CHAPTER 29

Consumer Finance Law

**SECTION 34‑29‑10.** Definitions.

 When used in this chapter the terms listed below shall have the following meanings:

 (a) “Consumer finance company” shall include all persons conducting the business of making advances of cash in amounts of seventy‑five hundred dollars or less.

 (b) “Board” shall mean the State Board of Bank Control and its duly authorized deputies.

 (c) “License” shall mean the privilege certificate issued by the Board under the authority of this chapter to conduct the business regulated by this chapter.

 (d) “Licensee” shall mean a person to whom one or more licenses have been issued.

 (e) “Cash advance” shall mean the amount of cash or its equivalent that the borrower actually receives or is paid out at his direction or on his behalf.

 (f) “Amount of the loan” shall mean the cash advance plus other authorized charges.

 (g) “Person” shall mean an individual, partnership, association, corporation and all other legal and commercial entities.

HISTORY: 1962 Code Section 8‑797; 1956 (49) 2052, 2967; 1957 (50) 339; 1966 (54) 2391.

CROSS REFERENCES

Characterization, for purposes of the South Carolina Consumer Protection Code, of the relationship between a subsidiary corporation licensed under this chapter and one licensed under the Consumer Protection Code, see Section 37‑9‑103.

Inapplicability of Chapter 39 of Title 38, concerning insurance premium service companies, to a consumer finance company as provided for in Sections 34‑29‑10 to 34‑29‑260, see Section 38‑39‑10.

Department of Insurance regulations, see S.C. Code of Regulations R. 69‑1 et seq.

South Carolina Consumer Protection Code, see Sections 37‑1‑101 et seq.

Unfair Trade Practices Act, see Sections 39‑5‑10 et seq.

Attorney General’s Opinions

Consumer finance company may charge borrower service charge of not more than $10 for dishonored check or draft given to company in payment of existing debt. 1984 Op Atty Gen, No. 84‑108, p. 250.

NOTES OF DECISIONS

In general 1

1. In general

When acceleration of unearned interest of loan is not required to be rebated in the event of default, as is the case under this chapter since there is no provision for rebate, such acceleration provisions are not required to be disclosed on a disclosure statement under the Federal Truth in Lending Act, 15 USCA Section 1601 et seq. and the regulations promulgated thereunder. Jones v. Allied Loans, Inc. (D.C.S.C. 1977) 447 F.Supp. 1121.

Portion of loan secured by personal property, or “amount financed” which is disbursed on behalf of obligor to pay life and accident insurance premiums, documentary stamps and recording fees, is subject to finance charge along with net proceeds received by obligor. United Financial Corp. v. Cribb (S.C. 1980) 274 S.C. 573, 266 S.E.2d 71. Consumer Credit 15

**SECTION 34‑29‑20.** License; exemptions; loans violating requirements are void.

 (a) No person shall engage in the business of lending in amounts of seventy‑five hundred dollars or less and contract for, exact or receive directly or indirectly, or in connection with any such loan, any charges, whether for interest, compensation, consideration or expense, which in the aggregate are greater than the interest rate permitted by the general usury statute, except as provided in and authorized by this chapter and without first having obtained a license from the Board.

 (b) This chapter does not apply to any person doing business under authority of and as permitted by any law of this State or of the United States relating to banks, savings and loan associations, savings banks, trust companies, insurance companies, credit unions or licensed pawnbrokers; and does not apply to loans made to a corporation.

 (c) The provisions of subsection (a) of this section shall apply to any person who seeks to avoid its application by any device, subterfuge or pretense whatsoever.

 (d) Any contract of loan, the making or collecting of which violates subsection (a) of this section shall be void and the lender shall have no right to collect, receive or retain any principal, interest or charges whatsoever, except in the case of bona fide error.

 (e) Any person and the several members, officers, directors, agents and employees thereof, who shall knowingly or wilfully violate or participate in the violation of any of the provisions of subsection (a) of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punishable by a fine of not more than one thousand dollars and not less than one hundred dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment in the discretion of the court.

HISTORY: 1962 Code Section 8‑798; 1956 (49) 2052, 2967; 1957 (50) 339; 1966 (54) 2391.

CROSS REFERENCES

Legal rate of interest and usury, see Section 34‑31‑20.

LIBRARY REFERENCES

53 C.J.S., Licenses Sections 6 et seq.

Attorney General’s Opinions

Application of chapter. This chapter does not apply to bona fide sales of personal property under conditional sale contracts, nor does this chapter extend to assignment of such contracts; the “refinancing” of such a contract, by the vendor or by the assignee of the contract, would probably constitute a loan. 1966‑67 Op Atty Gen, No 2363, p 203.

Essential elements of a loan are present where assignee of conditional sales contract enters into agreement with purchaser, that he, the purchaser, may pay balance due on original contract over extended period of time and purchaser, in return, promises to pay balance due, in addition to interest or finance charges on unpaid balance. 1966‑67 Op Atty Gen, No 2368, p 214.

**SECTION 34‑29‑30.** Application for license; fees.

 Application for a license shall be in writing under oath and in the form prescribed by the Board. The application shall contain such information as the Board may require, including the names and addresses of the partners, officers, directors or trustees, and such of the principal owners or members as will provide the basis for investigations and findings contemplated by Section 34‑29‑40. At the time of making such application, the applicant shall pay to the Board a fee for investigating the application and the sum for a license, as prescribed by the Board, which will yield sufficient revenue to defray the entire expense of operating the Consumer Finance Division of the Board of Financial Institutions for the period ending on the last day of the current calendar year. Such fee shall be computed on the outstanding loan balance of the applicant for license at the end of the last previous calendar year.

HISTORY: 1962 Code Section 8‑799; 1956 (49) 2052, 2967; 1957 (50) 339; 1966 (54) 2391; 1976 Act No. 709 Part II Section 7; 1977 Act No. 219 Pt II Section 9.

LIBRARY REFERENCES

53 C.J.S., Licenses Sections 39 et seq.

58 C.J.S., Money Lenders Section 4.

**SECTION 34‑29‑40.** Issuance or denial of license.

 (a) Upon the filing of the application and payment of the fees, the Board shall investigate the facts concerning the application and the requirements provided for in subsection (b) of this section. The Board shall notify the applicant and each licensee having a place of business in the community where the applicant proposes to do business of such application of a day it proposes to consider the application, which shall be not more than twenty days after the date of filing. If any licensee having a place of business in the community or other person files an objection within twenty days after the date of mailing such notice, or if as a result of a preliminary investigation the Board has any doubt of the applicant meeting the standards of subsection (b), the Board shall set a date and a time for a hearing of such application not less than thirty days nor more than forty‑five days from the date of such mailing.

 (b) The Board shall grant or deny each application for a license which is accompanied by the required fees, within sixty days from the date of mailing said notice, unless extended by written agreement of the applicant and Board, if it shall find (1) that the financial responsibility, character, experience, and general fitness of the applicant are such as to command the confidence of the public and to warrant belief that the business will be operated lawfully, honestly, fairly and efficiently within the purposes of this chapter, which requirements shall be maintained during the period of the license, (2) that the applicant has available liquid assets of not less than twenty‑five thousand dollars for operation of such business at the specified location; provided, that any licensed person engaged in the business of lending as of August 7, 1966 shall have five years from August 7, 1966 to meet this requirement, for the operation of such business at the specified location, and (3) allowing such applicant to engage in business will promote the convenience and advantage of the community in which the licensed office is to be located; thereupon, it shall enter an order granting the application, place on file its findings of fact and forthwith issue a license to the applicant. However, where the number of licensees in a community is less than two, upon properly qualified applications under clauses (1) and (2) hereof, the Board shall issue additional licenses as to bring the number of licenses to two in such community.

