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COMMITTEE REPORT

May 17, 2016

**H. 5040**

Introduced by Reps. Mack and Sandifer

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Read the first time April 21, 2016.

**THE COMMITTEE ON BANKING AND INSURANCE**

To whom was referred a Bill (H. 5040) to amend Section 37-1-201, Code of Laws of South Carolina, 1976, relating to territorial application of the Consumer Protection Code, so as to expand how, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

ROBERT W. HAYES, JR. for Committee.

**A** **BILL**

TO AMEND SECTION 37‑1‑201, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO TERRITORIAL APPLICATION OF THE CONSUMER PROTECTION CODE, SO AS TO EXPAND HOW A CREDITOR MAY INDUCE A CONSUMER TO ENTER INTO A TRANSACTION; TO AMEND SECTION 37‑1‑203, RELATING TO JURISDICTION AND SERVICE OF PROCESS, SO AS TO REPLACE THE TERM “CREDITOR” WITH THE TERM “PERSON”; TO AMEND SECTION 37‑1‑302, RELATING TO THE DEFINITION OF THE “FEDERAL CONSUMER CREDIT PROTECTION ACT”, SO AS TO REMOVE THE REFERENCE TO THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM; TO AMEND SECTION 37‑2‑102, RELATING TO THE SCOPE OF CHAPTER 2 OF THE CONSUMER PROTECTION CODE, SO AS TO APPLY CERTAIN PROVISIONS TO THE SALE OF MOTOR VEHICLES; TO AMEND SECTION 37‑2‑305, RELATING TO FILING AND POSTING THE MAXIMUM RATE SCHEDULE, SO AS TO REMOVE THE PROVISION REQUIRING THE DEPARTMENT OF CONSUMER AFFAIRS TO MAINTAIN A FILE FOR EACH CREDITOR’S ORIGINAL AND ALL REVISED MAXIMUM RATE SCHEDULES, AMONG OTHER THINGS; TO AMEND SECTION 37‑3‑305, RELATING TO FILING AND POSTING A MAXIMUM RATE SCHEDULE, SO AS TO REMOVE THE PROVISION REQUIRING THE DEPARTMENT OF CONSUMER AFFAIRS TO MAINTAIN A FILE FOR EACH CREDITOR’S ORIGINAL AND ALL REVISED MAXIMUM RATE SCHEDULES, AMONG OTHER THINGS; TO AMEND SECTION 37‑5‑102, RELATING TO THE SCOPE OF CHAPTER 5 OF THE CONSUMER PROTECTION CODE, SO AS TO EXTEND THE PROVISIONS OF THE CHAPTER TO OTHER TRANSACTIONS GOVERNED BY TITLE 37; TO AMEND SECTION 37‑6‑102, RELATING TO THE APPLICABILITY OF CHAPTER 6, TITLE 37, SO AS TO APPLY THE PROVISIONS OF THE CHAPTER TO A PERSON WHO IS SUBJECT TO TITLE 37 OR AN ACTION OF THE ADMINISTRATOR; TO AMEND SECTION 37‑6‑107, RELATING TO THE APPLICATION OF CHAPTER 6 TO ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW, SO AS TO REMOVE THE REFERENCE TO PART FOUR OF CHAPTER 6 AND INSERT THAT THE ADMINISTRATIVE PROCEDURES ACT APPLIES TO AND GOVERNS ALL ADMINISTRATIVE ACTIONS TAKEN PURSUANT TO THE CHAPTER; TO AMEND SECTION 37‑6‑108, RELATING TO ADMINISTRATIVE ENFORCEMENT ORDERS, SO AS TO REMOVE LANGUAGE REQUIRING AN ADMINISTRATOR TO BRING AN ACTION BEFORE THE ADMINISTRATIVE LAW COURT; TO AMEND SECTION 37‑6‑110, RELATING TO INJUNCTIONS AGAINST VIOLATIONS OF THE CONSUMER PROTECTION CODE, SO AS TO REPLACE THE TERM “CREDITOR” WITH THE TERM “PERSON”; TO AMEND SECTION 37‑6‑113, RELATING TO CIVIL ACTIONS BY THE ADMINISTRATOR, SO AS TO REPLACE THE TERM “CREDITOR” WITH THE TERM “RESPONDENT”; TO AMEND SECTION 37‑6‑115, RELATING TO REMEDIES AVAILABLE UNDER THE CONSUMER PROTECTION CODE, SO AS TO REPLACE THE TERM “DEBTORS” WITH THE TERM “CONSUMERS”; AND TO AMEND SECTION 37‑6‑118, RELATING TO INVESTIGATION OF UNFAIR TRADE PRACTICES IN CONSUMER TRANSACTIONS, SO AS TO UPDATE THE PROCEDURES AVAILABLE TO A PERSON AGGRIEVED BY AN ORDER OF THE ADMINISTRATOR.

