

Statutory Fees & NMLS Fees/Costs

| CONSUMER FINANCE DIVISION | | | |
|--------------------------------|-----------------------------------|------------|--------------------------|
| Deferred Presentment Servicers | | | |
| Initial Fees | Application Fee | \$1,000 | S.C. Code § 34-39-150(C) |
| | Investigation Fee | \$500 | |
| Renewal Fees | Annual Fee - headquarters | \$1,000 | S.C. Code § 34-39-150(D) |
| | Annual Fee - additional locations | \$250 each | |

| Check Cashing Servicers | | | |
|-------------------------|---------------------------|-----------|-------------------------|
| Initial Fees | Application Fee | \$250 | S.C. Code § 34-41-40(C) |
| | Investigation Fee | \$500 | |
| Renewal Fees | Annual Fee - Headquarters | \$250 | S.C. Code § 34-41-40(D) |
| | Annual Fee – Branches | \$50 each | |

| Supervised Lending | | | |
|--------------------|-------------------|------------------|--|
| Initial Fees | Application Fee | \$200 | S.C. Code Regs. 28-8(D)(12); S.C. Code § 37-3-503(8); S.C. Code § 34-29-30 |
| | Investigation Fee | \$100 | |
| Renewal Fee | Annual Fee | \$400 (flexible) | |

NMLS Annual Fees and Costs (projected):

| | |
|-------------------------------------|---|
| \$100 Processing Fee - Headquarters | \$15 Credit Check (per person) |
| \$100 Processing Fee - Website | \$36.25 FBI Background Check (per person) |
| \$20 Processing Fee - Branch (each) | |

| MORTGAGE DIVISION | | | |
|---------------------------|--|------------------------------|----------------------------------|
| Mortgage Lenders | | | |
| Initial Fees | Filing Fee | \$1000 | S.C. Code § 37-22-140(E) |
| | Credit & Criminal history reports | \$15 & \$36.25 (actual cost) | |
| Renewal Fee | Annual Fee | \$800 | S.C. Code § 37-22-150(A), (A)(1) |
| Mortgage Lender Branches | | | |
| Initial Fee | Filing Fee | \$150 each | S.C. Code § 37-22-140(E) |
| Renewal Fee | Annual Fee | \$150 each | S.C. Code § 37-22-150(A), (A)(1) |
| Mortgage Loan Originators | | | |
| Initial Fees | Filing Fee | \$50 | S.C. Code § 37-22-140(E) |
| | Credit & Criminal history reports | \$15 & \$36.25 (actual cost) | |
| Renewal Fee | Annual Fee | \$50 | S.C. Code § 37-22-150(A), (A)(2) |
| NMLS | | | |
| | “...all applicable fees to utilize the Nationwide Mortgage Licensing System and Registry...” | | S.C. Code §§ 37-22-270(B) |

NMLS Annual Fees (new applications and renewals):

| |
|--|
| \$100 Processing Fee - Lender Headquarters |
| \$20 Processing Fee - Lender Branch (each) |
| \$30 Processing Fee - Originator |

CHAPTER 39
Deferred Presentment Services

SECTION 34-39-110. Short title.

This chapter may be cited as the “South Carolina Deferred Presentment Services Act”.

HISTORY: 1998 Act No. 433, Section 1, eff upon approval (became law without the Governor’s signature on June 11, 1998).

SECTION 34-39-120. Definitions.

As used in this chapter, unless the context clearly requires otherwise, the term:

- (1) “Board” means the State Board of Financial Institutions.
- (2) “Check” means a check signed by the maker and made payable to a person licensed pursuant to this chapter. The name of the maker must be preprinted on the face of the check. “Counter checks” and checks without the name of the maker preprinted on the face of the check may not be accepted by a licensee.
- (3) “Deferred presentment services” means a transaction pursuant to a written agreement involving the following combination of activities in exchange for a fee:
 - (a) accepting a check dated on the date it was written; and
 - (b) holding the check for a period of time before presentment for payment or deposit.
- (4) “Licensee” means a person licensed to provide deferred presentment services pursuant to this chapter.
- (5) “Person” means an individual, group of individuals, partnership, association, corporation, or other business unit or legal entity.
- (6) “Location” means the entire space in which deferred presentment services are provided. The space must be completely separated from any space where goods or services are sold or leased. The location must be separately staffed and must not have a common entrance with any other business not permitted by this chapter.
- (7) “Nationwide Multistate Licensing System and Registry” means a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators of licensees licensed pursuant to this chapter.
- (8) “Unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Multistate Licensing System and Registry.

HISTORY: 1998 Act No. 433, Section 1, eff upon approval (became law without the Governor’s signature on June 11, 1998).

SECTION 34-39-130. Licensure requirements.

(A) A person may not engage in the business of deferred presentment services without first obtaining a license pursuant to this chapter. A separate license is required for each location from which the business is conducted. The licensee shall post its license to engage in the business of deferred presentment services at each location licensed pursuant to this chapter.

(B) A person engaged in the business of deferred presentment services on the effective date of this chapter may continue to engage in the business without a license until the board has acted upon the application for a license, but the application must be filed within sixty days after the effective date of this chapter.

(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.

HISTORY: 1998 Act No. 433, Section 1, eff upon approval (became law without the Governor’s signature on June 11, 1998); 2009 Act No. 78, Section 3 [see Editor’s Note].

Editor's Note

2009 Act No.78, Section 11 provides as follows:

“SECTIONS 2, 3, [adding subsection (C) above] and 4 of this act take effect upon implementation of the common database as required in SECTION 1 [Section 34-39-175]. The remaining SECTIONS of this act take effect upon approval by the Governor.

Effect of Amendment

The 2009 amendment added subsection (C) relating to deferred presentment services with customers residing in South Carolina.

SECTION 34-39-140. Applicability of chapter; exceptions.

This chapter does not apply to:

- (1) a bank, savings institution, credit union, or farm credit system organized under the laws of the United States or any state; and
- (2) a person principally engaged in the bona fide retail sale of goods or services who, either as an incident to or independently of a retail sale or service and not holding itself out to be a deferred presentment service, from time to time cashes checks, drafts, or money orders without a fee or other consideration.

HISTORY: 1998 Act No. 433, Section 1, eff upon approval (became law without the Governor's signature on June 11, 1998).

SECTION 34-39-150. Application for licensure.

(A) An application for licensure pursuant to this chapter must ~~be in writing, under oath, and on a form prescribed by the board. The application must~~ set forth all of the following:

- (1) the legal name and residence and business addresses of the applicant and, if the applicant is a partnership, association, or corporation, of every member, officer, managing employee, and director of it;
- (2) the location of the registered office of the applicant;
- (3) the registered agent of the applicant if the applicant is required by other law to have a registered agent;
- (4) the addresses of the locations to be licensed; and
- (5) other information concerning the financial responsibility, background experience, and activities, such as other partnerships, associations, and corporations located at or adjacent to the licensed location of the applicant and its members, officers, managing employees, and directors as the board requires.

(B) Upon receipt of an application in the form prescribed by the board, accompanied by the required fee, the board shall investigate whether the qualifications for licensure are satisfied. If the board finds that the qualifications are satisfied, it shall issue to the applicant a license to engage in the deferred presentment services business. If the board fails to issue a license, it shall notify the applicant of the denial and the reasons for it. The provisions of the Administrative Procedures Act apply to the appeal of the denial of a license.

