~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

February 11, 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, Horne, Jefferson, 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, A.D. Young, Wylie and T.R. Young

S. Printed 2/11/09--H. [SEC 2/12/09 2:31 PM]

Read the first time January 15, 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 more than one deferred presentment transaction at any one time, 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 act and verify if deferred presentment transactions are outstanding for a particular person. Deferred presentment providers shall submit that data 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 with any licensee; or

(2) 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) 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 (C).

(C) The board shall contract with a single third party database provider 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 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.

(D) 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.

(E) 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.

(F) 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.

(G) 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.

(H) 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.

(I) 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.

(J) At each licensed location, a licensee shall prominently post a notice in at least 24-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 an extended payment plan. A licensee also shall notify a person of his right to an extended payment plan by displaying the following statement, in at least 12-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 may be eligible to request an extended payment plan.’

(K) After a person has completed ten successive deferred presentment transactions, no licensee may enter another deferred presentment transaction with that person for a period of days equal to the person's pay period. A pay period for purposes of this section means the number of days between a person's regular pay dates. A successive deferred presentment transaction for purposes of this section means a deferred presentment transaction made to a person on the same date that the person repaid a previous deferred presentment transaction.

Section 34‑39‑280. (A) At the time of application or renewal of a license to engage in the business of deferred presentment, every licensee must provide to the Consumer Finance Division for approval an extended payment plan to be offered for a customer who is unable to repay a deferred presentment transaction when originally due. No license may be granted unless the division approves an extended payment plan for the licensee.

(B) If, on or before the due date of a deferred presentment transaction, a customer notifies the licensee with which the customer has a deferred presentment transaction that the customer is unable to repay the deferred presentment transaction when due, the licensee must provide to the customer the right to repay the deferred presentment transaction under the terms and conditions of the extended payment plan as approved by the division.

(C) 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.

(D) The Consumer Finance Division may not approve any extended payment plan which provides for any additional fee for the use by the customer of the extended payment plan nor may any licensee require any additional fee to a customer for the use of any extended payment plan.”

SECTION 3. Section 34‑39‑130 of the 1976 Code, as added by Act 433 of 1998, is amended by adding at the end:

“(C) 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, as added by Act 433 of 1998, is amended to read:

“(B) The ~~face~~total amount ~~of a check taken~~advanced to a customer for deferred presentment or deposit~~may not exceed three hundred dollars~~, exclusive of the fees allowed in Section 34‑39‑180(E), may not exceed six hundred dollars. 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. 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 6. Section 34‑39‑150(C) and (D) of the 1976 Code, as last amended by Act 433 of 1998, is further amended to read:

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

(E) The Board of Financial Institutions shall disburse one‑half of the license fees collected to the South Carolina Attorney General’s Office to establish and maintain a division to enforce the provisions of this chapter.

(F) The Board of Financial Institutions shall certify that the licensee in compliance with the provisions of this chapter by completing a full examination of licensee’s books, accounts, and records upon application for yearly renewal.”

SECTION 7. Chapter 39, Title 34 of the 1976 Code is amended by adding:

“Section 34‑39‑290. 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.”

SECTION 8. 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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