

Document No. 4527

**DEPARTMENT OF CONSUMER AFFAIRS****CHAPTER 28**

Statutory Authority: 1976 Code Sections 37-7-101 et seq.,  
Particularly Sections 37-7-112 and 37-7-121

## 28-700. Consumer Credit Counseling Requirements

**Synopsis:**

The department proposes to amend Regulation 28-700. The proposed regulation modifies the fees credit counseling organizations licensed under 1976 Code Section 37-7-101 *et seq.* may charge the consumers.

South Carolina Code sections 37-7-112 and 37-7-121 authorize the department to promulgate regulations necessary to effectuate the purposes of the chapter.

Notice of Drafting for the proposed regulation was published in the *State Register* on September 26, 2014. Comments were solicited for consideration in drafting the proposed regulation. Proposed regulation was published in the *State Register* on November 28, 2014.

**Instructions:**

Amend Regulation 28-700. (Consumer Credit Counseling Requirements) as printed below.

**Text:**

## 28-700. Consumer Credit Counseling Requirements.

(Statutory Authority 1976 Code Section 37-7-101, as amended)

## A. Definitions

(1) Definitions shall be those contained in the Consumer Credit Counseling Act, S.C. Code Ann. Section 37-7-101 *et seq.* and the following:

(a) "Fees and charges of licensees" means the amount of money the credit counseling organization licensee may charge to the consumer.

(b) "Good Faith" means honesty in fact and the observance of reasonable standards of fair dealing.

(c) "Instructor" means a person that presents or teaches a continuing education course to licensees or otherwise guides licensees through the course materials.

(d) "Professional certification organization" means an independent organization, approved by the department, which authenticates the competence of individuals providing education and assistance to other individuals in connection with credit counseling services.

(e) "Sponsor" means a person that offers or otherwise coordinates a continuing professional education course.

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### B. Fees and Charges of Licensees

(1) A licensee may not charge or receive from a consumer, directly or indirectly, a fee except as delineated in this section. A credit counseling organization may not impose or receive fees under more than one subitem listed under subsection (2) below.

(2) The following fees may be charged based on the primary purpose of the services contracted for:

(a) If the organization receives or offers to receive funds from the consumer for the purpose of distributing the funds among the consumer's creditors in full or partial payment of the consumer's debts:

(i) an initial consultation fee, not to exceed sixty dollars;

(ii) a DMP set-up fee, not to exceed fifty dollars;

(iii) a monthly maintenance fee, not to exceed ten dollars times the number of creditors in the DMP at the time the fee is assessed, but not more than seventy dollars for each month;

(iv) a reinstatement fee, not to exceed twenty-five dollars;

(v) an additional fee for services related to the debt management plan not to exceed ten dollars per month. No fee may be charged pursuant to this subsection without prior approval from the Department.

(b) If the organization improves or offers to improve a consumer's credit record, history or rating:

(i) an initial consultation fee, not to exceed sixty dollars;

(ii) a monthly maintenance fee, not to exceed fifty dollars for each month;

(iii) a reinstatement fee, not to exceed twenty-five dollars.

(c) If the organization negotiates or offers to negotiate to defer or reduce a consumer's obligations with respect to credit extended by others:

(i) an initial consultation fee, not to exceed sixty dollars;

(ii) a monthly maintenance fee, not to exceed ten dollars times the number of creditors remaining at the time the fee is assessed, but not more than seventy dollars for each month;

(iii) a reinstatement fee, not to exceed twenty-five dollars.

(3) Upon the third dishonored payment made by a consumer to a licensee within a twelve-month period, the licensee may impose on the consumer a charge not to exceed twenty-five dollars. A licensee may not charge the same consumer more than three of these charges within the same twelve-month period.

(4) Any monies received by a person in violation of the Consumer Credit Counseling Act or Regulation 28-700 shall be returned to the payor.

(5) No person shall receive a fee from a consumer unless the fee permitted by S.C. Code Ann. Section 37-7-101 *et seq.* and/or R.28-700 is delineated in the contract and it has been established, as based on a good faith determination that the consumer will benefit from the services to be received pursuant to the contract.

### C. Continuing Professional Education

(1) Pursuant to S.C. Code Ann. Section 37-7-105, persons other than the department may seek approval to offer continuing professional education courses to licensees. Persons other than the department seeking to provide a continuing professional education course to licensees for the purpose of fulfilling the requirements of section 37-7-105 must submit a sponsor application to the department on forms prescribed by the department or, in the alternative, seek approval from the department to be deemed a professional certification organization. The application shall at a minimum include:

- (a) Applicant's name, telephone number, address, and contact person;
- (b) Description of the applicant's attendance policy, including a copy of the attendance form or document that will be kept by the sponsor to evidence attendance;
- (c) A copy of the certificate of completion to be delivered to licensees completing an approved course.

(2) Upon review of the sponsor application or request for approval as a professional certification organization, the department will either issue the applicant a certificate of approval or a letter of denial. Sponsors and professional certification organizations shall inform the department of any changes in subitems (1)(a)-(c) above within thirty days of the change.

(3) No continuing professional education course credit will be given for a course unless the sponsor has been approved by the department.