 (c) If the findings of the Board are not favorable, it shall place on file its findings of fact and enter an order denying the application and notifying the applicant of the denial, returning the license fee but retaining the investigation fee.

HISTORY: 1962 Code Section 8‑800; 1956 (49) 2052, 2967; 1957 (50) 339; 1966 (54) 2391.

LIBRARY REFERENCES

53 C.J.S., Licenses Sections 39 et seq.

58 C.J.S., Money Lenders Section 4.

Attorney General’s Opinions

Notice to licensees having place of business in “community”. Under the provisions of this section [Code 1962 Section 8‑800] it is required that the licensees of a “community” be notified and permitted to oppose issuance of an additional license in their “community”; and it would be required under the terms of this section [Code 1962 Section 8‑800] that notice be given to all licensees in the city of Columbia and its unincorporated suburbs when an application is made for a consumer finance license at an unincorporated location three miles outside of the corporate limits of Columbia. 1970‑71 Op Atty Gen, No 3117, p 65.

**SECTION 34‑29‑50.** Contents of license; posting; nonassignability; duration; annual fee.

 (a) Each license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a copartnership or association, the names of the members thereof, and if a corporation, the date and place of its incorporation. Each license shall be kept posted in the licensed place of business and shall not be transferable or assignable.

 (b) Each license shall remain in full force and effect until surrendered, revoked or suspended as hereinafter provided. Each licensee shall, on or before the first day of each February, pay to the Board the sum, as prescribed by the Board, for each license held by the licensee as a license renewal fee for the current year, computed as of December thirty‑first of the preceding calendar year.

HISTORY: 1962 Code Section 8‑800.1; 1956 (49) 2052, 2967; 1957 (50) 339; 1966 (54) 2391; 1976 Act No. 686 Section 59; 1976 Act No. 709 Part II Section 7; 1977 Act No. 219 Pt II Section 10.

**SECTION 34‑29‑60.** Licenses for more than one place of business; removal.

 (a) Not more than one place of business shall be maintained under the same license, but the Board may issue more than one license to the same licensee upon compliance with all the provisions of this chapter governing issuance of a single license; provided, however, that no license need be obtained for an accounting record‑keeping place of business or other internal place of business control.

 (b) No change in the place of business for the making and collecting of loans, made pursuant to this chapter, of a licensee to a location outside of the original city or town shall be permitted under the same license. When a licensee wishes to change his place of business within a city or town he shall give written notice thereof to the Board, accompanied by the license certificate and the Board shall engross the address change upon the certificate and return it to the licensee.

HISTORY: 1962 Code Section 8‑800.2; 1956 (49) 2052, 2967; 1957 (50) 339; 1966 (54) 2391.

**SECTION 34‑29‑70.** Licensing purchaser of business.

 Should a licensee sell his outstanding loan contracts and surrender his license, the Board shall issue a license to make loans under this chapter at the specific location from which the business sold was conducted to the purchaser of such loan contracts without reference to whether the convenience and advantage of the community will be promoted thereby and without the notice to other licensees as provided by Section 34‑29‑40 (a), if the purchaser shall qualify in all other respects for the issuance of such license.

HISTORY: 1962 Code Section 8‑800.3; 1966 (54) 2391.

**SECTION 34‑29‑80.** Revocation, suspension, surrender and reinstatement of licenses.

 (a) The Board may, if it has reason to believe that grounds for revocation of a license may exist, notify the licensee not less than thirty days before revoking the license and it shall specify in the notice the particulars of the alleged grounds for revocation, and shall offer the licensee proper opportunity to be heard in answer thereto. The reason or reasons for revocation of a license shall be one or more of the following:

 (1) The licensee has failed to pay the annual license fee.

 (2) The licensee has failed to operate the business of lending for a continuous period of sixty days or more, unless the licensee shall have, prior to a finding by the Board that such licensee is inoperative, secured the written approval of the Board to suspend business operations for a reasonable additional period.

 (3) The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provisions of this chapter or any regulation or order lawfully made pursuant to and within the authority of this chapter.

 (b) If the Board finds that probable cause for revocation of any license exists and that enforcement of the chapter requires immediate suspension of such license pending investigation, it may, upon ten days’ written notice and a hearing, enter an order prohibiting such licensee from making any loans for a period not exceeding thirty days.

 (c) Whenever the Board shall revoke or suspend a license issued pursuant to this chapter, it shall enter an order to that effect and forthwith notify the licensee of the revocation or suspension. Within five days after the entry of such an order it shall place on file its findings of fact and a summary of the evidence supporting them and forthwith deliver a copy to the licensee.

 (d) Any licensee may surrender any license by delivering it to the Board with written notice of its surrender, but such surrender shall not affect his civil or criminal liability for acts committed prior thereto.

 (e) No revocation, suspension or surrender of any license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any obligor.

 (f) The Board may reinstate suspended licenses or issue new licenses to a person whose license or licenses have been revoked, if no fact or condition then exists which clearly would have justified the Board in refusing originally to issue such license under this chapter.

HISTORY: 1962 Code Section 8‑800.4; 1956 (49) 2052, 2967; 1957 (50) 339; 1966 (54) 2391.

LIBRARY REFERENCES

53 C.J.S., Licenses Sections 88 et seq.

**SECTION 34‑29‑90.** Examinations; investigations; orders to desist; injunctions.

 (a) At least once each year a duly authorized representative of the Board shall visit each place of business of each licensee and thoroughly inspect and examine its affairs, including the loans, transactions, books, papers, annual reports required by Section 34‑29‑100 (b) and records of such licensee so far as they pertain to the business licensed under this chapter. The actual cost of any examination shall be paid to the Board by each licensee so examined, with the exception of the first examination in each licensed year, and the Board may maintain an action for such costs in any court of competent jurisdiction.

 (b) For the purpose of discovering violations of this chapter or of securing information lawfully required hereunder, the Board or its duly authorized representatives may at any time investigate the business and examine the books, accounts, papers and records used therein of (1) any licensee, (2) any other person engaged in the business described in subsection (a) of Section 34‑29‑20 or participating in such business as principal, agent, broker or otherwise and (3) any person whom the Board has reasonable cause to believe is violating or is about to violate any provisions of this chapter, whether or not such person shall claim to be within the authority or beyond the scope of this chapter. For the purposes of this section, any person who shall advertise for, solicit or hold himself out as willing to make loan transactions in the amount of or the value of seventy‑five hundred dollars or less shall be presumed to be engaged in the business described in subsection (a) of Section 34‑29‑20.

 (c) For the purposes of this section, the Board or its duly authorized representatives shall have and be given free access to the offices and places of business, files, safes and vaults of all such persons, and shall have authority to require the attendance of any person and to examine him under oath relative to such loans or such business or to the subject matter of any examination, investigation or hearing.

 (d) Whenever the Board has reasonable cause to believe that any person is violating or is threatening to, or intends to violate any provisions of this chapter, it may, in addition to all the actions provided for in this chapter and without prejudice thereto, enter an order requiring such person to desist or refrain from such violations; and if it deems necessary the Board shall apply to a judge of the circuit court to issue an injunction restraining the licensee, in whole or in part, from proceeding, engaging in, or continuing such violation or from doing any act or acts in furtherance thereof. The judge may issue an injunction forthwith, and upon notice and hearing thereon and after a full hearing of the matter, may dissolve or modify the injunction or make it permanent and may make all orders and judgments needful in the matter and may appoint agents or a receiver to take possession of the property and effects of the licensee and settle its affairs subject to such rules and orders as the court shall prescribe from time to time.