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

SECTION 1. Section 37‑1‑201(1) of the 1976 Code is amended to read:

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

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

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

SECTION 2. Section 37‑1‑203 of the 1976 Code is amended to read:

“Section 37‑1‑203. (1) Subject to constitutional and statutory jurisdictional limitations, the courts of this State may exercise jurisdiction over any ~~creditor~~ person with respect to any conduct in this State governed by this title or with respect to any claim arising from a transaction subject to this title. In addition to any other method provided by statute, personal jurisdiction ~~over a creditor~~ may be acquired in a civil action or proceeding instituted in a court by the service of process in the manner provided by this section.

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

SECTION 3. Section 37‑1‑302 of the 1976 Code is amended to read:

“Section 37‑1‑302. In this title ‘Federal Consumer Credit Protection Act’ means the Consumer Credit Protection Act (Public Law 90‑321: 82 Stat. 146), as amended from time to time, and includes regulations issued ~~from time to time by the Board of Governors of the Federal Reserve System~~ under the act. Title I of the Federal Consumer Credit Protection Act is referred to throughout this title as the ‘Federal Truth in Lending Act’.”

SECTION 4. Section 37‑2‑102 of the 1976 Code is amended to read:

“Section 37‑2‑102. This chapter applies to consumer credit sales, including home solicitation sales, and consumer leases; Sections 37‑2‑307 and 37‑2‑308 of Part 3 apply to the sale of motor vehicles, in addition, Part 6 applies to other than consumer credit sales and Part 7 applies to consumer rental‑purchase agreements.”

SECTION 5. Section 37‑2‑305 of the 1976 Code is amended to read:

“Section 37‑2‑305. (1) Every creditor (Section 37‑1‑301(13)), intending to impose a credit service charge in excess of eighteen percent per annum other than an assignee of a credit obligation, making consumer credit sales (Section 37‑2‑104) in this State on or before the effective date of this section, and in the case of a creditor not making consumer credit sales in this State on that date, on or before the date the creditor begins to make such credit sales in this State, shall file a rate schedule with the Department of Consumer Affairs and, except as otherwise provided in this section, post in one conspicuous place in every place of business in this State, if any, in which offers to make consumer credit sales are extended, a maximum rate schedule ~~meeting the requirements~~ issued by the department which contains the items set forth in subsections (2), (3), and (4).

(a) A creditor that has seller credit cards or similar arrangements (Section 37‑1‑301(26)) is not required to post a copy of the required rate schedule in any place of business which is authorized to honor such transactions; provided that the creditor shall include a conspicuous statement of the maximum rate it intends to charge for these transactions in the initial disclosure statement required to be provided the debtor by the Federal Truth‑In‑Lending Act and notifies the debtor of any change in the maximum rate on or before the effective date of the change.

(b) [Reserved]

(2) The rate schedule required to be filed and posted by subsection (1) must contain a list of the maximum rate of credit service charge (Section 37‑2‑109) stated as an annual percentage rate, determined in accordance with the Federal Truth‑In‑Lending Act and Federal Reserve Board Regulation Z, that the creditor intends to charge for consumer credit transactions in each of the following categories of credit:

(a) unsecured credit sales:

(b) secured credit sales other than those secured by real estate;

(c) credit sales secured by real estate;

(d) open‑end (revolving) credit;

(e) all other.

If a variable rate is applicable to one or more categories or subcategories, the rate schedule must designate the rate as a variable rate and disclose the index for calculating changes in the rate and the cap or other limitation, if any, on any increases or decreases in the rate.

The creditor may include as many subcategories as it chooses under each of the specified categories, and may, at its option, include a series of rates for different dollar amounts and maturities. A creditor may omit one or more of the categories from the rate schedule if the creditor does not make consumer credit transactions falling within the omitted categories.

