**South Carolina General Assembly**

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**S. 631**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Fair

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Introduced in the Senate on March 26, 2009

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

Summary: Pawnbrokers

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/26/2009 Senate Introduced and read first time [SJ](file:///h:\SJ%20Archive\2009\03-26-09.docx)‑4

3/26/2009 Senate Referred to Committee on **Labor, Commerce and Industry** [SJ](file:///h:\SJ%20Archive\2009\03-26-09.docx)‑4

**VERSIONS OF THIS BILL**

[3/26/2009](file:///p:\pprever\2009-10\631_20090326.docx)

**A** **BILL**

TO AMEND SECTION 40‑39‑10, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CERTAIN DEFINITIONS ASSOCIATED WITH PAWNBROKERS, SO AS TO ADD TO THE DEFINITION OF A “PAWNBROKER”, CHANGE THE DEFINITION OF A “MONTH”, AND ADD DEFINITIONS FOR “BENEFICIAL OWNER” AND “APPROPRIATE LAW ENFORCEMENT OFFICIAL”; TO AMEND SECTION 40‑39‑20, RELATING TO THE REGULATION OF PAWNBROKERS, SO AS TO CHANGE THE TERM “LAW ENFORCEMENT AGENCY” TO “APPROPRIATE LAW ENFORCEMENT OFFICIAL”; TO AMEND SECTION 40‑39‑40, RELATING TO THE PROHIBITION OF UNAUTHORIZED FEES, SO AS TO PROVIDE A CHARGE FOR REDEMPTION OR PICKUP MAY BE ASSESSED IN THE ACTUAL AMOUNT OF ACTUAL MAILING COST, AMONG OTHER THINGS; TO AMEND SECTION 40‑39‑50, RELATING TO THE REQUIREMENT OF A BOND OR OTHER EVIDENCE OF FINANCIAL RESPONSIBILITY FOR A PERSON SEEKING A CERTIFICATE OF AUTHORITY, SO AS TO INCREASE THE AMOUNT OF A REQUIRED BOND FROM FIVE TO TEN THOUSAND DOLLARS; TO AMEND SECTION 40‑39‑100, RELATING TO CHARGES ON LOANS, SO AS TO ADD CERTAIN LANGUAGE TO A REQUIRED POSTED RATE SCHEDULE; TO AMEND SECTION 40‑39‑110, RELATING TO VESTING OF TITLE TO PLEDGED PROPERTY, SO AS TO PROVIDE FAILURE OF A PAWNBROKER TO TIMELY SEND PROPER FORFEITURE NOTICE TOLLS THE VESTING PERIOD UNTIL TEN DAYS AFTER PROPER NOTICE IS SENT, THAT INTEREST MAY NOT ACCRUE DURING THE TOLLING PERIOD, THAT THE VALUE OF A PAWNED ITEM IS SUBJECTIVE AND BETWEEN THE PAWNBROKER AND HIS CUSTOMER, AND THAT THE LOAN VALUE AT THE TIME OF THE LOAN CONSTITUTES THE ENTIRE VALUE OF THE ITEM; AND TO AMEND SECTION 40‑39‑130, RELATING TO CERTAIN ENFORCEMENT POWERS OF THE ADMINISTRATOR OF THE DEPARTMENT OF CONSUMER AFFAIRS, SO AS TO PROVIDE THAT IN ORDER TO SEIZE AN ITEM PROVEN TO BE PROPERTY OF A PERSON OTHER THAN A PLEDGOR, A GOVERNING AUTHORITY OR MUNICIPALITY MUST HAVE IN PLACE A WRITTEN PLAN FOR REIMBURSEMENT OF THE PAWNBROKER.

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

SECTION 1. Section 40‑39‑10 of the 1976 Code is amended to read:

“Section 40‑39‑10. ~~The following definitions apply for purposes of~~As used in this chapter:

(1) ‘Person’ means an individual, partnership, corporation, joint venture, trust, association, or ~~any~~ other legal entity ~~however organized~~.

(2) ‘Pawnbroker’ means ~~any~~a person:

(a) engaged in the business of lending money on the security of pledged goods, or engaged in the business of purchasing tangible personal property on condition that it may be redeemed or repurchased by the seller for a fixed price within a fixed period of time; or

(b) who publicly displays at his place of business a sign generally used by a pawnbroker to denote a pawnbroker business, specifically, three yellow balls; or

(c) who publicly exhibits a sign stating money may be loaned on items of deposit or to him as a possessory lender.

