**South Carolina General Assembly**

125th Session, 2023-2024

**S. 365**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Massey and Kimbrell

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Currently residing in the Senate Committee on **Banking and Insurance**

Summary: Consumer Affairs

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/10/2023 Senate Introduced and read first time ([Senate Journal‑page 207](h:\sj\20230110.docx))

1/10/2023 Senate Referred to Committee on **Banking and Insurance** ([Senate Journal‑page 207](h:\sj\20230110.docx))

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**VERSIONS OF THIS BILL**

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 1‑30‑10, RELATING TO DEPARTMENTS OF STATE GOVERNMENT, SO AS TO ADD THE DEPARTMENT OF CONSUMER AFFAIRS TO THE DEPARTMENTS WITHIN THE EXECUTIVE BRANCH OF STATE GOVERNMENT; BY ADDING SECTION 1‑30‑140 SO AS TO PROVIDE FOR THE TRANSITION OF THE DEPARTMENT OF CONSUMER AFFAIRS TO THE EXECUTIVE BRANCH OF STATE GOVERNMENT; BY AMENDING SECTION 37‑6‑103, RELATING TO THE DEFINITION OF “ADMINISTRATOR”, SO AS TO PROVIDE THAT THE ADMINISTRATOR IS APPOINTED BY THE GOVERNOR UPON THE ADVICE AND CONSENT OF THE SENATE; BY AMENDING SECTIONS 37‑6‑104(6), 37‑6‑117(I), 37‑6‑501 THROUGH 510, 37‑6‑602, AND 37‑6‑604(B), ALL RELATING TO FUNCTIONS AND DUTIES OF THE COMMISSION ON CONSUMER AFFAIRS, SO AS TO PROVIDE FOR THE DISSOLUTION OF THE COMMISSION ON CONSUMER AFFAIRS TO BE REPLACED WITH AN ADMINISTRATOR AS THE HEAD OF THE DEPARTMENT.

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

SECTION 1. Section 1‑30‑10(A) and (B)(1)(i) of the S.C. Code is amended to read:

Section 1‑30‑10. (A) There are hereby created, within the executive branch of the state government, the following departments:

1. Department of Administration

2. Department of Agriculture

3. Department of Alcohol and Other Drug Abuse Services

4. Department of Commerce

5. Department of Consumer Affairs

56. Department of Corrections

67. Department of Disabilities and Special Needs

78. Department of Education

89. Department of Health and Environmental Control

910. Department of Health and Human Services

1011. Department of Insurance

1112. Department of Juvenile Justice

1213. Department of Labor, Licensing and Regulation

1314. Department of Mental Health

1415. Department of Motor Vehicles

1516. Department of Natural Resources

1617. Department of Parks, Recreation and Tourism

1718. Department of Probation, Parole and Pardon Services

1819. Department of Public Safety

1920. Department of Revenue

2021. Department of Social Services

2122. Department of Transportation

2223. Department of Employment and Workforce

2324. Department on Aging

2425. Department of Veterans' Affairs.

(B)(1) The governing authority of each department shall be:

(i) a director, an administrator, or a secretary, who must be appointed by the Governor with the advice and consent of the Senate, subject to removal from office by the Governor pursuant to provisions of Section 1‑3‑240(B); or

SECTION 2. Chapter 30, Title 1 of the S.C. Code is amended by adding:

Section 1‑30‑140. There is hereby created, within the executive branch of the state government, the Department of Consumer Affairs, headed by an administrator appointed by the Governor pursuant to Section 37‑6‑103. The employees, funds, authorized appropriations, property, assets, liabilities, and all contractual rights and obligations associated with the Department of Consumer Affairs formerly headed by the Commission of Consumer Affairs, are hereby transferred to and incorporated in and shall be administered as part of the newly reconstituted Department of Consumer Affairs within the executive branch of state government.

SECTION 3. Section 37‑6‑103 of the S.C. Code is amended to read:

Section 37‑6‑103. “Administrator” means the officer appointed by the Commission on Consumer AffairsGovernor, upon the advice and consent of the Senate, to administer this title, as provided in (part Part 5 of this chapterchapter).

SECTION 4. Section 37‑6‑104(6) of the S.C. Code is amended to read:

(6) The administrator shall not bring class actions, initiate criminal actions or seek injunctive relief, as provided in this title, without prior approval of a majority of the Commission on Consumer Affairsthe Governor, exclusive of members who are associated with any such business within the meaning of Section 8‑13‑20.

SECTION 5. Section 37‑6‑117(i) of the S.C. Code is amended to read:

(i)(1) with the approval of the Commission on Consumer AffairsGovernor, bring an individual action for a consumer who might have a cause of action for damages resulting from the use of or employment by another person of an unfair or deceptive method, act, or practice, as provided in Section 39‑5‑140, when he considers such action is necessary to protect the consumer's interest, the actual damages sought are two thousand five hundred dollars or less, and either the individual has written evidence that two attorneys licensed to practice law in this State have reviewed the case and have declined to represent the individual in pursuing the cause of action, or an attorney licensed to practice law in this State, after reviewing the facts of the case, in writing has requested that the administrator bring an action on behalf of the consumer under this section;

(2) The provisions of this subsection do not apply if consumer‑industry appeals, arbitration or mediation panels or boards, whose decisions are binding on the participating business, are available in this State for the product or service concerned, provided such business complies with the decision of the panel or board.

SECTION 6. Sections 37‑6‑501 through 37‑6‑510 of the S.C. Code are amended to read:

Section 37‑6‑501. There is hereby created:

(a)(1) The Department of Consumer Affairs; and

(b) The Commission on Consumer Affairs; and

(c)(2) The Office of Administrator of Consumer Affairs.