HISTORY: 1962 Code Section 8‑800.5; 1956 (49) 2052, 2967; 1957 (50) 339; 1966 (54) 2391.

**SECTION 34‑29‑100.** Books and records; reports; publication of analysis.

 (a) Each licensee shall keep and use in his business such full and correct books and accounting records as are in accordance with sound and accepted accounting principles and practices and such books and records, including cards used in the card system, if any, as are in accord with the rules and regulations lawfully made by the board. Each licensee shall preserve such books, accounts, and records, including cards used in the card system, if any, for at least two years after making the final entry on any loan recorded in them. The renewal or refinancing of a loan shall constitute a final entry. Notwithstanding any other provision of law or regulation, each licensee, subject to the approval of the Director of the Consumer Finance Division of the South Carolina Board of Financial Institutions, may retain books and records in any other medium, electronic or otherwise, that conforms with the requirements of these chapters.

 (b) Every licensee shall file in the office of the board, on or before the first day of April, a report for the preceding calendar year. The report shall give information with respect to the financial condition of such licensee, and shall include the name and address of the licensee, balance sheets at the beginning and end of the accounting period, a statement of income and expenses for the period, a reconciliation of surplus with the balance sheets, a schedule of assets used and useful in the consumer finance business in the State, an analysis of charges, size of loans and types of actions undertaken to effect collection and such other relevant information in form and detail as the board may prescribe.

 (c) In addition to the information required to be reported under subsection (b), the annual report shall include the following:

 (1) the total number of loans and aggregate dollar amounts made by the lender which renewed existing accounts;

 (2) the total number of new loans and aggregate dollar amounts made to former borrowers;

 (3) the total number of loans and aggregate dollar amounts made to new borrowers;

 (4) the total number of loans and aggregate dollar amounts which received a final entry, as provided in subsection (a), other than by renewal;

 (5) the total number of renewals in which the borrower received a cash advance which was less than ten percent of the net outstanding loan balance at the time of renewal;

 (6) the total number of loans and aggregate dollar amounts outstanding at the beginning of the reporting period; and

 (7) the total number of loans and aggregate dollar amounts outstanding at the end of the reporting period.

 (d) Such report shall be made under oath and shall be in the form prescribed by the board and consistent with this section. The board shall make and publish annually an analysis and recapitulation of such reports.

 (e) In addition to the report required by the provisions of Section 34‑29‑100 (b) and (c), the board may under rules and regulations promulgated by it under the procedure provided in this chapter require quarterly and/or semiannual reports from licensees to facilitate the performance of its duties and to effectively regulate the making of loans under this chapter.

HISTORY: 1962 Code Section 8‑800.6; 1956 (49) 2052, 2967; 1957 (50) 339; 1966 (54) 2391; 1995 Act No. 135, Section 1, eff January 1, 1996; 1998 Act No. 433, Section 4, eff upon approval (became law without the Governor’s signature on June 11, 1998).

Effect of Amendment

The 1995 amendment revised this section by adding information required to be reported in the annual report made by restricted lenders.

The 1998 amendment, in subsection (a), in the second sentence, substituted “in them” for “thereon”, and added the fourth sentence.

**SECTION 34‑29‑110.** Rules and regulations; copies of licenses, regulations and orders.

 (a) The Board shall have the power and authority to make rules and regulations which interpret or explain any section or sections of this chapter, as it may deem necessary. Such regulations shall be referenced to the section or sections of this chapter which set forth the legislative standards which they interpret or explain. When promulgated and made, the rules and regulations shall be filed with the Secretary of State and the Board shall otherwise comply fully with the provisions of Sections 1‑1‑210 through 1‑1‑240.

 (b) On application of any person and payment of the cost thereof, the Board shall furnish under its seal and duly signed, a certified copy of any license, regulation or order. Such copy shall be prima facie evidence of the fact of the issuance of such license, regulation or order in any court or proceeding.

HISTORY: 1962 Code Section 8‑800.7; 1956 (49) 2052, 2967; 1957 (50) 339; 1966 (54) 2391.

CROSS REFERENCES

Consumer Finance Act regulations, see S.C. Code of Regulations R. 15‑60 et seq.

**SECTION 34‑29‑120.** Advertising.

 No licensee or other person subject to this chapter shall advertise, display, distribute, broadcast, televise or cause or permit to be advertised, displayed, distributed, broadcast or televised in any manner whatsoever, any false, misleading or deceptive statement or representation with regard to the rates, terms or conditions for loans. The Board may require that charges or rates, if stated by a licensee, be stated fully and clearly in such manner as it may deem necessary to prevent misunderstanding thereof by prospective borrowers. The Board may permit licensees to refer in their advertising to the fact that their business is under State supervision, subject to conditions imposed by it to prevent an erroneous impression as to the scope or degree of protection provided by this chapter.

HISTORY: 1962 Code Section 8‑800.8; 1956 (49) 2052, 2967; 1957 (50) 339; 1966 (54) 2391.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Advertising Section 40, Finance and Banking.

**SECTION 34‑29‑130.** Conducting business with other business; loans shall be made in name of licensee.

 (a) No licensee shall conduct the business of making loans under this chapter within any office, room or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, if the Board shall find, after a hearing, that the conduct of such business by the licensee concealed evasions of this chapter or of the rules and regulations made hereunder, and shall order such licensee in writing to desist from such conduct.

 (b) No licensee shall make any loan provided for by this chapter under any name other than that stated in the license.

HISTORY: 1962 Code Section 8‑800.9; 1956 (49) 2052, 2967; 1957 (50) 339; 1966 (54) 2391.

Attorney General’s Opinions

Sale of insurance. Consumer finance companies may sell insurance only as an incident to making a loan, and only such insurance may be sold as is provided in the Consumer Finance Act. 1970‑71 Op Atty Gen, No 3192, p 164.

**SECTION 34‑29‑140.** Charges permitted; installments; maturity of loans; splitting of loan prohibited; penalties for excessive charges; loans to purchase real estate prohibited.

 (a) Maximum finance charges permitted; initial charge. A licensee under this chapter may lend any sum of money not exceeding seventy‑five hundred dollars, excluding charges, and notwithstanding the fact that the loan may be repayable in substantially equal monthly installments, may contract for and receive finance charges not to exceed:

 (1) Loans Not Exceeding One Hundred Fifty Dollars. On loans with cash advance not exceeding one hundred fifty dollars, a charge not to exceed two dollars and fifty cents per month if contracted for in writing by the borrower, may be charged in lieu of interest, and such loans may be repaid in weekly payments, with four weeks constituting a month.

 (2) Loans Over One Hundred Fifty Dollars But Not Exceeding Two Thousand Dollars. On loans with a cash advance exceeding one hundred fifty dollars but not exceeding two thousand dollars, twenty‑five dollars per one hundred dollars on that portion of the cash advance not exceeding six hundred dollars; eighteen dollars per one hundred dollars on that portion of the cash advance exceeding six hundred dollars but not exceeding one thousand dollars; and twelve dollars per one hundred dollars on that portion of the cash advance exceeding one thousand dollars but not exceeding two thousand dollars when the loan is made payable over a period of one year, and proportionately at those rates over a longer or shorter period of time.