(3) ‘Pledged goods’ means tangible personal property other than choses in action, ~~title,~~ securities, or printed evidences of indebtedness, ~~which property~~that is deposited with or ~~otherwise actually~~ delivered ~~into~~to the possession of a pawnbroker in the course of his business in connection with a pawn transaction, and rights to this property.

(4) ‘Pawnshop’ means the location ~~at which or premises in which~~where a pawnbroker regularly conducts business.

(5) ‘Month’ means ~~that period of time from one date in a calendar month to the corresponding date in the following calendar month, but if there is no corresponding date, then the last day of the following month, and when computations are made for a fraction of a month, a day is one‑thirtieth of a month~~a thirty‑day period.

(6) ‘Administrator’ means the administrator of the Department of Consumer Affairs.

(7) ‘Pawn transaction’ means the pledging with a pawnbroker under this chapter of a single item of goods or tangible personal property as security for a loan of money. Items that are usually sold as a set are considered a single item and must be included in the same transaction, and a pledged item together with items that are accessories to the pledged item are considered a single item and must be included in the same transaction. A separate pawn transaction retains its separate character when it is renewed, unless the parties agree otherwise.

(8) ‘Beneficial owner’ means a person who does not have legal title to property but has, asserts, or exercises, or attempts to assert or exercise rights or authority in the property that are a normal incident of owning the property; an equitable rather than legal interest. A person who is a spouse of a legal owner is considered a beneficial owner if he asserts or exercises, or attempts to assert or exercise a legal owner’s rights or authority.

(9) ‘Appropriate law enforcement official’ means the sheriff of the county where a pawnshop is located or, where a pawnshop is located in a municipality, the police chief of the municipality where the pawnshop is located. A sheriff or police chief may designate as the appropriate law enforcement official of the county or municipality, as applicable, a law enforcement officer working within the county or municipality over which that sheriff or police chief has jurisdiction.”

SECTION 2. Section 40‑39‑20 of the 1076 Code is amended to read:

“Section 40‑39‑20. (A) ~~All pawnbrokers~~A pawnbroker conducting business in this State ~~are~~is under the authority of and regulated by the Department of Consumer Affairs, the administrator of which has the authority to promulgate regulations as he considers necessary to carry out the conditions and intent of this chapter. ~~No~~A person may not carry on the business of a pawnbroker in ~~any~~a location in this State without first having obtained a Certificate of Authority for each location from the Department of Consumer Affairs. Upon receipt of the application for the Certificate of Authority, the Department of Consumer Affairs shall notify the appropriate law enforcement ~~agency~~official having jurisdiction where the applicant intends to do business. The appropriate law enforcement ~~agency~~official shall conduct a criminal background investigation of the applicant and upon its completion shall make the results of the investigation known to the administrator of the Department of Consumer Affairs along with its appropriate recommendation on the issuance of the Certificate of Authority.

(B) A person convicted of a felony may not be issued a Certificate of Authority to carry on the business of a pawnbroker or in any manner engage in the business of a pawnbroker, except that ~~any~~a person who is in the business of a pawnbroker on July 1, 1988, and ~~who~~ has been convicted of a felony before this date may be issued a Certificate of Authority and upon receiving it may continue in the business of a pawnbroker. ~~but~~ If this person is convicted of a felony on or after July 1, 1988, he may not ~~thereafter~~ be issued a Certificate of Authority or carry on the business of a pawnbroker after the date of this subsequent felony conviction.”

SECTION 3. Section 40‑39‑40 of the 1976 Code is amended to read:

“Section 40‑39‑40. (A) ~~No~~A pawnbroker may not charge or collect ~~any fees, costs, or assessments of any kind or nature~~a fee, cost, or assessment other than those specifically allowed under this chapter. A charge for redemption or pick‑up may be assessed in the amount of the actual mailing cost.

(B) A county or municipality may enact an ordinance that complies with, but is not more restrictive than, this section except that a local ordinance may not require payment of a fee or tax related to a pawn transaction or purchase unless authorized under this chapter or restrict hours of operation other than between midnight and 6:00 a.m. An ordinance that conflicts with this subsection is void. This section does not affect the authority of a county or municipality to establish land use controls or require a pawnbroker to obtain a local occupation license.”

