~~Indicates Matter Stricken~~

Indicates New Matter

AS PASSED BY THE SENATE

May 21, 2009

**H. 3301**

Introduced by Reps. Harrell, Cato, Sandifer, Sellers, Neilson, Erickson, Bannister, Bedingfield, Merrill, Mitchell, Anthony, Bingham, Huggins, Vick, Cooper, Chalk, J.R. Smith, Willis, Gilliard, Allison, Anderson, Bales, Barfield, Battle, Bowers, Brady, G.A. Brown, H.B. Brown, Cole, Daning, Duncan, Edge, Forrester, Gambrell, Gullick, Hamilton, Hayes, Herbkersman, Hiott, Jefferson, Horne, Kelly, Kirsh, Knight, Limehouse, Littlejohn, Long, Lowe, Lucas, Miller, Millwood, Nanney, Ott, Owens, Parker, Pinson, E.H. Pitts, M.A. Pitts, Scott, Simrill, Skelton, D.C. Smith, G.R. Smith, Sottile, Spires, Stewart, Stringer, Thompson, Toole, Umphlett, White, Whitmire, Wylie, A.D. Young and T.R. Young

S. Printed 5/21/09--S.

Read the first time February 12, 2009.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 34‑39‑175 SO AS TO REQUIRE THE CONSUMER FINANCE DIVISION OF THE BOARD OF FINANCIAL INSTITUTIONS TO IMPLEMENT A REAL‑TIME INTERNET ACCESSIBLE DATABASE FOR DEFERRED PRESENTMENT PROVIDERS TO VERIFY IF DEFERRED PRESENTMENT TRANSACTIONS ARE OUTSTANDING FOR A PARTICULAR PERSON; BY ADDING SECTION 34‑39‑270 SO AS TO PROHIBIT A DEFERRED PRESENTMENT PROVIDER FROM ENTERING INTO A DEFERRED PRESENTMENT TRANSACTION WITH A PERSON WHO HAS AN OUTSTANDING DEFERRED PRESENTMENT TRANSACTION OR WHO HAS ENTERED INTO AN EXTENDED PAYMENT PLAN AGREEMENT AND TO REQUIRE A DEFERRED PRESENTMENT PROVIDER TO VERIFY WHETHER AN INDIVIDUAL IS ELIGIBLE TO ENTER INTO A DEFERRED PRESENTMENT TRANSACTION; BY ADDING SECTION 34-39-280 SO AS TO REQUIRE THOSE APPLYING FOR LICENSES TO ENGAGE IN THE BUSINESS OF DEFERRED PRESENTMENT TO PROVIDE CERTAIN INFORMATION REGARDING EXTENDED PAYMENT PLANS; TO AMEND SECTION 34‑39‑130, RELATING TO LICENSURE REQUIREMENTS FOR DEFERRED PRESENTMENT PROVIDERS, SO AS TO PROHIBIT A PERSON FROM ENGAGING IN THE BUSINESS OF DEFERRED PRESENTMENT SERVICES WITH A RESIDENT OF SOUTH CAROLINA EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 39, TITLE 34; TO AMEND SECTION 34‑39‑180, RELATING TO DEFERRED PRESENTMENT RESTRICTIONS AND REQUIREMENTS, SO AS TO PROVIDE THAT THE TOTAL AMOUNT ADVANCED TO A CUSTOMER FOR DEFERRED PRESENTMENT OR DEPOSIT, EXCLUSIVE OF PERMISSIBLE FEES, MAY NOT EXCEED SIX HUNDRED DOLLARS.