 In addition to the finance charges authorized in subparagraphs (1) and (2) of this subsection (a), a licensee under this chapter may contract for and receive an initial charge in such an amount as may be agreed upon in writing with the borrower, but not to exceed seven percent of the cash advance or fifty‑six dollars, whichever is the lesser, for the expenses including, but not limited to, any attorney’s fees and broker’s fees, then or theretofore incurred and the services then or theretofore rendered by the lender incident to the loan or the security therefor, such as investigating the moral and financial standing of the borrower, investigating the security, title and similar investigations and for closing the loan, including any and all expenses incurred or services rendered at the request of the borrower or on his behalf in connection with the loan. Such initial charge may not be contracted for and received on any renewal loan more often than once in a three‑month period. Upon any loan made to the borrower of a sum in excess of the amount on which the initial charge may have been charged within the three‑month period, then the initial charge may be contracted for and received on the excess. The initial charge on loans not exceeding one hundred fifty dollars is a one‑time charge, not a per annum charge and is not subject to refund. The initial charge on loans in excess of one hundred fifty dollars is a one‑time charge, not a per annum charge and shall be subject to refund upon prepayment of the loan. The amount of the refund or refund credit shall represent at least as great a proportion of the total charges as the sum of the periodical time balances after the date of the prepayment bears to the sum of all periodical time balances under the schedule of payments in the loan contract.

 (3) Loans Over Two Thousand But Not Over Seventy‑Five Hundred Dollars. On loans with a cash advance exceeding two thousand dollars but not exceeding seventy‑five hundred dollars, the finance charges authorized in subparagraphs (1) and (2) of this subsection (a) shall not be permitted on any part of the loan. On such loans a licensee under this chapter may contract for and receive finance charges not to exceed nine dollars per one hundred dollars of the cash advance, when the loan is made payable over a period of one year, and proportionately at that rate over a longer or shorter period.

 In addition to the finance charges authorized in subparagraph (3) of this subsection (a), a licensee under this chapter may contract for and receive an initial charge in such an amount as may be agreed upon in writing with the borrower, but not to exceed five percent of the cash advance or two hundred dollars, whichever is lesser, for the expenses including, but not limited to, any attorney’s fees and broker’s fees, then or theretofore incurred and the services then and theretofore rendered by the lender incident to the loan or the security therefor, such as investigating the morals and financial standing of the borrower, investigating the security, title and similar investigations and for closing the loan, including any and all expenses incurred or services rendered at the request of the borrower or on his behalf in connection with the loan. The initial charge may not be contracted for or received on any renewal loan made to the same borrower more often than once in a twelve‑month period. Upon any loan made to the borrower of a sum in excess of the amount on which the initial charge may have been charged within the twelve‑month period, then the initial charge may be contracted for and received on the excess. If a loan is renewed or financed after the expiration of the initial twelve‑month period, the initial charge may not exceed two percent of the cash advance. The initial charge is a one‑time charge, not a per annum charge and shall be subject to refund upon prepayment of the loan. The amount of the refund or refund credit shall represent at least as great a proportion of the total charges as the sum of the periodical time balances after the date of the prepayment bears to the sum of all periodical time balances under the schedule of payments in the loan contract.

 (b) Installment payments and maximum term of loan contract. ‑ The payments on any loan governed by this chapter shall be in substantially equal, consecutive monthly installments and shall be in an amount not less than ten dollars per month, exclusive of finance charges. The final installment shall mature within the time limits set out below:

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| --- | --- | --- |
|  |  |  |
|   | Cash advance of $1000 or less | 24 1/2 months |
|   | Cash advance of $1001 to $1500 | 36 1/2 months |
|   | Cash advance of $1501 to $2000 | 48 1/2 months |
|   | Cash advance of $2001 to $7500 | 60 1/2 months |

 (c) Payment prior to maturity. ‑ Any balance to become payable under any loan contract made under the provisions of this chapter may be repaid in full prior to maturity. When such balance is so repaid before maturity, whether by payment in cash, a new loan, renewal or otherwise, the unearned portion of the charges shall be refunded or credited to the borrower. The amount of the refund or refund credit shall represent at least as great a proportion of the total charges as the sum of the periodical time balances after the date of the prepayment bears to the sum of all periodical time balances under the schedule of payments in the loan contract; provided, that if a loan is renewed or refinanced during the first ninety days of the loan contract period, the refund shall be on a pro rata basis.

 (d) Splitting of loan prohibited. ‑ No licensee shall induce or permit any person, nor any husband and wife, jointly or severally, to become obligated directly or contingently, or both, under more than one contract of loan at the same time, for the sole purpose of obtaining a higher rate of interest or greater charge than would otherwise be permitted by this chapter.

 (e) Delinquent charge; penalties for excessive charges. In addition to the charges and fees provided for by this chapter, no further or other amount may be charged, contracted for, or received, directly or indirectly, except that a licensee, if agreed to in writing, may contract for, impose, and collect a delinquent charge of five cents for each full dollar of an installment that is delinquent for ten or more days. The charge may be imposed only once on each delinquent installment and, if a portion of an installment is delinquent, the delinquent charge may be imposed only once on that portion of the installment that is delinquent. A lender may contract for and receive a minimum delinquency charge of five dollars, even if the charge exceeds five percent of the unpaid amount of the installment. The restriction does not apply to official fees as defined in Section 37‑1‑301(17), or actual and reasonable attorney fees as determined by the court in which suit is filed and court costs incurred in the collection or to the actual and reasonable expenses of repossession, storing, and selling of property pledged as security on a contract in default, or insurance premiums or identifiable charges authorized by this chapter. If an amount in excess of the charges permitted by this chapter is charged, contracted for, or received, except as the result of an accidental or bona fide error, the contract of loan is void, and the licensee has no right to collect or receive any principal, interest, charge, or recompense. The licensee and its several members, officers, directors, and agents who participated in the violation are guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred and not less than two hundred dollars or imprisoned not less than thirty days nor more than six months.

 (f) Deferment charge. ‑ If, as of an installment due date, the payment date of all wholly unpaid installments is deferred one or more full months and the maturity of the contract is extended for a corresponding period, the licensee may charge and collect a deferment charge not exceeding one percent per month of the outstanding balance for each month of the deferment period, provided that two percent per month of the outstanding balance for each month of the deferment period may be charged on loans where the original cash advance is five hundred dollars or less. The deferment period is that period during which no payment is made or required by reason of such deferment, except that no deferment made pursuant to this subsection shall extend the maturity of any contract made under this chapter for more than two months during any twelve‑months period. The deferment charge may be collected at the time of deferment or at any time thereafter. The portion of the charges contracted for under Section 34‑29‑140 (a) and (d) applicable to each deferred balance and installment period following the deferment period shall remain the same as that applicable to such balance and period under the original loan contract. No installment on which a delinquent charge has been collected, or on account of which any partial payment has been made, shall be deferred or included in the computation of the deferment charge. If a loan is prepaid in full during the deferment period, the borrower shall receive, in addition to the refund required under Section 34‑29‑140 (c), a refund of that portion of the deferment charge applicable to any unexpired full month or months of such deferment period.

 Provided, however, no deferment charge for a deferment of a period of one month or less shall exceed ten dollars.

 (g) Charges not deducted in advance. ‑ Finance charges and initial charges made under this chapter shall not be paid, deducted, or received in advance, but shall be added to the cash advance.

 (h) Loans to purchase real estate prohibited. ‑ A licensee shall not contract for or receive the charges authorized by this chapter, on any loan which is directly or indirectly for the purchase price of real estate or an interest therein and which is secured by a purchase money lien or interest therein; provided, that this paragraph shall not be construed to prohibit a licensee from taking a nonpurchase money lien, whether primary or secondary, on real estate as security for a loan made in compliance with this chapter, and contracting for or receiving on such loan the charges authorized by this chapter.

 (i) In addition to all other charges authorized by this section, a licensee may charge and add to the gross note a maintenance fee of two dollars for each month for the term of the loan for each loan account. If the loan is prepaid, the maintenance fee must be refunded pro rata with the unexpired term of the loan and a part of a month must be treated like a full month.