SECTION 4. Section 40‑39‑50 of the 1976 Code is amended to read:

“Section 40‑39‑50. ~~Every~~A person seeking a Certificate of Authority to carry on the business of a pawnbroker, ~~shall~~ at the time of application for his certificate, shall file with the Department of Consumer Affairs a bond in favor of the department to be executed by the person granted the certificate and by two responsible sureties or a surety company licensed to do business in this State in the penal sum of ~~five~~ten thousand dollars to be approved by the administrator. The bond must be conditioned for the faithful performance of the duties and obligations pertaining to the business ~~so~~ authorized. In lieu of ~~the above~~these requirements, other evidence of financial responsibility approved by the administrator must be submitted~~,~~ including, but not limited to, letters of credit or certificates of deposit. ~~Each~~An applicant ~~shall~~ also shall file proof of his net worth, which must be a minimum of thirty‑five thousand dollars until ~~that time as~~ liability insurance covering the contents of the pawn location is secured by the pawnbroker. The amount of the liability insurance required must be set by regulations promulgated by the administrator.”

SECTION 5. Section 40‑30‑100 of the 1976 Code is amended to read:

“Section 40‑39‑100. (A) ~~Pawnbrokers~~A pawnbroker may charge interest on ~~loans~~a loan not exceeding the following amounts:

(1) at the rate of two dollars and fifty cents per thirty‑day period for each ten dollars loaned for the first fifty dollars loaned;

(2) at the rate of two dollars per thirty‑day period for each ten dollars loaned on that portion of the loan exceeding fifty dollars but not exceeding one hundred dollars;

(3) at the rate of one dollar and fifty cents per thirty‑day period for each ten dollars loaned on that portion of the loan exceeding one hundred dollars but not exceeding two hundred dollars;

(4) at the rate of one dollar per thirty‑day period for each ten dollars loaned on that portion of the loan exceeding two hundred dollars but not exceeding one thousand dollars;

(5) at the rate of fifty cents per thirty‑day period for each ten dollars loaned on that portion of the loan exceeding one thousand dollars but not exceeding ~~two~~ten thousand dollars.

(B) ~~No~~A pawnbroker may not separate or divide a pawn transaction into two or more transactions for the purpose or with the effect of obtaining a total pawn interest rate in excess of that authorized for an amount financed equal to the total of the amounts financed in the resulting transactions.

(C) ~~No~~A pawnbroker may not make a loan in excess of ~~two~~ten thousand dollars. Every pawnbroker shall post these rates in a form which is prescribed by the administrator. The following statement must be included in the posted rate schedule: ‘This amount is subject to change based on the Consumer Price Index provided in Section 37‑1‑109.

~~“~~Consumers: All pawnbrokers operating in South Carolina are required by law to post a schedule showing the maximum rate of LOAN FINANCE CHARGES stated as dollars for each ten dollars for each thirty‑day period that the pawnbroker intends to charge for various types of pawn transactions. The purpose of this requirement is to assist you in comparing the maximum rates that pawnbrokers charge, thereby furthering your understanding of the terms of pawn transactions and helping you to avoid the uninformed use of credit.

NOTE: Pawnbrokers are prohibited only from granting credit at rates higher than those specified above. A pawnbroker 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.’”

SECTION 6. Section 40‑39‑110 of the 1976 Code is amended to read:

“Section 40‑39‑110. (A) If ~~any~~a loan remains unpaid for a period of sixty days from the due date or ~~any~~a renewal or extension ~~thereof~~of it, the title of the borrower or pledgor to the property pledged to secure the loan shall vest in the pawnbroker, without advertising, sale, or accountability to the pledgor, if the pawn ticket or memorandum delivered to the borrower in accordance with Section 40‑39‑80, contains on the back ~~thereof~~of it a notice to that effect, and if a printed or written notice of the impending forfeiture is mailed to the pledgor at the address given on the pawn ticket, at least ten days prior to the forfeiture date. This notice must contain a description of the article pledged, and the amount due ~~thereon~~on it as of the date of the notice. ~~No~~A notice is not required on loans of fifty dollars or less.

(B) Failure of a pawnbroker to timely send proper forfeiture notice tolls the vesting period until ten days after proper notice is actually sent. Interest may not accrue during the tolling period.

(C) The value of a pawned item is subjective and between the pawnbroker and his customer’s needs. However, the loan value at the time of the loan constitutes the entire value of the item.”

SECTION 7. Section 40‑39‑130 of the 176 Code is amended to read:

“Section 40‑39‑130. (A) ~~All pawnbrokers~~A pawnbroker shall comply with the Federal Truth in Lending Act. The administrator has the administrative enforcement powers set forth in Section 108 of the Federal Truth in Lending Act.

(B) In order to seize an item proven to be property of a person other than the pledgor, a governing authority or municipality must have in place a written plan for reimbursement of the pawnbroker, not to exceed the loan value within thirty days of the seizure.”

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

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