

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

562C0570

HOUSE BILL NO. 1183

Introduced by: Representatives Solum and Broderick and Senators Munson (David), Lawler,
and Shoener

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding consumer installment
2 sales contracts.

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

4 Section 1. That § 54-4-64 be amended to read as follows:

5 54-4-64. The provisions of §§ 54-4-36 to 54-4-63, inclusive, do not apply to any person
6 selling goods or services, as defined in § 54-3A-1, and providing financing for such goods or
7 services.

8 Section 2. That § 54-3A-1 be amended to read as follows:

9 54-3A-1. Terms used in this chapter, ~~unless the context otherwise requires~~, mean:

10 (1) "Cash sale price," the price for which the person making a sale pursuant to an
11 installment sales contract would have sold the goods or services if the sale had been
12 for cash. The cash sale price may include any taxes or license, title, and registration
13 fees and the cash price of any accessories or services related to the sale, such as
14 charges for delivery, installation, alterations, modifications, ~~and improvements~~, and
15 any other similar charges agreed upon between the parties. The cash price of a motor
16 vehicle may also include a documentary fee or document administration fee for

1 services actually rendered to, for, or on behalf of, the retail buyer, in preparing,
2 handling, and processing documents relating to the motor vehicle and the closing of
3 the retail sale;

4 (2) "Consumer," a natural person who seeks or acquires, or is offered property, services,
5 or credit for personal, family, household, or agricultural purposes;

6 (3) "Consumer transaction," a transaction involving the purchase or sale of goods or
7 services for personal, family, household, or agricultural use from one, who in the
8 ordinary course of business sells goods or services. The parties to a transaction, which
9 involves the purchase or sale of goods or services but which is not a consumer
10 transaction, may agree to be governed by all of the provisions of this chapter with
11 respect to the transaction, and in such event the transaction shall be deemed to be a
12 consumer transaction for all purposes of this chapter;

13 (4) "Finance charge," however denominated, ~~means~~ the amount which is paid or payable
14 for the privilege of paying for goods or services in one or more installments. It does
15 not include a delinquency charge as permitted in §§ 54-3A-11 and 54-3A-12,
16 additional charges as permitted in § 54-3A-5, or any charge imposed by a creditor
17 upon another person for purchasing or accepting an obligation of a consumer unless
18 the consumer is required to pay any part of that charge in cash, as an addition to the
19 obligation, or as a deduction from the proceeds of the obligation;

20 (5) "Goods," tangible personal chattels, whether or not in existence at the time the
21 transaction is entered into, and including things which, at the time of sale or
22 subsequently, are to be so affixed to real property as to become a part thereof,
23 whether or not severable therefrom, but excluding money, chattel paper, documents
24 of title and other instruments. "Goods" does not include motor vehicles which are sold
25 in secured sales subject to chapter 54-7;

- 1 (6) "Installment sales contract," an arrangement other than a revolving charge account,
2 entered into in this state evidencing any consumer transaction in which a consumer
3 purchases goods or services from a creditor, under which arrangement a finance
4 charge may be imposed and the consumer agrees to pay for the goods or services in
5 one or more installments;
- 6 (7) "Official fees," the fees prescribed by law for filing, recording, or otherwise perfecting
7 a security interest or the premium payable for any insurance in lieu of perfecting any
8 security interest if the premium does not exceed the fees otherwise prescribed by law;
- 9 (8) "Services" includes:
- 10 (a) Work, labor, and other personal services;
- 11 (b) Privileges and contract rights with respect to accommodations or facilities,
12 including ~~but not limited to~~ hotels and restaurants, transportation, education,
13 entertainment, recreation, physical culture, hospital accommodations, funerals,
14 and cemetery associations;
- 15 (c) Diagnostic work, maintenance, repair or improvement, other than as part of the
16 manufacture or original construction, of properties; and
- 17 (d) Insurance;
- 18 (9) "Transaction," all of the agreements made between two or more persons to carry out
19 an exchange of value, including the entire process of soliciting, negotiating, making,
20 performing, and enforcing such agreements, whether or not any agreement is
21 enforceable by action.

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

23 54-3A-5. In addition to the finance charge, a creditor may contract for, and receive the
24 following additional charges in connection with an installment sales contract if such charges are
25 itemized and disclosed to the buyer:

- 1 (1) Official fees and taxes; and
- 2 (2) Charges for credit life, accident, health, loss of income, ~~property~~ or liability insurance;
- 3 ~~provided, that. However,~~ any such insurance ~~shall be~~ is optional, and the consumer
- 4 ~~must~~ shall be informed that any such insurance is optional.

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

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

10 A creditor may require property insurance on the collateral securing the installment sales
11 contract. The amount of the insurance required shall be reasonable and appropriate considering
12 the nature of the property, the amount of the contract, the term of the contract, and any other
13 circumstances. The insurance policy shall show the creditor as the loss payee, unless waived by
14 the creditor.

15 Section 5. That § 54-3A-12 be amended to read as follows:

16 54-3A-12. The holder of a contract authorized by this chapter may, if the contract so
17 provides, collect a delinquency and collection charge on each installment in arrears for a period
18 of not less than ten days in an amount ~~not in excess of five percent of each installment or five~~
19 ~~dollars, whichever is greater~~ agreed upon by the parties.

20 Any delinquency or collection charge may be collected only once on any one installment
21 however long the installment remains delinquent. Any installment payment which is made shall
22 be deemed to apply first to any current installment and only then to delinquent installments.

23 Section 6. That chapter 54-3A be amended by adding thereto a NEW SECTION to read as
24 follows:

25 The holder of a contract authorized by this chapter may, if the contract so provides, collect

- 1 a charge not to exceed thirty dollars for each check, draft, order of withdrawal, or similar
- 2 payment device that is received by the holder in connection with the contract and that is returned
- 3 for nonpayment for any reason.