

State of South Dakota

NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

841Y0266

HOUSE JUDICIARY ENGROSSED NO. **HB 1096** 2/3/2017

Introduced by: Representatives Lust, Bartels, Lake, Otten (Herman), and Reed and Senators Partridge, Cammack, Cronin, Haverly, Peters, Solano, and Wiik

1 FOR AN ACT ENTITLED, An Act to provide for a criminal penalty for any person who
2 prevents the enforcement of a secured creditor's security interest upon repossession of a
3 motor vehicle.

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

5 Section 1. That the code be amended by adding a NEW SECTION to read:

6 Any person who, following notice of default, intentionally prevents the enforcement of a
7 secured creditor's security interest in the person's motor vehicle is guilty of a Class 1
8 misdemeanor.

9 Section 2. That the code be amended by adding a NEW SECTION to read:

10 Upon receipt of a signed and notarized affidavit stating the make, model, year, color, and
11 VIN number of the motor vehicle, that notice has been provided to the owner, and that it has
12 been ten days since delivery of the notice the attorney general shall list the motor vehicle as
13 stolen pursuant to § 32-4-1.

14 Section 3. That the code be amended by adding a NEW SECTION to read:



1 Any contract creating a security interest in a motor vehicle shall contain:

2 (1) A statement that intentionally preventing the repossession of a motor vehicle subject

3 to a security interest following receipt of notice of default is a Class 1 misdemeanor;

4 and

5 (2) A statement that any notice of default will be mailed to the owner's address listed on

6 the loan agreement and that the owner is responsible for keeping the listed address

7 current with the creditor.

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

9 A person shall have, in addition to any other defense, the following defenses for a violation

10 of any provision of this Act:

11 (1) The person was physically incapacitated and unable to request or obtain permission

12 of the secured creditor to retain the motor vehicle;

13 (2) The motor vehicle itself was in a condition, through no intentional fault of the

14 defendant, that it could not be returned to the secured creditor within the specified

15 time; or

16 (3) The owner has a security interest pursuant to § 57A-2-711.

17 Section 5. That the code be amended by adding a NEW SECTION to read:

18 Any secured creditor taking possession of a motor vehicle is responsible for any towing,

19 storage, or any other related fees or charges if a law enforcement agency seizes the motor

20 vehicle on behalf of the secured creditor.

21 Section 6. That the code be amended by adding a NEW SECTION to read:

22 For purposes of this Act, notice is a written demand to the owner for the return of a motor

23 vehicle delivered by certified mail or served in the manner for service of process.