ALAN WILSON
ATTORNEY GENERAL

January 31, 2019

The Honorable Jonathon D. Hill, Member
South Carolina House of Representatives
District No. 8
434-C Blatt Bldg.
Columbia, SC 29201

Dear Representative Hill:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:

> This letter is to request your opinion about the meaning of South Carolina Code of Laws Title 40, Chapter 39, which regulates pawn loans. There appear to be industry practices which circumvent the statutory finance charge limits, and there is some confusion about whether local ordinances consistent with this statute are pre-empted by Act 262 of 2016.
>
> What is your office's opinion of the following questions?
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> Question 1: Are "NO REFUND OF FINANCE CHARGE ON PREPAYMENT" of a pawn loan in violation of Section 40-39-100, 40-39-40(A), and 40-39-10(5) of the South Carolina Code?
>
> This section lays out the maximum interest rate that pawnbrokers can charge for their loans:

Code section	Hypothetical loan	Monthly interest	APR
40-39- 100 (A)(l)	$2.50 per $10 for loans up to $50	25%	300%
40-39-100(A)(2)	$2.50 per $10 for loans $50-$100	20%	240%
40-39-100(A)(3)	$2.50 per $10 for loans $100-$200	15%	180%
40-39-100(A)(4)	$2.50 per $10 for loans $200-$1,000	10%	120%
40-39-100(A)(5)	$2.50 per $10 for loans over $1,000	5%	60%

> All pawnbrokers operating in South Carolina are required by law to post a schedule showing the maximum rate of loan finance charges as dollars per ten dollars per thirty-day period. Pawnbrokers are specifically prohibited from granting credit at interest rates higher than those specified above.

Pawn shops in the State of South Carolina include in the terms of their loan agreements terms which appear to work around the intent of this interest cap. Specifically, adding "NO REFUND OF FINANCE CHARGE ON PREPAYMENT" means that regardless of the length of time of the pawn loan, a full thirty days interest is charged for each month or portion thereof, which results in an interest charge equivalent to 9,125% APR (25% interest for one day times 365 days in a year).

Is this practice a violation of the limitations and restrictions imposed by Title 40, Chapter 39? Does the statute permit pawnbrokers to not prorate finance charges for loans less than thirty days?

Question 2: Does 40-39-100(B) prohibit splitting loans into separate transactions to maximize the return to the pawnbroker? What is the correct way to calculate pawn loan interest under 40-39-100?

A pawnbroker, as is demonstrated by the attached pawn ticket, when making a loan for $1,000 calculates the finance charges by breaking the loan into four components:

Principal	Interest %	Finance Charge
$50	25%	$12.50
$50	20%	$10.00
$100	15%	$15.00
$800	10%	$80.00
Total principal: $1,000	Total finance charge: $117.50	

These four separate loans are combined into a single transaction with a total finance charge of $117.50 per month. If, however, the $1,000 loan were not split into four, it would be subject to the 10% rate which is only $100.00:

Principal	Interest %	Finance Charge
$1,000	10%	$100.00

Question 3: Would local ordinances prohibiting the practices explained in Question 1 and Question 2 be allowed or prohibited by Section 15 of Act 262 of 2016?

Law/Analysis

I. Is a pawnbroker required to prorate a loan which is paid off within the 30 day finance period?

It is this Office's opinion that a court would likely find a pawnbroker is not required to prorate a pawn transaction. Chapter 39 of Title 40, the statutory authority governing pawnbrokers, does not expressly address the issue of prorating a pawn transaction. Section 40-39-100(A) permits pawnbrokers to charge interest at a set dollar amount over a "per thirty-day period." Because interest charges are expressly authorized on thirty-day terms, it appears inconsistent with legislative intent to require a per diem proration. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (Where a statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will."). This Office has been informed that the South Carolina Department of Consumer Affairs, which is assigned regulatory authority over the administration of Chapter 39 of Title 40 and over all pawnbrokers in this State, has enforced this statute in a manner which is consistent with this construction. A pawnbroker may, however, grant credit at lower rates. Id. ("NOTE: Pawnbrokers are prohibited only from granting credit at rates higher than those specified above. A pawnbroker 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."). Therefore, it is this Office's opinion that a court would likely find a pawnbroker may, but is not required to, prorate the interest charged on a pawn transaction.

The request letter also asked whether declining to prorate a pawn transaction amounts to a violation of S.C. Code Ann. §§ 40-39-10(5), -40(A). Section 40-39-10(5) is the statutory definition for "month" within Chapter 39 of Title 40 and is defined as "that period of time from one date in a calendar month to the corresponding date in the following calendar month, but if there is no corresponding date, then the last day of the following month, and when computations are made for a fraction of a month, a day is one-thirtieth of a month." The definition of "month" does include computations made for fractions of a month which suggests proration is a consideration where the term is used. However, "month" does not appear in the description of the interest charges authorized in S.C. Code Ann. § 40-39-100(A). Instead, these charges are authorized on a "per thirty-day period." Id. Were the interest charges authorized on a "per month period," such language would more strongly support a construction that requires proration.

