**South Carolina General Assembly**

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**H. 3159**

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Summary: Deferred presentment services

**HISTORY OF LEGISLATIVE ACTIONS**

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12/16/2008 House Referred to Committee on **Labor, Commerce and Industry**

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**VERSIONS OF THIS BILL**

[12/16/2008](file:///p:\pprever\2009-10\3159_20081216.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 34‑39‑175 SO AS TO PROVIDE FOR A COMMON DATABASE OF DEFERRED PRESENTMENT TRANSACTIONS IMPLEMENTED BY THE CONSUMER FINANCE DIVISION OF THE BOARD OF FINANCIAL INSTITUTIONS AND ACCESSIBLE TO DEFERRED PRESENTMENT PROVIDERS TO VERIFY IF AN APPLICANT HAS AN EXISTING OR RECENTLY TERMINATED DEFERRED PRESENTMENT TRANSACTION FOR PURPOSES OF DETERMINING ELIGIBILITY TO ENTER INTO A NEW TRANSACTION, TO PROVIDE FOR THE INFORMATION REQUIRED, AND TO ALLOW A FEE UP TO ONE DOLLAR FOR SUBMITTED DATA; BY ADDING SECTION 34‑39‑205 SO AS TO PROHIBIT MISLEADING ADVERTISING ON THE PREMISES OF A DEFERRED PRESENTMENT PROVIDER; BY ADDING SECTION 34‑39‑270 SO AS TO PROHIBIT A NEW DEFERRED PRESENTMENT TRANSACTION WITH A PERSON WHO HAS AN EXISTING TRANSACTION, AN EXTENDED PAYMENT PLAN, OR HAS ENDED A TRANSACTION EARLIER THAN SEVEN DAYS FROM APPLICATION, TO PROVIDE FURTHER FOR THE SUBMISSION OF AND ACCESS TO INFORMATION IN THE COMMON DATABASE, AND TO PROVIDE FOR A FEE AND FOR CONFIDENTIALITY; BY ADDING SECTION 34‑39‑280 SO AS TO PROVIDE FOR AN EXTENDED PAYMENT PLAN FOR PAYMENT OF AN OUTSTANDING DEFERRED PRESENTMENT TRANSACTION AND THE REQUIRED TERMS; BY ADDING SECTION 34‑39‑290 SO AS TO REQUIRE AN ANNUAL REPORT OF THESE TRANSACTIONS BY THE BOARD OF FINANCIAL INSTITUTIONS TO THE GENERAL ASSEMBLY; TO AMEND SECTION 34‑39‑130, RELATING TO LICENSURE REQUIREMENTS IN CONNECTION WITH A PERSON ENGAGING IN THE BUSINESS OF DEFERRED PRESENTMENT SERVICES, SO AS TO PROHIBIT BUSINESS IN THIS STATE WITHOUT A LICENSE, 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, AND TO REQUIRE COMPLIANCE WITH STATE AND FEDERAL LAW WHEN ACTING FOR A THIRD PARTY LENDER; TO AMEND SECTION 34‑39‑150, RELATING TO APPLICATION FOR LICENSURE, SO AS TO INCREASE THE APPLICATION FEE AND ANNUAL RENEWAL FEE FROM TWO HUNDRED FIFTY DOLLARS TO FIVE HUNDRED DOLLARS AND THE MULTIPLE LOCATION FEE FROM FIFTY DOLLARS TO ONE HUNDRED DOLLARS; TO AMEND SECTION 34‑39‑170, RELATING TO RESTRICTIONS ON THE ADVANCEMENT OF MONIES, SO AS TO PROHIBIT AN ELECTRONIC FUNDS TRANSFER FOR AUTOMATIC PAYMENT OF A DEFERRED PRESENTMENT TRANSACTION; TO AMEND SECTION 34‑39‑180, RELATING TO RESTRICTIONS AND REQUIREMENTS FOR A DEFERRED PRESENTMENT TRANSACTION, SO AS TO LIMIT THE TOTAL AMOUNT ADVANCED TO THE LESSER OF FIVE HUNDRED DOLLARS OR TWENTY‑FIVE PERCENT OF THE CUSTOMER’S GROSS INCOME DURING THE LOAN PERIOD, TO REQUIRE DISCLOSURE OF THE NATURE OF THE TRANSACTION AND THE CUSTOMER’S RIGHTS, TO PROHIBIT A LOAN TO A PERSON WHO IS ENGAGED IN AN EXTENDED PAYMENT PLAN, AND TO PROVIDE FOR FORMS FOR CALCULATION OF PERMISSIBLE LOAN AMOUNTS; AND TO AMEND SECTION 34‑39‑200, RELATING TO LIMITATIONS ON LICENSEES, SO AS TO REQUIRE COMPLIANCE WITH LAW WHEN ACTING FOR A THIRD‑PARTY LENDER.

