

INITIATED MEASURE

ATTORNEY GENERAL'S STATEMENT

Title: An initiated measure to set a maximum finance charge for certain licensed money lenders

Explanation:

The initiated measure prohibits certain State-licensed money lenders from making a loan that imposes total interest, fees and charges at an annual percentage rate greater than 36%. The measure also prohibits these money lenders from evading this rate limitation by indirect means. A violation of this measure is a misdemeanor crime. In addition, a loan made in violation of this measure is void, and any principal, fee, interest, or charge is uncollectable.

The measure's prohibitions apply to all money lenders licensed under South Dakota Codified Laws chapter 54-4. These licensed lenders make commercial and personal loans, including installment, automobile, short-term consumer, payday, and title loans. The measure does not apply to state and national banks, bank holding companies, other federally insured financial institutions, and state chartered trust companies. The measure also does not apply to businesses that provide financing for goods and services they sell.

FOR AN ACT ENTITLED, An Act to provide for a limit on finance charges on payday, car title, and installment loans and to provide a penalty therefor.

BE IT ENACTED BY THE PEOPLE OF SOUTH DAKOTA:

Section 1. That 54-3-14 be amended to read as follows:

The term "regulated lenders" as used in § 54-3-13 means:

- (1) A bank organized pursuant to chapter 51A-1, et seq.;
- (2) A bank organized pursuant to 12 U.S.C. § 21;
- (3) A trust company organized pursuant to chapter 51A-6;
- (4) A savings and loan association organized pursuant to chapter 52-1, et seq.;
- (5) A savings and loan association organized pursuant to 12 U.S.C. § 1464;
- (6) Any wholly owned subsidiary of a state or federal bank or savings and loan association which subsidiary is subject to examination by the comptroller of the currency, or the federal reserve system, or the South Dakota Division of Banking, or the federal home loan bank board and which subsidiary has been approved by the United States secretary of housing and urban development for participation in any mortgage insurance program under the National Housing Act;
- (7) A federal land bank organized pursuant to 12 U.S.C. § 2011;
- (8) A federal land bank association organized pursuant to 12 U.S.C. § 2031;
- (9) A production credit association organized pursuant to 12 U.S.C. § 2091;
- (10) A federal intermediate credit bank organized pursuant to 12 U.S.C. § 2071;
- (11) An agricultural credit corporation or livestock loan company or its affiliate, the principal business of which corporation is the extension of short and intermediate term credit to farmers and ranchers;
- (12) A federal credit union organized pursuant to 12 U.S.C. § 1753;
- (13) A federal financing bank organized pursuant to 12 U.S.C. § 2283;
- (14) A federal home loan bank organized pursuant to 12 U.S.C. § 1423, et seq.;
- (15) A national consumer cooperative bank organized pursuant to 12 U.S.C. § 3011;
- (16) A bank for cooperatives organized pursuant to 12 U.S.C. § 2121;
- (17) Bank holding companies organized pursuant to 12 U.S.C. § 1841, et seq.;
- (18) National Homeownership Foundation organized pursuant to 12 U.S.C. § 1701y;

- (19) Farmers Home Administration as provided by 7 U.S.C. § 1981;
- (20) Small Business Administration as provided by 15 U.S.C. § 633;
- (21) Government National Mortgage Association and Federal National Mortgage Association as provided by 12 U.S.C. § 1717;
- (22) South Dakota Housing Development Authority as provided by chapter 11-11;
- (23) Insurance companies, whether domestic or foreign, authorized to do business in this state, and which as a part of their business engage in mortgage lending in this state. However, § 54-3-13 does not exempt insurance companies from the provisions of § 58-15-15.8; or
- (24) Any wholly owned service corporation subsidiary of a domestic or foreign insurance company, authorized to do business in this state, and which subsidiary is subject to examination by the same insurance examiners as the parent company; ~~or~~.
- ~~(25) An installment loan licensee under the provisions of chapter 54-4 and 54-6~~

Section 2. That 54-4-44 be amended to read as follows:

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

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

No person may engage in any device, subterfuge, or pretense to evade the requirements of § 54-4-44, including, but not limited to, making loans disguised as a personal property sale and leaseback transaction; disguising loan proceeds as a cash rebate for the pretextual installment sale of goods or services; or making, offering, assisting, or arranging a debtor to obtain a loan with a greater rate of interest, consideration, or charge than is permitted by this chapter through any method including mail, telephone, internet, or any electronic means regardless of whether the person has a physical location in the state. Notwithstanding any other provision of this chapter, a violation of this section is subject to the penalties in § 54-4-44.

CONSTITUTIONAL AMENDMENT

ATTORNEY GENERAL'S STATEMENT

Title: An initiated amendment to the South Dakota Constitution to allow referral of state and municipal laws affecting public peace, health, safety and the support of government and also to limit the ability to amend or repeal initiated laws.

Explanation:

Under the Constitution, laws enacted by the Legislature or a municipality may be referred to a vote of the people, except for laws necessary for the immediate preservation of the public peace, health or safety, or laws required for the support of government and its existing public institutions.

The amendment removes this restriction and allows such laws to be referred if a petition is filed within ninety days after the law goes into effect. The referred law remains in effect unless repealed by majority vote at the following general election. In even-numbered years, referrals under this amendment may conflict with current state election laws and may violate federal absentee voting laws.

In addition, under the Constitution the people may enact state and municipal laws by initiated measure. The amendment changes the Constitution to prohibit the amendment or repeal of an initiated law without a two-thirds vote of each house of the legislature. A municipality would likewise be prohibited from amending or repealing an initiated law without a two-thirds vote of the governing body.

Title: An Amendment to the South Dakota Constitution relating to initiatives and referendum.

Section 1. That Article III, section 1 of the Constitution of the State of South Dakota, be amended to read as follows:

§ 1. The legislative power of the state shall be vested in a Legislature which shall consist of a senate and house of representatives. However, the people expressly reserve to themselves the right to propose measures, which shall be submitted to a vote of the electors of the state, and also the right to require that any laws which the Legislature may have enacted shall be submitted to a vote of the electors of the state before going into effect; ~~except such laws as may be.~~ A law enacted by the Legislature that is necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions may be referred to a vote of the electors of the state within ninety days of the law going into effect. The law shall remain in effect until the law is voted upon by the people. If the law is rejected by a majority of the electors, the law is repealed. Not more than five percent of the qualified electors of the state shall be required to invoke either the initiative or the referendum.

This section shall not be construed so as to deprive the Legislature or any member thereof of the right to propose any measure. However, the Legislature may only repeal or amend an initiated measure by a two-thirds vote of all the members elect of each branch of the Legislature. The veto power of the Executive shall not be exercised as to measures referred to a vote of the people. This section shall apply to municipalities. The enacting clause of all laws approved by vote of the electors of the state shall be: "Be it enacted by the people of South Dakota." The Legislature shall make suitable provisions for carrying into effect the provisions of this section.

Section 2. The provisions of this Amendment are effective on November 9, 2016, and apply to any initiated measure approved by the electors on November 8, 2016.