

State of South Dakota

NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

841Y0266

HOUSE BILL NO. 1096

Introduced by: Representatives Lust, Bartels, Lake, Otten (Herman), and Reed and Senators Partridge, Cammack, Cronin, Haverly, Peters, Solano, and Wiik

1 FOR AN ACT ENTITLED, An Act to provide for a criminal penalty for any person who
2 prevents the enforcement of a secured creditor's security interest upon repossession of a
3 motor vehicle.

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

5 Section 1. That the code be amended by adding a NEW SECTION to read:

6 Any person who intentionally prevents the enforcement of a secured creditor's security
7 interest in the person's motor vehicle by failing to return the motor vehicle to the secured
8 creditor following notice of default or by prohibiting the secured creditor from taking possession
9 of the motor vehicle is guilty of a Class 1 misdemeanor.

10 Section 2. That the code be amended by adding a NEW SECTION to read:

11 Any motor vehicle that is not returned to a secured creditor by an owner following notice
12 of default is a stolen motor vehicle for purposes of § 32-4-1.

13 Section 3. That the code be amended by adding a NEW SECTION to read:

14 Any contract creating a security interest in a motor vehicle shall contain:

15 (1) A statement that failing to return a motor vehicle subject to a security interest



1 following receipt of any notice of default is a Class 1 misdemeanor; and

2 (2) A statement that any notice of default will be mailed to the owner's address listed on
3 the loan agreement and that the owner is responsible for keeping the listed address
4 current.

5 Section 4. That the code be amended by adding a NEW SECTION to read:

6 A person shall have a defense to any charge for a violation of any provision of this Act if:

7 (1) The person was physically incapacitated and unable to request or obtain permission
8 of the secured creditor to retain the motor vehicle;

9 (2) The motor vehicle itself was in a condition, through no intentional fault of the
10 defendant, that it could not be returned to the secured creditor within the specified
11 time; or

12 (3) The owner has a security interest pursuant to § 57A-2-711.

13 Section 5. That the code be amended by adding a NEW SECTION to read:

14 Any secured creditor taking possession of a motor vehicle is responsible for any towing,
15 storage, or any other related fees or charges if a law enforcement agency seizes the motor
16 vehicle on behalf of the secured creditor.