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MAY 27 2015

S.D. SEC. OF STATE

MARTY J. JACKLEY
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

HAND DELIVERED

May 27, 2015

Hon. Shantel Krebs
Secretary of State
500 E. Capitol
Pierre, SD 57501

RE: Attorney General's Statement for initiated measure (maximum finance charge)

Dear Secretary Krebs,

This Office received an initiated measure regarding maximum finance charges for certain money lenders. Enclosed is a copy of the initiated measure, in final form, that was submitted to this Office. In accordance with SDCL 12-13-25.1, I hereby submit the Attorney General's Statement with respect to this measure. It is my understanding that the Legislative Research Council has prepared a fiscal impact statement pursuant to SDCL 2-1-19 and has or will file it directly with you.

By copy of this letter, I am providing a copy of the Attorney General's Statement to the sponsor of the initiated measure pursuant to SDCL 12-13-25.1.

Very truly yours,

Marty J. Jackley
ATTORNEY GENERAL

MJJ/PA/lde
Enc.

cc/enc.: Steve Hickey
Jason Hancock, Director of LRC

Filed this 27th day of
May, 2015

SECRETARY OF STATE

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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.

Filed this 27th day of

May 2015

Shantal Krebs

SECRETARY OF STATE

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.