(C) The application must be accompanied by payment of an application fee of one thousand dollars and an investigation fee of five hundred dollars in addition to the actual cost of obtaining credit reports and national fingerprint-based criminal history record checks. 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 one thousand dollars. The annual license renewal fee for an applicant with more than one location is one thousand dollars for the first location and two hundred fifty dollars for each additional location.

(E) One-half of the renewal fees collected pursuant to subsection (D) must be credited to the Board of Financial Institutions for enforcement of this chapter and one-half must be credited to the Attorney General to prosecute actions brought for violations of this chapter.

HISTORY: 1998 Act No. 433, Section 1, eff upon approval (became law without the Governor's signature on June 11, 1998); 2009 Act No. 78, Section 5, eff June 16, 2009.

Effect of Amendment

The 2009 amendment, in subsections (C) and (D) substituted "one thousand dollars" for "two hundred fifty dollars", and in subsection (D) in the second sentence substituted "two hundred fifty dollars" for "fifty dollars"; and added subsection (E) relating to disposition of license renewal fees.

SECTION 34-39-160. Qualifications for licensure.

To qualify for a license issued pursuant to this chapter, an applicant shall have:

- (1) a minimum net worth, determined in accordance with generally accepted accounting principles, of at least twenty-five thousand dollars available for the operation of each location; and
- (2) the financial responsibility, character, experience, and general fitness so as to command the confidence of the public and to warrant belief that the business is operated lawfully, honestly, fairly, and efficiently.

HISTORY: 1998 Act No. 433, Section 1, eff upon approval (became law without the Governor's signature on June 11, 1998).

SECTION 34-39-170. Restrictions on advancement of monies on security of check; posting of fees charged for deferred presentment services.

(A) A licensee may not advance monies on the security of a check unless the account on which the presented check is drawn is a legitimate, open, and active account.

(B) A licensee, in every location conducting business under a license issued pursuant to this chapter, conspicuously shall post and at all times display a notice stating the fee charged for deferred presentment services. A licensee shall file with the board a statement of the fees charged at every location licensed for deferred presentment services.

(C) A licensee shall endorse in the name of the licensee every check, draft, or money order presented by the licensee for payment or deposit.

HISTORY: 1998 Act No. 433, Section 1, eff upon approval (became law without the Governor's signature on June 11, 1998).

SECTION 34-39-175. Deferred presentment transaction database.

(A) In order to prevent a person from having a deferred presentment transaction that exceeds the limit in Section 34-39-180(B) and Section 34-39-270(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 shall enter into a contract with a single source private vendor to develop and operate the database. By no later than February 1, 2010, the database must be accessible to the board and the deferred presentment providers to meet the requirements of this chapter and verify if a deferred presentment transaction is outstanding for a particular person. Deferred presentment providers shall submit the person's data to the database provider 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 regulation, 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 database provider may impose the database verification fee authorized by Section 34-39-270(H) for data required to be submitted by a licensee. The board may adopt procedures 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.

HISTORY: 2009 Act No. 78, Section 1, eff June 16, 2009.

SECTION 34-39-180. Restrictions and requirements for deferred presentment or deposit of check.

(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.

(B) The total amount advanced by a licensee to any customer at one time for deferred presentment or deposit may not exceed five hundred fifty 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 the customer.

(C) 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.

(D) 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.

(E) A licensee shall not charge, directly or indirectly, a fee or other consideration in excess of fifteen percent of the principal amount of the transaction for accepting a check for deferred presentment or deposit. The fee or other consideration authorized by this subsection may be imposed only once for each written agreement. Records must be kept by each licensee with sufficient detail to ensure that the fee or other consideration authorized by this subsection may be imposed only once for each written agreement.

(F) A check accepted for deferred presentment or deposit pursuant to this chapter may 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 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.

(G) If a check is returned to the licensee from a payor 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 except for the imposition of a returned check charge. An individual who issues a personal check to a licensee under a deferred presentment agreement is not subject to criminal liability.

HISTORY: 1998 Act No. 433, Section 1, eff upon approval (became law without the Governor's signature on June 11, 1998); 2009 Act No. 78, Section 4, [see Editor's Note]; 2009 Act No. 78, Sections 8, 9, eff June 16, 2009.

Editor's Note

2009 Act No.78, Section 11 provides as follows:

“SECTIONS 2, 3, and 4 [amending subsection (B) above] of this act take effect upon implementation of the common database as required in SECTION 1 [Section 34-39-175]. The remaining SECTIONS of this act take effect upon approval by the Governor.

Effect of Amendment

The 2009 amendment, in subsection (B), in the first sentence substituted “total amount advanced by a licensee to any customer at one time” for “face amount of a check taken” and “five hundred fifty dollars” for “three hundred dollars”, and added the second sentence prohibiting advances causing the customer to exceed the limit; in subsection (E), in the first sentence substituted “principal amount of the transaction” for “face amount of the check”; and, in subsection (G), in the first sentence substituted “except for” for “including, but not limited to,” and deleted at the end “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 of the fee imposed by the financial institution on the licensee for the returned check”.

SECTION 34-39-190. Maintenance of books, accounts and records; examination.

(A) A person subject to the provisions of this chapter shall maintain in its offices books, accounts, and records, as the board may reasonably require and establish by regulation. The books, accounts, and records must be kept with sufficient detail to ensure that the provisions of Section 34-39-180(E) are met. The books, accounts, and records must be maintained separately from other business in which the person is engaged and must be retained for at least three years.

(B) The board may examine the books, accounts, and records to determine compliance with this chapter and with the regulations adopted pursuant to it. The licensee examined pursuant to this section must pay the cost of the examination to the board.

HISTORY: 1998 Act No. 433, Section 1, eff upon approval (became law without the Governor's signature on June 11, 1998).

SECTION 34-39-200. Limitations on activities by persons required to be licensed by chapter.

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, except that the sale of money orders, postage stamps, payment of utility bills with no additional fee to the customer, vending machines for food or beverage, facsimile services, wire transfer services, or the rental of postal boxes at rates not higher than allowed by the United States Postal Service are not the sale 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.

HISTORY: 1998 Act No. 433, Section 1, eff upon approval (became law without the Governor's signature on June 11, 1998); 2009 Act No. 78, Section 7, eff June 16, 2009.

Effect of Amendment

The 2009 amendment, in item (9), substituted "wire transfer services," for "Western Union services," added "the rental of", and made nonsubstantive changes.

SECTION 34-39-210. Suspension or revocation of license.

(A) The board may suspend or revoke a license issued pursuant to this chapter if, after notice and opportunity for hearing, the board issues written findings that the licensee has:

- (1) violated this chapter or applicable state or federal law;
 - (2) made a false statement on the application for a license under the chapter;
 - (3) refused to permit investigation by the board as authorized by this chapter;
 - (4) failed to comply with an order of the board;
 - (5) demonstrated incompetency or untrustworthiness to engage in the business of deferred presentment services; or
 - (6) been convicted of a felony or misdemeanor involving fraud, misrepresentation, or deceit.
- (B) The board may not suspend or revoke a license issued pursuant to this chapter unless the licensee has been given notice and opportunity for hearing in accordance with the Administrative Procedures Act.

HISTORY: 1998 Act No. 433, Section 1, eff upon approval (became law without the Governor's signature on June 11, 1998).

SECTION 34-39-220. Orders to cease and desist violations of chapter; hearing.

If the board determines that a person subject to the provisions of this chapter has violated this chapter or regulations adopted pursuant to it, the board, upon notice and opportunity for hearing in accordance with the Administrative Procedures Act, may order the person to cease and desist from the violations and to comply with this chapter. The board may designate a hearing officer or hearing panel to conduct hearings or take other action as necessary pursuant to this section and may seek the assistance of the Attorney General or the Department of Consumer Affairs in enforcing compliance with this chapter. The board may enforce compliance with an order issued pursuant to this section by the imposition and collection of civil penalties authorized in this chapter.