Section 37‑6‑502. The Commission on Consumer Affairs shall be composed of nine members, one of whom shall be the Secretary of State as an ex officio member; four members shall be appointed by the Governor with advice and consent of the Senate and the remaining four members shall be elected by the General Assembly. Members of the Commission shall elect a Chairman. Terms of the members shall be four years unless otherwise stipulated in this section, and upon the expiration of the terms, the Governor shall appoint a member and the General Assembly shall elect one member respectively. With the exception of the ex officio member, any vacancy in the office of a member shall be filled by the Governor by appointment for the unexpired term. Members of the Commission shall be eligible for reappointment. No person associated with any businesses regulated by the Commission on Consumer Affairs shall be eligible to serve on the Commission as defined by Section 8‑13‑20 of the Code of Laws of South Carolina.The head of the Department of Consumer Affairs is an administrator appointed by the Governor upon the advice and consent of the Senate.

Section 37‑6‑503. A majority of the members shall constitute a quorum. The Commission shall meet monthly on such date as it may designate and may meet at such other times as it may deem necessary, or when called by the chairman or by a majority of its members, and shall counsel and advise with the administrator on any and all phases of the operations and functions of the Department.

Section 37‑6‑504. Each member of the Commission other than ex officio shall, before entering upon the duties of his office, give bond to the State in the sum of twenty‑five thousand dollars with a sufficient surety, to be approved by the State Treasurer, for the faithful performance of all duties required of him under the law during the term of his office. The premium of such bond shall be paid by the State.

Section 37‑6‑505. Each member of the Commission other than ex officio shall receive such compensation and official expenses as provided by law for members of state boards and commissions.

Section 37‑6‑506. (1) The Commission administrator shall be the policymaking and governing authority of the Department of Consumer Affairs and shall appoint the administrator and be responsible for enforcement of this title.

(2) The Commission, through the administrator, shall see that the provisions of this title are faithfully administered and enforced and to that end it may adopt, amend and repeal rules and regulations, not inconsistent with law, to interpret and explain provisions of this title, carry out the purposes and policies of this title, to prevent circumvention or evasion thereof or to facilitate compliance therewith.

(3) No provision of this title or of any statute to which this title refers which imposes any penalty on any creditor shall apply to any act done, or omitted to be done, in conformity with any rule or regulation so adopted, amended or repealed or in conformity with any written order, opinion, interpretation or statement of the Commission or of the administrator, notwithstanding that such rule, regulation, order, opinion, interpretation or statement may, after such act or omission, be amended, or rescinded or be determined by judicial or other authority to be erroneous or invalid for any reason.

Section 37‑6‑507. The administrator shall be a person of good moral character, at least thirty years of age, a resident taxpayer of this State, and shall be thoroughly familiar with this title and the consumer transactions to which it pertains. The Commission Governor may also require additional qualifications. The administrator, while serving as such, shall not directly or indirectly be financially interested in or associated with any other person subject to the jurisdiction of the Commission department or the administrator thereof. The administrator shall serve at the pleasure of the CommissionGovernor.

Section 37‑6‑508. The administrator, with the approval of the commission, may designate such deputies as he determines necessary to assist him in performing the duties he is required to perform under this title. Any deputy shall satisfy and meet the same qualifications, including bond, required for the administrator.

Section 37‑6‑509. The administrator shall take the oath of office prescribed for all State officers. Before entering upon the duties of his office, he shall give bond to the State for the benefit of any person aggrieved by his unlawful or wrongful actions, and such bond shall be in the sum of fifty thousand dollars, with sufficient surety, to be approved by the State Treasurer, for the faithful performance of all the duties required of him under the law during the term of his office. The premium of the bond shall be paid by the State.

Section 37‑6‑510. The administrator shall prepare in writing a manual of necessary employee positions for the Department, including job classifications, personnel qualifications, duties, maximum and minimum salary schedules, and other personnel information for approval by the Commission before appointing any personnel. The deputy administrator and other employees of the Department shall serve at the pleasure of the administrator.

SECTION 7. Section 37‑6‑602 of the S.C. Code is amended to read:

Section 37‑6‑602. The Consumer Advocate may be the Administrator of Consumer Affairs or he may be appointed by the administrator with the approval of the Commission on Consumer Affairs. The Consumer Advocate must be an attorney qualified to practice in all courts of this State with a minimum of eight years' practice experience.

SECTION 8. Section 37‑6‑604(B) of the S.C. Code is amended to read:

(B) The annual report required of the Commission onDepartment of Consumer Affairs must include a report on the activities of the Division of Consumer Advocacy.

SECTION 9. The Code Commissioner is directed to change or correct all references to the Commission on Consumer Affairs in the S.C. Code to reflect the transfer Department of Consumer Affairs to the executive branch of state government as provided in this act. References to the Commission on Consumer Affairs shall be changed or corrected to be the Administrator of the Department of Consumer Affairs, or Administrator, as appropriate.

SECTION 10. The General Assembly finds that the sections presented in this act constitute one subject as required by Article III, Section 17 of the South Carolina Constitution, in particular finding that each change and each topic relates directly to or in conjunction with other sections to the subject of reforming the Department of Consumer Affairs as clearly enumerated in the title. The General Assembly further finds that a common purpose or relationship exists among the sections, representing a potential plurality but not disunity of topics, notwithstanding that reasonable minds might differ in identifying more than one topic contained in the act.

SECTION 11. 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 12. This act takes effect upon approval by the Governor.

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