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CHAPTER 3.

LOANS

PART 1.

GENERAL PROVISIONS

SECTION 37-3-101. Short title.

This chapter shall be known and may be cited as South Carolina Consumer Protection Code - Loans.

HISTORY: 1962 Code Section 8-800.231; 1974 (58) 2879.

SECTION 37-3-102. Scope.

This chapter applies to consumer loans including supervised loans and, except as provided in Sections 37-3-200 and 37-3-500, restricted loans; in addition part 6 applies to loans other than consumer loans.

HISTORY: 1962 Code Section 8-800.232; 1974 (58) 2879; 1976 Act No. 686 Section 21.

SECTION 37-3-103. Index of definitions.

The following definitions apply to this title and appear in this chapter as follows:

"Consumer Loan"--Section 37-3-104

"Lender"--Section 37-3-107(1)

"Loan"--Section 37-3-106

"Loan finance charge"--Section 37-3-109

"Loan primarily secured by an interest in land"--Section 37-3-105

"Precomputed"--Section 37-3-107(2)

"Principal"--Section 37-3-107(3)

"Restricted Lender"--Section 37-3-501(4)

"Restricted Loan"--Section 37-3-501(3)

"Revolving loan account"--Section 37-3-108

"Short-term vehicle secured loan"--Section 37-3-413(1)

"Supervised Lender"--Section 37-3-501(2)

"Supervised Loan"--Section 37-3-501(1)

HISTORY: 1962 Code Section 8-800.233; 1974 (58) 2879; 1976 Act No. 686 Section 22; 2003 Act No. 42, Section 5.A, eff Jan. 1, 2004.

SECTION 37-3-104. "Consumer loan" defined.

Except as provided in Section 37-3-105, "consumer loan" is a loan made by a person regularly engaged in the business of making loans in which:

- (a) the debtor is a person other than an organization;
- (b) the debt is incurred primarily for a personal, family, or household purpose;
- (c) either the debt is payable in installments or a loan finance charge is made; and
- (d) either the principal does not exceed twenty-five thousand dollars or the debt is secured by an interest in land.

HISTORY: 1962 Code Section 8-800.234; 1974 (58) 2879; 1976 Act No. 686 Section 63; 1982 Act No. 385, Section 25; 1991 Act No. 142, Section 8.

SECTION 37-3-105. First mortgage real estate loans.

(1) Except as otherwise provided in subsection (2), unless the loan is made subject to this title by agreement (Section 37-3-601), "consumer loan" does not include a loan secured by a first lien or equivalent security interest in real estate.

(2) Loans excluded from the definition of a "consumer loan" pursuant to subsection (1) shall nevertheless be subject to the following provisions:

(a) Civil liability for violation of disclosure (Section 37-5-203);

(b) Voluntary complaint resolution (Section 37-6-117);

(c) Whenever the primary purpose of the credit extended is not to enable the debtor to buy or build a residence on residential real property, the administrative powers in Part 1 of Article 6.

If an origination charge, prepaid finance charge, prepaid points, service, or other prepaid charge substantially exceeds the usual and customary charge for a particular type of loan, the creditor is subject to the provisions of Part 1, Chapter 6 of Title 37, notwithstanding that the origination charge, prepaid finance charge, prepaid points, service, or other prepaid charge is properly disclosed as part of the finance charge for purposes of complying with the Federal Truth-in-Lending Act or part or all of the origination charge, prepaid finance charge, prepaid points charge, service, or other prepaid charges are rebatable or refundable upon prepayment or acceleration of the obligation. For the purpose of this paragraph, a creditor is not subject to any liability if the loan finance charge and other fees and charges imposed by the creditor and the collection practices followed in administering or enforcing the loan are usual and customary for the particular type of loan. A charge, collection practice, or administrative procedure that is authorized or required by any state or federal statute or regulation relating to mortgage loans; or in any official manual setting forth the procedures for real estate mortgages issued by any governmental or quasi-governmental organization that purchases, insures, or guarantees such loans, including without limitation, manuals issued by the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Corporation, or by any organization that regularly insures mortgages and is authorized to conduct such business in this State, is deemed to be usual and customary.

(3) Loans excluded from the definition of a "consumer loan" pursuant to subsection (1) also are subject to the provisions of Chapter 7, Chapter 10, Chapter 22, and Chapter 23 of this title.

HISTORY: 1962 Code Section 8-800.235; 1974 (58) 2879; 1976 Act No. 686 Section 64; 1982 Act No. 385, Section 26; 1985 Act No. 153, Section 1; 1991 Act No. 142, Section 9; 2009 Act No. 67, Section 4.B, eff January 1, 2010.

SECTION 37-3-106. "Loan" defined.

"Loan" includes:

(1) The creation of debt by the lender's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor;

(2) The creation of debt by a credit to an account with the lender upon which the debtor is entitled to draw immediately;

(3) The creation of debt pursuant to a lender credit card or similar arrangement; and

(4) The forbearance of debt arising from a loan.

HISTORY: 1962 Code Section 8-800.236; 1974 (58) 2879; 1982 Act No. 385, Section 27.

SECTION 37-3-107. "Lender"; "precomputed"; "principal" defined.

(1) Except as otherwise provided "lender" includes an assignee of the lender's right to payment but use of the term does not in itself impose on an assignee any obligation of the lender with respect to events occurring before the assignment.

(2) A loan, refinancing, or consolidation is "precomputed" if the debt is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance.

(3) "Principal" of a loan means the total of:

(a) the net amount paid to, receivable by, or paid or payable for the account of the debtor.

(b) the amount of any discount excluded from the loan finance charge (subsection (2) of Section 37-3-109), and,

(c) to the extent that payment is deferred,

(i) amounts actually paid or to be paid by the lender for registration, certificate of title, or license fees if not included in (a), and

(ii) additional charges permitted by this chapter (Section 37-3-202).

HISTORY: 1962 Code Section 8-800.237; 1974 (58) 2879; 1976 Act No. 686 Section 23.

SECTION 37-3-108. "Revolving loan account" defined.

"Revolving loan account" means an arrangement between a lender and a debtor pursuant to which (1) the lender may permit the debtor to obtain loans from time to time, (2) the unpaid balances of principal and the loan finance and other appropriate charges are debited to an account, (3) a loan finance charge if made is not precomputed but is computed on the outstanding unpaid balances of the debtor's account from time to time, and (4) the debtor has the privilege of paying the balances in installments.

HISTORY: 1962 Code Section 8-800.238; 1974 (58) 2879.

SECTION 37-3-109. "Loan finance charge" defined.

(1) "Loan finance charge" means the sum of -

(a) all charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit, including any of the following types of charges which are applicable: interest or any amount payable under a point, discount or other system of charges, however denominated, premium or other charge for any guarantee or insurance protecting the lender against the debtor's default or other credit loss; and, except as otherwise provided in this section;

(b) charges incurred for investigating the collateral or creditworthiness of the debtor or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the lender had no notice of the charges when the loan was made but excluding fees and charges paid to persons registered as mortgage loan brokers pursuant to Chapter 58 of Title 40. The term does not include charges as a result of default, additional charges (Section 37-3-202), delinquency charges (Section 37-3-203), or deferral charges (Section 37-3-204), or in a consumer loan which is secured in whole or in part by a first or junior lien on real estate, charges incurred for appraising the real estate that is collateral for the loan, if not paid to the creditor or a person related to the creditor.

(2) If a lender makes a loan to a debtor by purchasing or satisfying obligations of the debtor pursuant to a lender credit card or similar arrangement, and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the loan finance charge.

HISTORY: 1962 Code Section 8-800.239; 1974 (58) 2879; 1976 Act No. 686 Section 24; 1982 Act No. 385, Section 28; 1988 Act No. 614, Section 1.