Amend Title To Conform

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) In order to prevent a person from having a deferred presentment transaction that exceeds the limit in Section 34‑39‑180(B) and Section 34‑39‑270(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 shall enter into a contract with a single source private vendor to develop and operate the database. By no later than February 1, 2010, the database must be accessible to the board and the deferred presentment providers to meet the requirements of this chapter and verify if a deferred presentment transaction is outstanding for a particular person. Deferred presentment providers shall submit the person’s data to the database provider 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 regulation, 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 database provider may impose the database verification fee authorized by Section 34‑39‑270(G) for data required to be submitted by a licensee. The board may adopt procedures 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:

(1) who has an outstanding deferred presentment transaction;

(2) who has repaid a previous deferred presentment transaction with any licensee on the same business day;

(3) who has repaid a previous deferred presentment transaction with any licensee on the same business day or the previous business day if the transaction being requested would be the customer’s eighth or more transaction within a calendar year; or

(4) who has entered into an extended payment plan agreement with any licensee as provided in Section 34‑39‑280 which has not been paid in full or terminated.

(B) No eighth or subsequent deferred presentment transaction within a calendar year may be entered into on the same or subsequent business day of the repayment of the previous deferred presentment transaction.

(C) 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 accessing the deferred presentment transaction database established pursuant to subsection (D).

(D) The board shall contract with a single third party database provider that is SAS 70 certified 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 should give full consideration to Section 11‑35‑5210 when selecting the third‑party database provider to establish and operate the deferred presentment transaction database required by this chapter. 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 and immediately substitute another qualified third party database provider. 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 established and operated so as to prevent a licensee from entering into a transaction that violates the provisions of this section.

(E) 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.

(F) 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 paid in full, the licensee shall designate the transaction as closed and immediately notify the database provider. When the database provider receives notification that the transaction is paid in full, the database provider immediately shall designate the transaction as paid in full in the database. For purposes of this subsection, an item is paid in full when the payor bank makes final payment on the customer’s check pursuant to Section 36‑4‑215 or the customer has redeemed the check with a cash payment in full.

(G) 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.

(H) 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, if that transaction is consummated by the licensee. The fee must be established by the board as the actual cost of verifying a person’s eligibility, not to exceed one dollar. A licensee may charge a person seeking to enter into a deferred presentment transaction one‑half of the actual cost of the verification fee.

(I) 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.

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

(K) A licensee will give a customer the right to rescind, at no cost, a deferred presentment transaction on or before the close of the following business day.”

“Section 34‑39‑280. (A) Subject to the terms and conditions contained in this section, a customer who is unable to repay a deferred presentment transaction when due may elect once in any twelve month period to repay the deferred presentment transaction to licensee by means of an extended payment plan. The twelve month period is measured from the date the customer enters into one extended payment plan with licensee until the date that the customer enters into another extended payment plan with licensee.

(B) To request an extended payment plan, the customer, before the due date of the outstanding deferred presentment transaction, must request the plan and sign an amendment to the deferred presentment agreement that memorializes the plan’s terms.

(C) The extended payment plan’s terms must allow the customer, at no additional cost, to repay the outstanding deferred presentment transaction including any fee due in at least four substantially equal installments. Each plan installment must be due on or after a date on which the customer receives regular income. The customer may prepay an extended payment plan in full at any time without penalty. The licensee shall not charge customer any interest or additional fees during the term of the extended payment plan. The licensee may, with each payment under the plan by a customer, provide for the return of the customer’s prior held check and require a new check for the remaining balance under the plan. Alternatively, the licensee may require the customer at the time the customer enters into the extended payment plan to provide multiple checks, one for each of the scheduled payments in the amount of those payments.

(D) If the customer fails to pay any extended payment plan installment when due, the customer shall be in default of the payment plan and the licensee may immediately accelerate payment on the remaining balance. Upon default, the licensee may take action to collect all amounts due.

(E) If a customer enters into an extended repayment plan, the licensee must enter that information into the database established in Section 34‑39‑175, and the customer and a licensee is prohibited from entering into a subsequent deferred presentment transaction until repayment in full of the original deferred presentment transaction.

(F) At each licensed location, a licensee shall prominently post a notice in at least twenty‑four point bold type, in a form established or approved by the board, informing persons that if they are unable to repay a deferred presentment transaction when due they shall be eligible to enter into one extended payment plan in a twelve month period. A licensee also shall notify a person of his right to an extended payment plan by displaying the following statement, in at least twelve point bold type, on the first page of each deferred presentment agreement: ‘If you are unable to repay a deferred presentment transaction when due, you are eligible to request one extended payment plan in a twelve month period.’”

