**South Carolina General Assembly**

124th Session, 2021-2022

**H. 5137**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Cobb‑Hunter and Carter

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Companion/Similar bill(s): 58, 3462

Introduced in the House on March 15, 2022

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

Summary: Consumer Loans

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/15/2022 House Introduced and read first time ([House Journal‑page 22](file:///h:\hj\20220315.docx))

3/15/2022 House Referred to Committee on **Labor, Commerce and Industry** ([House Journal‑page 22](file:///h:\hj\20220315.docx))

3/30/2022 House Member(s) request name added as sponsor: Carter

View the latest [legislative information](http://www.scstatehouse.gov/billsearch.php?billnumbers=5137&session=124&summary=B) at the website

**VERSIONS OF THIS BILL**

[3/15/2022](file:///p:\pprever\2021-22\5137_20220315.docx)

**A** **BILL**

TO AMEND SECTION 34‑39‑180, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO RESTRICTIONS AND REQUIREMENTS FOR DEFERRED PRESENTMENT OR DEPOSIT OF CHECKS, SO AS TO PROVIDE THAT A LICENSEE MAY NOT CHARGE A FEE THAT WOULD CAUSE THE ANNUAL PERCENTAGE RATE TO EXCEED THIRTY‑SIX PERCENT; TO AMEND SECTION 37‑3‑201, RELATING TO LOAN FINANCE CHARGES, SO AS TO PROVIDE THAT CERTAIN LENDERS MAY NOT CHARGE AN ANNUAL PERCENTAGE RATE HIGHER THAN THIRTY‑SIX PERCENT PER ANNUM; TO AMEND SECTION 37‑3‑205, RELATING TO LOAN FINANCE CHARGES ON REFINANCING, SO AS TO PROVIDE THAT WITH RESPECT TO A CONSUMER LOAN, REFINANCING, OR CONSOLIDATION, A LENDER MAY NOT EXCEED AN ANNUAL PERCENTAGE RATE OF THIRTY‑SIX PERCENT; TO AMEND SECTION 37‑3‑206, RELATING TO LOAN FINANCE CHARGES ON CONSOLIDATION, SO AS TO PROVIDE FOR ANNUAL PERCENTAGE RATE LIMITS; TO AMEND SECTION 37‑3‑305, RELATING TO FILING AND POSTING OF THE MAXIMUM RATE SCHEDULE OF A LOAN, SO AS TO PROVIDE FOR REQUIREMENTS; TO AMEND SECTION 37‑3‑511, RELATING TO PAYMENT SCHEDULES AND MAXIMUM LOAN TERMS, SO AS TO REMOVE THE MAXIMUM PRINCIPAL AMOUNT; AND TO REPEAL CHAPTER 29 OF TITLE 34 AND SECTIONS 37‑3‑413 AND 34‑39‑250 ALL RELATING TO CONSUMER FINANCE LAW.

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

SECTION 1. Section 34‑39‑180(E) of the 1976 Code 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 principal amount of the transaction 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~~ that would cause the APR for the transaction to exceed thirty‑six percent, calculated as a rate is calculated using the system for calculating a military annual percentage rate pursuant to 32 C.F.R. Section 232.4.”

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

“Section 37‑3‑201. (1) With respect to a consumer loan, including a loan pursuant to open end credit, a lender who is not a supervised lender may contract for and receive a finance charge, calculated according to the actuarial method, not exceeding twelve percent per year. With respect to a consumer loan made pursuant to open end credit, the finance charge shall be deemed not to exceed twelve percent per year if the finance charge contracted for and received does not exceed a charge for each monthly billing cycle which is one percent of the average daily balance of the open end account in the billing cycle for which the charge is made. The average daily balance of the open end account is the sum of the amount unpaid each day during that cycle divided by the number of days in the cycle. The amount unpaid on a day is determined by adding to any balance unpaid as of the beginning of that day all purchases, loans, and other debits and deducting all payments and other credits made or received as of that day. If the billing cycle is not monthly, the finance charge shall be deemed not to exceed twelve percent per year if the finance charge contracted for and received does not exceed a percentage which bears the same relation to one percent as the number of days in the billing cycle bears to three hundred sixty five divided by twelve. A billing cycle is monthly if the closing date of the cycle is the same date each month or does not vary by more than four days from the regular date.

(2) With respect to a consumer loan, including a loan pursuant to open end credit, a supervised lender or a supervised financial organization may contract for and receive a loan finance charge ~~as provided:~~

~~(a)~~ on all 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~~ not exceeding an annual percentage rate higher than thirty‑six percent per annum as calculated pursuant to 32 C.F.R. Section 232.4, provided the maximum charge does not exceed the rate filed and posted 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~~.

(3) This section does not limit or restrict the manner of calculating the finance charge, whether by way of add on, discount, single annual percentage rate, or otherwise, so long as the rate of the finance charge does not exceed that permitted by this section.

If the loan is a precomputed consumer credit transaction:

(a) the finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (Section 37‑3‑210).

(4) Except as provided in subsection (5), the term of a loan for purposes of this section commences on the day the loan is made. Any month may be counted as one twelfth of a year but a day is counted as one three hundred sixty fifths of a year. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen days may be treated as a full month if periods of fifteen days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted. The administrator may adopt regulations not inconsistent with the Federal Truth in Lending Act with respect to treating as regular other minor irregularities in amount or time.

