**South Carolina General Assembly**

118th Session, 2009-2010

**H. 3056**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Hart and Gunn

Document Path: l:\council\bills\agm\19303mm09.docx

Introduced in the House on January 13, 2009

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

Summary: Payday loans

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/9/2008 House Prefiled

12/9/2008 House Referred to Committee on **Labor, Commerce and Industry**

1/13/2009 House Introduced and read first time [HJ](file:///h:\HJ%20Archive\2009\01-13-09.docx)‑36

1/13/2009 House Referred to Committee on **Labor, Commerce and Industry** [HJ](file:///h:\HJ%20Archive\2009\01-13-09.docx)‑36

**VERSIONS OF THIS BILL**

[12/9/2008](file:///p:\pprever\2009-10\3056_20081209.docx)

**A** **BILL**

TO AMEND SECTION 34‑29‑140, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CHARGES PERMITTED AND OTHER PROVISIONS ALLOWED IN CONSUMER FINANCE TRANSACTIONS, SO AS TO EXCLUDE “PAYDAY LOANS”, KNOWN AS DEFERRED PRESENTMENT TRANSACTIONS; TO AMEND SECTION 34‑39‑140, RELATING TO APPLICATION OF THE PROVISIONS REQUIRING LICENSING OF A PERSON ENGAGED IN THE BUSINESS OF DEFERRED PRESENTMENT TRANSACTIONS, SO AS TO MAKE THE PROVISIONS APPLICABLE TO A PERSON ACTUALLY ENGAGED IN THAT BUSINESS WHILE PURPORTING TO ACT AS AN ENTITY THAT WOULD NOT BE REQUIRED OTHERWISE TO BE LICENSED; TO AMEND SECTION 34‑39‑180, RELATING TO RESTRICTIONS AND REQUIREMENTS FOR DEFERRED PRESENTMENT, SO AS TO LIMIT THE NUMBER AND THE AMOUNT OF A TRANSACTION FOR EACH CUSTOMER AND TO CAP THE ANNUAL INTEREST RATE CHARGEABLE IN A DEFERRED PRESENTMENT TRANSACTION TO THIRTY‑SIX PERCENT; TO AMEND SECTION 34‑39‑200, RELATING TO LIMITATIONS ON LICENSES, SO AS TO RESTATE THE LIMIT OF ONE CONTRACT WITH A CUSTOMER AT A TIME; TO AMEND SECTION 37‑3‑201, RELATING TO THE ALLOWABLE LOAN FINANCE CHARGE FOR CONSUMER LOANS, AND SECTION 37‑3‑305, AS AMENDED, RELATING TO THE POSTING OF A MAXIMUM RATE SCHEDULE FOR CONSUMER LOANS, BOTH SO AS TO EXCLUDE THEIR APPLICABILITY TO A DEFERRED PRESENTMENT TRANSACTION.

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

SECTION 1. Section 34‑29‑140 of the 1976 Code, as last amended by Act 44 of 2001, is further amended by adding at the end to read:

“(l) This section does not apply to a ‘payday loan’, otherwise known as a deferred presentment transaction, as provided in Chapter 39 of Title 34.”

SECTION 2. Section 34‑39‑140 of the 1976 Code, as added by Act 433 of 1998, is amended to read:

“Section 34‑39‑140. (A) This chapter does not apply to:

(1) a bona fide bank, savings institution, credit union, or farm credit system organized under the laws of the United States or any state; and

(2) a person principally engaged in the bona fide retail sale of goods or services who, either as an incident to or independently of a retail sale or service and not holding itself out to be a deferred presentment service, from time to time cashes checks, drafts, or money orders without a fee or other consideration.

(B) This chapter does apply to:

(1) a person engaging in the business of deferred presentment services pursuant to a sham charter of, or other sham relationship with, a bank, savings institution, credit union, or farm credit system organized under the laws of the United States or any state; and

(2) a person engaging in the business of deferred presentment services while purporting to be an instant cash rebate scheme, personal property or car sale and leaseback business, internet access cash rebate scheme, or other sham operation that attempts to evade the provisions of this chapter.”

