**South Carolina General Assembly**

125th Session, 2023-2024

**S. 518**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Shealy, Hutto and K. Johnson

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Introduced in the Senate on February 9, 2023

Currently residing in the Senate Committee on **Labor, Commerce and Industry**

Summary: Unfair Trade Practice - Consumer Loans

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 2/9/2023 Senate Introduced and read first time (Senate Journal‑page 8)

 2/9/2023 Senate Referred to Committee on **Labor, Commerce and Industry** (Senate Journal‑page 8)

View the latest  [legislative information](https://www.scstatehouse.gov/billsearch.php?billnumbers=518&session=125&summary=B)  at the website

**VERSIONS OF THIS BILL**

[02/09/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/518_20230209.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ADDING SECTION 39‑5‑910 SO AS TO PROVIDE THAT IT IS AN UNFAIR TRADE PRACTICE FOR DEFERRED PRESENTMENT LENDERS, CONSUMER LENDERS, SUPERVISED LENDERS, SUPERVISED FINANCIAL ORGANIZATIONS, AND CONSUMER FINANCE COMPANIES TO CHARGE FEES OR INTEREST RATES THAT EXCEED THIRTY‑SIX PERCENT ANNUAL PERCENTAGE RATE; BY ADDING SECTION 39‑5‑920 SO AS TO PROVIDE THAT THE AMOUNT OF THE CONSUMER’S RECOVERY IN AN ACTION PURSUANT TO THIS ARTICLE IS NOT CONTROLLING REGARDING AN AWARD OF ATTORNEY’S FEES; BY ADDING SECTION 39‑5‑930 SO AS TO PROVIDE THAT A LENDER CANNOT USE CERTAIN CORPORATE STRUCTURES TO CIRCUMVENT THE PROVISIONS CONTAINED IN THIS ARTICLE.

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

SECTION 1. Chapter 5, Title 39 of the S.C. Code is amended by adding:

 Article 9

 Consumer Lending

 Section 39‑5‑910. (A) It is an unfair trade practice pursuant to Section 39‑5‑20(a) for a person engaged in the business of deferred presentment services to charge, directly or indirectly, a fee or other consideration that would cause the annual percentage rate for the transaction to exceed thirty‑six percent, calculated as a rate using the system for calculating a military annual percentage rate pursuant to 32 C.F.R. Section 232.4.

 (B) It is an unfair and deceptive trade practice pursuant to Section 39‑5‑20(a) for a consumer lender, supervised lender, or a supervised financial organization to contract for and receive a loan finance charge that exceeds an annual percentage rate of thirty‑six percent per annum as calculated pursuant to 32 C.F.R. Section 232.4.

 (C) It is an unfair trade practice pursuant to Section 39‑5‑20(a) for a consumer finance company to make loans pursuant to Chapter 29, Title 34 that would cause the annual percentage rate for the transaction to exceed thirty‑six percent, calculated as a rate using the system for calculating a military annual percentage rate pursuant to 32 C.F.R. Section 232.4.

 Section 39‑5‑920. In determining attorney’s fees in action brought pursuant to Section 39‑5‑140 for a violation of Section 35‑9‑910, the amount of the recovery on behalf of the consumer is not controlling.

 Section 39‑5‑930. A person is a lender subject to the requirements of this article even if the person purports to act as an agent, service provider, or in another capacity for another entity that is exempt from this article if:

 (1) the person holds, acquires, or maintains, directly or indirectly, the predominant interest in the loan that violates this article;

 (2) the person markets, brokers, arranges, or facilitates the loan that violates this article and holds the right, requirement, or first right of refusal to purchase the loan or a receivable interest in the loan; or

 (3) under the totality of the circumstances, the person is the actual lender and the transaction is structured to evade the requirements of this article. In determining whether the provisions of this item are met, a finder of fact may consider all relevant facts, including, but not limited to, whether the person:

 (a) indemnifies, insures, or protects an exempt entity for any costs or risks associated with the loan that violates this article;

 (b) predominantly designs, controls, or operates the loan program; or

 (c) purports to act as an agent, service provider, or in another capacity for an exempt entity while acting directly as a lender in other states.

SECTION 2. This act takes effect upon approval by the Governor.

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