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## **DIVISION OF BANKING**

1601 N. Harrison Avenue, Suite 1, Pierre, SD 57501  
605-773-3421

## **MEMORANDUM**

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NUMBER: 20-019  
DATE: June 30, 2017  
TO: SOUTH DAKOTA MONEY LENDERS  
FROM: BRET AFDAHL, Director  
RE: HOUSE BILL 1090

The passage of Initiated Measure 21 (IM 21) impacted all lenders licensed pursuant to SDCL Chapter 54-4, not just those offering payday, title, and signature loans. House Bill 1090 (HB 1090) seeks to clarify how IM 21 impacts lenders that offer a variety of products, including retail installment contracts for auto purchases, mortgage related loans, and other consumer credit products.

### Section 1

Modifies the existing definition of “loan” to exclude installment sales contracts as defined in SDCL 54-3A-1(6).

### Section 2

Provides that the 36% rate limitation in SDCL 54-4-44 applies only to “loans” as defined in SDCL 54-4-36(12). Sections 1 & 2 of HB 1090 combine to exclude retail installment sales contracts for vehicle and other purchases from the interest rate limitation provided in SDCL 54-4-44. Entities that purchase and securitize these contracts would still need to be licensed under Chapter 54-4, but the contracts themselves would not be limited by SDCL 54-4-44 if the contracts are already compliant with the provisions of SDCL Chapter 54-3A.

### Section 3

Provides that, for purposes of the 36% rate limitation in SDCL 54-4-44, fees “incident to the extension of credit” in connection with a loan for the purchase of a motor vehicle do not include fees for optional maintenance agreements and extended service contracts, official fees and taxes, sales tax, title fees, lien registration fees, or dealer documentary fees.

### Section 4

Provides that, for purposes of the 36% rate limitation on all loans provided in SDCL 54-4-44, fees “incident to the extension of credit” do not include late fees, return check fees, or attorneys' fees incurred upon a consumer default.

Please note that SDCL 54-4-44.1 provides the following regarding the manipulation of fees to avoid the application of the requirements of SDCL 54-4-44:

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.

Any effort to exploit the very limited exceptions provided in HB 1090, in order to engage in high cost consumer lending, will not be permitted.

If you would like additional information regarding this bill, or if you have any questions, please do not hesitate to contact the South Dakota Division of Banking at 605-773-3421.