(3) The rate schedule that is filed by the creditor must be reproduced by the department in at least fourteen‑point type for posting as required by subsection (1). The terms ‘Credit Service Charge’ and ‘Annual Percentage Rate’ will be printed in larger size type than the other terms in the posted rate schedule. The following statement must be included in the posted rate schedule: ‘Consumers: All creditors making consumer credit sales in South Carolina are required by law to post a schedule showing the maximum rate of CREDIT SERVICE CHARGES expressed as the FINANCE CHARGE stated as ANNUAL PERCENTAGE RATES that the creditor intends to charge for various types of consumer credit transactions. The purpose of this requirement is to assist you in comparing the maximum rates that creditors charge, thereby furthering your understanding of the terms of consumer credit transactions and helping you to avoid the uninformed use of credit. NOTE: Creditors are prohibited only from granting consumer credit at rates higher than those specified above. A creditor may be willing to grant you credit at rates that are lower than those specified, depending on the amount, terms, collateral, and your creditworthiness.’

(4) A rate schedule filed and posted as required by this section is effective until changed in accordance with this subsection. A creditor wishing to change any of the maximum rates shown on a schedule previously filed and posted or to add or delete the prescribed categories or subcategories shall file with the Department of Consumer Affairs~~, in duplicate,~~ together with the required fee specified in subsection ~~(6)~~ (7) and post as required by subsection (1) a revised schedule of maximum rates. ~~The revised schedule must be certified and returned to the creditor if properly filed.~~ The revised rate schedule is effective ~~for all consumer credit extended after the close of business on the day the certified schedule is received by the creditor or seven days after the date of submission postmark, whichever is earlier~~ on the date issued by the department. The posting or changes in connection with seller credit cards and similar arrangements shall be made in accordance with subsection (1).

(5) A creditor has no obligation to print the maximum rate schedule in any public advertisement that mentions rates charged by that creditor.

(6) ~~The Department of Consumer Affairs shall maintain a file for each creditor containing the original and all revised rate schedules by the creditor. A certified copy of each filing showing the date and time that it was received must be sent to the creditor making the filing at the time of its receipt. A fee of twenty dollars for each rate schedule filed by a creditor is payable to the Department of Consumer Affairs for its services in maintaining the rate schedule files and providing one certified copy of each rate filing to the creditor. Additional certified copies of a filing must be provided at a charge of four dollars for each copy.~~

~~(7)~~ The Commission on Consumer Affairs shall promulgate a regulation pursuant to subsection (2) of Section 37‑6‑506 establishing the filing procedures for the format of the rate schedules prescribed by this section.

~~(8)~~(7) Every creditor shall file at least one maximum rate schedule and pay at least one forty‑dollar filing fee during each state fiscal year disclosing that creditor’s existing maximum rates plus an additional forty dollars for each additional location. This filing and fee required of each creditor is due annually before the thirty‑first day of January of each year. If this filing does not change any maximum rates previously filed, the creditor is not required to alter posted maximum rates. If any creditor has not filed a maximum rate schedule with the Department of Consumer Affairs by the thirty‑first day of January of the year in which it is due, then on this date the filing is no longer effective and the maximum credit service charge that the creditor may impose on any credit extended after that date may not exceed eighteen percent a year until such time as the creditor files a revised maximum rate schedule that complies with this section. The Department of Consumer Affairs shall retain ~~thirty dollars of~~ each fee to offset the cost of administering and enforcing this chapter and Chapter 3. This revenue may be applied to the cost of operations and any unexpended balance carries forward to succeeding fiscal years and must be used for the same purposes.”

SECTION 6. Section 37‑3‑305 of the 1976 Code is amended to read:

“Section 37‑3‑305. (1) Every creditor ~~[~~(Section 37‑1‑301(13)~~]~~), other than an assignee of a credit obligation, making supervised or restricted consumer loans (Section 37‑3‑104) in this State shall on or before the effective date of this section, and in case of a creditor not making supervised consumer loans in this State on that date, on or before the date the creditor begins to make such loans in this State, file a rate schedule with the Department of Consumer Affairs and, except as otherwise provided in this section, post in one conspicuous place in every place of business, if any, in this State in which offers to make consumer loans are extended, a ~~certified~~ maximum rate schedule ~~meeting the requirements~~ issued by the department which contains the items set forth in subsections (2), (3), and (4).

A creditor that has issued lender credit cards or similar arrangements ~~[~~(Section 37‑1‑301(16)~~]~~) is not required to post a copy of the required rate schedule in any place of business which is authorized to honor such transactions except its central and branch offices other than a branch office that is a free‑standing automatic teller machine; provided, that the creditor shall include a conspicuous statement of the maximum rate it intends to charge for these transactions in the initial disclosure statement required to be provided the debtor by the Federal Truth‑In‑Lending Act and notifies the debtor of any change in the maximum rate on or before the effective date of the change.