MAXIMUM CHARGES

SECTION 37-3-200. Restricted loans and restricted lenders.

This part does not apply to restricted loans or restricted lenders.

HISTORY: 1976 Act No. 686 Section 1.

SECTION 37-3-201. Loan finance charge for consumer loans.

(1) With respect to a consumer loan, including a loan pursuant to open-end credit, a lender who is not a supervised lender may contract for and receive a finance charge, calculated according to the actuarial method, not exceeding twelve percent per year. With respect to a consumer loan made pursuant to open-end credit, the finance charge shall be deemed not to exceed twelve percent per year if the finance charge contracted for and received does not exceed a charge for each monthly billing cycle which is one percent of the average daily balance of the open-end account in the billing cycle for which the charge is made. The average daily balance of the open-end account is the sum of the amount unpaid each day during that cycle divided by the number of days in the cycle. The amount unpaid on a day is determined by adding to any balance unpaid as of the beginning of that day all purchases, loans, and other debits and deducting all payments and other credits made or received as of that day. If the billing cycle is not monthly, the finance charge shall be deemed not to exceed twelve percent per year if the finance charge contracted for and received does not exceed a percentage which bears the same relation to one percent as the number of days in the billing cycle bears to three hundred sixty-five divided by twelve. A billing cycle is monthly if the closing date of the cycle is the same date each month or does not vary by more than four days from the regular date.

(2) With respect to a consumer loan, including a loan pursuant to open-end credit, a supervised lender may contract for and receive a loan finance charge as provided:

(a) on loans with a cash advance not exceeding six hundred dollars, a maximum charge not exceeding the maximum charges imposed in Section 34-29-140 as disclosed as an annual percentage rate, provided that a supervised lender may impose a finance charge at a rate less than provided in Section 34-29-140, and provided further that the maximum charge shall not exceed the rate posted and filed pursuant to Section 37-3-305;

(b) on loans with a cash advance exceeding six hundred dollars, and on all loans, regardless of the dollar amount, made by Supervised Financial Organizations, any rate filed and posted pursuant to Section 37-3-305; or

(c) on loans of any amount, eighteen percent per year on the unpaid balances of principal.

(3) This section does not limit or restrict the manner of calculating the finance charge, whether by way of add-on, discount, single annual percentage rate, or otherwise, so long as the rate of the finance charge does not exceed that permitted by this section.

If the loan is a precomputed consumer credit transaction:

(a) the finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) the effect of prepayment is governed by the provisions on rebate upon prepayment (Section 37-3-210).

(4) Except as provided in subsection (5), the term of a loan for purposes of this section commences on the day the loan is made. Any month may be counted as one-twelfth of a year but a day is counted as one-three hundred sixty-fifths of a year. Subject to classifications and differentiations the lender may reasonably establish, a part of a month in excess of fifteen days may be treated as a full month if periods of fifteen days or less are disregarded and that procedure is not consistently used to obtain a greater yield than would otherwise be permitted. The administrator may adopt regulations not inconsistent with the

Federal Truth in Lending Act with respect to treating as regular other minor irregularities in amount or time.

(5) Subject to classifications and differentiations the lender may reasonably establish, he may make the same finance charge on all amounts financed within a specified range. A finance charge so made does not violate subsection (1) or (2) if:

(a) when applied to the median amount within each range, it does not exceed the maximum permitted by the applicable subsection,

(b) when applied to the lowest amount within each range, it does not produce a rate of finance charge exceeding the rate calculated according to item (a) by more than eight percent of the rate calculated according to item (a).

(6) Notwithstanding subsection (2), if a lender can demonstrate with competent evidence that (a) any failure to post rates properly filed under Section 37-3-305 or failure to properly file these rates under Section 37-3-305 was a result of a bona fide error or excusable neglect, (b) the rates were properly posted or properly filed when the error or neglect was discovered or brought to the lender's attention, and (c) that no other failure to post or file rates has been brought to the lender's attention by the Department of Consumer Affairs or by consumers within the previous forty-eight month period, then the maximum rate of loan finance charges assessable by the lender is the rate previously properly filed with the Department of Consumer Affairs, provided, however, the lender that has failed or neglected to post rates or to file rates is subject to a civil penalty of up to \$5,000.00 payable to the Department of Consumer Affairs.

HISTORY: 1976 Act No. 686 Section 1; 1980 Act No. 433, Section 2; 1982 Act No. 385, Section 30; 1984 Act No. 261, Section 5; 1985 Act No. 153, Section 2; 1989 Act No. 119, Section 2; 1995 Act No. 135, Sections 9, 10.

(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; and

(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;

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

(2) An additional charge may be made for insurance written in connection with the loan, other than insurance protecting the lender against the debtor's default or other credit loss with respect to:

(a) insurance against loss of or damage to property, or against liability, if the lender furnishes a clear and specific statement in writing to the debtor, setting forth the cost of the insurance if obtained from or through the lender, and stating that the debtor may choose the person through whom the insurance is to be obtained;

(b) consumer credit insurance providing life, accident and health, or unemployment insurance coverage, if the insurance coverage is not required by the lender, and this fact is clearly and conspicuously disclosed in writing to the debtor, and if, in order to obtain the insurance in connection with the loan, the debtor, or two of them in the case of joint coverage, gives specific, dated, and separately signed affirmative written indication of his desire to do so after written disclosure to him of the cost thereof with a statement similar to the following appearing in caps, underlined, or disclosed in another prominent manner with the consumer signature required by this section: **CONSUMER CREDIT INSURANCE IS NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE ADDITIONAL COST**; and

(c) vendor's single interest insurance, but only:

(i) to the extent that the insurer has no right of subrogation against the debtor;

(ii) to the extent that the insurance does not duplicate the coverage of other insurance under which loss is payable to the creditor as his interest may appear, against loss of or damage to property for which a separate charge is made to the debtor pursuant to paragraph (a); and

(iii) if a clear, conspicuous, and specific statement in writing is furnished by the creditor to the debtor setting forth the cost of the insurance if obtained from or through the creditor and stating that the debtor may choose the person through whom the insurance is to be obtained; and

(iv) upon application of the consumer for the insurance or for a transaction in which this coverage may be offered in connection with the purchase of a motor vehicle or with the placement of a motor vehicle as collateral, the following notice printed in no smaller than bold-face 13-point type:

"NOTICE: THE INSURANCE COVERAGE YOU ARE PURCHASING IS FOR THE BENEFIT OF THE CREDITOR. IT WILL NOT REIMBURSE YOU FOR DAMAGES TO YOUR VEHICLE, BUT IT MAY PAY THE CREDITOR FOR THE DAMAGES IF YOU CANNOT PAY. YOU HAVE THE RIGHT TO PURCHASE INSURANCE THAT WILL REIMBURSE YOU FOR DAMAGES TO YOUR VEHICLE EITHER THROUGH THE CREDITOR IF OFFERED BY THE CREDITOR OR THROUGH YOUR OWN AGENT."

