A person required to be licensed pursuant to this chapter may not:

(1) charge fees in excess of those authorized by this chapter;

(2) engage in the business of:

(i) making loans of money or extension of credit;

(ii) discounting notes, bills of exchange, items, or other evidences of debt; or

(iii) accepting deposits or bailments of money or items, except as expressly provided by Section 34‑39‑180;

(3) use or cause to be published or disseminated advertising communication which contains false, misleading, or deceptive statements or representations;

(4) conduct business at premises or locations other than locations licensed by the board;

(5) engage in unfair, deceptive, or fraudulent practices, including unconscionable conduct in violation of Section 37‑5‑108;

(6) alter or delete the date on a check accepted by the licensee;

(7) accept an undated check or a check dated on a date other than the date on which the licensee accepts the check;

(8) require a customer to provide security for the transaction or require the customer to provide a guaranty from another person;

(9) engage in the retail sale of goods or services, other than deferred presentment services and Level I check‑cashing services as defined in Section 34‑41‑10, at the location licensed pursuant to this chapter, ~~provided, however~~ except, that a sale of money orders~~,~~ or postage stamps, and services such as the payment of utility bills with ~~no additional~~ a fee to the customer that does not exceed one percent of the bill being paid, vending machines for food or beverage, facsimile services, ~~Western Union~~ wire transfer services, or rental of postal boxes at rates not higher than allowed by the United States Postal Service ~~is~~ are not the ~~sale~~ sales of goods or services prohibited by this subsection;

(10) be licensed pursuant to Section 12‑21‑2720(a)(3) to operate a video poker machine; ~~or~~

(11) permit others to engage in an activity prohibited by this section at a location licensed pursuant to this chapter~~.~~; or

(12) broker or arrange a deferred presentment transaction on behalf of a third‑party lender, unless the transaction complies with the provisions of this chapter and is not preempted by federal law.”

SECTION 7. This act takes effect upon approval by the Governor.

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