 (j) Change of Dollar Amounts. ‑ The dollar amounts provided in subsections (a)(2) and (a)(3) of this section shall change from time to time in the manner provided by Section 37‑1‑109, except that the index for December, 1991, is the Reference Base Index for purposes of adjustments to the dollar amounts of this section. The Chairman of the State Board of Financial Institutions has the same powers and duties in regard to the adjustments to the dollar amounts of subsection (a)(2) of this section as does the Administrator of the Department of Consumer Affairs with adjustments to the dollar amounts required in Section 37‑1‑109.

 (k) Dollar Limits on Renewals. A licensee under this chapter may not renew a loan more than one time during any fifteen‑month period where the actual dollars given to the customer is less than ten percent of the net outstanding loan balance at the time of renewal.

HISTORY: 1962 Code Section 8‑800.10; 1956 (49) 2052, 2967; 1957 (50) 339; 1966 (54) 2391; 1967 (55) 558; 1976 Act No. 686 Section 56; 1977 Act No. 137; 1980 Act No. 392, Sections 1, 2; 1986 Act No. 370, Section 1; 1991 Act No. 98, Sections 1, 2, eff May 30, 1991; 1995 Act No; 135, Sections 2, 3, eff January 1, 1996; 2001 Act No. 44, Section 1, eff May 29, 2001.

Effect of Amendment

The 1991 amendment in (a)(2) increased the maximum dollar amount of loans covered from not exceeding one thousand dollars to not exceeding two thousand dollars, and doubled all the dollar amounts of the cash advances or portions of cash advances referred to in the section; in the second paragraph of (a)(2) substituted fifty‑six for twenty‑eight dollars; in (a)(3) substituted two thousand dollars for one thousand dollars; added Subsection (j); and made grammatical changes.

The 1995 amendment, by Section 2, added subsection (k); and, by Section 3, revised subsection (a) to provide for limitations on loan renewals.

The 2001 amendment in subsection (e) changed “five or more days” to “ten or more days”, inserted the sentence relating to contracting for a minimum delinquency charge of five dollars, and changed “Section 37‑1‑301(10)” to “Section 37‑1‑301(17)”; in subsection (i) increased the maximum maintenance fee from one dollar to two dollars for each month; and made language and punctuation changes throughout subsections (e) and (i).

CROSS REFERENCES

For regulation adjusting dollar amounts in Section 3‑29‑140(a)(2) and (a)(3), see S.C. Code of Regulations R. 15‑63.

LIBRARY REFERENCES

58 C.J.S., Money Lenders Section 5.

Attorney General’s Opinions

Consumer finance company may charge borrower service charge of not more than $10 for dishonored check or draft given to company in payment of existing debt. 1984 Op Atty Gen, No. 84‑108, p. 250.

The Equal Credit Opportunity Act pre‑empts the South Carolina Consumer Finance Act prohibition against dual loans when each party to a marriage voluntarily applies for separate accounts with the same creditor. 1974‑75 Op Atty Gen, No 4209, p 253.

Actual fees paid to a public official for filing a “continuation statement” pursuant to Code 1962 Section 10.9‑403, may be charged to the debtor under this section [Code 1962 Section 8‑800.10]. 1970‑71 Op Atty Gen, No 3098, p 44.

Refund of unearned charges on a “pro rata basis,” as provided in subsection (c) of this section [Code 1962 Section 8‑800.10] requires that refunds be computed on a daily basis. 1968‑69 Op Atty Gen, No 2667, p 86.

Subsection (h) construed. See 1966‑67 Op Atty Gen, No 2362, p 202.

NOTES OF DECISIONS

In general 1

1. In general

When acceleration of unearned interest of loan is not required to be rebated in the event of default, as is the case under this chapter since there is no provision for rebate, such acceleration provisions are not required to be disclosed on a disclosure statement under the Federal Truth in Lending Act, 15 USCA Section 1601 et seq. and the regulations promulgated thereunder. Jones v. Allied Loans, Inc. (D.C.S.C. 1977) 447 F.Supp. 1121.

There is no conflict or inconsistency betweenSection 37‑3‑305(8) and any provision of the South Carolina Consumer Finance Act, including Section 34‑29‑140, and therefore the annual filing requirement prescribed by Section 37‑3‑305(8), which compliments the initial filing requirement prescribed by Section 37‑3‑305(1) and plainly applies to restricted lenders, is simply an additional condition that a restricted lender must fulfill if it wishes to impose finance charges in excess of 18 percent but within the range of the maximum charges allowed by Section 34‑29‑140. Additionally, Section 37‑3‑102 makes manifest the applicability of Section 37‑3‑305(8) to restricted loans, and the inapplicability of the exclusionary provisions of Section 37‑1‑202(7) to the maximum rate schedule filing requirements imposed by Section 37‑3‑305(8) upon all creditors, including restricted lenders. Bell Finance Co., Inc. v. South Carolina Dept. of Consumer Affairs (S.C.App. 1988) 297 S.C. 111, 374 S.E.2d 918.

Portion of loan secured by personal property, or “amount financed” which is disbursed on behalf of obligor to pay life and accident insurance premiums, documentary stamps and recording fees, is subject to finance charge along with net proceeds received by obligor. United Financial Corp. v. Cribb (S.C. 1980) 274 S.C. 573, 266 S.E.2d 71. Consumer Credit 15

**SECTION 34‑29‑150.** Written statement disclosing terms of contract; receipts for payments; return of note and security on payment in full; lien on household furniture.

 (a) The licensee shall disclose, at the time a loan is made, the following to the obligor on a loan transacted pursuant to this chapter, (if there are two or more obligors on the loan contract, delivery to one of them shall be sufficient) in a written statement in conspicuous type:

 (1) The amount and date of the note or loan contract and of its maturity;

 (2) The original principal amount of the loan excluding any charge made under Section 34‑29‑140;

 (3) The original dollar charge for the loan;

 (4) A description of the payment schedule;

 (5) The right of the obligor to prepay the loan in full prior to maturity, and the fact that such prepayment in full will reduce the charge for the loan;

 (6) The nature of the security, if any;

 (7) Every deduction from the loan or payment made by the obligor through the licensee for insurance, and a description of the insurance coverage for which each deduction or payment was made;

 (8) The name and address of the obligor and of the licensee;

 (9) Signature of principal borrower directly beneath amount of cash borrower actually receives.

 (b) For each payment in cash made on any loan the licensee shall furnish a full and complete receipt.

 (c) Upon payment of any loan in full the licensee shall return to the customer, marked “paid,” the note or other evidence of indebtedness of the loan and the security signed by any obligor and release any mortgage, restore any pledge and cancel and return any note and any assignment given to the licensee.

 (d) No licensee shall take any obligation evidencing a loan which does not disclose the amount of the loan, a schedule of the payments, the amount of the finance charges, and amounts disbursed for the account of the borrower, nor shall the licensee take any instrument in which blanks are left to be filled in after execution.

 (e) No licensee shall take any chattel mortgage or other lien on household furniture then in possession and use of the obligor unless it is in writing and signed by the obligor, and in case of a married obligor unless given with the consent of the spouse and such consent shall be evidenced by the spouse in the mortgage or other lien by the signing of his or her name thereto. The written consent shall not be required when husband and wife have been living separate and apart for a period of at least five months prior to the making of such mortgage or when such spouse is legally incompetent.

HISTORY: 1962 Code Section 8‑800.11; 1956 (49) 2052, 2967; 1957 (50) 339; 1966 (54) 2391.