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

SECTION 1. Chapter 39 of Title 34 is amended by adding:

“Section 34‑39‑175. (A) The Consumer Finance Division of the Board of Financial Institutions shall implement a common database with real‑time access through an internet connection for deferred presentment providers, as provided in this subsection. The board may enter into a contract with a single source private vendor to develop and operate the database. The database must be accessible to the board and the deferred presentment providers to verify if deferred presentment transactions are outstanding for a particular person. A deferred presentment provider shall submit that data before entering into a deferred presentment transaction and once a deferred presentment transaction has been paid in full, in a format the board requires by rule including the drawer’s name, social security number or employment authorization alien number, address, driver’s license number, amount of the transaction, date of transaction, the date that the transaction is closed, and additional information required by the board. The board may impose a fee not to exceed one dollar for each transaction for data required to be submitted by a licensee. A licensee may rely on the information contained in the database as accurate and is not subject to any administrative penalty or civil liability as a result of relying on inaccurate information contained in the database. The board may adopt rules to administer and enforce the provisions of this section and to ensure that the database is used by licensees in accordance with this section.

(B) The information provided in the database is limited for the use in determining if a customer is eligible or ineligible to enter into a new deferred presentment transaction and to describe the reason for the determination of eligibility or ineligibility.”

SECTION 2. Chapter 39, Title 34 of the 1976 Code is amended by adding:

“Section 34‑39‑205. On‑premises advertising by a licensee may not contain false, misleading, or deceptive statements or representations. The board shall promulgate regulations necessary to administer and enforce this section.”

SECTION 3. Chapter 39, Title 34 of the 1976 Code is amended by adding:

“Section 34‑39‑270. (A) A licensee may not enter into a deferred presentment transaction with a person:

(1) who has an outstanding deferred presentment transaction with any licensee;

(2) who has entered into an extended payment plan agreement as provided in Section 34‑39‑280 which has not been paid in full or terminated; or

(3) sooner than the seventh day after the date upon which the person last closed out a deferred presentment transaction with any licensee.

(B) Before entering into a deferred presentment transaction with a person, a licensee shall verify whether the person is eligible to enter into the transaction by inquiring of the person, checking the licensee’s records, and accessing the deferred presentment transaction database established pursuant to subsection (C).

(C) The board shall contract with a single third party database provider to establish and operate a deferred presentment transaction database for the purpose of verifying whether a person is eligible to enter into a deferred presentment transaction. The board shall supervise the establishment and operation of the database and shall ensure that the database provider establishes and operates the database pursuant to the provisions of this section. The board shall have full access to the database and all records related to the database for purposes of supervising the establishment and operation of the database. If the database provider violates a provision of this section, the board shall terminate the contract. The database must have real‑time access through an internet connection and be accessible at all times to the board and licensees. The database provider shall establish and maintain a process for responding to transaction verification requests when technical difficulties prevent the licensee from accessing the database through the internet including, but not limited to, verification by telephone. The database must be set up so as to notify the board if a licensee or a person enters into a transaction in violation of the provisions of this section.

(D) To conduct an inquiry as to whether a person is eligible to enter into a deferred presentment transaction, a licensee shall submit to the database provider such information as the board may require. The response to an inquiry to the database provider by a licensee must state only that a person is eligible or ineligible to enter into a transaction and describe the reason for that determination. The person seeking to enter into the transaction may make a direct inquiry to the database provider to request a more detailed explanation of the basis for the database provider’s determination that the person is ineligible to enter into the transaction.

(E) A licensee shall notify the database provider immediately when the licensee enters into a deferred presentment transaction with a person. The licensee shall submit to the database provider such information as the board requires. When the transaction is closed, the licensee shall designate the transaction as closed and immediately notify the database provider. When the database provider receives notification that the transaction is closed, the database provider immediately shall designate the transaction as closed in the database.

(F) A licensee shall notify a person seeking to enter into a deferred presentment transaction that the licensee shall access the database to verify whether the person is eligible to enter into a transaction. The licensee also shall notify the person that information related to a new transaction must be entered into the database.

(G) The database provider may charge a database verification fee to a licensee for an inquiry as to whether a person is eligible to enter into a deferred presentment transaction, if that transaction is consummated by the licensee. The fee must be established by the board and may not exceed the actual cost of verifying a person’s eligibility. A licensee may charge a person seeking to enter into a deferred presentment transaction one‑half of the actual cost of the verification fee.

