

# State of South Dakota

NINETY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2017

973Y0363

## HOUSE COMMERCE AND ENERGY ENGROSSED NO. **HB 1090** - 2/15/2017

Introduced by: Representatives Rounds, Bartling, Beal, Haggar, Johns, Lust, Qualm, Rozum,  
and Willadsen and Senators Greenfield (Brock), Kolbeck, and Stalzer

1 FOR AN ACT ENTITLED, An Act to define certain fees incident to the extension of credit.

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

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

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

5 (1) "Advertisement," a commercial message in any medium that aids, promotes, or  
6 assists, directly or indirectly, the sale of products or services;

7 (2) "Business of lending money," includes originating, selling, servicing, acquiring, or  
8 purchasing loans, or servicing, acquiring, or purchasing retail installment contracts;

9 (3) "Commission," the State Banking Commission;

10 (4) "Director," the director of the Division of Banking of the Department of Labor and  
11 Regulation;

12 (5) "Division," the Division of Banking;

13 (6) "Duration," the time a loan exists before it is paid off, renewed, rolled over, or  
14 flipped;



- 1 (7) "Finance charge," the amount, however denominated, which is the direct or indirect  
2 cost payable by a borrower for a loan;
- 3 (8) "Installment loan," a loan made to be repaid in specified amounts over a certain  
4 number of months;
- 5 (9) "License," a license provided by this chapter;
- 6 (10) "Installment loan contract" or "contract," an agreement evidencing a installment loan  
7 transaction;
- 8 (11) "Licensee," any person holding a license;
- 9 (12) "Loan," any installment loan, single pay loan, or open-end loan which may be  
10 unsecured or secured by real or personal property. The term does not include an  
11 installment sales contract as defined under subdivision 54-3A-1(6);
- 12 (13) "Nationwide mortgage licensing system and registry," a licensing system developed  
13 and maintained by the Conference of State Bank Supervisors and the American  
14 Association of Residential Mortgage Regulators for the licensing and registration of  
15 licensed mortgage loan originators and other regulated entities;
- 16 (14) "Payday loan," any short-maturity loan on the security of a check, any assignment of  
17 an interest in the account of a person at a depository institution, any authorization to  
18 debit the person's deposit account, any assignment of salary or wages payable to a  
19 person. A short-maturity loan made in anticipation of an income tax refund is not a  
20 payday loan for purposes of this chapter;
- 21 (15) "Regional revolving loan fund," a regional revolving loan fund with a service area  
22 of at least five South Dakota counties, a designated staff for loan processing and  
23 servicing, a loan portfolio of at least one million dollars, and which is governed by  
24 a board of directors that meets at least quarterly;

1 (16) "Short-term consumer loan," any loan to any individual borrower with a duration of  
2 six months or less, including a payday loan. A title loan is not a short-term consumer  
3 loan for purposes of this chapter;

4 (17) "Title lender," a regulated lender authorized pursuant to this chapter to make title  
5 loans;

6 (18) "Title loan," a loan for a debtor that is secured by a nonpurchase money security  
7 interest in a motor vehicle and that is scheduled to be repaid in a single installment.

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

9 54-4-44. After procuring such license from the Division of Banking, the licensee may  
10 engage in the business of making loans and may contract for and receive interest charges and  
11 other fees at rates, amounts, and terms as agreed to by the parties which may be included in the  
12 principal balance of the loan and specified in the contract. However, no licensee may contract  
13 for or receive finance charges pursuant to a loan in excess of an annual rate of thirty-six percent,  
14 including all charges for any ancillary product or service and any other charge or fee incident  
15 to the extension of credit. A violation of this section is a Class 1 misdemeanor. Any loan made  
16 in violation of this section is void and uncollectible as to any principal, fee, interest, or charge.

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

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

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

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