



SOUTH DAKOTA SETS INTEREST RATE CAP

This election cycle South Dakota voters passed Initiated Measure 21 ("IM 21"), a measure to amend the Money Lender statute to establish a maximum finance charge for licensed money lenders. The Money Lender statute does not apply to state or national banks, banking holding companies, other federally insured financial institutions and state chartered trust companies.

IM 21 prohibits licensees from contracting for or receiving finance charges in excess of an "annual rate" of 36%. The "annual rate" limit includes all charges for any ancillary product or services and any other charge or fee incident to the extension of credit. The Department of Banking, the agency that administers the Money Lender statute, and the South Dakota Attorney General have described IM 21 as limiting the "annual percentage rate" on loans. Prior to IM 21, the Money Lender statute permitted a licensee to charge interest at a rate agreed to by the parties.

The "annual rate" limit applies to any person engaged in any device, subterfuge or pretense to evade the limit including, but not limited to, a person making, offering, assisting or arranging [for] a debtor to obtain a loan with a greater rate of interest than permitted by IM 21 regardless of whether the person is physically located in South Dakota.

Violating IM 21 is a misdemeanor and any loan made with an "annual rate" greater than 36% is void. IM 21 became effective on November 16, 2016. The Department of Banking directed any licensee, who intends to keep its license, to submit a written business plan indicating how the licensee plans to comply with IM 21 by November 16. We can help you analyze the affect of IM 21 on your financing program. □

✧ *Mike Tomkies and Susan Manship Seaman*

Darrell L. Dreher
ddreher@dltlaw.com

Elizabeth L. Anstaett
eanstaett@dltlaw.com

Robin R. De Leo
robin@dreher-la.com

Susan M. Seaman
sseaman@dltlaw.com

Emily C. Cellier
ecellier@dltlaw.com

2750 HUNTINGTON CENTER
41 S. HIGH STREET
COLUMBUS, OHIO 43215
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600
WWW.DTLAW.COM

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Michael C. Tomkies
mtomkies@dltlaw.com

Charles V. Gall
cgall@dltlaw.com

Judith M. Scheiderer
jscheiderer@dltlaw.com

Susan L. Ostrander
sostrander@dltlaw.com