This notice must be signed by the applicant evidencing his acknowledgment of having read the notice, and be separate and apart from any other form used in the application;

(d) noncredit term life insurance; provided, that the person soliciting the sale of such insurance is properly licensed as required under South Carolina insurance laws and the lender is properly licensed as an agency as required under South Carolina insurance laws and clearly and conspicuously discloses to the insured, prior to the consummation of the insurance purchase, the right to cancel and provides the insured at that time with a form in duplicate signed by the insured. This form shall clearly and conspicuously state in a manner that achieves a grade level score of no higher than seventh grade on the Flesch-Kincaid readability test:

(i) that the purchase of this insurance is not a condition of any loan or extension of credit by including the following language: **The purchase of this insurance is not required to obtain credit and will not be provided unless you sign this form and agree to pay the additional cost.**";

- (ii) that the interest rates and charges do not depend upon the purchase of this insurance;
- (iii) that the insured has the option to pay the insurance premium from his own funds or to pay the premium with a portion of the loan proceeds;
- (iv) the premium and a description of the coverage, including the face amount, term of the coverage, and any exceptions, limitations, or restrictions;
- (v) that the insured may cancel this insurance by mailing a signed request to cancel, together with the policy, to the lender or the insurance company within thirty days after receipt of the policy and, that in the event of cancellation by the insured within thirty days after receipt of the policy, the insured will be promptly refunded the entire premium for such insurance;
- (vi) that the insurance laws of South Carolina apply with respect to any type of termination other than as contained in subitem (v) of this item (d) and that the policy should be consulted for more information;
- (vii) that the insurance is not tied to the loan in any manner and that if the loan is terminated, the insurance will remain in force unless it is otherwise terminated under the terms of the agreement between the debtor and the insurer;
- (viii) the name, address, and phone number of the lender; and
- (ix) the name, address, and phone number of the insurance company and the process to be followed in submitting a claim.

The noncredit term life insurance must be underwritten by an insurance company which is properly licensed as required under South Carolina insurance laws. In addition, the noncredit term life insurance must be filed for approval prior to use in accordance with South Carolina insurance laws, and the terms and conditions of the transaction must comply with any other applicable provisions of the South Carolina insurance laws.

If the creditor contracts for or receives a separate charge for insurance, the amount charged for the insurance may not exceed the premium to be charged by the insurer, as computed at the time the charge to the debtor is determined, conforming to any rate filings required by law and made by the insurer with the Director of the Department of Insurance.

Any attempt to tie the sale of the noncredit term life insurance to any loan or extension of credit or otherwise to coerce the debtor into purchasing the insurance is prohibited, and any party engaged in the tying or coercion is subject to penalties in accordance with Section 37-5-202.

(3) With respect to an assumption of an existing obligation, the lender may, in addition to the other authorized charges, charge an assumption fee not exceeding the lesser of four hundred dollars or one percent of the unpaid balance of the debt at the time the assumption transaction is consummated whenever the primary collateral securing the credit is real estate or a residential manufactured home and not exceeding the lesser of fifty dollars or one percent of the unpaid balance of the debt at the time the assumption transaction is consummated whenever the primary collateral securing the credit is personal property other than a residential manufactured home.

HISTORY: 1976 Act No. 686 Section 1; 1982 Act No. 385, Section 31; 1986 Act No. 444, Section 2; 1988 Act No. 614, Section 2; 1989 Act No. 164, Section 2; 1991 Act No. 142, Section 10; 1994 Act No. 363, Section 3; 1996 Act No. 326, Section 3; 1999 Act No. 66, Section 23; 2004 Act No. 234, Section 2, eff May 11, 2004.

SECTION 37-3-203. Delinquency charges.

(1) With respect to a consumer loan including an open-end consumer loan pursuant to a lender credit card or similar arrangement, and any refinancings or consolidations of all such consumer loans, the parties may contract for a delinquency charge on any installment not paid in full within ten days after its due date, as originally scheduled or as deferred, in an amount, not exceeding five dollars which is not more than five percent of the unpaid amount of the installment.

(2) Notwithstanding subsection (1) the lender may contract for and receive a minimum delinquency charge not to exceed forty percent of five dollars as adjusted pursuant to Section 37-1-109. The lender may contract for such a minimum charge even though the charge exceeds five percent of the unpaid amount of the installment.

(3) A statement in the agreement between the lender and the debtor to the effect that the lender may charge the maximum delinquency charge (or late charge) authorized by law entitles the creditor to impose a delinquency charge in the dollar amount specified in subsections (1) and (2) as adjusted pursuant to Section 37-1-109 at the time the delinquency charge is imposed, subject to the five percent of the unpaid amount of the installment limitation, if applicable.

(4) A delinquency charge under this section may be collected only once on an installment however long it remains in default. No delinquency charge may be collected with respect to a deferred installment unless the installment is not paid in full within ten days after its deferred due date. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(5) A delinquency charge pursuant to this section must not be collected on a payment that is otherwise a full installment payment for the applicable period and is paid on its due date or within ten days after its due date if the only delinquency is attributable to a late fee or a delinquency charge assessed on an earlier installment. It is the intent of the legislature that in construing this subsection, the courts be guided by interpretations to 16 C.F.R. 444.4 and 12 C.F.R. 227.15, as amended from time to time, relating to late charges, given by the Federal Trade Commission, Federal Reserve Board, and the Federal Courts.

(6) If two installments or parts thereof of a precomputed consumer loan are in default for ten days or more, the lender may elect to convert the loan from a precomputed loan to one in which the loan finance charge is based on unpaid balances. In this event, he shall make a rebate pursuant to the provisions on rebate upon prepayment (Section 37-3-210) as if the date of prepayment were one day before the maturity date of a delinquent installment, and thereafter may make a loan finance charge as authorized by the provisions on loan finance charge for consumer loans by lenders not supervised lenders [Section 37-3-201(1)] or finance charge for consumer loans by supervised lenders [Section 37-3-201(2)], whichever is appropriate. The amount of the rebate must not be reduced by the amount of any permitted minimum charge (Section 37-3-210). If the creditor proceeds under this subsection, any delinquency or deferral charges made with respect to installments due on or after the maturity date of the first delinquent installment must be rebated, and no further delinquency or deferral charges may be made.

HISTORY: 1976 Act No. 686 Section 1; 1982 Act No. 385, Section 32; 1991 Act No. 142, Section 11; 2004 Act No. 234, Section 3, eff May 11, 2004.

SECTION 37-3-204. Deferral charges.

(1) In this section and in the provisions on rebate upon prepayment (Section 37-3-210) the following defined terms apply with respect to a precomputed consumer loan:

(a) "Computational period" means (i) the interval between scheduled due dates of instalments under the transaction if the intervals are substantially equal or, (ii) if the intervals are not substantially equal, one month if the smallest interval between the scheduled due dates of instalments under the transaction is one month or more, and, otherwise, one week.

(b) "Deferral" means a postponement of the scheduled due date of an instalment as originally scheduled or as previously deferred.

(c) "Deferral period" means a period in which no instalment is scheduled to be paid by reason of a deferral.

(d) The "interval" between specified dates means the interval between them including one or the other but not both of them; if the interval between the date of a transaction and the due date of the first scheduled instalment does not exceed one month by more than 15 days when the computational period is one month, or does not exceed 11 days when the computational period is one week, the interval may be considered by the creditor as one computational period.

(e) "Periodic balance" means the amount scheduled to be outstanding on the last day of a computational period before deducting the instalment, if any, scheduled to be paid on that day.

(f) "Standard deferral" means a deferral with respect to a transaction made as of the due date of an instalment as scheduled before the deferral by which the due dates of that instalment and all subsequent instalments as scheduled before the deferral are deferred for a period equal to the deferral period. A standard deferral may be for one or more full computational periods or a portion of one computational period or a combination of any of these.

(g) "Sum of the balances method," also known as the "Rule of 78," means a method employed with respect to a transaction to determine the portion of the loan finance charge attributable to a period of time before the scheduled due date of the final instalment of the transaction. The amount so attributable is determined by multiplying the finance charge by a fraction the numerator of which is the sum of the periodic balances included within the period and the denominator of which is the sum of all periodic balances under the transaction. According to the sum of the balances method the portion of the finance charge attributable to a specified computational period is the difference between the portions of the finance charge attributable to the periods of time including and excluding, respectively, the computational period, both determined according to the sum of the balances method.

(h) "Transaction" means a precomputed consumer loan unless the context otherwise requires.

(2) Before or after default in payment of a scheduled instalment of a transaction, the parties to the transaction may agree in writing to a deferral of all or part of one or more unpaid instalments and the creditor may make at the time of deferral and receive at that time or at any time thereafter a deferral charge not exceeding that provided in this section.