HISTORY: 1998 Act No. 433, Section 1, eff upon approval (became law without the Governor's signature on June 11, 1998).

SECTION 34-39-230. Civil penalties; repayment of unlawful or excessive fees.

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

HISTORY: 1998 Act No. 433, Section 1, eff upon approval (became law without the Governor's signature on June 11, 1998).

SECTION 34-39-240. Wilful violations; referral for criminal prosecution.

The board, upon a determination that a violation of Section 34-39-130 is wilful, may refer the violation to the Attorney General or to the appropriate circuit solicitor for criminal prosecution. A wilful violation of Section 34-39-130 is a Class B misdemeanor, and each transaction involving unlawful deferred presentment constitutes a separate offense.

HISTORY: 1998 Act No. 433, Section 1, eff upon approval (became law without the Governor's signature on June 11, 1998).

SECTION 34-39-250. Chapter not subject to other statutes governing imposition of interest, fees, loan charges, or extension of credit.

The business of deferred presentment services conducted in accordance with this chapter is not subject to or controlled by any other state statute governing the imposition of interest, fees, or loan charges, or the extension of credit.

HISTORY: 1998 Act No. 433, Section 1, eff upon approval (became law without the Governor's signature on June 11, 1998).

SECTION 34-39-260. Promulgation of regulations.

(A) The board may promulgate regulations pursuant to the Administrative Procedures Act necessary to carry out the purposes of this chapter, to provide for the protection of the public, and to assist licensees in interpreting and complying with this chapter.

(B) For the purpose of participating in the Nationwide Multistate Licensing System and Registry, the board may waive or modify, in whole or in part, by rule, regulation, or order, any or all of the requirements of this chapter and establish new requirements as reasonably necessary to participate in the Nationwide Multistate Licensing System and Registry.

HISTORY: 1998 Act No. 433, Section 1, eff upon approval (became law without the Governor's signature on June 11, 1998).

SECTION 34-39-270. Prohibited deferred presentment transactions; eligibility inquiries; notification of transactions.

(A) A licensee may not enter into a deferred presentment transaction with a person:

- (1) who has an outstanding deferred presentment transaction;
- (2) who has repaid a previous deferred presentment transaction with any licensee on the same business day;
- (3) who has repaid a previous deferred presentment transaction with any licensee on the same business day or the previous business day if the transaction being requested would be the customer's eighth or more transaction within a calendar year; or
- (4) who has entered into an extended payment plan agreement with any licensee as provided in Section 34-39-280 which has not been paid in full or terminated.

(B) No eighth or subsequent deferred presentment transaction within a calendar year may be entered into on the same or subsequent business day of the repayment of the previous deferred presentment transaction.

(C) 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 accessing the deferred presentment transaction database established pursuant to subsection (D).

(D) The board shall contract with a single third party database provider that is SAS 70 certified 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 should give full consideration to Section 11-35-5210 when selecting the third-party database provider to establish and operate the deferred presentment transaction database required by this chapter. 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 and immediately substitute another qualified third party database provider. 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 established and operated so as to prevent a licensee from entering into a transaction that violates the provisions of this section.

(E) 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.

Chairman
THE HONORABLE CURTIS. M. LOFTIS, JR.
State Treasurer



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SOUTH CAROLINA
STATE BOARD OF FINANCIAL INSTITUTIONS

Legislative and Legal Committee

MINUTES

Thursday, November 29, 2018

2:00 P.M.

1200 Senate Street, Wade Hampton Office Building

Treasurer's Conference Room

Columbia, South Carolina

The Legislative and Legal Committee of the State Board of Financial Institutions met on November 29, 2018.

Members present: Chairman Hansel Hart and Ms. Rhonda Marcum.

Others in attendance: Commissioner Bodvake, Commissioner Davis, STO Attorney Laura Baer, Deputy Commissioner Sally Estes, and Board Liaison Alicia Sharpe.

The **Agenda** was approved by General Consent.

The November 14, 2018 Committee **Meeting Minutes** were approved by General Consent.

There were no **member recusal or conflict of interests** disclosed or identified.

Commissioner Bodvake provided a report on the following to the Committee:

Legislative action on proposed legislative changes adopting NMLS and related processing and other fees.

The Committee voted to recommend to the full Board to authorize legislative action requiring applicants and licensees for deferred presentment, check-cashing, and supervised lending licenses to use NMLS for all license applications and renewals and to require those applicants and licensees to pay the processing fees and credit and criminal background checks costs charged by NMLS. In determining the manner of legislative action, representatives of the Board must obtain industry support and consult with appropriate members of the General Assembly.

There were no **Executive Session** items.

The members discussed as **new business** the need for additional members, representing other industry groups, to serve on this committee. Each member expressed a desire to see their successor on the Board considered for this committee.

The next board meeting will be Wednesday, December 12, 2018.

(F) 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 paid in full, the licensee shall designate the transaction as closed and immediately notify the database provider. When the database provider receives notification that the transaction is paid in full, the database provider immediately shall designate the transaction as paid in full in the database. For purposes of this subsection, an item is paid in full when the payor bank makes final payment on the customer's check pursuant to Section 36-4-215 or the customer has redeemed the check with a cash payment in full.

(G) 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.

(H) 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 as the actual cost of verifying a person's eligibility, not to exceed one dollar. A licensee may charge a person seeking to enter into a deferred presentment transaction one-half of the actual cost of the verification fee.

(I) 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.

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

(K) A licensee will give a customer the right to rescind, at no cost, a deferred presentment transaction on or before the close of the following business day.

HISTORY: 2009 Act No. 78, Section 2, [see Editor's Note].

Editor's Note

2009 Act No.78, Section 11 provides as follows:

“SECTIONS 2 [adding this section], 3, and 4 of this act take effect upon implementation of the common database as required in SECTION 1 [Section 34-39-175]. The remaining SECTIONS of this act take effect upon approval by the Governor.

SECTION 34-39-280. Extended payment plans.

(A) Subject to the terms and conditions contained in this section, a customer who is unable to repay a deferred presentment transaction when due may elect once in any twelve month period to repay the deferred presentment transaction to the licensee by means of an extended payment plan. The twelve month period is measured from the date the customer enters into one extended payment plan with the licensee until the date that the customer enters into another extended payment plan with licensee.

(B) To request an extended payment plan, the customer, before the due date of the outstanding deferred presentment transaction, must request the plan and sign an amendment to the deferred presentment agreement that memorializes the plan's terms.

(C) The extended payment plan's terms must allow the customer, at no additional cost, to repay the outstanding deferred presentment transaction including any fee due in at least four substantially equal installments. Each plan installment must be due on or after a date on which the customer receives regular income. The customer may prepay an extended payment plan in full at any time without penalty. The licensee shall not charge the customer any interest or additional fees during the term of the extended payment plan. The licensee may, with each payment under the plan by a customer, provide for the return of the customer's prior held check and require a new check for the remaining balance under the plan. Alternatively, the licensee may require the customer at the time the customer enters into the extended

payment plan to provide multiple checks, one for each of the scheduled payments in the amount of those payments.

(D) If the customer fails to pay any extended payment plan installment when due, the customer shall be in default of the payment plan and the licensee immediately may accelerate payment on the remaining balance. Upon default, the licensee may take action to collect all amounts due.