Finally, Section 40-39-40(A) states, "No pawnbroker may charge or collect any fees, costs, or assessments of any kind or nature other than those specifically allowed under this chapter." Because it is this Office's opinion that S.C. Code Ann. § 40-39-100(A) does not require proration, it is this Office's opinion that a court would likely find that a pawnbroker would be in compliance with Section 40-39-40(A) even when he does not prorate a pawn transaction which is paid off within the thirty-day finance period.

II. What is the correct way to calculate pawn loan interest charges under S.C. Code Ann. § 40-39-100?

It is this Office's opinion that a court would likely find the charges described above are consistent with the amount of interest a pawnbroker is permitted to charge pursuant to S.C. Code Ann. § 40-39-100. Section 40-39-100(B) states, "No pawnbroker may separate or divide a pawn transaction into two or more transactions for the purpose or with the effect of obtaining a total pawn interest rate in excess of that authorized for an amount financed equal to the total of the amounts financed in the resulting transactions." In relevant part, "pawn transaction" is statutorily defined to mean "the pledging with a pawnbroker under this chapter of a single item of goods or tangible personal property as security for a loan of money." S.C. Code Ann. § 40-39-10(7). The plain language of these statutes clearly demonstrates legislative intent to prohibit the splitting of a single loan into multiple transactions to generate an interest charge in excess of the amounts authorized by statute.

However, the example finance charge appears consistent with the amount of interest authorized in Chapter 39 of Title 40 of the South Carolina Code of Laws. The maximum interest a pawnbroker may charge for a pawn transaction is specified as follows:

> A pawnbroker may charge interest on loans not exceeding the following amounts:
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> (1) at the rate of two dollars and fifty cents per thirty-day period for each ten dollars loaned for the first fifty dollars loaned;
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> (2) at the rate of two dollars per thirty-day period for each ten dollars loaned on that portion of the loan exceeding fifty dollars but not exceeding one hundred dollars;
>
> (3) at the rate of one dollar and fifty cents per thirty-day period for each ten dollars loaned on that portion of the loan exceeding one hundred dollars but not exceeding two hundred dollars;
>
> (4) at the rate of one dollar per thirty-day period for each ten dollars loaned on that portion of the loan exceeding two hundred dollars but not exceeding one thousand dollars;
>
> (5) at the rate of fifty cents per thirty-day period for each ten dollars loaned on that portion of the loan exceeding one thousand dollars but not exceeding the maximum amount in subsection (C).

S.C. Code Ann. § 40-39-100(A). The final marginal rate of interest a pawnbroker may charge on a pawn transaction which totals $1,000 is one dollar per thirty-day period for each ten dollars loaned. However, that rate is only applicable to the portion of the loan "exceeding two hundred

dollars but not exceeding one thousand dollars." Each of the preceding rates also remain applicable for first $200 of the loan as described in S.C. Code Ann. §§ 40-39-100(A)(1)-(3). The example total finance charge of $117.50 for a pawn transaction of $1,000 is consistent with the authorized interest charges in S.C. Code Ann. § 40-39-100(A). The maximum authorized interest charges for pawn transactions between $50 and $15,000, as calculated by the South Carolina Department of Consumer Affairs, are attached for reference.

III. Can a local ordinance prohibit the practices as described in the request letter?

It is this Office's opinion that a court would likely find that 2016 Act No. 262, § 15 does not permit local ordinances to prohibit the practices described in the request letter. As discussed above, it is this Office's opinion that the practices described are consistent with Chapter 39 of Title 40 of the South Carolina Code of Laws and 2016 Act No. 262. Section 15 of 2016 Act No. 262 states:

> A county or municipality may enact ordinances that are in compliance with, but <u>not more restrictive than the provisions of this act</u>, except that local ordinances may not require the payment of a fee or tax related to a pawn transaction or purchase unless authorized pursuant to this chapter or restrict hours of operation other than between midnight and 6:00 a.m. An ordinance that conflicts with this act is void. This act does not affect the authority of a county or municipality to establish land use controls or require a pawnbroker to obtain a local occupational license.

<u>Id.</u> (emphasis added). Because it is this Office's opinion that the practices are consistent with the statutes at issue, any ordinance which is designed to restrict those practices would be more restrictive than the provisions of 2016 Act No. 262 and be prohibited by Section 15. Therefore, it is this Office's opinion that a court would likely find that 2016 Act No. 262, § 15 prohibits local ordinances from restricting the practices described in the request letter.

<u>Conclusion</u>

It is this Office's opinion that a court would likely find a pawnbroker may, but is not required to, prorate the interest charged on a pawn transaction. Section 40-39-100(A) permits pawnbrokers to charge interest at a set dollar amount over a "per thirty-day period." Because interest charges are expressly authorized on thirty-day terms, it appears inconsistent with legislative intent to require a per diem proration. Further, it is this Office's opinion that a court would likely find the charges described in the request letter are consistent with the amount of interest a pawnbroker is permitted to charge pursuant to S.C. Code Ann. § 40-39-100. Finally, it is this Office's opinion that a court would likely find that 2016 Act No. 262, § 15 does not permit

local ordinances to prohibit the practices described in the request letter as they are consistent with Chapter 39 of Title 40 of the South Carolina Code of Laws and 2016 Act No. 262.

Sincerely,

Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General