

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

571M0617

SENATE COMMERCE COMMITTEE ENGROSSED NO.

**HB 1209** - 02/16/2006

Introduced by: Representatives Cutler, Bradford, Brunner, Buckingham, Dykstra, Gassman, Haley, Haverly, Hennies, Hills, Hunt, Jensen, Klaudt, Kraus, McCoy, Murschel, Rausch, Roberts, Schafer, Sigdestad, Street, Turbiville, Van Etten, and Willadsen and Senators Dempster, Abdallah, Bogue, Duenwald, Earley, Gray, Greenfield, Hanson (Gary), Knudson, Moore, Napoli, Nesselhuf, Olson (Ed), Sutton (Dan), and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding money lending.

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

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

4 54-4-36. Terms used in ~~§§ 54-4-36 to 54-4-63, inclusive, and §§ 54-4-65 and 54-4-66~~ this  
5 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 ~~paid or payable for~~  
13 ~~the privilege of paying for goods or services in one or more installments at the~~



1 ~~beginning of the transaction~~ the direct or indirect cost payable by a borrower for a  
2 loan;

3 (6) "Financing institutions," any person engaged in the business of creating and holding  
4 or purchasing or acquiring retail installment contracts;

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

7 (8) "License," a license provided by §§ ~~54-4-36 to 54-4-63~~, inclusive this chapter;

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

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

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

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

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

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

1       (15) "Title lender," a regulated lender authorized pursuant to this chapter to make title  
2             loans; and

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

5       Section 2. That § 54-4-58 be amended to read as follows:

6       54-4-58. The licensee shall disclose in any loan contract the following:

- 7       (1)    The amount and date of the loan;
- 8       (2)    The amount of the down payment, if any;
- 9       (3)    The dates any payments are due and the amount of payments;
- 10      (4)    A list of any property used to secure the loan;
- 11      (5)    Any liens or title filings required;
- 12      (6)    The method used to compute the charges;
- 13      (7)    An explanation of ~~the charges~~ any fee or charge, including the cost of the loan as an  
14             annual percentage rate (APR);
- 15      (8)    Any fee or charge that may be applied for delinquency;
- 16      (9)    The conditions for an extension of payment or maturity of the loan; ~~and~~
- 17      (10)   Refinancing requirements, including any fee or charge; and
- 18      (11)   The address and telephone number of the Division of Banking and that any  
19             improprieties in making the loan or in loan practices may be referred to the division.

20       The licensee shall provide a copy of the loan contract to the debtor. A violation of this  
21 section is a Class 2 misdemeanor.

22       Section 3. That § 54-4-65 be amended to read as follows:

23       54-4-65. No licensee may renew, rollover, or flip a ~~payday~~ short-term consumer loan more  
24 than four times. No renewal, rollover, or flip is valid unless, at the time of the renewal, rollover,

1 or flip, the debtor pays the outstanding fee ~~at the time of the renewal~~ and reduces the principal  
2 amount of the loan as provided in this section. Upon the first renewal, rollover, or flip and each  
3 subsequent renewal, rollover, or flip, the debtor shall reduce the principal amount of the loan  
4 by not less than ten percent of the original amount of the loan.

5 Section 4. That § 54-4-40 be amended to read as follows:

6 54-4-40. Any person who engages in the business of lending money shall apply for a license  
7 as prescribed by §§ ~~54-4-36 to 54-4-63~~, inclusive this chapter. The applicant shall apply for a  
8 license under oath on forms supplied by the division. The application shall contain the name of  
9 the applicant's business, proof of surety bond, address of the business, the names and addresses  
10 of the partners, members, officers, directors, or trustees, and other information the director may  
11 consider necessary. The applicant shall pay an original license fee as set by rules of the  
12 commission promulgated pursuant to chapter 1-26 not to exceed one thousand dollars. If the  
13 application of an existing licensee is for an additional location, the application need only include  
14 the location and identity of the location manager, plus any changes from the existing license,  
15 or such other information the director may consider necessary. The State of South Dakota, any  
16 political subdivision of the state, and any quasi-governmental organization created by an  
17 executive order of the State of South Dakota and any subsidiary of such organization; any  
18 nonprofit corporation formed pursuant to chapter 47-22; any nonprofit United States Treasury  
19 Community Development Financial Institution, Small Business Administration Certified  
20 Development Company, or Regional Revolving Loan Fund; or any commercial club, chamber  
21 of commerce, or industrial development corporation formed pursuant to § 9-12-11 or 9-27-37  
22 is subject to this chapter but exempt from initial license fees, renewal fees, and surety bond  
23 requirements under this chapter.

24 Section 5. That § 54-4-42 be amended to read as follows:

1       54-4-42. The applicant shall submit with the application for a license a bond in an amount  
2 not to exceed the total of ten thousand dollars for the first license and two thousand five hundred  
3 dollars for each additional license. The bond shall be satisfactory to the director and issued by  
4 a surety company qualified to do business as a surety in this state. The bond shall be in favor of  
5 this state for the use of this state and any person who has a cause of action under §§ ~~54-4-36 to~~  
6 ~~54-4-63, inclusive, this chapter~~ against the licensee. The bond shall be conditioned on:

- 7       (1) The licensee's faithful performance under §§ ~~54-4-36 to 54-4-63, inclusive, this~~  
8       chapter and any rules adopted pursuant to §§ ~~54-4-36 to 54-4-63, inclusive this~~  
9       chapter; and
- 10       (2) The payment of any amounts that are due to the state or another person during the  
11       calendar year for which the bond is given.

