

AN ACT

ENTITLED, An Act to define certain fees incident to the extension of credit.

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

Section 1. That § 54-4-36 be amended to read:

54-4-36. Terms used in this chapter mean:

- (1) "Advertisement," a commercial message in any medium that aids, promotes, or assists, directly or indirectly, the sale of products or services;
- (2) "Business of lending money," includes originating, selling, servicing, acquiring, or purchasing loans, or servicing, acquiring, or purchasing retail installment contracts;
- (3) "Commission," the State Banking Commission;
- (4) "Director," the director of the Division of Banking of the Department of Labor and Regulation;
- (5) "Division," the Division of Banking;
- (6) "Duration," the time a loan exists before it is paid off, renewed, rolled over, or flipped;
- (7) "Finance charge," the amount, however denominated, which is the direct or indirect cost payable by a borrower for a loan;
- (8) "Installment loan," a loan made to be repaid in specified amounts over a certain number of months;
- (9) "License," a license provided by this chapter;
- (10) "Installment loan contract" or "contract," an agreement evidencing a installment loan transaction;
- (11) "Licensee," any person holding a license;
- (12) "Loan," any installment loan, single pay loan, or open-end loan which may be unsecured or secured by real or personal property. The term does not include an installment sales

contract as defined under subdivision 54-3A-1(6);

- (13) "Nationwide mortgage licensing system and registry," a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators and other regulated entities;
- (14) "Payday loan," any short-maturity loan on the security of a check, any assignment of an interest in the account of a person at a depository institution, any authorization to debit the person's deposit account, any assignment of salary or wages payable to a person. A short-maturity loan made in anticipation of an income tax refund is not a payday loan for purposes of this chapter;
- (15) "Regional revolving loan fund," a regional revolving loan fund with a service area of at least five South Dakota counties, a designated staff for loan processing and servicing, a loan portfolio of at least one million dollars, and which is governed by a board of directors that meets at least quarterly;
- (16) "Short-term consumer loan," any loan to any individual borrower with a duration of six months or less, including a payday loan. A title loan is not a short-term consumer loan for purposes of this chapter;
- (17) "Title lender," a regulated lender authorized pursuant to this chapter to make title loans;
- (18) "Title loan," a loan for a debtor that is secured by a nonpurchase money security interest in a motor vehicle and that is scheduled to be repaid in a single installment.

Section 2. That § 54-4-44 be amended to read:

54-4-44. After procuring such license from the Division of Banking, the licensee may engage in the business of making loans and may contract for and receive interest charges and other fees at rates, amounts, and terms as agreed to by the parties which may be included in the principal balance of the

loan and specified in the contract. However, no licensee may contract for or receive finance charges pursuant to a loan in excess of an annual rate of thirty-six percent, including all charges for any ancillary product or service and any other charge or fee incident to the extension of credit. A violation of this section is a Class 1 misdemeanor. Any loan made in violation of this section is void and uncollectible as to any principal, fee, interest, or charge.

Section 3. That chapter 54-4 be amended by adding a NEW SECTION to read:

For purposes of § 54-4-44, fees contracted for or received that are "incident to the extension of credit" in connection with a loan for the purchase of a motor vehicle do not include fees for optional maintenance agreements and extended service contracts, official fees and taxes, sales tax, title fees, lien registration fees, and dealer documentary fees.

Section 4. That the code be amended by adding a NEW SECTION to read:

For the purposes of § 54-4-44 for all loans, late fees, return check fees, and attorney's fees incurred upon consumer default are not fees "incident to the extension of credit."

An Act to define certain fees incident to the extension of credit.

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I certify that the attached Act
originated in the
HOUSE as Bill No. 1090

Chief Clerk

Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1090
File No. _____
Chapter No. _____

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Received at this Executive Office
this ____ day of _____ ,
20__ at _____ M.

By _____
for the Governor

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The attached Act is hereby
approved this _____ day of
_____, A.D., 20__

Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State