(E) If a customer enters into an extended repayment plan, the licensee must enter that information into the database established in Section 34-39-175, and the customer and a licensee is prohibited from entering into a subsequent deferred presentment transaction until repayment in full of the original deferred presentment transaction.

(F) At each licensed location, a licensee shall prominently post a notice in at least twenty-four point bold type, in a form established or approved by the board, informing persons that if they are unable to repay a deferred presentment transaction when due they shall be eligible to enter into one extended payment plan in a twelve month period. A licensee also shall notify a person of his right to an extended payment plan by displaying the following statement, in at least twelve point bold type, on the first page of each deferred presentment agreement: "If you are unable to repay a deferred presentment transaction when due, you are eligible to request one extended payment plan in a twelve month period."

HISTORY: 2009 Act No. 78, Section 2, [see Editor's Note].

Editor's Note

2009 Act No.78, Section 11 provides as follows:

"SECTIONS 2 [adding this section], 3, and 4 of this act take effect upon implementation of the common database as required in SECTION 1 [Section 34-39-175]. The remaining SECTIONS of this act take effect upon approval by the Governor.

SECTION 34-39-290. Annual report and meeting concerning data.

(A) 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) 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;

(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; and

(6) the number of twenty-four hour periods within which a successive loan is conducted after a prior loan is completed.

(B) The Senate Banking and Insurance Committee and the House of Representatives Labor, Commerce and Industry Committee must annually meet, jointly or separately, to hold a hearing concerning the data provided by the database vendor and the report submitted by the Board of Financial Institutions. The vendor and the Board of Financial Institutions must testify at the meeting and answer questions, including questions related to the data and the report.

HISTORY: 2009 Act No. 78, Section 6, eff June 16, 2009.

SECTION 34-39-310. Participation in Nationwide Multistate Licensing System and Registry.

(A) The board may participate in a Nationwide Multistate Licensing System and Registry and may:

(1) facilitate and participate in the establishment and implementation of the Nationwide Multistate Licensing System and Registry;

(2) enter into agreements and contracts including cooperative, coordinating, and information sharing agreements;

(3) contract with third parties to process, maintain and store information collected by the Nationwide Multistate Licensing System and Registry;

(4) authorize the Nationwide Multistate Licensing System and Registry to collect fingerprints on the board's behalf in order to receive national criminal history background record checks from the FBI to retain for certification purposes and for notification of the board regarding subsequent criminal charges which may be reported to the FBI in accordance with Sections 34-39-150(C);

(5) authorize the Nationwide Multistate Licensing System and Registry to collect credit reports on the board's behalf for all licensees in accordance with Section 34-39-150(C);

(6) require persons that must be licensed by this chapter to utilize the Nationwide Multistate Licensing System and Registry;

(7) require all applicants and licensees to pay all applicable funds provided for in this chapter through the Nationwide Multistate Licensing System and Registry;

(8) provide information to and receive information from the Nationwide Multistate Licensing System and Registry;

(9) authorize a third party to collect funds associated with licensure on behalf of the board; and

(10) authorize the Nationwide Multistate Licensing System and Registry to collect and disburse consumer complaints.

(B) Persons required to be licensed pursuant to this chapter must be required to pay all applicable fees to utilize the Nationwide Multistate Licensing System and Registry and consent to utilizing the Nationwide Multistate Licensing System and Registry to obtain fingerprint-based criminal history background record checks and credit reports.

(C) The board shall provide licensees with written notice sent to the address of record on file with the board through the United States Postal Service the date the Nationwide Multistate Licensing System and Registry will be available for their use. Licensees shall have one hundred and twenty days from the date the system is available for use to enter all their licensing information into the Nationwide Multistate Licensing System and Registry. All filings and collection of data required by the board pursuant to this chapter after the date the system is available for use must be made through the Nationwide Multistate Licensing System and Registry, except for exempt persons.

(D) All licensees licensed through the Nationwide Multistate Licensing System and Registry must use the unique identifier assigned on all deferred presentment service documents.;

(E) Notwithstanding another provision of law to the contrary, the Nationwide Multistate Licensing System and Registry is not intended to and does not replace or affect the Board's authority to grant, suspend, revoke, or deny a license required pursuant to this chapter.

(F) The board shall develop a plan that ensures an orderly transition to the Nationwide Multistate Licensing System and Registry.

CHAPTER 41
Check-Cashing Services

SECTION 34-41-10. Definitions.

As used in this chapter, unless the context clearly requires otherwise, the term:

- (1) "Board" means the State Board of Financial Institutions.
- (2) "Cashing" means providing currency for payment instruments but does not include the bona fide sale or exchange of travelers checks and foreign denomination payment instruments.
- (3) "Level I check-cashing service" means any person or entity engaged in the business of cashing checks, drafts, or money orders for a fee, service charge, or other consideration.
- (4) "Level II check-cashing service" means any person or entity engaged in the business of cashing checks, drafts, or money orders for a fee, service charge, or other consideration. A Level II licensee may not be licensed to engage in the business of deferred presentment.
- (5) "Licensee" means a person or entity licensed to engage in either a Level I or Level II check-cashing service pursuant to this chapter.
- (6) "Person" means an individual, partnership, association, or corporation.
- (7) "Nationwide Multistate Licensing System and Registry" means a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators of licensees licensed pursuant to this chapter.
- (8) "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Multistate Licensing System and Registry.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).

SECTION 34-41-20. Licensure requirements.

(A) No person or other entity may engage in the business of either Level I or Level II check-cashing service without first obtaining a license pursuant to this chapter. No person or other entity providing a Level I or Level II check-cashing service may avoid the requirements of this chapter by providing a check or other currency equivalent instead of currency when cashing payment instruments.

(B) A person providing Level I or Level II check-cashing service on the effective date of this chapter may continue to engage in the business without a license until the board has acted upon the application for a license, but the application must be filed within sixty days after the effective date of this chapter.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).

SECTION 34-41-30. Applicability of chapter; exceptions.

This chapter shall not apply to:

- (1) a bank, savings institution, credit union, or farm credit system organized under the laws of the United States or any state; and
- (2) any person or entity principally engaged in the bona fide retail sale of goods or services, who either as an incident to or independently of a retail sale or service and not holding itself out to be a Level I or Level II check-cashing service, from time to time cashes checks, drafts, or money orders without a fee or other consideration.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).

SECTION 34-41-40. Application for licensure.

(A) An application for licensure pursuant to this chapter must ~~be in writing, under oath, and on a form prescribed by the board. The application shall~~ set forth all of the following:

- (1) the name and address of the applicant;
- (2) if the applicant is a firm or partnership, the name and address of each member of the firm or partnership;
- (3) if the applicant is a corporation, the name and address of each officer, director, registered agent, and principal;
- (4) the addresses of the locations of the business to be licensed; and
- (5) other information concerning the financial responsibility, background experience, and activities, such as other partnerships, associations, and corporations located at or adjacent to the licensed location, of the applicant and its members, officers, directors, and principals as the board requires.

(B) The board may make such investigations as the board considers necessary to determine if the applicant has complied with all applicable provisions of this chapter and state and federal law.

(C) The application must be accompanied by payment of a two hundred fifty dollar application fee and a five hundred dollar investigation fee in addition to the actual cost of obtaining credit reports and national fingerprint-based criminal history record checks. These fees are not refundable or abatable, but, if the license is granted, payment of the application fee shall satisfy the fee requirement for the first license year or remaining part of it.

