

November 22, 2016

Danielle Fagre Arlowe
Senior Vice President, State Government Affairs
American Financial Services Association
919 Eighteenth Street, NW, Suite 300
Washington, DC 20006-5517

RE: Initiated Measure 21 (IM 21)

Dear Ms. Arlowe,

The South Dakota Division of Banking (Division) received and reviewed your letter related to IM 21 dated November 16, 2016. In your letter, you request confirmation from the Division that the substantive provisions of IM 21 do not apply to retail installment sales contracts purchased by licensed South Dakota money lenders. Further, in your letter, you request clarification regarding the charges and fees that are to be included in the method that the Division will use in rate calculations to determine compliance with IM 21's 36 percent rate limitation.

All South Dakota money lenders licensed per the provisions of SDCL Chapter 54-4 are required to comply with the provisions of IM 21, including the 36 percent rate limit. Retail installment contracts are installment loans in South Dakota for purposes of SDCL Chapter 54-4. As you correctly point out in your letter, financial institutions in South Dakota that service, acquire, or purchase retail installment contracts are required to obtain and maintain money lender licenses per the requirements of SDCL Chapter 54-4. As such, financial institutions in South Dakota that service, acquire, or purchase retail installment contracts are required to comply with the provisions of IM 21, and the other substantive requirements of SDCL Chapter 54-4.

The types of services, products, charges, or fees that are to be included in rate calculations for purposes of the rate limitations imposed by IM 21 are to include "all charges for any ancillary product or service and any other charge or fee incident to the extension of credit." See IM 21 Section 2. These charges, products, services, and fees may, depending on the circumstances, include vehicle service and maintenance contracts, official fees and taxes, guaranteed asset protection waivers, sales taxes, title fees, lien registration fees, dealer documentary fees, returned check fees, attorney fees, and credit life or accident and health insurance.

Finally, as to your request that the Division provide ample time for South Dakota money lenders to design, test, and implement system enhancements that will allow for accurate measurement of finance charges under IM 21 for covered transactions, please note that the provisions of IM 21 became effective on November 16, 2016. South Dakota money lenders

were required to be in full compliance with the provisions of IM 21 as of the effective date of IM 21.

Please note that the above opinion is based on a very general set of facts and circumstances provided by you, and is limited to those facts and circumstances. The above opinion is not meant to address other fact patterns or additional issues that may develop. If any of the facts and circumstances, upon which the above opinion is based, changes in any material way, the above opinion may need to be revised. The above opinion is issued for your information only, and, accordingly, is not binding on the Division. Finally, please note that the above opinion is not intended as, nor should it be construed as, legal advice.

If you have any other questions or need more information, please feel free to contact this office. Thanks.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Brock Jensen', with a long horizontal flourish extending to the right.

Brock Jensen
Division Counsel