

# State of South Dakota

NINETY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2018

526Z0154

HOUSE COMMERCE AND ENERGY

ENGROSSED NO. **HB 1082** - 1/24/2018

**This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.**

Introduced by: Representatives Steinhauer, Beal, Clark, Greenfield (Lana), Hawley, Heinemann, Hunhoff, Johns, Lesmeister, Livermont, May, Mickelson, Otten (Herman), Peterson (Sue), Rasmussen, Reed, Rhoden, Rounds, Schoenfish, Smith, Willadsen, York, and Zikmund and Senators Cronin, Bolin, Klumb, Kolbeck, Partridge, Peters, Rusch, Soholt, Solano, Stalzer, and Youngberg

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding licensure for the  
2 lending of money.

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

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

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) "Business of lending money," includes the originating, selling, servicing, acquiring,  
9 or purchasing ~~loans~~ of any loan involving a borrower who is a person other than a  
10 family member, or the servicing, acquiring, or purchasing of a retail installment  
11 ~~contracts~~ contract a party to which is a person other than a family member. The term  
12 does not include any seller-financed transaction for the sale of assets to a purchaser



or any seller-financed transaction for the sale of real estate through a contract for deed so long as the interest rate for the transaction does not exceed the rate permitted under § 54-4-44;

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

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

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

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

(7) "Family member," includes an immediate family member as the term is defined in § 54-14-12 that includes any descendant of a person's grandparents and any descendant of a person's spouse's grandparents;

(8) "Finance charge," the amount, however denominated, ~~which~~ that is the direct or indirect cost payable by a borrower for a loan;

~~(8)~~(9) "Installment loan," a loan made to be repaid in specified amounts over a certain number of months;

~~(9)~~(10) "License," a license provided by this chapter;

~~(10)~~(11) "Installment loan contract" or "contract," an agreement evidencing ~~a~~ an installment loan transaction;

~~(11)~~(12) "Licensee," any person holding a license;

~~(12)~~(13) "Loan," any installment loan, single pay loan, or open-end loan which may be unsecured or secured by real or personal property. The term does not include an installment sales contract as defined under subdivision 54-3A-1(6);

~~(13)~~(14) "Nationwide mortgage licensing system and registry," a licensing system

developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators and other regulated entities;

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

~~(15)~~(16) "Regional revolving loan fund," a regional revolving loan fund with a service area of at least five South Dakota counties, a designated staff for loan processing and servicing, a loan portfolio of at least one million dollars, and ~~which~~ that is governed by a board of directors that meets at least quarterly;

~~(16)~~(17) "Short-term consumer loan," any loan to any individual borrower with a duration of six months or less, including a payday loan. A title loan is not a short-term consumer loan for purposes of this chapter;

~~(17)~~(18) "Title lender," a regulated lender authorized pursuant to this chapter to make title loans;

~~(18)~~(19) "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.