(3) A standard deferral may be made with respect to a transaction as of the due date, as originally scheduled or as deferred pursuant to a standard deferral, of an instalment with respect to which no delinquency charge (Section 37-3-203) has been made or, if made, is deducted from the deferral charge computed according to this subsection. The deferral charge for a standard deferral may equal but not exceed the portion of the loan finance charge attributable to the computational period immediately preceding the due date of the earliest maturing instalment deferred as determined according to the sum of the balances method multiplied by the whole or fractional number of computational periods in the deferral period, counting each day as $\frac{1}{30}$ th of a month without regard to differences in lengths of months when the computational period is one month or as $\frac{1}{7}$ th of a week when the computational period is one week. A deferral charge computed according to this subsection is earned pro rata during the deferral period and is fully earned on the last day of the deferral period.

(4) With respect to a transaction as to which a creditor elects not to make and does not make a standard deferral or a deferral charge for a standard deferral, a deferral charge computed according to this subsection may be made as of the due date, as scheduled originally or as deferred pursuant to either subsection (3) or this subsection, of an instalment with respect to which no delinquency charge (Section 37-3-203) has been made or, if made, is deducted from the deferral charge computed according to this subsection. A deferral charge pursuant to this subsection may equal but not exceed the rate of loan finance charge required to be disclosed to the debtor pursuant to law applied to each amount deferred for the period for which it is deferred computed without regard to differences in lengths of months, but proportionately for a part of a month, counting each day as $\frac{1}{30}$ th of a month or as $\frac{1}{7}$ th of a week. A deferral charge computed according to this subsection is earned pro rata with respect to each amount deferred during the period for which it is deferred.

(5) In addition to the deferral charge permitted by this section, a creditor may make and receive appropriate additional charges (Section 37-3-202), and any amount of these charges which is not paid may be added to the deferral charge computed according to subsection (3) or to the amount deferred for the purpose of computing the deferral charge computed according to subsection (4).

(6) The parties may agree in writing at the time of a transaction that, if an instalment is not paid within ten days after its due date, the creditor may unilaterally grant a deferral and make charges as provided in this section. A deferral charge may not be made for a period after the date that the creditor elects to accelerate the maturity of the transaction.

HISTORY: 1976 Act No. 686 Section 1.

SECTION 37-3-205. Loan finance charge on refinancing.

With respect to a consumer loan, refinancing, or consolidation, the lender may by agreement with the debtor refinance the unpaid balance and may contract for and receive a loan finance charge based on the principal resulting from the refinancing at a rate not exceeding that permitted by the provisions on loan finance charge for consumer loans (Section 37-3-201) or the provisions on loan finance charge for supervised loans (Section 37-3-508), whichever is appropriate. For the purpose of determining the loan finance charge permitted, the principal resulting from the refinancing comprises the following:

(1) if the transaction was not precomputed, the total of the unpaid balance and the accrued charges on the date of the refinancing, or, if the transaction was precomputed, the amount which the debtor would have been required to pay upon prepayment pursuant to the provisions on rebate upon prepayment (Section 37-3-210) on the date of refinancing, except that for the purpose of computing this amount no minimum charge (Section 37-3-210) shall be allowed; and

(2) appropriate additional charges (Section 37-3-202), payment of which is deferred.

HISTORY: 1976 Act No. 686 Section 1.

SECTION 37-3-206. Loan finance charge on consolidation.

(1) If a debtor owes an unpaid balance to a lender with respect to a consumer loan, refinancing, or consolidation, and becomes obligated on another consumer loan, refinancing, or consolidation with the same lender, the parties may agree to a consolidation resulting in a single schedule of payments. If the previous consumer loan, refinancing, or consolidation was not precomputed, the parties may agree to add the unpaid amount of principal and accrued charges on the date of consolidation to the principal with respect to the subsequent loan. If the previous consumer loan, refinancing, or consolidation was precomputed, the parties may agree to refinance the unpaid balance pursuant to the provisions on refinancing (Section 37-3-205) and to consolidate the principal resulting from the refinancing by adding it to the principal with respect to the subsequent loan. In either case the lender may contract for and receive a loan finance charge based on the aggregate principal resulting from the consolidation at a rate not in excess of that permitted by the provisions on loan finance charge for consumer loans (Section 37-3-201) or the provisions on loan finance charge for supervised loans (Section 37-3-508), whichever is appropriate.

(2) The parties may agree to consolidate the unpaid balance of a consumer loan with the unpaid balance of a consumer credit sale. The parties may agree to refinance the previous unpaid balance pursuant to the provisions on refinancing sales (Section 37-2-205) or the provisions on refinancing loans (Section 37-3-205), whichever is appropriate, and to consolidate the amount financed resulting from the refinancing or the principal resulting from the refinancing by adding it to the amount financed or principal with respect to the subsequent sale or loan. The aggregate amount resulting from the consolidation shall be deemed principal, and the creditor may contract for and receive a loan finance charge based on the principal at a rate not in excess of that permitted by the provisions on loan finance charge for consumer loans (Section 37-3-201) or the provisions on loan finance charge for supervised loans (Section 37-3-508), whichever is appropriate.

HISTORY: 1976 Act No. 686 Section 1.

SECTION 37-3-207. Conversion to revolving loan account.

The parties may agree to add to a revolving loan account the unpaid balance of a consumer loan, not made pursuant to revolving loan account, or a refinancing, or consolidation thereof, or the unpaid balance of a consumer credit sale, refinancing or consolidation. For the purpose of this section:

(1) the unpaid balance of a consumer loan, refinancing, or consolidation is an amount equal to the principal determined according to the provisions on refinancing (Section 37-3-205); and

(2) the unpaid balance of a consumer credit sale, refinancing, or consolidation is an amount equal to the amount financed determined according to the provisions on refinancing (Section 37-2-205).

HISTORY: 1976 Act No. 686 Section 1.

SECTION 37-3-208. Advance to perform covenants of debtor.

(1) If the agreement with respect to a consumer loan, refinancing, or consolidation contains covenants by the debtor to perform certain duties pertaining to insuring or preserving collateral and if the lender pursuant to the agreement pays for performance of the duties on behalf of the debtor, the lender may add the amounts paid to the debt. Within a reasonable time after advancing any sums, he shall state to the debtor in writing the amount of the sums advanced, any charges with respect to this amount, and any revised payment schedule and, if the duties of the debtor performed by the lender pertain to insurance, a brief description of the insurance paid for by the lender including the type and amount of coverages. No further information need be given.

(2) A loan finance charge may be made for sums advanced pursuant to subsection (1) at a rate not exceeding the rate stated to the debtor pursuant to the provisions on disclosure (Part 3) with respect to the loan, refinancing, or consolidation, except that with respect to a revolving loan account the amount of the advance may be added to the unpaid balance of the debt and the lender may make a loan finance charge not exceeding that permitted by the provisions on loan finance charge for consumer loans (Section 37-3-201) or for supervised loans (Section 37-3-508), whichever is appropriate.

HISTORY: 1976 Act No. 686 Section 1.

SECTION 37-3-209. Right to prepay.

Subject to the provisions on rebate upon prepayment (Section 37-3-210), the debtor may prepay in full the unpaid balance of a consumer loan, refinancing, or consolidation at any time without penalty.

HISTORY: 1976 Act No. 686 Section 1.

SECTION 37-3-210. Rebate upon prepayment.

(1) Except as otherwise provided in this section, upon prepayment in full of a precomputed consumer loan entered into after September 28, 1976, the creditor shall rebate to the debtor an amount not less than the unearned portion of the loan finance charge computed according to this section. If the rebate otherwise required is less than \$1.00, no rebate need be made.