(D) Licenses shall expire annually and may be renewed upon payment of a license fee of two hundred fifty dollars plus a fifty dollar fee for each branch location certificate issued under a license.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).

SECTION 34-41-42. Requirements for mobile check-cashing services.

For the purposes of this chapter, all mobile check-cashing services must:

- (1) be licensed as a Level I licensee;
- (2) be a registered and licensed armored vehicle in accordance with the laws of this State;
- (3) be considered a "branch" of a check-cashing business for purposes of licensure through this chapter; and
- (4) keep records in accordance with this chapter that are returned daily to either the main office or another nonmobile branch of the business.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).

SECTION 34-41-50. Maintenance of minimum liquid assets; issuance of license.

(A) Each licensee and applicant shall have and maintain liquid assets of at least fifty thousand dollars for each licensee.

(B) Upon the filing and investigation of an application, and compliance by the applicant with Section 34-41-40, and this section, the board shall issue and deliver to the applicant the license applied for to engage in business pursuant to this chapter at the locations specified in the application, provided that the board finds that the financial responsibility, character, reputation, experience, and general fitness of the applicant and its members, officers, directors, and principals are such as to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with law. If the board fails to make these findings, a license may not be issued, and the board shall notify the applicant of the denial and the reasons for it. The provisions of the Administrative Procedures Act apply to the appeal of the denial of a license.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).

SECTION 34-41-60. Restrictions and requirements for licensed check-cashing services.

(A) Notwithstanding any other provision of law, a check-cashing service licensed pursuant to this chapter may not directly or indirectly charge or collect fees or other consideration for check-cashing services in excess of the following:

(1) two percent of the face amount of the check or three dollars, whichever is greater, for checks issued by the federal government, state government, or any agency of the state or federal government, or any county or municipality of this State;

(2) two percent of the face amount of the check or three dollars, whichever is greater, for printed payroll checks. For purposes of this item, "printed" means type written, electronically generated, or computer generated; and

(3) seven percent of the face amount of the check or five dollars, whichever is greater, for all other checks, including handwritten payroll checks, or for money orders.

(B) A licensee may not advance monies on the security of any check unless the account from which the check being presented is drawn is legitimate, open, and active. A licensee who cashes a check for a fee shall deposit the check not later than five days from the date the check is cashed.

(C) A licensee shall ensure that in every location conducting business under a license issued pursuant to this chapter, there is posted conspicuously and at all times displayed a notice stating the fees charged for cashing checks, drafts, and money orders. A licensee further shall ensure that notice of the fees currently charged at every location is filed with the board.

(D) A licensee shall endorse every check, draft, or money order presented by the licensee for payment in the name of the licensee.

(E) Each check must be documented by a written agreement signed by both the customer and the licensee. In the case of an automated check-cashing machine, a printed receipt of the transaction between the customer and the licensee shall constitute an agreement. 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.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).

SECTION 34-41-70. Maintenance of books, accounts, and records; examination.

(A) Each person required to be licensed pursuant to this chapter shall maintain in its offices such books, accounts, and records as the board reasonably may require. The books, accounts, and records must be maintained separate from any other business in which the person is engaged and must be retained for a period prescribed by the board.

(B) The licensee shall ensure that each customer cashing a check is provided a receipt showing the name or trade name of the licensee, the transaction date, amount of the check, and the fee charged.

(C) The board may examine the books, accounts, and records in order to determine whether the person is complying with this chapter and rules adopted pursuant to it. The cost of the examination must be paid by the licensee and must be determined by the board.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).

SECTION 34-41-80. Limitations on activities by persons required to be licensed by chapter.

No person required to be licensed pursuant to this chapter shall do any of the following:

(1) charge fees in excess of those authorized pursuant to 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;
- (3) use or cause to be published or disseminated any advertising communication which contains any false, misleading, or deceptive statement or representation;
- (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) cash a check, draft, or money order made payable to a payee other than a natural person unless the licensee has previously obtained appropriate documentation from the executive entity of the payee clearly indicating the authority of the natural person or persons cashing the check, draft, or money order on behalf of the payee;
- (7) as a Level I licensee, engage in the retail sale of goods or services, other than check-cashing services and deferred presentment services, at the location licensed pursuant to this chapter, provided, however, that a sale of money orders, postage stamps, payment of utility bills with no additional fee to the customer, vending machines for food or beverage, facsimile services, Western Union services, or postal boxes at rates not higher than allowed by the United States Postal Service is not the sale of goods or services prohibited by this subsection;
- (8) as a Level II licensee, engage in the business of deferred presentment as provided in Chapter 39 of Title 34;
- (9) be licensed pursuant to Section 12-21-2720(a)(3) to operate a video poker machine; or
- (10) permit others to engage in an activity prohibited by this section at a location licensed pursuant to this chapter.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).

SECTION 34-41-90. Suspension or revocation of license.

(A) The board may suspend or revoke any license or licenses issued pursuant to this chapter if, after notice and opportunity for hearing, the board issues written findings that the licensee has engaged in any of the following conduct:

- (1) violated this chapter or applicable state or federal law or rules;
- (2) made a false statement on the application for a license pursuant to this chapter;
- (3) refused to permit investigation by the board authorized pursuant to this chapter;
- (4) failed to comply with an order of the board;
- (5) demonstrated incompetency or untrustworthiness to engage in the business of check cashing; or
- (6) has been convicted of a felony or misdemeanor involving fraud, misrepresentation, or deceit.

(B) The board may not suspend or revoke any license issued pursuant to this chapter unless the licensee has been given notice and opportunity for hearing in accordance with the Administrative Procedures Act.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).

SECTION 34-41-100. Orders to cease and desist violations; hearing.

If the board determines that a person required to be licensed pursuant to this chapter has violated this chapter or regulations promulgated pursuant to this chapter, the board, upon notice and opportunity for hearing in accordance with the Administrative Procedures Act, may order the person to cease and desist from the violations and to comply with this chapter. The board may designate a hearing officer or hearing panel to conduct hearings or take other action as necessary pursuant to this section and may seek the assistance of the Attorney General or the Department of Consumer Affairs in enforcing compliance with

this chapter. The board may enforce compliance with an order issued pursuant to this section by the imposition and collection of civil penalties authorized pursuant to this chapter.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).

SECTION 34-41-110. Civil penalties; repayment of unlawful or excessive fees.

The board may order and impose civil penalties upon any person required to be licensed pursuant to this chapter for violations of this chapter or regulations promulgated under it. Civil penalties shall not exceed one thousand dollars for each violation. The board also may order repayment of unlawful or excessive fees charged to customers.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).

SECTION 34-41-120. Wilful violations; referral for criminal prosecution.

The board, upon a determination that a violation of Section 34-41-20 is wilful, may refer a violation to the Attorney General or to the appropriate circuit solicitor for criminal prosecution. A violation of Section 34-41-20 by a person required to obtain a license pursuant to this chapter is a Class B misdemeanor and each transaction involving the unlawful cashing of a check, draft, or money order constitutes a separate offense.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).

SECTION 34-41-130. Promulgation of regulations.

(A) The board may promulgate regulations necessary to carry out the purposes of this chapter, to provide for the protection of the public, and to assist licensees in interpreting and complying with this chapter.

(B) For the purpose of participating in the Nationwide Multistate Licensing System and Registry, the board may waive or modify, in whole or in part, by rule, regulation, or order, any or all of the requirements of this chapter and establish new requirements as reasonably necessary to participate in the Nationwide Multistate Licensing System and Registry.

HISTORY: 1998 Act No. 433, Section 2, eff upon approval (became law without the Governor's signature on June 11, 1998).

