**A** **BILL**

TO AMEND SECTION 37‑3‑202, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ADDITIONAL CHARGES A LENDER MAY CHARGE IN CONNECTION WITH A CONSUMER LOAN, SO AS TO ALLOW A LENDER TO CHARGE A CONVENIENCE FEE FOR ACCEPTING AN ELECTRONIC PAYMENT AND TO ESTABLISH CERTAIN STANDARDS FOR THE CONVENIENCE FEE.

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

SECTION 1. Section 37‑3‑202(1) of the 1976 Code is amended to read:

“(1) In addition to the loan finance charge permitted by this chapter a lender may contract for and receive the following additional charges in connection with a consumer loan:

(a) official fees and taxes;

(b) charges for insurance as described in subsection (2);

(c) with respect to open‑end credit pursuant to a lender credit card or similar arrangement, as defined in Section 37‑1‑301(16), which entitles the debtor to purchase or lease goods or services from at least one hundred persons not related to the lender, under an arrangement pursuant to which the debts resulting from the purchases or leases are payable to the lender:

(i) annual charges, payable in advance, for the privilege of using the lender credit card or other credit arrangement; and

(ii) an over‑limit charge not to exceed ten dollars if the balance of the account exceeds the credit limit established pursuant to the agreement between the lender and the debtor plus the lesser of ten percent of the credit limit or one hundred dollars. The over‑limit charge authorized by this subitem must not be assessed again against the debtor unless the account balance has been reduced below the credit limit plus the lesser of ten percent of the credit limit or one hundred dollars, and the debtor’s account balance subsequently exceeds the credit limit plus the lesser of ten percent of the credit limit or one hundred dollars;

(d) with respect to a loan secured by an interest in land, the following “closing costs”, if they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this title:

(i) fees or premiums for title examination, abstract of title, title insurance, surveys, or similar purposes;

(ii) fees for preparation of a deed, settlement statement, or other documents, if not paid to the creditor or a person related to the creditor;

(iii) escrows for future payments of taxes, including assessments for improvements, insurance, and water, sewer, and land rents;

(iv) fees for notarizing deeds and other documents, if not paid to the creditor or a person related to the creditor; and

(v) fees for appraising the real estate that is collateral for the loan, if not paid to the creditor or a person related to the creditor;

(e) charges for other benefits, including insurance, conferred on the debtor, if the benefits are of value to him and if the charges are reasonable in relation to the benefits, are of a type which is not for credit, and are authorized as permissible additional charges by rule adopted by the administrator; ~~and~~

(f) fees and charges paid to persons registered as mortgage loan brokers pursuant to Chapter 58, Title 40; and

(g) a convenience fee from a debtor making payments by debit card, electronic funds transfer, electronic check, or other electronic means in order to offset actual costs incurred by a lender for accepting and processing payments made by electronic means.

(i) A convenience fee collected by a lender pursuant to this section may not exceed the actual costs incurred by the lender. However, a lender may impose a convenience fee in lieu of the actual cost of the individual payment type that does not exceed the average of the actual cost incurred for the various types of electronic payments for which the lender imposes a convenience fee. The average cost must be computed using the actual cost incurred over a period of twelve months and updated annually on February first based on the previous calendar year average. The initial average must be computed using the first full month’s actual average cost.

(ii) A lender charging a convenience fee must notify the debtor of the amount of the fee prior to completing a transaction, provide an opportunity for the debtor to cancel the transaction without incurring a fee, and allow the debtor the opportunity to make a payment on a loan by check, cash, or money order directly to the lender without the imposition of a convenience fee for a card or electronic payment.

(iii) When a debtor elects to make a payment to the lender by credit card, debit card, electronic funds transfer, electronic check, or other electronic means and a convenience fee is imposed and collected, the payment of the convenience fee is not refundable.

(iv) For purposes of this item, ‘actual costs’ means actual third party costs incurred for the processing of payments made by electronic means. If a lender is a subsidiary of an entity that processes payments made by electronic means, the parent entity must be considered a third party.”

SECTION 2. This act takes effect upon approval by the Governor.

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