(2) Upon prepayment of a consumer loan, whether or not precomputed, except a consumer lease or one pursuant to a revolving loan account, the creditor may collect or retain a minimum charge not exceeding fifteen dollars, if the minimum charge was contracted for and the loan finance charge earned at the time of prepayment is less than the minimum charge contracted for.

(3) In the following subsections these terms have the meanings ascribed to them in subsection (1) of Section 37-3-204: computational period, deferral, deferral period, periodic balance, standard deferral, sum of the balances method, and transaction.

(4) If, with respect to a transaction payable according to its original terms in no more than 61 instalments, the creditor has made either:

(a) no deferral or deferral charge, the unearned portion of the loan finance charge is no less than the portion thereof attributable according to the sum of the balances method to the period from the first day of the computational period following that in which prepayment occurs to the scheduled due date of the final instalment of the transaction; or

(b) a standard deferral and a deferral charge pursuant to the provisions on a standard deferral, the unpaid balance of the transaction includes any unpaid portions of the deferral charge and any appropriate additional charges incident to the deferral, and the unearned portion of the loan finance charge is no less than the portion thereof attributable according to the sum of the balances method to the period from the first day of the computational period following that in which prepayment occurs except that the numerator of the fraction is the sum of the periodic balances, after rescheduling to give effect to any standard deferral, scheduled to follow the computational period in which prepayment occurs. A separate rebate of the deferral charge is not required unless the unpaid balance of the transaction is paid in full during the deferral period, in which event the creditor shall also rebate the unearned portion of the deferral charge.

(5) In lieu of computing a rebate of the unearned portion of the loan finance charge as provided in subsection (4) of this section, the creditor:

(a) shall, with respect to a transaction payable according to its original terms in more than 61 instalments, and a transaction payable according to its original terms in no more than 61 instalments as to which the creditor has made a deferral other than a standard deferral, and

(b) may, in other cases, recompute or redetermine the earned finance charge by applying, according to the actuarial method, the annual percentage rate of finance charge required to be disclosed to the debtor pursuant to law to the actual unpaid balances of the amount financed for the actual time that the unpaid balances were outstanding as of the date of prepayment, giving effect to each payment, including payments of any deferral and delinquency charges, as of the date of the payment. The Administrator shall adopt rules to simplify the calculation of the unearned portion of the finance charge, including allowance of the use of tables or other methods derived by application of a percentage rate which deviates by not more than one-half of one percent from the rate of the loan finance charge required to be disclosed to the debtor pursuant to law, and based on the assumption that all payments were made as originally scheduled or as deferred.

(6) Except as otherwise provided in subsection (5), this section does not preclude the collection or retention by the creditor of delinquency charges (Section 37-3-203).

(7) If the maturity is accelerated for any reason and judgment is entered, the debtor is entitled to the same rebate as if payment had been made on the date judgment is entered.

(8) Upon prepayment in full of a precomputed consumer loan by the proceeds of consumer credit insurance (Section 37-4-103), the debtor or his estate is entitled to the same rebate as though the debtor had prepaid the agreement on the date the proceeds of insurance are paid to the creditor, but no later than 20 business days after satisfactory proof of loss is furnished to the creditor.

HISTORY: 1976 Act No. 686 Section 1; 1980 Act No. 326, Section 3.

PART 3.

DISCLOSURE AND ADVERTISING

SECTION 37-3-301. Application of and compliance with Federal Truth in Lending Act.

A person upon whom the Federal Truth in Lending Act imposes duties or obligations shall make or give to the consumer the disclosures, information and notices required of him by that act and in all respects comply with that act.

HISTORY: 1962 Code Section 8-800.261; 1974 (58) 2879.

SECTION 37-3-302. Receipts; statements of account; evidence of payment.

(1) The creditor shall deliver or mail to the debtor, without request, a written receipt for each payment by coin or currency on an obligation pursuant to a consumer loan. A periodic statement showing a payment received by mail complies with this subsection.

(2) Upon written request of a debtor, the person to whom an obligation is owed pursuant to a consumer loan, except one pursuant to a revolving loan account, shall provide a written statement of the dates and amounts of payments made within the 12 months preceding the month in which the request is received and the total amount unpaid as of the end of the period covered by the statement. The statement shall be provided without charge once during each year of the term of the obligation. If additional statements are requested the creditor may charge not in excess of \$2.00 for each additional statement.

(3) After a debtor has fulfilled all obligations with respect to a consumer loan, except one pursuant to a revolving loan account, the person to whom the obligation was owed, upon request of the debtor, shall deliver or mail to the debtor written evidence acknowledging payment in full of all obligations with respect to the transaction.

HISTORY: 1976 Act No. 686 Section 25.

SECTION 37-3-303. Notice to co-signers and similar parties.

(1) A natural person, other than the spouse of the debtor, is not obligated as a co-signer, co-maker, guarantor, indorser, surety, or similar party with respect to a consumer loan, unless before or contemporaneously with signing any separate agreement of obligation or any writing setting forth the terms of the debtor's agreement, the person receives a separate written notice that contains a completed identification of the debt he may have to pay and reasonably informs him of his obligation with respect to it.

(2) A clear and conspicuous notice in substantially the following form complies with this section:

NOTICE

You agree to pay the debt identified below although you may not personally receive any property, services, or money. You may be sued for payment although the person who receives the property, services, or money is able to pay. This notice is not the contract that obligates you to pay the debt. Read the contract for the exact terms of your obligation.

IDENTIFICATION OF DEBT YOU MAY HAVE TO PAY

(Name of Debtor)

(Name of Creditor)

(Date)

(Kind of Debt)

I have received a copy of this notice.

(Date) (Signed)

(3) The notice required by this section need not be given to a seller, lessor, or lender who is obligated to an assignee of his rights.

(4) A person entitled to notice under this section shall also be given a copy of any writing setting forth the terms of the debtor's agreement and of any separate agreement of obligation signed by the person entitled to the notice.

(5) A notice to co-signer which complies with the Federal Trade Commission's Trade Regulation Rule on Credit Practices (16 C.F.R. Section 444) or which complies with a regulation regarding co-signer notices promulgated by any federal agency pursuant to Section 18(f) of the Federal Trade Commission Act, 15 U.S.C. Section 57a(f) (Section 202(a) of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act, Public Law 93-63 F) likewise complies with this section, provided that the notice does not indicate that the creditor may collect any amount or engage in any activity which would be illegal under South Carolina law and the notice contains the following information signed and dated by the co-signer:

IDENTIFICATION OF DEBT YOU MAY HAVE TO PAY

(Name of Debtor)

(Name of Creditor)

(Date)

(Kind of Debt)

I have received a copy of this notice.

(Date)

(Signed)

HISTORY: 1976 Act No. 686 Section 25; 1991 Act No. 142, Section 12; 2004 Act No. 234, Sections 4 and 5, eff May 11, 2004.

SECTION 37-3-304. Advertising.

(1) A lender may not advertise, print, display, publish, distribute, broadcast, or cause to be advertised, printed, displayed, published, distributed, or broadcast in any manner any statement or representation with regard to the rates, terms, or conditions of credit with respect to a consumer loan that is false, misleading, or deceptive.

(2) Advertising that complies with the Federal Truth in Lending Act does not violate this section.

(3) This section does not apply to the owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated.

HISTORY: 1976 Act No. 686 Section 25.

SECTION 37-3-305. Filing and posting maximum rate schedule.

(1) Every creditor [Section 37-1-301(13)], other than an assignee of a credit obligation, making supervised or restricted consumer loans (Section 37-3-104) in this State shall on or before the effective date of this section, and in case of a creditor not making supervised consumer loans in this State on that date, on or before the date the creditor begins to make such loans in this State, file with the Department of Consumer Affairs and, except as otherwise provided in this section, post in one conspicuous place in every place of business, if any, in this State in which offers to make consumer loans are extended, a certified maximum rate schedule meeting the requirements set forth in subsections (2), (3), and (4) of this section.