SECTION 34-41-140. Participation in Nationwide Multistate Licensing System and Registry.

(A) The board may participate in a Nationwide Multistate Licensing System and Registry and may:

(1) facilitate and participate in the establishment and implementation of the Nationwide Multistate Licensing System and Registry;

(2) enter into agreements and contracts including cooperative, coordinating, and information sharing agreements;

(3) contract with third parties to process, maintain and store information collected by the Nationwide Multistate Licensing System and Registry;

(4) authorize the Nationwide Multistate Licensing System and Registry to collect fingerprints on the board's behalf in order to receive national criminal history background record checks from the FBI to retain for certification purposes and for notification of the board regarding subsequent criminal charges which may be reported to the FBI in accordance with Sections 34-41-40(C);

(5) authorize the Nationwide Multistate Licensing System and Registry to collect credit reports on the board's behalf for all licensees in accordance with Section 34-41-40(C);

(6) require persons that must be licensed by this chapter to utilize the Nationwide Multistate Licensing System and Registry;

(7) require all applicants and licensees to pay all applicable funds provided for in this chapter through the Nationwide Multistate Licensing System and Registry;

(8) provide information to and receive information from the Nationwide Multistate Licensing System and Registry;

(9) authorize a third party to collect funds associated with licensure on behalf of the board; and

(10) authorize the Nationwide Multistate Licensing System and Registry to collect and disburse consumer complaints.

(B) Persons required to be licensed pursuant to this chapter must be required to pay all applicable fees to utilize the Nationwide Multistate Licensing System and Registry and consent to utilizing the Nationwide Multistate Licensing System and Registry to obtain fingerprint-based criminal history background record checks and credit reports.

(C) The board shall provide licensees with written notice sent to the address of record on file with the board through the United States Postal Service the date the Nationwide Multistate Licensing System and Registry will be available for their use. Licensees shall have one hundred and twenty days from the date the system is available for use to enter all their licensing information into the Nationwide Multistate Licensing System and Registry. All filings and collection of data required by the board pursuant to this chapter after the date the system is available for use must be made through the Nationwide Multistate Licensing System and Registry, except for exempt persons.

(D) All licensees licensed through the Nationwide Multistate Licensing System and Registry must use the unique identifier assigned on all check cashing documents.

(E) Notwithstanding another provision of law to the contrary, the Nationwide Multistate Licensing System and Registry is not intended to and does not replace or affect the Board's authority to grant, suspend, revoke, or deny a license required pursuant to this chapter.

(F) The board shall develop a plan that ensures an orderly transition to the Nationwide Multistate Licensing System and Registry.

SECTION 37-3-501. Definitions. ~~“supervised loan”; “supervised lender”; “restricted loan”; “restricted lender”.~~

(1) “Supervised loan” means a consumer loan in which the rate of the loan finance charge exceeds twelve percent per year as determined according to the provisions on the loan finance charge for consumer loans (Section 37-3-201). A supervised loan does not include:

(a) a mortgage loan as defined in Section 37-22-110(30); or

(b) a closed-end credit transaction, with an original repayment term of less than one hundred twenty days, unsecured by any interest in the consumer’s personal property or secured by personal property, excluding motor vehicles that are free of any other liens or encumbrances, that does not have a market value that reasonably secures the amount of the loan, and the consumer:

(i) receives funds from and incurs interest or a fee payable to a creditor, and contemporaneously with, or any time after, the receipt of funds, provides a check or other payment instrument to the creditor who agrees with the consumer not to deposit or present the check or payment instrument; or

(ii) receives funds from and incurs interest or a fee payable to a creditor, and contemporaneously with, or any time after, the receipt of funds, authorizes the creditor to initiate a debit or debits to the consumer’s deposit account by electronic fund transfer or a remotely created check or remotely created consumer item as defined in Section 36-3-103(16).

The provisions of subitem (b) do not apply to credit unions, bank holding companies, banks, or financial institutions insured by the Federal Deposit Insurance Corporation.

(2) “Supervised lender” means a person authorized to make or take assignments of supervised loans.

(3) “Restricted loan” means a supervised loan made by a restricted lender pursuant to and in compliance with Chapter 29, Title 34 (The South Carolina Consumer Finance Act).

(4) “Restricted lender” means a person licensed pursuant to Chapter 29, Title 34 to make loans under that chapter (The South Carolina Consumer Finance Act).

(5) “Nationwide Multistate Licensing System and Registry” means a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators of licensees licensed pursuant to this chapter.

(6) “Person” means a natural person, partnership, limited liability company, limited partnership, corporation, association, or other group engaged in joint business activities, however organized.

(7) “Unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Multistate Licensing System and Registry.

HISTORY: 1976 Act No. 686 Section 2; 1982 Act No. 385, Section 38; 1995 Act No. 135, Section 12; 2009 Act No. 67, Section 4.C, eff January 1, 2010; 2010 Act No. 287, Section 4.A, eff June 29, 2010.

Editor’s Note

2010 Act No. 287, Section 3, provides as follows:

“Any provision of this act deemed by HUD to conflict with its interpretation of the SAFE Act, provided for in Section 1508 of Title V of The Housing and Economic Recovery Act of 2008, Public Law 110-289, must be interpreted, applied, or amended in such a way so as to comply with HUD’s interpretation of the SAFE Act. If any provision of this act cannot be interpreted, applied, or amended in such a way so as to comply with the SAFE Act, that provision must be severed from the act and shall not affect the remainder of the act’s compliance with the SAFE Act. The regulating authority shall adopt emergency regulations or take other actions necessary to ensure compliance with the SAFE Act and the regulating authority’s continued jurisdiction over and supervision of the mortgage business in this State.”

SECTION 37-3-502. Authority to make supervised loans.

Unless a person is a supervised financial organization or has first obtained a license from the State Board of Financial Institutions authorizing him to make supervised loans, he shall not engage in the business of

- (1) making supervised loans; or
- (2) taking assignments of and undertaking direct collection of payments from or enforcement of rights against debtors arising from supervised loans.

HISTORY: 1976 Act No. 686 Section 2; 1982 Act No. 385, Section 39.

SECTION 37-3-503. License to make supervised loans.

(1) The State Board of Financial Institutions shall receive and act on all applications for licenses to make supervised loans under this title. Applications shall be filed in the manner prescribed by the Board and shall contain the information the Board requires by rule to make an evaluation of the financial responsibility, character and fitness of the applicant, and the convenience and advantage to the community in which the licensed office is to be located.

(2) An applicant meets the minimum standard of financial responsibility for engaging in the business of making supervised loans (Section 37-3-502) if he has available for operation of that business in this State assets of at least twenty-five thousand dollars for each license issued.

(3) Upon written request, the applicant is entitled to a hearing on the question of his qualifications for a license if (a) the State Board of Financial Institutions has notified the applicant in writing that his application has been denied, or (b) the Board has not issued a license within sixty days after the application for the license was filed. A request for a hearing may not be made more than fifteen days after the Board has mailed a writing to the applicant notifying him that the application has been denied and stating in substance the Board findings supporting denial of the application.

(4) The State Board of Financial Institutions shall issue additional licenses to the same licensee upon compliance with all the provisions of this Title governing issuance of a single license. A separate license shall be required for each place of business. Each license shall remain in full force and effect until surrendered, suspended, or revoked.

(5) A supervised lender, other than a supervised financial organization, prior to installation of an electronic information processing device in the form of a computer terminal, whether or not manned by an employee of the licensee, which is or may be activated by a customer of a licensee for the purpose of obtaining consumer loans from a licensee, whether by way of cash disbursement or other method of funds transfer, must apply for and obtain a license for such installation if located off premises from a licensed location or place of business.

