

State of South Dakota

EIGHTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2012

914T0402

SENATE COMMERCE AND ENERGY ENGROSSED NO. **SB 65** - 1/26/2012

Introduced by: Senators Rampelberg, Cutler, Hundstad, Johnston, Krebs, Lederman, Novstrup (Al), Olson (Russell), and Tieszen and Representatives Hunt, Abdallah, Dennert, Lust, Turbiville, and Willadsen

1 FOR AN ACT ENTITLED, An Act to revise the list of products offered to consumers by motor
2 vehicle dealers and sales finance companies.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 54-3A-5 be amended to read as follows:

5 54-3A-5. In addition to the finance charge, a creditor may contract for, and receive the
6 following additional charges in connection with an installment sales contract if such charges are
7 itemized and disclosed to the buyer:

8 (1) Official fees and taxes;

9 (2) Charges for guaranteed asset protection waivers, or credit life, accident, health, loss
10 of income, property, or liability insurance. However any insurance is optional, and
11 the consumer shall be informed, in writing, that any insurance is optional; and

12 (3) Charges for debt cancellation contracts and debt suspension contracts, as defined in
13 § 51A-1-2 and sections 2 and 3 of this Act, if the debt cancellation contract or debt
14 suspension contract is a contract of a depository institution or a licensee pursuant to



1 chapter 54-4 authorized to provide such coverage, and the contract is sold directly by
2 the authorized depository institution or licensee pursuant to chapter 54-4, or by a
3 retailer acting as an agent for the authorized depository institution or licensee
4 pursuant to chapter 54-4. However, any debt cancellation contract or debt suspension
5 contract is optional, and the consumer shall be informed, in writing, that any such
6 contract is optional.

7 Any such charges ~~must~~ shall be disclosed and explained to the consumer prior to signing any
8 agreement to repay a consumer credit obligation. Any such charges ~~must~~ shall be separately
9 agreed to in writing and separately signed by the consumer.

10 Section 2. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 For the purposes of this chapter, the term, debt cancellation contract, means a term of an
13 extension of credit or contractual arrangement modifying terms of an extension of credit under
14 which a licensee agrees to cancel all or part of a customer's obligation to repay an extension of
15 credit from the licensee upon the occurrence of a specified event. The contract may be separate
16 from or a part of other extension of credit documents. The term does not include installment
17 payment deferral arrangements in which the triggering event is the customer's unilateral election
18 to defer repayment, or the licensee's unilateral decision to allow a deferral of repayment.

19 Section 3. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 For the purposes of this chapter, the term, debt suspension contract, means a term of an
22 extension of credit or contractual arrangement modifying terms of an extension of credit under
23 which a licensee agrees to suspend all or part of a customer's obligation to repay an extension
24 of credit from the licensee upon the occurrence of a specified event. The contract may be

1 separate from or a part of other extension of credit documents. The term does not include
2 installment payment deferral arrangements in which the triggering event is the customer's
3 unilateral election to defer repayment, or the licensee's unilateral decision to allow a deferral of
4 repayment.

5 Section 4. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 A licensee pursuant to this chapter may enter into debt cancellation contracts and debt
8 suspension contracts and charge a fee for those contracts in connection with any extension of
9 credit that it makes, purchases, or of which it accepts assignment.

10 Section 5. That § 58-1-3 be amended to read as follows:

11 58-1-3. No provision of this title applies with respect to:

- 12 (1) Fraternal benefit societies, except as stated in chapter 58-37A;
- 13 (2) Bail bondsmen, other than corporate sureties and their agents, except as stated in
14 chapter 58-22;
- 15 (3) Motor vehicle service contracts which are contracts or agreements to perform or
16 indemnify for a specific duration the repair, replacement, or maintenance of motor
17 vehicles for operational or structural failure due to a defect in materials,
18 workmanship, or normal wear and tear, with or without additional provisions for
19 incidental payment of indemnity under limited circumstances, including towing,
20 rental, and emergency road service. Consideration for a motor vehicle service
21 contract shall be stated separately from the price of the motor vehicle;
- 22 (4) Service agreements or extended warranty plans for which the primary purpose is to
23 provide service, repair, or replacement on consumer goods or products including
24 appliances, merchandise, or equipment, or mechanical/electrical systems in single or

1 multiple-family dwellings. Incidental indemnity payments under such plans where
2 service, repair, or replacement is not feasible or economical does not void this
3 exemption;

4 (5) Any person, trust, or other entity proven to be under the exclusive regulatory
5 authority of the federal government or another state agency;

6 (6) Any agreement to provide liability protection entered into pursuant to chapter 1-24
7 is exempt from the regulatory requirements of Title 58, except to forms of insurance
8 coverage provided by an insurer otherwise subject to the insurance laws of this state;

9 (7) Any church plan, as defined in section 414(e) of the Internal Revenue Code of 1986,
10 as amended through December 31, 1999, and section (3)(33)(C)(i) of the Employee
11 Retirement Income Security Act of 1974 (29 U.S. C. § 1002(33)(C)(i)); or any church
12 benefits board, as described in section 414(e)(3)(A) of the Internal Revenue Code of
13 1986, as amended through December 31, 1999, and section (3)(33)(C)(i) of the
14 Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1002(33)(C)(i));

15 (8) Any debt cancellation contract or debt suspension contract as defined by subdivisions
16 51A-1-2(10) and 51A-1-2(11) and sections 2 and 3 of this Act; or

17 (9) Any damage guarantee program for renters administered by a nonprofit corporation
18 that is recognized as an exempt organization under § 501(c)(3) of the Internal
19 Revenue Code and whose mission is to increase the availability of affordable housing
20 to low and moderate income tenants.