A creditor that has issued lender credit cards or similar arrangements [Section 37-1-301(16)] is not required to post a copy of the required rate schedule in any place of business which is authorized to honor such transactions except its central and branch offices other than a branch office that is a free-standing automatic teller machine; provided, that the creditor shall include a conspicuous statement of the maximum rate it intends to charge for these transactions in the initial disclosure statement required to be

provided the debtor by the Federal Truth-In-Lending Act and notifies the debtor of any change in the maximum rate on or before the effective date of the change.

(2) The rate schedule required to be filed and posted by subsection (1) must contain a list of the maximum rate of loan finance charge (Section 37-3-109) stated as an annual percentage rate, determined in accordance with the Federal Truth-In-Lending Act and Federal Reserve Board Regulation Z, that the creditor intends to charge for consumer credit transactions in each of the following categories of credit:

- (a) unsecured personal loans;
- (b) secured personal loans other than those secured by real estate;
- (c) real estate mortgage loans;
- (d) open-end (revolving) credit;
- (e) all other.

The creditor may include as many subcategories as it chooses under each of the specified categories, and may, at its option, include a series of rates for different dollar amounts and maturities. A creditor may omit one or more of the categories from the rate schedule if the creditor does not make consumer credit transactions falling within the omitted categories.

If a variable rate is applicable to one or more categories or subcategories, the rate schedule must designate the rate as a variable rate and disclose the index for calculating changes in the rate and the cap or other limitation, if any, on any increases or decreases in the rate.

(3) The rate schedule that is filed by the creditor shall be reproduced in at least fourteen-point type for posting as required by subsection (1). The terms "Loan Finance Charge" and "Annual Percentage Rate" will be printed in larger size type than the other terms in the posted rate schedule. The following statement shall be included in the posted rate schedule:

"Consumers: All supervised and restricted creditors making consumer loans in South Carolina are required by law to post a schedule showing the maximum rate of LOAN FINANCE CHARGES stated as ANNUAL PERCENTAGE RATES that the creditor intends to charge for various types of consumer credit transactions.

The purpose of this requirement is to assist you in comparing the maximum rates that creditors charge, thereby furthering your understanding of the terms of consumer credit transactions and helping you to avoid the uninformed use of credit.

NOTE: Creditors are prohibited only from granting consumer credit at rates higher than those specified above. A creditor may be willing to grant you credit at rates that are lower than those specified, depending on the amount, terms, collateral and your credit worthiness."

(4) A rate schedule filed and posted as required by this section shall be effective until changed in accordance with this subsection. A creditor wishing to change any of the maximum rates shown on a schedule previously filed and posted or to add or delete the prescribed categories or subcategories shall file with the Department of Consumer Affairs, in duplicate, together with the required fee specified in subsection (6) and shall post as required by subsection (1) a revised schedule of maximum rates. The revised schedule shall be certified and returned to the creditor if properly filed. The revised rate schedule shall be effective for all consumer credit extended after the close of business on the day the certified schedule is received by the creditor or seven days after the date of submission postmark, whichever is earlier. The posting or changes in connection with lender credit cards and similar arrangements shall be made in accordance with subsection (1).

(5) A creditor shall have no obligation to print the maximum rate schedule in any public advertisement that mentions rates charged by that creditor.

(6) The Department of Consumer Affairs shall maintain a file for each creditor containing the original and all revised rate schedules filed by the creditor. A certified copy of each filing showing the date and time it was received must be sent to the creditor making the filing at the time of its receipt. A fee of twenty dollars for each rate schedule filed by a creditor is payable to the Department of Consumer Affairs for its services in maintaining the rate schedule files and providing one certified copy of each rate filing to the creditor. Additional certified copies of a filing must be provided at a charge of four dollars for each copy.

(7) The Commission on Consumer Affairs shall promulgate a regulation pursuant to subsection (2) of Section 37-6-506 establishing the filing procedures for and the format of the rate schedules prescribed by this section.

(8) Every creditor shall file at least one maximum rate schedule and pay at least one forty-dollar filing fee during each state fiscal year disclosing that creditor's existing maximum rates plus an additional forty dollars for each additional location. This filing and fee required of each creditor is due annually before the thirty-first day of January of each year. If this filing does not change any maximum rates previously filed, the creditor is not required to alter posted maximum rates. If any creditor has not filed a maximum rate schedule with the Department of Consumer Affairs by the thirty-first day of January of the year in which it is due, then on this date the filing is no longer effective and the maximum credit service charge that the creditor may impose on any credit extended after that date may not exceed eighteen percent a year until such time as the creditor files a revised maximum rate schedule that complies with this section. The Department of Consumer Affairs shall retain thirty dollars of each fee to offset the cost of administering and enforcing this chapter and Chapter 2 of this title. This revenue may be applied to the cost of operations and any unexpended balance carries forward to succeeding fiscal years and must be used for the same purposes.

(9) On loans with a cash advance [Section 37-1-301(30)] not exceeding six hundred dollars, a licensed lender may not post a rate which exceeds the maximum charges imposed in Section 34-29-140 as disclosed as an annual percentage rate or that rate filed and posted pursuant to this section, whichever is less.

HISTORY: 1982 Act No. 385, Section 33; 1984 Act No. 355, Section 12; 1987 Act No. 56 Section 2; 1989 Act No. 119, Section 3; 1991 Act No. 142, Section 13(A), (B); 1995 Act No. 135, Section 11; 2008 Act No. 353, Section 2, Pt 16B, eff July 1, 2009.

SECTION 37-3-306. Notice of assumption rights.

(1) Every creditor engaged in this State in making consumer loans pursuant to a lender credit card or similar arrangement shall:

(a) file on or before January thirty-first of each year with the Department of Consumer Affairs for every lender card plan it offers to South Carolina residents the disclosures required for credit and charge card applications and solicitations by the Federal Truth-In-Lending Act, Federal Reserve Board Regulation Z, Section 226.5a(b), 12 C.F.R. Section 226.5a(b), and any amendments or replacements thereto. The disclosures required by this section must be based on fees and charges and other terms in effect as of December thirty-first of the prior year. The required disclosures may be filed by providing one or more actual applications or solicitations used by the creditor which contain the required disclosures on one or more of the model forms in Appendix G of Federal Reserve Board Regulation Z. The annual filing fee for each creditor is twenty dollars, payable at the time the disclosures are filed regardless of the number of filings; and

(b) file with the Department of Consumer Affairs current figures on the disclosures required by item (a) within thirty days after receiving a written request for this information from the administrator. No filing fee may be imposed for this information request.

(2) Failure to file the disclosures required by this section and any errors in these disclosures does not affect the validity of any transaction or the maximum rates or charges in any transaction made by the creditor but the creditor is subject to the administrative remedies in Part 1 of Chapter 6.

HISTORY: 1982 Act No. 385, Section 34; 1991 Act No. 142, Section 14.

SECTION 37-3-308. Manufactured home loan disclosure; material terms.

(A) An estimate of the disclosures required by Section 37-3-301 is required in connection with a loan for the purchase, refinance, or consolidation of a loan secured by a borrower-occupied manufactured home not less than two days before the consummation of the transaction as defined in 12 C.F.R. Section 226.2(a)(13). The estimated disclosure must be accompanied by the itemization of the amount financed. With respect to a loan secured by real property, the disclosures required by the Federal Real Estate Settlement Procedures Act are applicable.

(B) If the lender turns down the applicant for the credit sale before making the disclosures, the disclosures as provided in subsection (A) are not required.

(C)(1) If the lender determines that a material term of the loan sale must change, then the lender shall redisclose the estimated disclosures to conform to the changed terms and the transaction must not be consummated until one day after the redisclosure.