SECTION 3. Section 34‑39‑180 of the 1976 Code, as added by Act 433 of 1998, is amended by adding at the end to read:

“(H) A licensee may not:

(1) issue multiple advances to a customer;

(2) allow more than one check advance to be outstanding with a customer at one time; or

(3) advance an aggregate amount of more than three hundred dollars to any one customer within the same thirty‑one day period.”

SECTION 4. Section 34‑39‑180(E) of the 1976 Code, as added by Act 433 of 1998, is amended to read:

“(E) ~~A licensee shall not charge, directly or indirectly, a fee or other consideration in excess of fifteen percent of the face amount of the check 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.~~(1) A licensee may charge an administrative fee of no more than five dollars for each deferred presentment loan entered into with a customer. Each licensee must keep records with sufficient detail to ensure that the fee or other consideration authorized by this subsection is imposed only once for each written agreement.

(2) In addition to the administrative fee, the licensee may charge interest on the amount of cash delivered to the customer in an amount no greater than thirty‑six percent for each three hundred and sixty‑five‑day year. The rate charged on the outstanding balance after maturity must not be greater than the rate charged during the loan term. Charges on loans must be computed and paid only as a percentage of the unpaid principal balance. ‘Principal balance’ means the balance due and owing exclusive of any interest, service charges, or other loan‑related charges.”

SECTION 5. Section 34‑39‑200 of the 1976 Code, as added by Act 433 of 1998, is amended to read:

“Section34‑39‑200. A person required to be licensed pursuant to this chapter may not:

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

(2) enter into more than one outstanding loan at a time with an existing customer. An existing customer includes a customer who has entered into a contract in any location that has been granted a license owned by the same person;

(~~2~~ 3) 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~~ 4) use or cause to be published or disseminated advertising communication which contains false, misleading, or deceptive statements or representations;

(~~4~~ 5) conduct business at premises or locations other than locations licensed by the board;

(~~5~~ 6) engage in unfair, deceptive, or fraudulent practices, including unconscionable conduct in violation of Section 37‑5‑108;

(~~6~~ 7) alter or delete the date on a check accepted by the licensee;

(~~7~~ 8) accept an undated check or a check dated on a date other than the date on which the licensee accepts the check;

(~~8~~ 9) require a customer to provide security for the transaction or require the customer to provide a guaranty from another person;

(~~9~~ 10) 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, that a 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 services, or postal boxes at rates not higher than allowed by the United States Postal Service is not the sale of goods or services prohibited by this subsection;

(~~10~~ 11) be licensed pursuant to Section 12‑21‑2720(a)(3) to operate a video poker machine; or

(~~11~~ 12) permit others to engage in an activity prohibited by this section at a location licensed pursuant to this chapter.”

SECTION 6. Section 37‑3‑201(2) of the 1976 Code is amended to read:

“(2) With respect to a consumer loan, excluding a ‘payday loan’, otherwise known as a deferred presentment transaction as provided in Chapter 39, Title 34, including a loan pursuant to open‑end credit, a supervised lender may contract for and receive a loan finance charge as provided:

(a) on loans with a cash advance not exceeding six hundred dollars, a maximum charge not exceeding the maximum charges imposed in Section 34‑29‑140 as disclosed as an annual percentage rate, provided that a supervised lender may impose a finance charge at a rate less than provided in Section 34‑29‑140, and provided further that the maximum charge shall not exceed the rate posted and filed pursuant to Section 37‑3‑305;

(b) on loans with a cash advance exceeding six hundred dollars, and on all loans, regardless of the dollar amount, made by Supervised Financial Organizations, any rate filed and posted pursuant to Section 37‑3‑305; or

(c) on loans of any amount, eighteen percent per year on the unpaid balances of principal.”

SECTION 7. Section 37‑3‑305 of the 1976 Code, as last amended by Act 353 of 2008, is further amended by adding at the end to read:

“(10) This section does not apply to ‘payday loans’, which are governed by Chapter 39, Title 34, Deferred Presentment Services.”

SECTION 8. This act takes effect upon approval by the Governor.

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