(H) Except as otherwise provided in this section, all personally identifiable information regarding a person contained within or obtained by way of the database is strictly confidential and is exempt from disclosure under the Freedom of Information Act. The database provider and licensees shall use the information collected pursuant to this section only as prescribed in this section and for no other purpose.

(I) A licensee may rely on the information contained in the database as accurate and is not subject to any administrative penalty or civil liability as a result of relying on inaccurate information contained in the database.

Section 34‑39‑280. (A) Subject to the terms and conditions contained in this section, a customer may pay an outstanding deferred presentment transaction by means of an extended payment plan.

(B) A licensee shall enter into a written plan agreement with the customer if the customer, on or before the deferred presentment transaction’s due date, requests a plan and signs an amendment to the written agreement that memorializes the plan’s terms and shall enter into the database established in Section 34‑29‑175 the information that the customer has an extended payment plan.

(C) The plan’s terms must allow the customer, at no additional cost, to repay the deferred presentment transaction in substantially equal installments over not less than sixty days. Each plan installment must coincide with a date on which the customer receives regular income. The customer may prepay a plan in full at any time without penalty. If the customer fails to pay a plan installment when due, the plan is terminated and the licensee immediately may accelerate and collect the unpaid transaction balance. The licensee, with each payment under the plan by a customer, may provide for the return of the customer’s prior held check and require a new check for the remaining balance under the plan.

(D) A licensee must notify the customer of his plan rights by displaying the following statement, in at least 12‑point bold type, on the first page of the written agreement:

‘You should use a deferred presentment transaction only for a short‑term credit need. If you have a long‑term credit need, you should consider a less costly way to borrow money or seek the advice of a nonprofit credit counselor. You may repay this contract through an extended payment plan. If you choose this right, then, on or before the date this contract is due, you must ask for an extended payment plan. You will be asked to sign a new agreement for this extended payment plan. The extended payment plan must let you repay this contract in substantially equal installments over the next sixty days. There will be no additional cost. Each extended payment plan installment must match with a date on which you receive regular income. You may prepay an extended payment plan in full at any time without penalty. If you fail to pay an extended payment plan installment when due, the extended payment plan will end and we may collect immediately the unpaid contract balance.’

Section 34‑39‑290. Based upon data provided by the database vendor, the Board of Financial Institutions annually shall report to the General Assembly the following information for loans made in South Carolina in the previous reporting year, specifically the number of:

(1) loans made in South Carolina by loan amount and the dollar amount of fees collected by loan amount;

(2) individual borrowers by loan amount and the number of borrowers by the number of times each borrower took out a loan;

(3) borrowers who chose to pay off their loans through an extended payment plan by loan amount;

(4) loans that were not paid off in the previous year by loan amount; and

(5) loans on which the lender submitted the check for collection by loan amount and the number of loans on which the lender took action for collection.”

SECTION 4. Section 34‑39‑130 of the 1976 Code, as added by Act 433 of 1998, is amended by adding at the end:

“(C) A person may not engage in the business of deferred presentment services with a customer residing in this State, whether or not that person has a location in South Carolina, except in accordance with the provisions of this chapter and without having first obtained a license pursuant to this chapter.

(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, upon review of 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.

(3) 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, 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 5. Section 34‑39‑150(C) and (D) of the 1976 Code, as added by Act 433 of 1998, is amended to read:

“(C) The application must be accompanied by payment of an application fee of ~~two hundred fifty dollars~~ five hundred dollars and an investigation fee of five hundred dollars. These fees are not refundable or abatable. If the license is granted, however, payment of the application fee satisfies the fee requirement for the first license year or its remainder.

(D) A license expires annually and may be renewed upon payment of a license fee of ~~two hundred fifty dollars~~ five hundred dollars. The annual license renewal fee for an applicant with more than one location is ~~two hundred fifty~~ five hundred dollars for the first location and ~~fifty~~ one hundred dollars for each additional location. All license fees collected must be remitted to the general fund.”

SECTION 6. Section 34‑39‑170 of the 1976 Code, as added by Act 433 of 1998, is amended by adding an appropriately numbered new item to read:

“( ) A licensee and a customer may not enter into an electronic funds transfer agreement to make automatic debited loan payments for any portion of a deferred presentment agreement.”

SECTION 7. Section 34‑39‑180 of the 1976 Code, as added by Act 433 of 1998, is amended to read:

“Section 34‑39‑180. (A) ~~A licensee may~~ ~~defer the presentment or deposit of a check for up to thirty‑one days pursuant to the provisions of this section.~~ The total amount advanced by all licensees to any customer for deferred presentment or deposit may not exceed the lesser of twenty‑five percent of the customer’s gross income during the term of the loan or five hundred dollars, exclusive of the fees allowed in Section 34‑39‑180(E). A licensee may not advance to a customer an amount for deferred presentment or deposit which causes this limit to be exceeded by that customer.