(2) A material term of the credit sale includes:

(a) the number of payments of the transaction;

(b) a feature of the transaction causing it to be an alternative mortgage transaction as defined in 12 U.S. Code Section 3802(1) when the transaction as previously disclosed was not an alternative mortgage transaction;

(c) a term or fee in the transaction or combination of terms or fees causing the annual percentage rate to vary more than one quarter of one percent of the annual percentage rate previously disclosed; or

(d) any insurance premiums, prepaid finance charges, third-party fees, or preparation charges that vary from the previously disclosed insurance premiums, prepaid finance charges, third-party fees, or preparation charges by lesser than five hundred dollars in the aggregate or one percent of the estimated amount disclosed pursuant to subsection (A) above.

HISTORY: 2003 Act No. 42, Section 3.B, eff Jan. 1, 2004, and applying to loans for which the loan applications were taken on or after that date.

PART 4.

LIMITATION ON AGREEMENTS

SECTION 37-3-401. Scope.

This part applies to consumer loans.

HISTORY: 1962 Code Section 8-800.271; 1974 (58) 2879.

SECTION 37-3-402. Balloon payments.

(1) Except as provided in subsection (2), if any scheduled payment of a consumer loan is more than twice as large as the average of earlier scheduled payments, the consumer has the right to refinance, without penalty, the amount of that payment at the time it is due. The terms of the refinancing shall be no less favorable to the consumer than the terms of the original transaction.

(2) This section does not apply to -

(a) a transaction pursuant to a revolving loan account;

(b) a transaction to the extent that the payment schedule is adjusted to the seasonal or irregular income or scheduled payments or obligations of the consumer;

(c) a credit transaction to the extent a formula for determining the rate of the loan finance charge and any change in the amount of payment upon renegotiation or refinancing is specified in the agreement between the parties or is an alternative mortgage instrument; or

(d) a transaction of a class defined by rule of the Administrator as not requiring for the protection of the consumer his right to refinance as provided in this section.

HISTORY: 1962 Code Section 8-800.272; 1974 (58) 2879; 1982 Act No. 385, Section 35; 1989 Act No. 144, Section 4.

SECTION 37-3-403. No assignment of earnings.

(1) A lender may not take an assignment of earnings of the debtor for payment or as security for payment of a debt arising out of a consumer loan. An assignment of earnings in violation of this section is unenforceable by the assignee of the earnings and revocable by the debtor. This section does not prohibit an employee from authorizing deductions from his earnings if the authorization is revocable.

(2) A sale of unpaid earnings made in consideration of the payment of money to or for the account of the seller of the earnings is deemed to be a loan to him secured by an assignment of earnings.

HISTORY: 1962 Code Section 8-800.273; 1974 (58) 2879.

SECTION 37-3-404. Attorney's fees.

(1) Except as provided by the provisions on limitations on attorney's fees as to certain supervised loans (Section 37-3-514), with respect to a consumer loan the agreement may provide for the payment by the debtor of reasonable attorney's fees not in excess of fifteen percent of the unpaid debt after default and referral to an attorney not a salaried employee of the lender. A provision in violation of this section is unenforceable.

(2) With respect to a consumer loan that is secured in whole or in part by a lien on real estate the provisions of Section 37-10-102(a) apply whenever the lender requires the debtor to purchase insurance or pay any attorney's fees in connection with examining the title and closing the transaction.

HISTORY: 1962 Code Section 8-800.274; 1974 (58) 2879; 1976 Act No. 686 Section 26; 1982 Act No. 385, Section 36; 1984 Act No. 355, Section 6.

SECTION 37-3-405. Charges as a result of default prohibited except as authorized by title.

Except for reasonable expenses incurred in realizing on a security interest, the agreement with respect to a consumer loan may not provide for charges as a result of default by the debtor other than those authorized by this title. A provision in violation of this section is unenforceable. This section does not prohibit or limit delinquency or deferral charges.

HISTORY: 1976 (59) 1792; 1976 Act No. 686 Section 68.

SECTION 37-3-406. Notice of assignment.

The debtor is authorized to pay the original lender until he receives notification of assignment of rights to payment pursuant to a consumer loan and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the debtor, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the debtor may pay the original lender.

HISTORY: 1962 Code Section 8-800.276; 1974 (58) 2879.

SECTION 37-3-407. Authorization to confess judgment prohibited.

A debtor may not authorize any person to confess judgment on a claim arising out of a consumer loan. An authorization in violation of this section is void.

HISTORY: 1962 Code Section 8-800.277; 1974 (58) 2879.

SECTION 37-3-408. Change in terms of revolving loan accounts.

(1) Whether or not a change is authorized by prior agreement, a creditor may change the terms of a revolving loan account applying to any balance incurred before or after the effective date of the change. If the change increases the rate of the loan finance charge or of additional charges, alters the method of determining the balance upon which charges are made so that increased charges may result, or imposes or increases minimum charges, the change is effective with respect to a balance incurred before the effective date of the change only if the debtor after receiving disclosure of the change agrees to it in writing or the creditor delivers or mails to the debtor one written disclosure of the change at least thirty days before the effective date. The written disclosure must state that if the consumer does not want to continue the revolving account under the new terms the creditor will terminate the account and permit the consumer to pay the existing balance under the terms in effect before the change in terms on the written request of the consumer sent to the creditor at the address provided in the disclosure. The disclosure also must state that the consumer may apply for another revolving account on the new terms.

(2) A disclosure provided for in subsection (1) is mailed to the debtor when mailed to him at his address used by the creditor for mailing him periodic billing statements.

(3) If a creditor attempts to change the terms of a revolving loan account as provided in subsection (1) without complying with this section, any additional cost or charge to the debtor resulting from the change is an excess charge and is subject to the remedies available to the debtor (Section 37-5-202) and to the administrator (Section 37-6-113).

HISTORY: 1962 Code Section 8-800.278; 1974 (58) 2879; 1976 Act No. 686 Section 27; 1980 Act No. 433, Section 5; 1989 Act No. 144, Section 2.

SECTION 37-3-409. Use of multiple agreements.

A lender may not use multiple agreements with intent to avoid disclosure of an annual percentage rate pursuant to the provisions on disclosure and advertising (part 3). The excess amount of loan finance charge provided for in agreements in violation of this section is an excess charge for the purposes of the provisions on the effect of violations on rights of parties (Section 37-5-202) and the provisions on civil actions by Administrator (Section 37-6-113).

HISTORY: 1962 Code Section 8-800.279; 1974 (58) 2879.

SECTION 37-3-410. Lender subject to claims and defenses arising from sale and leases.

(1) A lender, except the issuer of a lender credit card, who with respect to a particular transaction, makes a consumer loan to enable a debtor to buy or lease from a particular seller or lessor property or services is subject to all claims and defenses of the debtor against the seller or lessor arising from that sale or lease of the property or services if:

(a) the lender knows that the seller or lessor arranged for the extension of credit by the lender for a commission, brokerage, or referral fee;

(b) the lender is a person related to the seller or lessor, unless the relationship is remote or is not a factor in the transaction;

(c) the seller or lessor guarantees the loan or otherwise assumes the risk of loss by the lender upon the loan;

(d) the lender directly supplies the seller or lessor with the contract document used by the debtor to evidence the loan, and the seller or lessor has knowledge of the credit terms and participates in preparation of the document; or

(e) the loan is conditioned upon the debtor's purchase or lease of the property or services from the particular seller or lessor, but the lender's payment of proceeds of the loan to the seller or lessor does not in itself establish that the loan was so conditioned.

(f) the lender, before he makes the consumer loan, has knowledge or, from his course of dealing with the particular seller or lessor or his records, notice of substantial complaints by other buyers or lessees of the particular seller's or lessor's failure or refusal to perform his contracts with them and of the particular seller's or lessor's failure to remedy his defaults within a reasonable time after notice to him of the complaints.