(6) No licensee shall change the location of any place of business without giving the State Board of Financial Institutions at least 15 days prior written notice and no such change shall be made to a location outside of the city or town for which a license is issued, without obtaining a new license for such location. For these purposes "city or town" means an incorporated area and its contiguous unincorporated suburbs.

(7)(a) A licensee may conduct the business of making supervised loans only at or from any place of business for which he holds a license and not under any other name than that in the license. Sales or leases made pursuant to a lender credit card do not violate this subsection.

(b)(1) A person licensed to make supervised loans may not make or enter into a closed-end credit transaction, with an original repayment term of less than one hundred twenty days, unsecured by any interest in the consumer's personal property or secured by personal property, excluding motor vehicles that are free of any other liens or encumbrances, that does not have a market value that reasonably secures the amount of the loan, and the consumer:

(i) receives funds from and incurs interest or a fee payable to a creditor, and contemporaneously with, or any time after, the receipt of funds, provides a check or other payment instrument to the creditor who agrees with the consumer not to deposit or present the check or payment instrument; or

(ii) receives funds from and incurs interest or a fee payable to a creditor, and contemporaneously with, or any time after, the receipt of funds, authorizes the creditor to initiate a debit or debits to the consumer's deposit account by electronic fund transfer or a remotely created check or remotely created consumer item as defined in Section 36-3-103(16).

(2) The board shall impose the following penalties for violation of this item:

- (a) a fine of five hundred dollars for the first violation;
- (b) a fine of one thousand dollars for the second violation;
- (c) permanent revocation of license for the third violation.

The board may not revoke a license issued pursuant to this chapter unless the licensee has been given notice and opportunity for hearing in accordance with the Administrative Procedures Act.

(3) In addition to the penalties required in subsubitem (2), the board or the court may order and impose civil penalties upon a person subject to the provisions of this article for violations of this article or its regulations in an amount not to exceed one thousand dollars for each violation. The board also may order repayment of unlawful or excessive fees charged to customers.

(c) The provisions of item (b)(1) do not apply to credit unions, bank holding companies, banks, or financial institutions insured by the Federal Deposit Insurance Corporation.

(d) A person licensed to make supervised loans that makes supervised loans secured by a motor vehicle that have an original repayment term of less than one hundred twenty days must comply with the provisions contained in Section 37-3-413.

(8) The State Board of Financial Institutions, for the purposes of execution of its responsibilities under this Title, shall be entitled to collect from applicants and licensees the regulatory fees provided in Chapter 29, Title 34. But all lenders shall pay the notification fee provided in this Title to administrator.

HISTORY: 1976 Act No. 686 Section 2; 1982 Act No. 385, Sections 39, 59; 2010 Act No. 287, Section 4.B, eff June 29, 2010.

Editor's Note

2010 Act No. 287, Section 3, provides as follows:

“Any provision of this act deemed by HUD to conflict with its interpretation of the SAFE Act, provided for in Section 1508 of Title V of The Housing and Economic Recovery Act of 2008, Public Law 110-289, must be interpreted, applied, or amended in such a way so as to comply with HUD's interpretation of the SAFE Act. If any provision of this act cannot be interpreted, applied, or amended in such a way so as to comply with the SAFE Act, that provision must be severed from the act and shall not affect the remainder of the act's compliance with the SAFE Act. The regulating authority shall adopt emergency regulations or take other actions necessary to ensure compliance with the SAFE Act and the regulating authority's continued jurisdiction over and supervision of the mortgage business in this State.”

SECTION 37-3-504. Revocation or suspension of license.

(1) The State Board of Financial Institutions may issue to a person licensed to make supervised loans an order to show cause why his license should not be revoked or suspended for a period not in excess of 6 months. The order shall state the place for a hearing and set a time for the hearing that is no less than 10 days from the date of the order. After the hearing the Board shall revoke or suspend the license if it finds that:

(a) the licensee has repeatedly and wilfully violated this title or any rule or order lawfully made pursuant to this title; or

(b) facts or conditions exist which would clearly have justified the Board in refusing to grant a license had these facts or conditions been known to exist at the time the application for the license was made.

(2) No revocation or suspension of a license is lawful unless prior to institution of proceedings by the State Board of Financial Institutions notice is given to the licensee of the facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.

(3) If the State Board of Financial Institutions finds that probable cause for revocation of a license exists and that enforcement of this title requires immediate suspension of the license pending investigation, it may, after a hearing upon 5 days' written notice, enter an order suspending the license for not more than 30 days.

(4) Whenever the State Board of Financial Institutions revokes or suspends a license, 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 the order it shall deliver to the licensee a copy of the order and the findings supporting the order.

(5) Any person holding a license to make supervised loans may relinquish the license by notifying the State Board of Financial Institutions in writing of its relinquishment, but this relinquishment shall not affect his liability for acts previously committed.

(6) No revocation, suspension, or relinquishment of a license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any debtor.

(7) The State Board of Financial Institutions may reinstate a license, terminate a suspension, or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would have justified the Board refusing to grant a license.

HISTORY: 1976 Act No. 686 Section 2; 1982 Act No. 385, Section 39.

SECTION 37-3-505. Records; annual reports.

(1) Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the State Board of Financial Institutions to determine whether the licensee is complying with the provisions of this title. The recordkeeping system of a licensee shall be sufficient if he makes the required information reasonably available. The records need not be kept in the place of business where supervised loans are made, if the board is given free access to the records wherever located. The records pertaining to any loan, including the certified maximum rate chart in effect at the time the loan was made, need not be preserved for more than two years after making the final entry relating to the loan, but in the case of a revolving loan account the two years is measured from the date of each entry.

(2) On or before April fifteenth each year every licensee shall file with the board a composite annual report in the form prescribed by the board relating to all supervised loans made by him. The board shall consult with comparable officials in other states for the purpose of making the kinds of information required in annual reports uniform among the states.

(3) The report shall include, but is not limited to, the following:

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

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

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

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

(e) 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;

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

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

(h) the highest annual percentage rate charged by the lender on loans of various sizes; and

(i) the most frequent annual percentage rate charged by the lender on loans of various sizes.

(4) Information contained in annual reports shall be confidential and may be published only in composite form.

HISTORY: 1976 Act No. 686 Section 2; 1982 Act No. 385, Sections 39, 41; 1995 Act No. 135, Section 13.

SECTION 37-3-506. Examinations and investigations.

(1) The State Board of Financial Institutions shall examine periodically at intervals it deems appropriate the loans, business and records of every licensee. In addition, for the purpose of discovering violations of this title or securing information lawfully required, the Agency to whose supervision the organization is

subject may at any time investigate the loans, business and records of any lender. For these purposes such agency shall have free and reasonable access to the offices, places of business and records of the lender. For these purposes insurance agents, brokers and premium service companies are subject to the supervision of the Department of Insurance. Other supervised financial organizations [Section 37-1-301(17)], restricted lenders and supervised lenders (Section 37-3-501) are subject to the supervision of the agency which issued its license or charter. All other lenders are subject to the supervision of the Administrator of Consumer Affairs.

(2) If the lender's records are located outside this State, the lender at his option shall make them available to the supervisory agency at a convenient location within this State, or pay the reasonable and necessary expenses for the agency or its representative to examine them at the place where they are maintained. The agency may designate representatives, including comparable officials of the State in which the records are located, to inspect them on his behalf.