LIBRARY REFERENCES

58 C.J.S., Money Lenders Section 5.

Attorney General’s Opinions

Mortgages securing future loans are precluded. Mortgages securing future loans under the Consumer Finance Act are precluded by virtue of subsection (c) of this section [Code 1962 Section 8‑800.11] and the Board’s long‑standing interpretation thereof. 1970‑71 Op Atty Gen, No 3229, p 213.

NOTES OF DECISIONS

In general 1

1. In general

When acceleration of unearned interest of loan is not required to be rebated in the event of default, as is the case under this chapter since there is no provision for rebate, such acceleration provisions are not required to be disclosed on a disclosure statement under the Federal Truth in Lending Act, 15 USCA Section 1601 et seq. and the regulations promulgated thereunder. Jones v. Allied Loans, Inc. (D.C.S.C. 1977) 447 F.Supp. 1121.

**SECTION 34‑29‑160.** Insurance on security and borrower.

 Subject to the conditions provided in this section and notwithstanding any other provisions of this chapter, reasonable insurance may be sold to and required of the borrower for insuring personal property securing a loan and for insuring the life and earning capacity of not more than two parties obligated on the loan other than accommodation parties.

 Property insurance shall be in an amount not to exceed the reasonable value of the property insured and for the customary term approximating the term of the loan contract. It shall be optional with the borrower to obtain such insurance in an amount greater than the amount of the loan or for a longer term.

 Life insurance must be in an amount not to exceed the approximate amount of the debt and for a term not exceeding the approximate term of the loan contract. For purposes of credit coverage, the ‘approximate amount of the debt’ is defined as follows: (1) the periodic installment payment multiplied by the number of scheduled periodic installment payments for a loan with a term of sixty months or less; (2) the amount necessary to liquidate the remaining debt in a single lump sum payment, excluding all unearned interest and other unearned finance charges, plus six monthly installment payments for a loan with a term in excess of sixty months. Accident and health insurance and unemployment insurance, or both, must provide periodic benefits which may not exceed an amount which approximately equals the amount of each periodic installment payment to be made under the loan contract. However, when a loan is discharged or a new policy or policies of insurance are issued, the life, property, or accident and health insurance or all three on the prior obligation must be canceled and the unearned portion of the insurance premium or premiums, or identifiable charge, must be refunded to the borrower. However, the method of refunding the premiums on the policies must be pursuant to the Rule of 78 or the Sum of the Digits Method, except that no refund under three dollars must be made. The insurance company shall calculate its reserves on the policies in the same manner or, in the case of credit life insurance, in accordance with a mortality table and interest assumption used for ordinary life policies. Notwithstanding this requirement, if the property insurance policy or policies cover the insurable interest of the borrower as well as the lender, the policy or policies may be continued in force at the request of the borrower.

 This section does not require a creditor to grant a refund or credit of a life insurance premium to the debtor if any refund or credit due to the debtor under this section is less than three dollars. If the coverage provides accident and health benefits, the policy or certificate shall contain a provision that, if the insured obligor is disabled, as defined in the policy, for a period of more than three days, benefits shall commence as of the first day of disability, provided that accident and health insurance shall not be allowed on loans with a cash advance of less than one hundred dollars. Disability shall not be defined more restrictively than the inability of the insured to engage in his own occupation during the first year of disability or for the length of the benefit period if less than one year. After the first year of disability, disability shall not be defined more restrictively than the inability of the insured to engage in the substantial duties of any gainful occupation for substantially equivalent remuneration to the insured’s own occupation. Substantially equivalent remuneration means not less than seventy‑five percent of the insured’s base wage, exclusive of overtime and bonus, as of the date disability commences.

 All insurance sold or provided pursuant to this section shall bear a reasonable and bona fide relation to the existing hazard or risk of loss and shall be written by an agent or agency licensed in this State in an insurance company authorized to conduct such business in this State. A licensee shall not require the purchasing of insurance from the licensee or any employee, affiliate, or associate of the licensee, as a condition precedent to the making of a loan and shall not decline existing insurance where such insurance is provided by an insurance company authorized to conduct such business in this State.

 The licensee shall within thirty days after the loan is made, deliver to the borrower, or if more than one, to one of them, a policy or certificate of insurance covering any insurance procured by or through the licensee or any employee, affiliate, or associate of the licensee, which shall set forth the amount of any premium or identifiable charge which the borrower has paid or is obligated to pay, the amount of insurance, the term of insurance, and a complete description of the risks insured. Such policy or certificate may contain a mortgage clause or other appropriate provisions to protect the insurable interest of the licensee.

 Notwithstanding any other provision of this chapter, any gain or advantages in the form of commission, dividend, identifiable charge, or otherwise, to the licensee or to any employee, affiliate, or associate of the licensee from such insurance or its sale shall not be deemed to be additional or further interest or charge in connection with such a loan.

 Any accident and health or property insurance sold in conjunction with this chapter must be written on forms and at rates approved by the South Carolina Department of Insurance, provided that a minimum charge of three dollars may be made, pursuant to reasonable regulations adopted by it and having as their purpose the establishment and maintenance of premium rates which are reasonably commensurate with the coverage afforded and which are adequate, not excessive, and not unfairly discriminatory giving due consideration to past or prospective loss experience within or without this State, to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to borrowers, to reasonable expense allowances necessary to achieve proper risk distribution and spread, and to all other relevant factors within or without this State. These regulations may include reasonable classification systems or programs based upon identifiable and measurable variations in the hazards or expense requirements and may include statistical plans, systems, or programs, which the insurers may be required to adopt, for the purpose of providing that statistical information and data as may be necessary or reasonably appropriate to the determination of premium rates or rate levels. The premium rates and rate levels must be calculated to produce and maintain a ratio of losses incurred, or reasonably expected to be incurred, to premiums earned, or reasonably expected to be earned, of not less than fifty percent, and rates producing a lesser loss ratio are considered excessive.

 Until January 1, 2001, credit life insurance premiums for each one hundred dollars of indebtedness are considered reasonable and may be charged if they are not greater than the amounts given in the following table times the number of years, or fraction of a year, that the indebtedness covered by insurance is scheduled to continue, subject to a minimum charge of three dollars:

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
|   |   | Decreasing Balance | Level Balance |
|   | Individual | $ .65 | $1.30 |
|   | Joint Insurance | $1.08 | $2.16 |

 Effective January 1, 2001, credit life insurance premiums for each one hundred dollars of indebtedness are considered reasonable and may be charged if they are not greater than the amounts given in the following table times the number of years, or fraction of a year, that the indebtedness covered by insurance is scheduled to continue:

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
|   |   | Decreasing Balance | Level Balance |
|   | Individual | $ .57 | $1.14 |
|   | Joint Insurance | $ .95 | $1.89 |

 Effective January 1, 2003, credit life insurance premiums for each one hundred dollars of indebtedness are considered reasonable and may be charged if they are not greater than the amounts given in the following table times the number of years, or fraction of a year, that the indebtedness covered by insurance is scheduled to continue:

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
|   |   | Decreasing Balance | Level Balance |
|   | Individual | $ .55 | $1.10 |
|   | Joint Insurance | $ .91 | $1.83 |

HISTORY: 1962 Code Section 8‑800.12; 1956 (49) 2052, 2967; 1957 (50) 339; 1966 (54) 2391; 1985 Act No. 139, Sections 1, 2; 1986 Act No. 444, Section 1; 1987 Act No. 54 Sections 1, 2, eff April 28, 1987; 1991 Act No. 142, Section 16(B), eff January 1, 1993; 1993 Act No. 181, Section 524, eff July 1, 1995; 1995 Act No. 135, Section 4, eff January 1, 1996; 1999 Act No. 66, Section 1, eff January 1, 2000; 2002 Act No. 228, Section 1, eff May 1, 2002.

