

AN ACT

ENTITLED, An Act to revise the list of products offered to consumers by motor vehicle dealers and sales finance companies.

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

Section 1. That § 54-3A-5 be amended to read as follows:

54-3A-5. In addition to the finance charge, a creditor may contract for, and receive the following additional charges in connection with an installment sales contract if such charges are itemized and disclosed to the buyer:

- (1) Official fees and taxes;
- (2) Charges for guaranteed asset protection waivers, or credit life, accident, health, loss of income, property, or liability insurance. However any insurance is optional, and the consumer shall be informed, in writing, that any insurance is optional; and
- (3) Charges for debt cancellation contracts and debt suspension contracts, as defined in § 51A-1-2 and sections 2 and 3 of this Act, if the debt cancellation contract or debt suspension contract is a contract of a depository institution or a licensee pursuant to chapter 54-4 authorized to provide such coverage, and the contract is sold directly by the authorized depository institution or licensee pursuant to chapter 54-4, or by a retailer acting as an agent for the authorized depository institution or licensee pursuant to chapter 54-4. However, any debt cancellation contract or debt suspension contract is optional, and the consumer shall be informed, in writing, that any such contract is optional.

Any such charges shall be disclosed and explained to the consumer prior to signing any agreement to repay a consumer credit obligation. Any such charges shall be separately agreed to in writing and separately signed by the consumer.

Section 2. That chapter 54-4 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this chapter, the term, debt cancellation contract, means a term of an extension of credit or contractual arrangement modifying terms of an extension of credit under which a licensee agrees to cancel all or part of a customer's obligation to repay an extension of credit from the licensee upon the occurrence of a specified event. The contract may be separate from or a part of other extension of credit documents. The term does not include installment payment deferral arrangements in which the triggering event is the customer's unilateral election to defer repayment, or the licensee's unilateral decision to allow a deferral of repayment.

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

For the purposes of this chapter, the term, debt suspension contract, means a term of an extension of credit or contractual arrangement modifying terms of an extension of credit under which a licensee agrees to suspend all or part of a customer's obligation to repay an extension of credit from the licensee upon the occurrence of a specified event. The contract may be separate from or a part of other extension of credit documents. The term does not include installment payment deferral arrangements in which the triggering event is the customer's unilateral election to defer repayment, or the licensee's unilateral decision to allow a deferral of repayment.

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

A licensee pursuant to this chapter may enter into debt cancellation contracts and debt suspension contracts and charge a fee for those contracts in connection with any extension of credit that it makes, purchases, or of which it accepts assignment.

Section 5. That § 58-1-3 be amended to read as follows:

58-1-3. No provision of this title applies with respect to:

- (1) Fraternal benefit societies, except as stated in chapter 58-37A;
- (2) Bail bondsmen, other than corporate sureties and their agents, except as stated in chapter 58-22;

- (3) Motor vehicle service contracts which are contracts or agreements to perform or indemnify for a specific duration the repair, replacement, or maintenance of motor vehicles for operational or structural failure due to a defect in materials, workmanship, or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited circumstances, including towing, rental, and emergency road service. Consideration for a motor vehicle service contract shall be stated separately from the price of the motor vehicle;
- (4) Service agreements or extended warranty plans for which the primary purpose is to provide service, repair, or replacement on consumer goods or products including appliances, merchandise, or equipment, or mechanical/electrical systems in single or multiple-family dwellings. Incidental indemnity payments under such plans where service, repair, or replacement is not feasible or economical does not void this exemption;
- (5) Any person, trust, or other entity proven to be under the exclusive regulatory authority of the federal government or another state agency;
- (6) Any agreement to provide liability protection entered into pursuant to chapter 1-24 is exempt from the regulatory requirements of Title 58, except to forms of insurance coverage provided by an insurer otherwise subject to the insurance laws of this state;
- (7) Any church plan, as defined in section 414(e) of the Internal Revenue Code of 1986, as amended through December 31, 1999, and section (3)(33)(C)(i) of the Employee Retirement Income Security Act of 1974 (29 U.S. C. § 1002(33)(C)(i)); or any church benefits board, as described in section 414(e)(3)(A) of the Internal Revenue Code of 1986, as amended through December 31, 1999, and section (3)(33)(C)(i) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. § 1002(33)(C)(i));
- (8) Any debt cancellation contract or debt suspension contract as defined by subdivisions

51A-1-2(10) and 51A-1-2(11) and sections 2 and 3 of this Act; or

- (9) Any damage guarantee program for renters administered by a nonprofit corporation that is recognized as an exempt organization under § 501(c)(3) of the Internal Revenue Code and whose mission is to increase the availability of affordable housing to low and moderate income tenants.

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I certify that the attached Act  
originated in the  
  
SENATE as Bill No. 65

\_\_\_\_\_  
Secretary of the Senate  
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\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

Senate Bill No. 65  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

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Received at this Executive Office  
this \_\_\_\_\_ day of \_\_\_\_\_ ,  
  
20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor  
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The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 20\_\_\_\_

\_\_\_\_\_  
Governor

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STATE OF SOUTH DAKOTA,  
ss.  
Office of the Secretary of State

Filed \_\_\_\_\_, 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State