(B) Each check must be documented by a written agreement signed by both the customer and the licensee. The written agreement must contain the name or trade name of the licensee, the transaction date, the amount of the check, and a statement of the total amount of fees charged, expressed both as a dollar amount and as an effective annual percentage rate (APR). The written agreement must authorize expressly the licensee to defer presentment or deposit of the check until a specific date, not later than thirty‑one days from the date the check is accepted by the licensee. The written agreement also must contain plain language developed by the board which sufficiently informs the customer regarding the nature of deferred presentment services, the deferred presentment service process, the customer’s rights pursuant to this chapter, information to file complaints with the South Carolina Department of Consumer Affairs and other information the board may require.

(C) The board shall require each licensee to issue a standardized consumer notification and disclosure form in compliance with state and federal truth‑in‑lending laws before entering into a deferred presentment agreement with a customer.

(D) A licensee ~~shall~~ may not charge, directly or indirectly, a fee or other consideration in excess of fifteen percent of the ~~face~~ amount ~~of the check~~ advanced 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~~ is imposed only once for each written agreement.

(E) A check accepted for deferred presentment or deposit pursuant to this chapter ~~may~~ must not be repaid from the proceeds of another check accepted for deferred presentment or deposit by the same licensee or an affiliate of the licensee. A licensee ~~shall~~ may not renew or otherwise extend presentment of a check or withhold the check from deposit, for old or new consideration, for a period beyond the time set forth in the written agreement with the customer. A licensee shall not enter into a deferred presentment agreement with a customer who has entered into an extended payment plan agreement with any licensee as provided in Section 34‑39‑280.

(F) If a check is returned to the licensee from a payer financial institution due to insufficient funds, closed account, or stop payment order, the licensee may pursue all legally available civil means to collect the check including, but not limited to, the imposition of a returned check charge as provided in Section 34‑11‑70(a), except that the service charge imposed by the licensee ~~shall~~ may not exceed the lesser of ten dollars or the fee imposed by the financial institution on the licensee for the returned check. An individual who issues a personal check to a licensee under a deferred presentment agreement is not subject to criminal penalty.

(G) If a check is returned to the licensee from a payer financial institution due to insufficient funds, closed account, or stop payment order, the licensee may pursue all legally available civil means to collect the check including, but not limited to, the imposition of a returned check charge as provided in Section 34‑11‑70(a), except that the service charge imposed by the licensee shall not exceed the lesser of ten dollars or the fee imposed by the financial institution on the licensee for the returned check. An individual who issues a personal check to a licensee under a deferred presentment agreement is not subject to criminal penalty.

(H) The board shall develop a form that must be used by all licensees to calculate the maximum amount of funds it may lend a customer based on the customer’s income during the term of the loan as required by subsection (A). The form and copies of the documentation verifying the customer’s income shall be maintained by the licensee and a copy of both attached to the written agreement signed by the customer.”

SECTION 8. Section 34‑39‑200 of the 1976 Code, as added by Act 433 of 1998, is amended to read:

“Section 34‑39‑200. A person required to be licensed pursuant to this chapter may not:

(1) charge fees in excess of those authorized by this chapter;

(2) 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) use or cause to be published or disseminated advertising communication which contains false, misleading, or deceptive statements or representations;

(4) conduct business at premises or locations other than locations licensed by the board;

(5) engage in unfair, deceptive, or fraudulent practices, including unconscionable conduct in violation of Section 37‑5‑108;

(6) alter or delete the date on a check accepted by the licensee;

(7) accept an undated check or a check dated on a date other than the date on which the licensee accepts the check;

(8) require a customer to provide security for the transaction or require the customer to provide a guaranty from another person;

(9) 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~~ except, that a sale of money orders~~,~~ or postage stamps, and the payment of utility bills with ~~no additional~~ a fee to the customer that does not exceed one percent of the bill being paid, vending machines for food or beverage, facsimile services, ~~Western Union~~ wire transfer or money transmitter services, or rental of postal boxes at rates not higher than allowed by the United States Postal Service ~~is~~ are not the ~~sale~~ sales of goods or services prohibited by this subsection;

(10) be licensed pursuant to Section 12‑21‑2720(a)(3) to operate a video poker machine; ~~or~~

(11) permit others to engage in an activity prohibited by this section at a location licensed pursuant to this chapter~~.~~ ; or

(12) broker or arrange a deferred presentment transaction on behalf of a third‑party lender, unless the transaction complies with the provisions of this chapter and is not preempted by federal law.”

SECTION 9. 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 10. This act takes effect January 1, 2010.

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