

**Fiscal Impact Statement:**

No additional state funding is requested. The Commission estimates that no additional costs will be incurred by the State and its political subdivisions in complying with the proposed revisions.

**Statement of Rationale:**

Amendment of this regulation is necessary to enhance the ability of the Commission to prevent the introduction of Plum Pox Virus into the State, while minimizing administrative burdens on ornamental nursery operators.

Document No. 4040

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

Statutory Authority: 1976 Code Sections 37-7-101 et seq., Particularly Sections 37-7-112,  
37-7-115 and 37-7-121

**28-700. Consumer Credit Counseling Requirements****Synopsis:**

This regulation amends and modifies current Regulation 28-700. In 2005 the General Assembly passed the *Consumer Credit Counseling Act*, 1976 Code Section 37-7-101 et seq., requiring the licensing of credit counseling organizations and credit counselors. These organizations and counselors provide credit counseling services to consumers, which include: distributing funds to creditors; offering to improve credit scores, histories, or ratings; and/or negotiating with creditors to reduce a consumer's obligations. The Act requires the Department to set the fees a credit counseling organization can charge a consumer, permits the Department to regulate events which must be reported by a licensee and further allows the Department to promulgate regulations necessary to effectuate the purposes of the Chapter.

The regulation clarifies and amends the current fee structure as based on the service provided. The regulation also sets the procedures and criteria for persons other than the Department seeking to sponsor and provide continuing professional education courses to licensees for the purpose of such licensees satisfying the requirements of S.C. Code Ann. Section 37-7-105. Allowing persons other than the Department to offer continuing professional education and maintain a streamlined process for department and panel approval of the sponsor and their courses is imperative to licensee completion of the continuing professional education requirement, especially out-of-state licensees who are often unable to attend Department sponsored courses. Record keeping requirements, including a listing of documents that must be maintained by licensees, are included as well as a listing of specific events that must be reported to the Department within ten days of the occurrence. These provisions are necessary to enable the Department to ascertain a licensee's compliance with the Act.

**Instructions:**

Regulation 28-700 is modified as provided below.

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

##### 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 fifty dollars;

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

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

(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 fifty dollars;

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

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

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

(4) 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. 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 application, the department will either issue the applicant a certificate of approval or a letter of denial. Sponsor certificates are valid for two years from the date of issuance. Thirty days prior to certificate expiration, a notarized letter requesting an extension of the certificate must be submitted to the department. The department will either renew the certificate or issue a letter of denial.

(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. 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) Copy of advertisements and/or other materials marketing the course;

(f) A copy of the course materials, including instructor guides, handouts, tests and class exercises;

(g) 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) Sponsors shall also submit a copy of the course approval application and course materials directly to each continuing professional education panel member for approval.

(6) Licensees who attended a course not submitted for prior approval by an approved sponsor may submit to the department the course materials, as described in subitem (4)(f) above, the certificate of completion received, and an approval application on a form prescribed by the department. A copy of the required materials must also be submitted directly to each continuing professional education panel member for approval.

(7) The department may require that course materials be submitted in electronic form.

(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 or at least three years after the date of the complaint, as applicable.

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(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 against the licensee 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 members, 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 of Consumer Affairs estimates that no additional costs will be incurred by the State in complying with the regulation.

### **Statement of Rationale:**

The South Carolina *Consumer Credit Counseling Act* specifically provides for the Department to set the fee structure for licensees. The Act also permits and/or contemplates the drafting of reporting, recordkeeping and continuing professional education course approval requirements. Such modifications and additions are necessary to effectuate the consumer protection purpose of the law and to guide businesses with compliance.