(2) A claim or defense of a debtor specified in subsection (1) may be asserted against the lender under this section only if the debtor has made a good faith attempt to obtain satisfaction from the seller or lessor with respect to the claim or defense and then only to the extent of the amount owing to the lender with respect to the sale or lease of the property or services as to which the claim or defense arose at the time the lender has written notice of the claim or defense. Written notice of the claim or defense may be given before the attempt specified in this subsection. For the purposes of this section, written notice is any written notification other than notice on a coupon, billing statement or other payment medium or material supplied by the lender which sets forth or otherwise enables the creditor to identify the name and account number (if any) of the debtor.

(3) For the purpose of determining the amount owing to the lender with respect to the sale or lease:

(a) payments received by the lender after consolidation of two or more consumer loans, except pursuant to a revolving loan account, are deemed to have been applied first to the payment of the loans first made; if the loans consolidated arose from loans made on the same day, payments are deemed to have been applied first to the smallest loan; and

(b) payments received for a revolving loan account are deemed to have been applied first to the payment of loan finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries of the debts are made to the account.

(4) An agreement may not limit or waive the claims or defenses of a debtor under this section.

HISTORY: 1962 Code Section 8-800.280; 1974 (58) 2879; 1976 Act No. 686 Section 28; 1982 Act No. 385, Section 37.

SECTION 37-3-411. Card issuer subject to claims and defenses.

(1) This section neither limits the liability of nor imposes liability on a card issuer as a manufacturer, supplier, seller, or lessor of property or services sold or leased pursuant to the credit card. This section may subject a card issuer to claims and defenses of a cardholder against a seller or lessor arising from sales or leases made pursuant to the credit card.

(2) A card issuer is subject to claims and defenses of a cardholder against the seller or lessor arising from the sale or lease of property or services by a seller or lessor licensed, franchised, or permitted by the card issuer or a person related to the card issuer to do business under the trade name or designation of the card issuer or a person related to the card issuer, to the extent of the original amount owing to the card issuer with respect to the sale or lease of the property or services as to which the claim or defense arose.

(3) Except as otherwise provided in this section, a card issuer, including a lender credit card issuer, is subject to all claims and defenses of a cardholder against the seller or lessor arising from the sale or lease of property or services pursuant to the credit card

(a) if the original amount owing to the card issuer with respect to the sale or lease of the property or services as to which the claim or defense arose exceeds \$50.00;

(b) if the residence of the cardholder and the place where the sale or lease occurred are in the same state or within 100 miles of each other;

(c) if the cardholder has made a good faith attempt to obtain satisfaction from the seller or lessor with respect to the claim or defense; and

(d) to the extent of the amount owing to the card issuer with respect to the sale or lease of the property or services as to which the claim or defense arose at the time the card issuer has written notice of the claim or defense. Written notice of the claim or defense may be given before the attempt specified in paragraph (c). For the purposes of this section, written notice is any written notification other than notice on a coupon, billing statement or other payment medium or material supplied by the creditor which sets forth or otherwise enables the assignee to identify the name and account number (if any) of the debtor.

(4) For the purpose of determining the amount owing to the card issuer with respect to a sale or lease pursuant to a revolving loan account or a revolving charge account, payments received for the account are deemed to have been applied first to the payment of loan finance charges or credit service charges in the order of their entry to the account and then to the payment of debts in the order in which the entries of the debts are made to the account.

(5) An agreement may not limit or waive the claims or defenses of a cardholder under this section.

HISTORY: 1976 Act No. 686 Section 29.

SECTION 37-3-412. Variable interest rate real estate mortgage loans.

With respect to a consumer loan which is secured in whole or in part by a lien on real estate under which the aggregate of all sums advanced or contemplated by the parties in good faith to be advanced will not exceed one hundred thousand dollars, the rate of the loan finance charge shall be a fixed nonvariable rate unless the creditor makes the transaction in accordance with any regulation governing alternative mortgages promulgated by the State Board of Financial Institutions or a federal regulatory agency.

HISTORY: 1984 Act No. 355, Section 7.

SECTION 37-3-413. Short-term vehicle secured loans; notice to borrower.

(1) A "short-term vehicle secured loan" means a nonpurchase money consumer loan with an original repayment term of less than one hundred and twenty days and secured by a motor vehicle. It does not include a loan made by a supervised financial organization.

(2) A short-term vehicle secured loan must be for an original period of at least one month. A lender may allow the loan to be renewed no more than six additional periods, not to exceed two hundred forty days, with each period equal to the length of the original period. A short-term vehicle secured loan may not accrue interest after the maturity of the sixth renewal period. After the maturity of the final renewal period, the borrower may repay the remaining principal, without additional interest, in six equal monthly installments. For the purposes of this section, a renewal is an extension of a short-term vehicle secured loan for an additional period without changes in the terms of the loan other than a reduction in its principal. Accrued interest must not be capitalized or added to the principal of the loan at the time of a renewal. Fees must not be charged, other than the lien recording fee in the exact amount of the governmental entity's charge.

(3) Before making a short-term vehicle secured loan, a lender shall form a good faith belief that the borrower has the ability to repay the loan, considering the borrower's, and any co-borrower's, employment, monthly income, and other monthly expenses compared to the loan's repayment obligation for the original term and permitted renewals. The lender is considered to comply with this subsection if the lender obtains from the borrower, on a form separate from the loan agreement, a signed statement that the information the borrower has provided regarding employment, income, and expenses is true and correct and that, given the information, the borrower believes he has the ability to repay the loan.

(4) A lender may not make a short-term vehicle secured loan in a principal amount greater than the fair market retail value of the motor vehicle securing the loan, as determined by common industry appraisal

guides. If the motor vehicle securing the loan is not listed in common appraisal guides, the lender shall use his best judgment to determine the value.

(5) Except in the event of fraud by the borrower, if a borrower defaults in the repayment of a short-term vehicle secured loan, the lender's sole remedy is to seek possession and sale of the motor vehicle securing the loan and the lender may not pursue the borrower personally in an action for repayment of the loan or for any deficiency after sale. Notwithstanding this section, the lender must return to the borrower any surplus obtained after sale in excess of the amount owed on the loan and reasonable expenses of repossession and sale in accordance with Title 36, Chapter 9.

(6) In a short-term vehicle secured loan agreement the lender shall provide a:

(a) notice, placed conspicuously above the borrower's signature and in at least fourteen point type, as follows:

"THIS IS A HIGHER INTEREST LOAN. YOU SHOULD GO TO ANOTHER SOURCE IF YOU HAVE THE ABILITY TO BORROW AT A LOWER RATE OF INTEREST. YOU ARE PLACING YOUR VEHICLE AT RISK IF YOU DEFAULT ON THIS LOAN."; and

(b) right of rescission provision entitling the borrower to repay the principal amount borrowed without interest or other cost at any time until the close of business on the business day following the date the original loan was executed.

(7) A lender making short-term vehicle secured loans may not advertise or offer a rate of interest that is lower in the original period of the loan if that rate increases in later renewals.

HISTORY: 2003 Act No. 42, Section 5.B, eff Jan. 1, 2004, and applying to loans for which the loan applications were taken on or after that date.

PART 5.

SUPERVISED LOANS

SECTION 37-3-500. Scope.

Except as provided in Section 37-3-512, this Part shall not apply to restricted loans or restricted lenders.

HISTORY: 1976 Act No. 686 Section 2.

(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 of Title 34 (The South Carolina Consumer Finance Act).

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

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.

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 60 days after the application for the license was filed. A request for a hearing may not be made more than 15 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 item (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 subsection (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 of 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.

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 willfully 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 subsection (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 to this part.

Except as otherwise provided, the Part on Administrative Procedure and Judicial Review [Part 4 of Chapter 6 of this Title] 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.

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 of this title.

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.