(2) The rate schedule required to be filed and posted by subsection (1) must contain a list of the maximum rate of loan finance charge (Section 37‑3‑109) stated as an annual percentage rate, determined in accordance with the Federal Truth‑In‑Lending Act and Federal Reserve Board Regulation Z, that the creditor intends to charge for consumer credit transactions in each of the following categories of credit:

(a) unsecured personal loans;

(b) secured personal loans other than those secured by real estate;

(c) real estate mortgage loans;

(d) open‑end (revolving) credit;

(e) all other.

The creditor may include as many subcategories as it chooses under each of the specified categories, and may, at its option, include a series of rates for different dollar amounts and maturities. A creditor may omit one or more of the categories from the rate schedule if the creditor does not make consumer credit transactions falling within the omitted categories.

If a variable rate is applicable to one or more categories or subcategories, the rate schedule must designate the rate as a variable rate and disclose the index for calculating changes in the rate and the cap or other limitation, if any, on any increases or decreases in the rate.

(3) The rate schedule that is filed by the creditor shall be reproduced by the department in at least fourteen‑point type for posting as required by subsection (1). The terms ‘Loan Finance Charge’ and ‘Annual Percentage Rate’ will be printed in larger size type than the other terms in the posted rate schedule. The following statement shall be included in the posted rate schedule:

‘Consumers: All supervised and restricted creditors making consumer loans in South Carolina are required by law to post a schedule showing the maximum rate of LOAN FINANCE CHARGES stated as ANNUAL PERCENTAGE RATES that the creditor intends to charge for various types of consumer credit transactions.

The purpose of this requirement is to assist you in comparing the maximum rates that creditors charge, thereby furthering your understanding of the terms of consumer credit transactions and helping you to avoid the uninformed use of credit.

NOTE: Creditors are prohibited only from granting consumer credit at rates higher than those specified above. A creditor may be willing to grant you credit at rates that are lower than those specified, depending on the amount, terms, collateral and your credit worthiness.’

(4) A rate schedule filed and posted as required by this section shall be effective until changed in accordance with this subsection. A creditor wishing to change any of the maximum rates shown on a schedule previously filed and posted or to add or delete the prescribed categories or subcategories shall file with the Department of Consumer Affairs~~, in duplicate,~~ together with the required fee specified in subsection ~~(6)~~(7) and shall post as required by subsection (1) a revised schedule of maximum rates. ~~The revised schedule shall be certified and returned to the creditor if properly filed.~~ The revised rate schedule shall be effective ~~for all consumer credit extended after the close of business on the day the certified schedule is received by the creditor or seven days after the date of submission postmark, whichever is earlier~~ on the date issued by the department. The posting or changes in connection with lender credit cards and similar arrangements shall be made in accordance with subsection (1).

(5) A creditor shall have no obligation to print the maximum rate schedule in any public advertisement that mentions rates charged by that creditor.

(6) ~~The Department of Consumer Affairs shall maintain a file for each creditor containing the original and all revised rate schedules filed by the creditor. A certified copy of each filing showing the date and time it was received must be sent to the creditor making the filing at the time of its receipt. A fee of twenty dollars for each rate schedule filed by a creditor is payable to the Department of Consumer Affairs for its services in maintaining the rate schedule files and providing one certified copy of each rate filing to the creditor. Additional certified copies of a filing must be provided at a charge of four dollars for each copy.~~

~~(7)~~ The Commission on Consumer Affairs shall promulgate a regulation pursuant to subsection (2) of Section 37‑6‑506 establishing the filing procedures for and the format of the rate schedules prescribed by this section.

~~(8)~~ (7) Every creditor shall file at least one maximum rate schedule and pay at least one forty‑dollar filing fee during each state fiscal year disclosing that creditor’s existing maximum rates plus an additional forty dollars for each additional location. This filing and fee required of each creditor is due annually before the thirty‑first day of January of each year. If this filing does not change any maximum rates previously filed, the creditor is not required to alter posted maximum rates. If any creditor has not filed a maximum rate schedule with the Department of Consumer Affairs by the thirty‑first day of January of the year in which it is due, then on this date the filing is no longer effective and the maximum credit service charge that the creditor may impose on any credit extended after that date may not exceed eighteen percent a year until such time as the creditor files a revised maximum rate schedule that complies with this section. The Department of Consumer Affairs shall retain ~~thirty dollars of~~ each fee to offset the cost of administering and enforcing this chapter and Chapter 2. This revenue may be applied to the cost of operations and any unexpended balance carries forward to succeeding fiscal years and must be used for the same purposes.