(3) For the purposes of this section, the agency or official may administer oaths or affirmations, and upon its own motion or upon request of any party may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(4) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the agency may apply to the circuit court for an order compelling compliance.

HISTORY: 1976 Act No. 686 Section 2; 1982 Act No. 385, Section 39.

SECTION 37-3-507. Application of Part on Administrative Procedure and Judicial Review.

Except as otherwise provided, the part on Administrative Procedure and Judicial Review [Part 4, Chapter 6] applies to and governs all administrative action taken pursuant to this part.

HISTORY: 1976 Act No. 686 Section 2.

SECTION 37-3-509. Use of multiple agreements.

With respect to a supervised loan, no lender may use multiple agreements with respect to a single consumer loan transaction with intent to obtain a higher rate of loan finance charge than would otherwise be permitted by the provisions on loan finance charges for supervised loans (Section 37-3-508). The excess amount of loan finance charge resulting from a violation of this section is an excess charge for the purpose of the provisions on rights of parties (Section 37-5-202) and the provisions on civil actions by the administrator (Section 37-6-113).

HISTORY: 1976 Act No. 686 Section 2.

Editor's Note

Section 37-3-508, referred to in this section, was repealed by 1982 Act No. 385 Section 57(2)(h).

SECTION 37-3-510. Restrictions on interest in land as security.

(1) With respect to a supervised loan in which the principal is one thousand dollars or less, a lender may not contract for an interest in land as security. A security interest taken in violation of this section is void.

(2) An open-end credit agreement under which the credit limit is a minimum of five thousand dollars is exempt from this section even though one or more advances made pursuant to the agreement are less than one thousand dollars.

HISTORY: 1976 Act No. 686 Section 2; 1991 Act No. 142, Section 15.

SECTION 37-3-511. Regular schedule of payments; maximum loan term.

Supervised loans, in which the rate of loan finance charge exceeds twelve percent per annum, not made pursuant to a revolving loan account, in which the principal is one thousand dollars or less, shall be scheduled to be payable in substantially equal installments at equal periodic intervals except to the extent that the schedule of payments is adjusted to the seasonal or irregular income of the debtor, and

- (a) over a period of not more than thirty-seven months if the principal is more than three hundred dollars; or
- (b) over a period of not more than twenty-five months if the principal is three hundred dollars or less.

HISTORY: 1976 Act No. 686 Section 2; 1995 Act No. 135, Section 14.

SECTION 37-3-512. Conduct of business other than making loans.

(1) Except as provided in subsection (2), a restricted lender and a licensee authorized to make supervised loans pursuant to the provisions on authority to make supervised loans (Section 37-3-502) may not engage in the business of selling goods, or permit others to engage in the business of selling goods, at a location where supervised loans are made. In this section, "location" means the entire space in which supervised loans are made and must be separated from any space where goods are sold or leased by walls which may be broken only by a passageway to which the public is not admitted.

(2) This section does not apply to

- (a) occasional sales of property used in the ordinary course of business of the licensee;
- (b) sales of items of collateral of which the licensee has taken possession;
- (c) sales of items by a licensee who is also authorized by law to operate as a pawnbroker; or
- (d) Supervised Financial Organizations.

(3) A licensee may not carry on other business for the purpose of evasion or violation of this title at a location where he makes supervised loans.

HISTORY: 1976 Act No. 686 Section 2.

SECTION 37-3-513. Application of other provisions.

Except as otherwise provided, all provisions of this title applying to consumer loans apply to supervised loans.

HISTORY: 1976 Act No. 686 Section 2.

SECTION 37-3-514. Limitation on attorney's fees.

With respect to a supervised loan with a loan finance charge in excess of eighteen percent per year and in which the principal is \$1,000 or less, the agreement may not provide for the payment by the debtor of attorney's fees. A provision in violation of this section is unenforceable.

HISTORY: 1976 Act No. 686 Section 2.

SECTION 37-3-515. Loan renewal limitations.

A licensed lender may not renew a loan of one thousand dollars or less more than one time during any fifteen-month period where the dollars actually given to the customer is less than ten percent of the net outstanding loan balance at the time of renewal.

HISTORY: 1995 Act No. 135, Section 15.

Part 6

Loans Other Than Consumer Loans

SECTION 37-3-601. Loans subject to this Title by agreement of parties.

The parties to a loan other than a consumer loan may agree in a writing signed by the parties that the loan is subject to the provisions of this title applying to consumer loans. If the parties so agree, the loan is a consumer loan for the purposes of this title.

HISTORY: 1976 Act No. 686 Section 2; 1980 Act No. 433, Section 6; 1982 Act No. 385, Section 40.

SECTION 37-3-605. Loan finance charge for other loans.

With respect to a loan other than a consumer loan, the parties may contract for the payment by the debtor of any loan finance charge, except as provided in Chapter 10.

HISTORY: 1976 Act No. 686 Section 2; 1980 Act No. 326, Section 4; 1980 Act No. 433, Section 3; 1982 Act No. 385, Section 42.

SECTION 37-3-610. Participation in Nationwide Multistate Licensing System and Registry.

(A) The board may participate in a Nationwide Multistate Licensing System and Registry and may:

(1) facilitate and participate in the establishment and implementation of the Nationwide Multistate Licensing System and Registry;

(2) enter into agreements and contracts including cooperative, coordinating, and information sharing agreements;

(3) contract with third parties to process, maintain and store information collected by the Nationwide Multistate Licensing System and Registry;

(4) authorize the Nationwide Multistate Licensing System and Registry to collect fingerprints on the board's behalf in order to receive national criminal history background record checks from the FBI to retain for certification purposes and for notification of the board regarding subsequent criminal charges which may be reported to the FBI in accordance with Sections 37-3-503(1);

(5) authorize the Nationwide Multistate Licensing System and Registry to collect credit reports on the board's behalf for all licensees in accordance with Section 37-3-503(1);

(6) require persons that must be licensed by this chapter to utilize the Nationwide Multistate Licensing System and Registry;

(7) require all applicants and licensees to pay all applicable funds provided for in this chapter through the Nationwide Multistate Licensing System and Registry;

(8) provide information to and receive information from the Nationwide Multistate Licensing System and Registry;

(9) authorize a third party to collect funds associated with licensure on behalf of the board; and

(10) authorize the Nationwide Multistate Licensing System and Registry to collect and disburse consumer complaints.

(B) Persons required to be licensed pursuant to this chapter must be required to pay all applicable fees to utilize the Nationwide Multistate Licensing System and Registry and consent to utilizing the Nationwide Multistate Licensing System and Registry to obtain fingerprint-based criminal history background record checks and credit reports.

(C) The board shall provide licensees with written notice sent to the address of record on file with the board through the United States Postal Service the date the Nationwide Multistate Licensing System and Registry will be available for their use. Licensees shall have one hundred and twenty days from the date the system is available for use to enter all their licensing information into the Nationwide Multistate Licensing System and Registry. All filings and collection of data required by the board pursuant to this chapter after the date the system is available for use must be made through the Nationwide Multistate Licensing System and Registry, except for exempt persons.

(D) All licensees licensed through the Nationwide Multistate Licensing System and Registry must use the unique identifier assigned on all supervised loan documents.

(E) Notwithstanding another provision of law to the contrary, the Nationwide Multistate Licensing System and Registry is not intended to and does not replace or affect the Board's authority to grant, suspend, revoke, or deny a license required pursuant to this chapter.

(F) The board shall develop a plan that ensures an orderly transition to the Nationwide Multistate Licensing System and Registry.