SECTION 3. Section 34‑39‑130 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

“( ) 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.”

SECTION 4. Section 34‑39‑180(B) of the 1976 Code is amended to read:

“(B) The ~~face~~ total amount ~~of a check taken~~ advanced by a licensee to any customer at one time for deferred presentment or deposit may not exceed ~~three hundred dollars~~ five hundred fifty dollars, exclusive of the fees allowed in Section 34‑39‑180(E). A licensee may not advance to a customer an amount for deferred presentment or deposit which causes this limit to be exceeded by the customer.”

SECTION 5. Section 34‑39‑150 of the 1976 Code is amended to read:

“Section 34‑39‑150. (A) An application for licensure pursuant to this chapter must be in writing, under oath, and on a form prescribed by the board. The application must set forth all of the following:

(1) the legal name and residence and business addresses of the applicant and, if the applicant is a partnership, association, or corporation, of every member, officer, managing employee, and director of it;

(2) the location of the registered office of the applicant;

(3) the registered agent of the applicant if the applicant is required by other law to have a registered agent;

(4) the addresses of the locations to be licensed; and

(5) other information concerning the financial responsibility, background experience, and activities, such as other partnerships, associations, and corporations located at or adjacent to the licensed location of the applicant and its members, officers, managing employees, and directors as the board requires.

(B) Upon receipt of an application in the form prescribed by the board, accompanied by the required fee, the board shall investigate whether the qualifications for licensure are satisfied. If the board finds that the qualifications are satisfied, it shall issue to the applicant a license to engage in the deferred presentment services business. If the board fails to issue a license, it shall notify the applicant of the denial and the reasons for it. The provisions of the Administrative Procedures Act apply to the appeal of the denial of a license.

(C) The application must be accompanied by payment of an application fee of ~~two hundred fifty~~ one thousand 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~~ one thousand dollars. The annual license renewal fee for an applicant with more than one location is ~~two hundred fifty~~ one thousand dollars for the first location and ~~fifty~~ two hundred fifty dollars for each additional location.

(E) One-half of the renewal fees collected pursuant to subsection (D) must be credited to the Board of Financial Institutions for enforcement of this chapter and one‑half must be credited to the Attorney General to prosecute actions brought for violations of this chapter.”

SECTION 6. Chapter 39, Title 34 of the 1976 Code is amended by adding:

“Section 34‑39‑290. (A) 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) 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;

(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; and

(6) the number of twenty‑four hour periods within which a successive loan is conducted after a prior loan is completed.

(B) The Senate Banking and Insurance Committee and the House of Representatives Labor Commerce and Industry Committee must annually meet, jointly or separately, to hold a hearing concerning the data provided by the database vendor and the report submitted by the Board of Financial Institutions. The vendor and the Board of Financial Institutions must testify at the meeting and answer questions, including questions related to the data and the report.”

SECTION 7. Section 34‑39‑200(9) of the 1976 Code is amended to read:

“(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~~ the sale of money orders, postage stamps, payment of utility bills with no additional fee to the customer, vending machines for food or beverage, facsimile services, ~~Western Union~~ wire transfer services, or the rental of postal boxes at rates not higher than allowed by the United States Postal Service ~~is~~ are not the sale of goods or services prohibited by this subsection;”

SECTION 8. Section 34‑39‑180(E) of the 1976 Code is amended to read:

“(E) A license shall not charge, directly or indirectly, a fee or other consideration in excess of fifteen percent of the ~~face amount of the check~~ principal amount of the transaction 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 imposed only once for each written agreement.”

SECTION 9. Section 34‑39‑180(G) of the 1976 Code is amended to read:

“(G) If a check is returned to the licensee from a payer financial institutions 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,~~ except for 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 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 liability.”

SECTION 10. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 11. SECTIONS 2, 3, and 4 of this act take effect upon implementation of the common database as required in SECTION 1. The remaining SECTIONS of this act take effect upon approval by the Governor.

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