

# State of South Dakota

## EIGHTY-FOURTH SESSION LEGISLATIVE ASSEMBLY, 2009

571Q0514

### HOUSE BILL NO. 1168

Introduced by: Representatives Cutler, Curd, Hamiel, Hoffman, Hunhoff (Bernie), Jensen, Kirkeby, McLaughlin, Moser, Novstrup (David), Schlekeway, Turbiville, and Vanderlinde and Senators Hansen (Tom), Abdallah, Fryslie, Haverly, Merchant, Novstrup (Al), and Tieszen

1 FOR AN ACT ENTITLED, An Act to prohibit multiple payday loan transactions with the same  
2 person or within a specified time period and to provide for a database to verify transactions.

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

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

5 54-4-36. Terms used in this chapter mean:

- 6 (1) "Advertisement," a commercial message in any medium that aids, promotes, or  
7 assists, directly or indirectly, the sale of products or services;
- 8 (2) "Commission," the State Banking Commission;
- 9 (3) "Director," the director of the Division of Banking of the Department of Revenue and  
10 Regulation;
- 11 (4) "Division," the Division of Banking;
- 12 (5) "Finance charge," the amount, however denominated, which is the direct or indirect  
13 cost payable by a borrower for a loan;
- 14 (6) "Financing institutions," any person engaged in the business of creating and holding



1 or purchasing or acquiring retail installment contracts;

2 (7) "Installment loan," a loan made to be repaid in specified amounts over a certain  
3 number of months;

4 (8) "License," a license provided by this chapter;

5 (9) "Installment loan contract" or "contract," an agreement evidencing a installment loan  
6 transaction;

7 (10) "Licensee," any person holding a license;

8 (11) "Loan," any installment loan, single pay loan, or open-end loan which may be  
9 unsecured or secured by real or personal property;

10 (12) "Payday loan," any short-maturity loan on the security of a check, any assignment of  
11 an interest in the account of a person at a depository institution, any authorization to  
12 debit the person's deposit account, any assignment of salary or wages payable to a  
13 person. A short-maturity loan made in anticipation of an income tax refund is not a  
14 payday loan for purposes of this chapter;

15 (13) "Payday loan provider," any licensee that engages in payday loan transactions;

16 (14) "Regional revolving loan fund," a regional revolving loan fund with a service area  
17 of at least five South Dakota counties, a designated staff for loan processing and  
18 servicing, a loan portfolio of at least one million dollars, and which is governed by  
19 a board of directors that meets at least quarterly;

20 ~~(14)~~(15) "Short-term consumer loan," any loan to any individual borrower with a  
21 duration of six months or less, including a payday loan. A title loan is not a  
22 short-term consumer loan for purposes of this chapter;

23 ~~(15)~~(16) "Title lender," a regulated lender authorized pursuant to this chapter to make  
24 title loans; and

(16)(17) "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 chapter 54-4 be amended by adding thereto a NEW SECTION to read as follows:

No payday loan provider may enter into any payday loan transaction with any person who has an outstanding payday loan transaction with that provider or with any other payday loan provider, nor with any person whose previous payday transaction with that provider or with any other provider has been terminated for less than twenty-four hours. The payday loan provider shall verify such information as follows:

- (1) Each payday loan provider shall maintain a common database and shall verify whether the provider or an affiliate has an outstanding payday loan transaction with a particular person or has terminated a transaction with that person within the previous twenty-four hours. For the purposes of this subdivision, the term, affiliate, means any person who, directly or indirectly, through one or more intermediaries controls, is controlled by, or is under common control with, a payday loan provider;
- (2) The payday loan provider shall access the division's database established pursuant to section 3 of this Act and shall verify whether any other payday loan provider has an outstanding payday loan transaction with a particular person or has terminated a transaction with that person within the previous twenty-four hours.

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

The division shall implement a common database with real-time access through an internet connection for payday loan providers. The database shall be accessible to the division and the

1   payday loan providers in order to verify whether any payday loan transaction is outstanding for  
2   a particular person. No payday loan provider may enter into a payday loan transaction unless the  
3   provider has first submitted such data in such a format as required by the division in rules  
4   promulgated pursuant to chapter 1-26, including the person's name, social security number or  
5   employment authorization alien number, address, driver's license number, amount of the  
6   transaction, date of transaction, and the date that the transaction is closed. The division may, by  
7   rule promulgated pursuant to chapter 1-26, impose a fee of up to one dollar per transaction for  
8   data that must be submitted by a payday loan provider. A payday loan provider may rely on the  
9   information contained in the database as accurate. A payday loan provider shall notify the  
10   division, in a manner as prescribed by rules promulgated pursuant to chapter 1-26, within fifteen  
11   business days after ceasing operations or no longer holding a license pursuant to this chapter.  
12   Such notification shall include a reconciliation of any open transactions. If the provider fails to  
13   provide notice, the division shall take action to administratively release any open and pending  
14   transactions in the database after the division becomes aware of the closure. This section does  
15   not affect the rights of the provider to enforce the contractual provisions of any payday loan  
16   transaction through any civil action allowed by law. The division shall adopt rules, pursuant to  
17   chapter 1-26, to administer this section and to ensure that the database is used by payday loan  
18   providers in accordance with this section.