12       The aggregate liability of a surety to all persons damaged by a licensee's violation of §§ ~~54-~~  
13 ~~4-36 to 54-4-63, inclusive, this chapter~~ may not exceed the amount of the bond.

14       Section 6. That § 54-4-48 be amended to read as follows:

15       54-4-48. The director may issue a cease and desist order from any practice that does not  
16 conform to the requirements set forth in §§ ~~54-4-36 to 54-4-63, inclusive, this chapter~~ or any  
17 commission rule, order, or condition imposed in writing, or any federal statute, rule, or  
18 regulation pertaining to consumer credit. A cease and desist order may be issued to any licensee  
19 or to any person engaging in the business of lending money without a license. A licensee  
20 aggrieved by such order may appeal pursuant to chapters 1-26 and 1-26D.

21       Section 7. That § 54-4-51 be amended to read as follows:

22       54-4-51. In addition to any other means provided by law for the enforcement of a restraining  
23 order or injunction, the court, in which the action is brought, may impound, and appoint a  
24 receiver for, the property and business of the defendant, including books, papers, documents,

1 and records, as the court may deem reasonably necessary to prevent violations of ~~§§ 54-4-36 to~~  
2 ~~54-4-63, inclusive~~ this chapter. The receiver, when so appointed and qualified, shall control the  
3 custody, collection, administration, and liquidation of the property and business.

4 Section 8. That § 54-4-53 be amended to read as follows:

5 54-4-53. Any money received by the division pursuant to ~~§§ 54-4-36 to 54-4-63, inclusive,~~  
6 this chapter shall be deposited in the banking revolving fund.

7 Section 9. That § 54-4-55 be amended to read as follows:

8 54-4-55. Except for taxes on real property and license fees and other fees imposed by ~~§§ 54-~~  
9 ~~4-36 to 54-4-63, inclusive~~ this chapter, the tax imposed in § 54-4-54 is in lieu of all other taxes  
10 and license fees, state, county, or local, upon the business of the licensee, or upon any money,  
11 credits, or other assets of the licensee whether tangible or intangible, and which money, credits,  
12 or other assets are used for or in connection with the conduct of business transacted in South  
13 Dakota. However, amounts determined to be in excess of business capital requirements are not  
14 exempt from other taxes.

15 Section 10. That § 54-4-57 be amended to read as follows:

16 54-4-57. The division may annually, or as often as the director considers necessary, conduct  
17 an examination of business records and accounts of any licensee licensed under ~~§§ 54-4-36 to~~  
18 ~~54-4-63, inclusive~~ this chapter. The director may charge back to the licensee any cost associated  
19 with an on-site examination. The director may waive an on- site examination and only require  
20 an annual self-examination. If a licensee conducts a self-examination, the licensee shall provide  
21 any information requested under oath and on forms provided by the division by order or rule.  
22 The provisions of § 51A-2-35 apply to records and examination reports required under this  
23 chapter.

24 Section 11. That § 54-4-64 be amended to read as follows:

1        54-4-64. The provisions of §§ ~~54-4-36 to 54-4-63, inclusive, this chapter~~ do not apply to any  
2 person selling goods or services and providing financing for such goods or services.

3        Section 12. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as  
4 follows:

5        A title loan shall be evidenced by a written agreement in which a title lender agrees to make  
6 a title loan to a debtor and the debtor agrees to give the title lender a security interest in a motor  
7 vehicle owned by the debtor. The debtor shall give the title lender possession of the certificate  
8 of title to such motor vehicle. Except as otherwise provided in this chapter, the provisions of  
9 chapter 57A-9 apply to title loans and to persons engaged in the business of making title loans.

10        Section 13. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as  
11 follows:

12        Any title loan shall be for an initial term of no more than one month but may be renewed for  
13 additional one-month periods. No title loan may be renewed more than four times. No title loan  
14 is valid unless, at the time of the renewal, the debtor makes a payment of at least ten percent of  
15 the original principal amount of the title loan, in addition to any finance charges that are due.  
16 If at any renewal requiring a principal reduction, the debtor has not made previous principal  
17 reductions adequate to satisfy the current required principal reduction, and the debtor does not  
18 pay at least ten percent of the original loan amount, the title lender may either declare the debtor  
19 in default or renew the title loan and defer the required principal payment for an additional  
20 period. However, no further finance charges may accrue or be earned against the principal  
21 amount so deferred. For purposes of this section, a renewal is any extension or continuation of  
22 a title loan for an additional period without any change to the title loan or its terms other than  
23 a reduction in principal.

24        Section 14. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 If a debtor defaults in the repayment of a title loan, the title lender's sole remedy is to seek  
3 possession and sale of the motor vehicle securing the loan, and the title lender may not pursue  
4 the debtor personally in any action or proceeding for repayment of the loan or for any deficiency  
5 after the sale. The title lender shall return to the debtor any surplus obtained after the sale that  
6 is in excess of the amount owed on the loan after any reasonable expenses of repossession,  
7 storage, and sale, including court costs and attorney's fees have been deducted. The remedy  
8 limitation provided in this section does not apply in the following circumstances:

9 (1) If a debtor obtains a title loan from a title lender under false pretenses by not  
10 disclosing the existence of a valid prior lien or security interest affecting the motor  
11 vehicle; or

12 (2) If the debtor intentionally conceals, impairs, or destroys the collateral.