Editor’s Note

1999 Act No. 66, Section 25, provides in part as follows:

“The provisions in Section 1 and Section 14 relating to changes in credit life insurance rates are effective as indicated in the respective sections.”

Effect of Amendment

The 1987 amendment added to the third unnumbered paragraph the provision concerning refunds under two dollars, and revised the ninth unnumbered paragraph by making grammatical changes and adding the provision regarding a minimum charge of two dollars.

The 1991 amendment in the last [tenth] paragraph changed the dollar amounts in the table, effective Jan. 1, 1993.

The 1993 amendment, in the ninth undesignated paragraph, substituted “South Carolina Department of Insurance” for “South Carolina Insurance Commission”.

The 1995 amendment revised this section to further provide for conditions, minimum charges, and premiums.

The 1999 amendment, in the third undesignated paragraph, added the definition of “approximate amount of the debt”, in the fifth undesignated paragraph, added the final three sentences relating to disability, added the last two paragraphs setting forth the premiums in 2001 and 2003, respectively, and made other wording changes.

The 2002 amendment, in the eighth undesignated paragraph, substituted “minimum charge of three dollars” for “minimum charge of two dollars”.

CROSS REFERENCES

Certain premiums charged by restricted lenders under consumer finance law subject to minimum charges and retentions, see Section 37‑4‑204.

Regulation of credit insurance, see S.C. Code of Regulations R. 69‑11.1.

Attorney General’s Opinions

The monthly maintenance fee permitted under Section 34‑29‑140 of the South Carolina Code of Laws (1976), as amended by Act No. 392 of 1980, is insurable under Section 34‑29‑160. 1980 Op Atty Gen, No 80‑79, p 129.

Consumer finance companies may sell insurance only as an incident to making a loan, and only such insurance may be sold as is provided in the Consumer Finance Act. 1970‑71 Op Atty Gen, No 3192, p 164.

NOTES OF DECISIONS

In general 1

1. In general

Portion of loan secured by personal property, or “amount financed” which is disbursed on behalf of obligor to pay life and accident insurance premiums, documentary stamps and recording fees, is subject to finance charge along with net proceeds received by obligor. United Financial Corp. v. Cribb (S.C. 1980) 274 S.C. 573, 266 S.E.2d 71. Consumer Credit 15

**SECTION 34‑29‑161.** Payment on insurance claim; damages; fees; costs.

 No person may act or attempt in a loan transaction to prevent the filing or receiving of payment on a legitimate insurance claim. In an action in which it is found that a person has violated this section, the court shall award to the borrower the actual damages and consequential damages, if any, and to his attorneys their reasonable fees and costs. In determining attorney’s fees and costs, the amount of recovery on behalf of the consumer is not controlling.

HISTORY: 1999 Act No. 66, Section 2, eff January 1, 2000.

**SECTION 34‑29‑162.** Refinancing loan; nonlapsed insurance coverage.

 If a consumer defers, refinances, or consolidates a loan and the insurance coverage upon the original loan has not lapsed:

 (1) incontestability and waiting periods for insurance coverage, up to the amount of the coverage remaining at the time of the deferral, refinancing, or consolidation and for an additional period not to exceed the length of the term of the original insurance, must be based upon the date on which the insurer originally insured the debtor with respect to the insurance coverage on the indebtedness that is deferred, refinanced, or consolidated; and

 (2) the insurance coverage, up to the amount of the coverage remaining at the time of the deferral, refinancing, or consolidation and for an additional period not to exceed the length of the term of the original insurance, on the indebtedness that is deferred, refinanced, or consolidated may not be subject to evidence of insurability.

 The provisions of this section do not apply to insurance for which no identifiable charge is made to the debtor.

HISTORY: 1999 Act No. 66, Section 3, eff January 1, 2000.

**SECTION 34‑29‑163.** Effect of misrepresentation by insured.

 A policy or certificate may not be declared void and the insurer may not avoid liability based upon a misrepresentation made by the insured, with respect to information provided regarding medical conditions or health history required in furnishing evidence of insurability, that is not causally related to the contingency or event by which the policy claim arises.

HISTORY: 1999 Act No. 66, Section 4, eff January 1, 2000.

**SECTION 34‑29‑164.** Amount charged for nonfiling insurance coverage.

 The amount charged for nonfiling insurance coverage may not exceed seventy‑five percent of the official fee as defined in Section 37‑1‑301(17).

HISTORY: 1999 Act No. 66, Section 5, eff January 1, 2000.

**SECTION 34‑29‑165.** Evidence of insurability.

 (1) Consumer credit insurance provided by a creditor may be subject to the furnishing of evidence of insurability satisfactory to the insurer. Whether or not such evidence is required, the term of the insurance shall commence when the debtor becomes obligated to the creditor or when the debtor applies for the insurance, whichever is later, except as follows:

 (a) if any required evidence of insurability is not furnished until more than thirty days after the term would otherwise commence, the term may commence on the date when the insurer determines the evidence to be satisfactory; or

 (b) if the creditor provides insurance not previously provided covering debts previously created, the term may commence on the effective date of the policy.

 (2) If evidence of insurability is required and the insured’s eligibility is to be determined by inquiries about existing or past medical conditions, the medical conditions inquired about shall be clearly and conspicuously disclosed in plain language on forms promulgated or approved by the Department of Insurance which achieve a grade level score of no higher than seventh grade on the Flesch‑Kincaid readability test. The disclosure shall be made in a clear and conspicuous manner in bold type, with space for the insured to personally acknowledge the disclosure by a dated signature or initial immediately adjacent to the disclosure. Insurance coverage shall not be denied on the basis of any medical condition not so disclosed. Coverage shall not be denied if the insured’s dated acknowledgment does not appear on the form.

HISTORY: 1999 Act No. 66, Section 6, eff January 1, 2000.

**SECTION 34‑29‑166.** Insurance provided by creditor; delivery of policy; information on policy.

 If a creditor provides insurance, the insurance shall be evidenced by an individual policy or certificate of insurance delivered to the debtor at the time of the transaction where the debtor is present at the creditor’s place of business.

 If the debtor is not present at the creditor’s place of business at the time of the transaction, the individual policy or certificate of insurance must be sent to him at his address as stated by him, within thirty days after the term of the insurance commences under the agreement between the creditor and debtor or the creditor shall promptly notify the debtor of any failure or delay in providing the insurance.

 Each policy or certificate of credit life insurance or credit accident and sickness insurance shall set forth the following on the first page of the policy or attached thereto in a manner that is clear and conspicuous and achieves a grade level score of no higher than seventh grade on the Flesch‑Kincaid readability test:

 (a) the name, address, and telephone number of the insurer and the process to be followed in submitting a claim;

 (b) the name or names of the debtor, or in the case of a certificate, the identity by name or otherwise of the debtor;

 (c) the age or date of birth of the debtor;

 (d) the premium or amount payable by the debtor separately for credit life insurance and credit accident and sickness insurance;

 (e) a description of the coverage including the amount and term of the coverage, and any exceptions, limitations, or restrictions;

 (f) a statement that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness;

 (g) a statement that, if the amount of insurance exceeds the amount necessary to discharge the indebtedness, any excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to the debtor’s estate;

 (h) a conspicuous statement that the insured debtor shall have the right to cancel the insurance policy or group certificate and have all the premiums paid by or charged to the insured debtor refunded or credited, upon giving written notice to the insurer within thirty days from the date the insured debtor received the policy or certificate;

 (i) a conspicuous statement which reads as follows: “For specific information about credit insurance issued in conjunction with your loan, contact your creditor or your insurance company. For general information about credit insurance or complaints regarding your credit insurance, please contact the South Carolina Department of Insurance at [current toll‑free number].”; and

 (j) the provisions of this section do not apply to insurance for which no identifiable charge is made to the debtor.

