**South Carolina General Assembly**

118th Session, 2009-2010

**H. 3048**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Clemmons, Agnew, Gunn and Ballentine

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Introduced in the House on January 13, 2009

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

Summary: Deferred presentment services

**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)‑33

1/13/2009 House Referred to Committee on **Labor, Commerce and Industry** [HJ](file:///h:\HJ%20Archive\2009\01-13-09.docx)‑33

1/29/2009 House Member(s) request name added as sponsor: Ballentine

**VERSIONS OF THIS BILL**

[12/9/2008](file:///p:\pprever\2009-10\3048_20081209.docx)

**A** **BILL**

TO AMEND SECTION 34‑39‑130, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO LICENSURE REQUIREMENTS IN CONNECTION WITH A PERSON ENGAGING IN THE BUSINESS OF DEFERRED PRESENTMENT SERVICES, SO AS TO PROHIBIT A NONRESIDENT FROM ENGAGING IN THOSE SERVICES IN THIS STATE WITHOUT A LICENSE AND TO FURTHER DIFFERENTIATE BETWEEN A PERSON REQUIRED TO BE LICENSED AND A BONA FIDE STATE OR FEDERALLY CHARTERED BANK, THRIFT, SAVINGS ASSOCIATION, OR CREDIT UNION; TO AMEND SECTION 34‑39‑180, RELATING TO RESTRICTIONS AND REQUIREMENTS FOR DEFERRED PRESENTMENT OR DEPOSIT OF A CHECK, SO AS TO CAP THE ANNUAL INTEREST RATE CHARGEABLE AT THIRTY‑SIX PERCENT; TO AMEND SECTION 34‑39‑200, RELATING TO LIMITATIONS ON LICENSEES, SO AS TO LIMIT THE LICENSEE TO ONE CONTRACT WITH A CUSTOMER AT A TIME; AND TO AMEND SECTION 34‑39‑230, RELATING TO CIVIL PENALTIES FOR VIOLATIONS, SO AS TO VOID A VIOLATING CONTRACT, PROVIDE FOR DAMAGES, MAKE A VIOLATION AN UNFAIR TRADE PRACTICE, MAKE THE PENALTIES IN THIS CHAPTER CUMULATIVE OF ALL REMEDIES, BOTH LEGAL AND EQUITABLE, PROHIBIT THE ENFORCEMENT OF AN UNCONSCIONABLE ARBITRATION PROVISION, AND OUTLINE FACTORS FOR DETERMINING UNCONSCIONABILITY.

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

SECTION 1. Section 34‑39‑130 of the 1976 Code, as added by Act 433 of 1998, is amended by adding:

“(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.

(D)(1) A licensee pursuant to this chapter may not offer, arrange, act as an agent for, or assist a deferred deposit originator in any way in the making of a deferred deposit transaction unless the deferred deposit originator complies with all applicable federal and state laws and regulations, including this chapter.

(2) This prohibition does not apply to the arranger, agent, or assistant to a state or federally chartered bank, thrift, savings association, or credit union if, reviewing the entire circumstances, the state or federally chartered bank, thrift, savings association, or credit union:

(a) initially advanced the loan proceeds to the customer;

(b) maintained a preponderant economic interest in the loan after its initiation; and

(c) developed the deferred deposit transaction product or products on its own without involvement of the licensee.

(E) If a licensee offers, arranges, acts as an agent for, or assists a state or federally chartered bank, thrift, savings association, or credit union in the making of a deferred deposit transaction and the licensee demonstrates that the standards in item (2)(a), (b), and (c) are met, then the licensee must comply with all other provisions of this chapter to the extent that they are not preempted by other federal or state law.”

SECTION 2. 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 3. 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 4. Section 34‑39‑230 of the 1976 Code, as added by Act 433 of 1998, is amended to read:

“Section 34‑39‑230. (A) The board may order and impose civil penalties upon a person subject to the provisions of this chapter for violations of this chapter or its regulations in an amount not to exceed one thousand dollars for each violation. The board also may order repayment of unlawful or excessive fees charged to customers.

(B) The remedies provided in this chapter are cumulative and apply to a licensee and to an unlicensed person to whom this chapter applies and who failed to obtain a license.

(1) A violation of state law prohibiting unfair or deceptive trade practice is a violation of this chapter.

(2) A violation of this chapter is a violation of a state law prohibiting unfair or deceptive trade practices.

(3) The violation of a provision of this chapter, or regulation promulgated pursuant to it, except as the result of accidental or bona fide error of computation, renders the loan void ab initio, and the person may not collect, receive, or retain any principal, interest, or other charges with respect to the loan.

(4) A person found to have violated this chapter is liable to the customer for actual, consequential, and punitive damages, statutory damages of one thousand dollars for each violation, and costs and attorneys’ fees. In determining attorneys’ fees, the amount of the recovery on behalf of the debtor is not controlling.

(5) A customer may sue for injunctive and other appropriate equitable relief to stop a person from violating a provision of this chapter.

(C) An arbitration clause in a deferred deposit loan contract is not enforceable if the contract is unconscionable. In determining if the contract is unconscionable, the court shall consider the circumstances of the transaction as a whole including, but not limited to:

(1) the relative bargaining power of the parties;

(2) whether arbitration is prohibitively expensive to the customer in view of the amounts in controversy;

(3) whether the contract restricts or excludes damages or remedies that would be available to the customer in court, including the right to participate in a class action;

(4) whether the arbitration would take place outside the county in which the loan office is located or another place that is unduly inconvenient or expensive in view of the amounts in controversy; and

(5) any other circumstances that render the contract oppressive.”

SECTION 5. This act takes effect upon approval by the Governor.

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