~~(9)~~(8) On loans with a cash advance ~~[~~(Section 37‑1‑301(30)~~]~~) not exceeding six hundred dollars, a licensed lender may not post a rate which exceeds the maximum charges imposed in Section 34‑29‑140 as disclosed as an annual percentage rate or that rate filed and posted pursuant to this section, whichever is less.”

SECTION 7. Section 37‑5‑102 of the 1976 Code is amended to read:

“Section 37‑5‑102. This part applies to actions or other proceedings to enforce rights arising from consumer credit sales, consumer leases, consumer loans, and consumer rental‑purchase agreements; and, in addition, to extortionate extensions of credit (Section 37‑5‑107) and other transactions governed by this title.”

SECTION 8. Section 37‑6‑102 of the 1976 Code is amended to read:

“Section 37‑6‑102. This part applies to persons who in this State who:

(1) make or solicit consumer credit sales, consumer leases, consumer loans, and consumer rental‑purchase agreements; or

(2) directly collect payments from or enforce rights against debtors arising from sales, leases, loans, or agreements specified in item (1), wherever they are made; or

(3) are subject to this title or action by the administrator.”

SECTION 9. Section 37‑6‑107 of the 1976 Code is amended to read:

“Section 37‑6‑107. Except as otherwise provided, the ~~Part on Administrative Procedure and Judicial Review (Part 4) of this chapter~~ Administrative Procedures Act applies to and governs all administrative action taken pursuant to this chapter or the Part on Supervised Loans (Part 5) of the chapter on Loans (Chapter 3).”

SECTION 10. Section 37‑6‑108(D) of the 1976 Code is amended read:

“(D) For purposes of this section and Sections 37‑6‑117 and 37‑6‑118, a violation of the South Carolina Unfair Trade Practices Act arising out of the production, promotion, or sale of consumer goods, services, or interests in land is considered a violation of this title subject to action by the administrator ~~before the Administrative Law Court~~.”

SECTION 11. Section 37‑6‑110 of the 1976 Code is amended to read:

“Section 37‑6‑110. The administrator may bring a civil action to restrain any person from violating this title and for other appropriate relief including but not limited to the following: to prevent a person from using or employing practices prohibited by this title, to reform contracts to conform to this title and to rescind contracts into which a ~~creditor~~ person has induced a consumer to enter by conduct violating this title, even though a consumer is not a party to the action. An action under this section may be joined with an action under the provisions on civil actions by the administrator (Section 37‑6‑113).”

SECTION 12. Section 37‑6‑113(A) of the 1976 Code is amended to read:

“(A) After demand, the administrator may bring a civil action against a creditor or a person subject to this title to recover actual damages sustained and excess charges paid by one or more consumers who have a right to recover explicitly granted by this title. In a civil action pursuant to this subsection, penalties must not be recovered by the administrator. The court shall order amounts recovered pursuant to this subsection to be paid to each consumer or set off against his obligation. A consumer’s action, except a class action, takes precedence over a prior or subsequent action by the administrator with respect to the claim of that consumer. A consumer’s class action takes precedence over a subsequent action by the administrator with respect to claims common to both actions, but the administrator may intervene. An administrator’s action on behalf of a class of consumers takes precedence over a consumer’s subsequent class action with respect to claims common to both actions. Whenever an action takes precedence over another action pursuant to this subsection, the latter action may be stayed to the extent appropriate while the precedent action is pending and dismissed if the precedent action is dismissed with prejudice or results in a final judgment granting or denying the claim asserted in the precedent action. A defense available to a ~~creditor~~ respondent in a civil action brought by a consumer under this title is available to him in a civil action brought pursuant to this subsection.”

SECTION 13. Section 37‑6‑115 of the 1976 Code is amended to read:

“Section 37‑6‑115. The grant of powers to the administrator in this chapter does not affect remedies available to ~~debtors~~ consumers under this title or under other principles of law or equity.”

SECTION 14. Section 37‑6‑118(3) of the 1976 Code is amended to read:

“(3) ~~Upon written request, filed within twenty days after the notice is mailed, the person is entitled to a hearing on any finding or conclusion of the administrator. Such proceedings shall be deemed a contested case within the meaning of subsection (2) of Section 1‑23‑310~~ A person aggrieved by an order of the administrator may request a contested case hearing before the Administrative Law Court in accordance with the court’s rules or procedure. If the person fails to request a contested case hearing within the time provided in the court’s rules of procedure, the administrative order becomes final and the department may bring an action to enforce the order pursuant to Chapter 23, Title 1.”

SECTION 15. This act takes effect upon approval by the Governor.

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