HISTORY: 1999 Act No. 66, Section 7, eff January 1, 2000.

**SECTION 34‑29‑170.** Confession of judgment or power of attorney to confess judgment shall be void.

 No licensee shall take any confession of judgment or permit any borrower to execute a power of attorney in favor of any licensee or in favor of any third person to confess judgment or to appear for the borrower in any judicial proceeding and any such confession of judgment or power of attorney to confess judgment shall be absolutely void.

HISTORY: 1962 Code Section 8‑800.13; 1956 (49) 2052, 2967; 1957 (50) 339; 1966 (54) 2391.

**SECTION 34‑29‑180.** Judicial review of orders or decisions of Board.

 (a) Any order or decision made, issued or executed by the Board or its deputies, shall be subject to review by the circuit court on petition by any person aggrieved if the petition is filed within thirty days from the date of the delivery of a copy of the order or decision made by the Board upon such person. A copy of such petition for review as filed with and certified by the clerk of court shall be served upon the Board within five days after its filing. If the petition for review is not filed within thirty days, the parties aggrieved shall be deemed to have waived the right to have the merits of the order or decision reviewed and there shall be no trial of the merits thereof by any court to which application may be made by petition or otherwise, to enforce or restrain the enforcement of same.

 (b) The Board shall within thirty days, unless the time is extended by an order of the court, after the service of the copy of the petition for review upon it or its deputy, prepare and file with the clerk of the court a complete transcript of the record of the hearing, if any, and a true copy of the order or decision duly certified. The case shall be heard by the court as a civil case upon such transcript of the record and it shall be the duty of the court to hear and determine the petition with all convenient speed. If, on the hearing before the court, it shall appear that the record filed by the Board is incomplete, the court may by appropriate order direct the Board to certify any and all parts of the record so omitted.

 (c) The court shall have jurisdiction to review the facts and the law and to affirm, modify or to set aside the order or decision of the board and to restrain the enforcement thereof. Appeals from all final orders and judgments entered by the circuit court in reviewing the orders and decisions of the board may be taken in the manner provided by the South Carolina Appellate Court Rules.

HISTORY: 1962 Code Section 8‑800.14; 1956 (49) 2052, 2967; 1957 (50) 339; 1966 (54) 2391; 1999 Act No. 55, Section 35, eff June 1, 1999.

Effect of Amendment

The 1999 amendment changed the appeal provision at the end of the section to refer to the Appellate Court Rules.

**SECTION 34‑29‑190.** Disposition of fees and other funds.

 All license fees, investigation fees, and other funds collected by the Board under the terms of this chapter, shall be paid over to the State Treasurer and shall be used to defray costs of administering this chapter, including salaries of assistant examiners and other clerical help found necessary and necessary travel expenses and subsistence.

HISTORY: 1962 Code Section 8‑800.15; 1956 (49) 2052, 2967; 1957 (50) 339; 1966 (54) 2391.

**SECTION 34‑29‑200.** Chief administrative officer and other personnel.

 The Board is authorized to designate or appoint a chief administrative officer and such other personnel as it deems necessary to perform the duties and exercise the powers herein conferred. The chief administrative officer and all other personnel shall serve at the pleasure of the Board.

HISTORY: 1962 Code Section 8‑800.16; 1956 (49) 2052, 2967; 1957 (50) 339; 1966 (54) 2391.

**SECTION 34‑29‑210.** Appointment of Director as agent for service of process.

 Every person prior to being licensed under this chapter shall appoint, in writing, the Director and his successors in office to be its true and lawful attorney upon whom all legal process in any action or proceeding against it may be served and in such writing shall agree that any lawful process against it which is served upon such attorney shall be of the same legal force and validity as if served upon the company and that the authority shall continue in force so long as any liability remains outstanding in the State. Copies of such appointment certified by the Director, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted.

HISTORY: 1962 Code Section 8‑800.17; 1966 (54) 2391.

**SECTION 34‑29‑220.** Foreign loans.

 No loan made outside this State in the amount of or of the value of seventy‑five hundred dollars or less for which a greater rate of interest, consideration, or charge than is permitted by Section 34‑29‑140 has been charged, contracted for or received, shall be enforced in this State and every person in any way participating therein in this State shall be subject to the provisions of this chapter, but this section shall not apply to loans legally made in any state under and in accordance with a regulatory consumer finance law similar in principles to this chapter.

HISTORY: 1962 Code Section 8‑800.18; 1966 (54) 2391.

CROSS REFERENCES

Legal rate of interest and usury, see Section 34‑31‑20.

**SECTION 34‑29‑230.** Repealed by 1991 Act No. 98, Section 4, eff May 30, 1991.

Editor’s Note

Former Section 34‑29‑230 was derived from 1962 Code Section 8‑800.19; 1966 (54) 2391.

Former Section 34‑29‑230 provided for the regulation of other persons in the lending business and for injunctions against violations of usury laws.

Attorney General’s Opinions

This section [Code 1962 Section 8‑800.19] extends the general provisions of the Consumer Finance Act to cover loans made by unlicensed lenders except where the context requires a more restricted application. 1970‑71 Op Atty Gen, No 3227, p 209.

Lenders who are registered pursuant to this section [Code 1962 Section 8‑800.19] may charge a 7% add‑on rate provided in Code 1962 Section 8‑233. 1970‑71 Op Atty Gen, No 3131, p 82.

Second mortgage real estate loans. Lending agencies which are registered pursuant to this section [Code 1962 Section 8‑800.19] may make second mortgage real estate loans at a six and one‑half percent add‑on charge pursuant to Code 1962 Section 8‑233. 1967‑68 Op Atty Gen, No 2538, p 230.

**SECTION 34‑29‑240.** Licenses for persons engaged in lending on December 1, 1965.

 Any person engaged in the business of lending on December 1, 1965, may be licensed under the provisions of this chapter; provided, he applies for and obtains a license from the Board of Bank Control within ninety days after August 7, 1966; and, provided, further, that such person meets the requirements of Section 34‑29‑40 (b) (1) (2).

HISTORY: 1962 Code Section 8‑800.22; 1966 (54) 2391.

**SECTION 34‑29‑250.** Violations.

 Any person who wilfully violates any provision of this chapter, for which a penalty has not been provided, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars nor less than one hundred dollars in the discretion of the court.

 The board, in addition to the criminal penalties provided by this section, may also assess a civil penalty against the violator in the form of a fine not exceeding two thousand dollars for each violation. This civil penalty may be assessed in addition to or in lieu of the criminal penalties authorized by this section.

HISTORY: 1962 Code Section 8‑800.21; 1966 (54) 2391; 1991 Act No. 98, Section 3, eff May 30, 1991.

Effect of Amendment

The 1991 amendment added the second paragraph of this section.

**SECTION 34‑29‑260.** Modification, amendment or repeal of chapter.

 (a) This chapter or any part thereof may be modified, amended or repealed so as to effect a cancellation or alteration of any license or right of a licensee hereunder; provided, that such cancellation or alteration shall not impair or affect the obligations of any preexisting lawful contract between any licensee and any obligor.

 (b) Nothing contained herein shall be so construed as to impair or affect the obligation of any contract of loan between any lender and any borrower which was entered into prior to August 7 1966.

HISTORY: 1962 Code Section 8‑800.20; 1956 (49) 2052, 2967; 1957 (50) 339; 1966 (54) 2391.