(4) Approved sponsors may submit courses for approval by the continuing professional education panel. Professional certification organizations are not required to submit individual courses for approval. To be considered for approval, the sponsor must submit a course approval application to the department on forms prescribed by the department. The application shall at a minimum include:

- (a) Course information, including course title, type, location, and continuing professional education hours requested;
- (b) Course content outline and coordinating objectives;
- (c) Instructor name, address, telephone number, and employer;
- (d) Description of the instructor's qualifications;
- (e) If a person other than the sponsor furnished, prepared and/or authored the continuing professional education course materials, written authorization permitting the sponsor to utilize the materials.

(5) Licensees who attend a course not submitted for prior approval by an approved sponsor may submit to the department the items described in subitems (4)(a)-(d) above, the certificate of completion received, and an approval application on a form prescribed by the department.

(6) Licensees that are certified by a professional certification organization may submit evidence of current certification, along with the completed form as required by S.C. Code Ann. Section 37-7-105(A), to the department to satisfy their continuing professional education requirements.

(7) The department may require that all information required by this section be submitted in electronic form.

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(8) The department may permit a licensee to receive continuing professional education credit for a course that was not approved at the time of attendance, but was subsequently approved by the continuing professional education panel.

### D. Record Keeping

(1) A credit counseling organization must maintain and preserve the following records:

(a) Any documents signed by and/or given to the consumer, including the budget analysis and contract required by sections 37-7-108 and 37-7-110;

(b) Creditor consent forms required by section 37-7-109;

(c) Trust account statements required by section 37-7-111;

(d) Name and address of the FDIC-insured institution where South Carolina consumer funds are held and the number of the account utilized;

(e) Telephone scripts and marketing materials;

(f) Contracts entered into with service providers;

(g) Consumer complaint files;

(h) Copy of the organization's records disposal and security breach notification policies utilized to maintain compliance with the South Carolina Financial Identity Fraud and Identity Theft Protection Act, S.C. Code Ann. Sections 37-20-110 *et seq.*

(2) Consumer records must be maintained and preserved for at least three years after the termination of the contract. All business records must be maintained for at least three years after the discontinuation of the account, script, marketing materials, contract, or other record for at least three years after the date of the complaint, as applicable.

(3) All books and records shall be kept current and available for examination by the department. Records and account systems maintained in whole or in part by electronic data processing may be used in lieu of the books, files and records required by S.C. Code Ann. Sections 37-7-111 and 37-7-114 if they contain equivalent information and such information is accessible to the department. Electronic duplicates of original documents may satisfy the requirements of this section.

### E. Reporting Requirements

(1) Within ten business days after the occurrence of any of the following events, a licensee shall file a written report with the department describing the event and its expected impact upon the licensee's business;

(a) The institution of a revocation, suspension, or other proceeding or action against the licensee by a governmental authority. The licensee shall advise the department within thirty days of the proceeding or action being dismissed, settled, or otherwise resolved.

(b) The institution of a civil action against the licensee. The licensee shall advise the department within thirty days of the action being dismissed, settled, or otherwise resolved.

(c) The filing of bankruptcy, reorganization, or receivership proceedings by or against the licensee.

(d) The institution of a revocation, suspension, or other proceeding by a governmental authority which is related to the licensee's credit counseling organization in any state.

(e) Felony indictments or convictions of the licensee or any of its member, partners, directors, officers, trustees, beneficiaries, or principles, if known.

(f) Any action taken by the Internal Revenue Service against a nonprofit licensee, its officers, directors, employees, agents, or other disqualified persons with respect to the organization within the meaning of Section 4958 of the Internal Revenue Code of 1986 as amended, including the imposition of penalties or excise taxes or the change, suspension, or revocation of the organization's tax exempt status.

(g) Opening a new business location within this State.

(2) If a licensee fails to make a report required by this section, the department may require the licensee to pay a late penalty of fifty dollars for each day the report is overdue.

**Fiscal Impact Statement:**

The department estimates the costs incurred by the State in complying with the proposed regulation will be approximately \$0.

**Statement of Rationale:**

The department is revising this regulation pursuant to the requirement that state agencies review its regulations every five years and update them if necessary. The amendment of this regulation modifies the fees a licensee may charge consumers for services contracted.

Document No. 4524

**SOUTH CAROLINA CRIMINAL JUSTICE ACADEMY**

CHAPTER 37

Statutory Authority: 1976 Code Sections 23-23-10 et seq.

37-100. Suspension of Certification Due to Criminal Charges and/or Indictment.

**Synopsis:**

S.C. Code §23-23-80 authorizes the Law Enforcement Training Council to make regulations necessary for the administration of S.C. Code §23-23-10 et seq. S.C. Code §23-23-10, et seq. requires the Law Enforcement Training Council to certify and evaluate eligibility for certification of law enforcement officers in the state of South Carolina. Consistent with this authorization, the Training Council has noted some currently certified law enforcement officers are charged and/or indicted for crimes that, if they resulted in a conviction, could result in disqualification under S.C. Code §23-23-60, S.C. Regulation 38-004, and/or S.C. Regulation 38-016. Due to the potential danger posed to the public in allowing these individuals to remain actively engaged in law enforcement duties while such charges are pending, the Training Council believes this permanent regulation is necessary. This regulation was filed as an emergency regulation on August 1, 2014 at 12:30 p.m. and was also refiled as an emergency regulation pursuant to S.C. Code §1-23-130(C). The emergency regulation expired on February 1, 2015 at 1:54 p.m.

Notice of Drafting for the proposed regulation was published in the *State Register* on August 22, 2014. Proposed Regulations were published in the *State Register* on November 28, 2014. Public Hearing regarding the Proposed Regulations was held on January 28, 2015 before the Law Enforcement Training Council.