(5) Subject to classifications and differentiations the lender may reasonably establish, ~~he~~ the lender, who is not a supervised lender, may make the same finance charge on all amounts financed within a specified range. A finance charge so made does not violate subsection (1) or (2) if:

(a) when applied to the median amount within each range, it does not exceed the maximum permitted by the applicable subsection;

(b) when applied to the lowest amount within each range, it does not produce a rate of finance charge exceeding the rate calculated according to item (a) by more than eight percent of the rate calculated according to item (a).

(6) Notwithstanding subsection (2), if a lender can demonstrate with competent evidence that (a) any failure to post rates properly filed under Section 37‑3‑305 or failure to properly file these rates under Section 37‑3‑305 was a result of a bona fide error or excusable neglect, (b) the rates were properly posted or properly filed when the error or neglect was discovered or brought to the lender’s attention, and (c) that no other failure to post or file rates has been brought to the lender’s attention by the Department of Consumer Affairs or by consumers within the previous forty eight month period, then the maximum rate of loan finance charges assessable by the lender is the rate previously properly filed with the Department of Consumer Affairs, provided, however, the lender that has failed or neglected to post rates or to file rates is subject to a civil penalty of up to $5,000.00 payable to the Department of Consumer Affairs.”

SECTION 3. Section 37‑3‑205 of the 1976 Code is amended to read:

“Section 37‑3‑205. With respect to a consumer loan, refinancing, or consolidation, the lender may by agreement with the debtor refinance the unpaid balance and may contract for and receive a loan finance charge based on the principal resulting from the refinancing at a rate not exceeding that permitted by the provisions on loan finance charge for consumer loans (Section 37‑3‑201) ~~or the provisions on loan finance charge for supervised loans (Section 37‑3‑508), whichever is appropriate~~. For the purpose of determining the loan finance charge permitted, the principal resulting from the refinancing comprises the following:

(1) if the transaction was not precomputed, the total of the unpaid balance and the accrued charges on the date of the refinancing, or, if the transaction was precomputed, the amount which the debtor would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment (Section 37‑3‑210) on the date of refinancing, except that for the purpose of computing this amount no minimum charge (Section 37‑3‑210) shall be allowed; and

(2) appropriate additional charges (Section 37‑3‑202), payment of which is deferred, and given full disclosures with a new signed contract to the debtor.”

SECTION 4. Section 37‑3‑206 of the 1976 Code is amended to read:

“Section 37‑3‑206. (1) If a debtor owes an unpaid balance to a lender with respect to a consumer loan, refinancing, or consolidation, and becomes obligated on another consumer loan, refinancing, or consolidation with the same lender, the parties may agree to a consolidation resulting in a single schedule of payments. If the previous consumer loan, refinancing, or consolidation was not precomputed, the parties may agree to add the unpaid amount of principal and accrued charges on the date of consolidation to the principal with respect to the subsequent loan. If the previous consumer loan, refinancing, or consolidation was precomputed, the parties may agree to refinance the unpaid balance pursuant to the provisions on refinancing (Section 37‑3‑205) and to consolidate the principal resulting from the refinancing by adding it to the principal with respect to the subsequent loan. In either case the lender may contract for and receive a loan finance charge based on the aggregate principal resulting from the consolidation at a rate not in excess of that permitted by the provisions on loan finance charge for consumer loans (Section 37‑3‑201) ~~or the provisions on loan finance charge for supervised loans (Section 37‑3‑508), whichever is appropriate~~.

(2) The parties may agree to consolidate the unpaid balance of a consumer loan with the unpaid balance of a consumer credit sale. The parties may agree to refinance the previous unpaid balance pursuant to the provisions on refinancing sales (Section 37‑2‑205) or the provisions on refinancing loans (Section 37‑3‑205), whichever is appropriate, and to consolidate the amount financed resulting from the refinancing or the principal resulting from the refinancing by adding it to the amount financed or principal with respect to the subsequent sale or loan. The aggregate amount resulting from the consolidation shall be deemed principal, and the creditor may contract for and receive a loan finance charge based on the principal at a rate not in excess of that permitted by the provisions on loan finance charge for consumer loans (Section 37‑3‑201) ~~or the provisions on loan finance charge for supervised loans (Section 37‑3‑508), whichever is appropriate~~.”

SECTION 5. 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~~ intending to impose a loan finance charge in excess of twelve percent per annum on 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 maximum rate schedule 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 together with the required fee specified in subsection (7) and shall post as required by subsection (1) a revised schedule of maximum rates. The revised rate schedule shall be effective 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 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.

(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~~ loan finance charge that the creditor may impose on any credit extended after that date may not exceed ~~eighteen~~ twelve 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 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.

~~(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 6. Section 37‑3‑511 of the 1976 Code is amended to read:

“Section 37‑3‑511. Supervised loans, in which the rate of loan finance charge exceeds twelve percent per annum, not made pursuant to a revolving loan account~~, in which the principal is one thousand dollars or less,~~ shall be scheduled to be payable in substantially equal installments at equal periodic intervals except to the extent that the schedule of payments is adjusted to the seasonal or irregular income of the debtor, and

(a) over a period of not more than thirty seven months if the principal is more than three hundred dollars; or

(b) over a period of not more than twenty five months if the principal is three hundred dollars or less.”

SECTION 7. Chapter 29, Title 34, and Sections 37‑3‑413 and 34‑39‑250 of the 1976 Code are repealed.

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

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