

**TITLE 28**  
**LENDING AND CONSUMER PROTECTION ACT**

**CHAPTER 1**  
**TITLE, POLICY AND PURPOSE OF THIS ORDINANCE**

**Section 28-1-1. TITLE.**

This title may be known and cited as the “Flandreau Santee Sioux Tribal Lending and Consumer Protection Act.”

**Section 28-1-2. DECLARATION OF POLICY.**

The establishment, promotion and operation of consumer lending is necessary to the general welfare of the Flandreau Santee Sioux Tribe, provided that such lending is regulated and controlled by the Flandreau Santee Sioux Tribe pursuant to this title and that tribal revenues derived from consumer lending are used exclusively for the benefit of the Flandreau Santee Sioux Tribe.

**Section 28-1-3 PURPOSE.**

The Executive Committee of the Flandreau Santee Sioux Tribe, empowered by Article VIII, Section 1(f) of the Flandreau Santee Sioux Tribal Constitution to enact ordinances, hereby enacts this title to establish reasonable procedures and requirements for consumer lending entities operating under the jurisdiction of the Flandreau Santee Sioux Tribe in meeting the needs of commerce for consumer credit in a manner that is fair and equitable to the consumer, as well as, to protect consumers from deceptive and unreasonable lending and collection practices.

**CHAPTER 2**  
**DEFINITIONS**

**Section 28-2-1 DEFINITIONS.**

As used in this title –

(a) “Adverse action” means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested. Such term does not include a refusal to extend additional credit under an existing credit arrangement where the applicant is delinquent or otherwise in default, or where such additional credit would exceed a previously established credit limit.

(b) “Billing cycle” means the interval between the days or dates of regular

periodic statements.

(c) “Consumer” means an individual who has applied, met specific requirements, and received a consumer loan from a Lender or an extension, renewal, or continuation of credit.

(d) “Consumer loan” means an amount of money lent to a consumer that may be used for any purpose.

(e) “Credit” means the right granted by a Lender to a debtor to defer payment of debt or to incur debt and defer its payment, or to purchase property or services and defer payment.

(f) “Federal Consumer Protection Laws” means Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. §§ 5491-5493; Electronic Fund Transfer Act, 15 U.S.C. §§1693-1693f and related regulations at 12 C.F.R. Part 205 and 12 C.F.R. Part 1005; Equal Credit Opportunity Act, 15 U.S.C. §§1691-1691f and related regulations at 12 C.F.R. Part 202 and 12 C.F.R. Part 1002; Fair Credit Billing Act, 15 U.S.C. §1666a; Fair Credit Reporting Act, 15 U.S.C. §§1681-1681x and related regulations at 12 C.F.R. Part 222; 12 C.F.R. Part 1022; 16 C.F.R. Parts 600-698; Fair Debt Collection Practices Act, 15 U.S.C. §§1692-1692p and related regulations at 12 C.F.R. Part 1006; Federal Trade Commission Act, 15 U.S.C. §§41-58 and related regulations at 16 C.F.R. Parts 1-4; Gramm-Leach-Bliley Act, 15 U.S.C. §§6801-6809 and related regulations at 16 C.F.R. Part 313; Servicemembers Civil Relief Act: 50 App. U.S.C. § §501-597 and related regulations at 38 C.F.R. Part 7; and, Truth in Lending Act, 15 U.S.C. §§1601-1667 and related regulations at 12 C.F.R. Part 226; 12 C.F.R. Part 1026.

(g) “Executive Committee” means the governing body of the Flandreau Santee Sioux Tribe as defined and described in Article III, Section 1 of the Constitution and By-Laws for the Flandreau Santee Sioux Tribe of South Dakota.

(h) “Finance charge” means fees related to cost of borrowing, including but not limited to interest charges, commitment fees, and other charges paid by the consumer.

(i) “Interest” means the compensation agreed upon or allowed by law upon any loan or forbearance of money, goods, or things in action but does not include loan service costs.

(j) “Lender” means a tribal entity approved by the Flandreau Santee Sioux Tribal Executive Committee that (1) regularly makes consumer loans, (2) extends, renews, or continues credit, (3) regularly arranges for the extension, renewal, (4) or continuation of credit, or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.

(k) “Loan service costs” means reasonable and necessary costs and charges

incurred in connection with the making, closing, disbursing, servicing, extending, transferring, or renewing of a loan, including but not limited to (1) prepayment charges, (2) delinquency charges, (3) fees for escrow, appraisal, abstracting, Title examination, surveys, inspections, credit reports, and recording of documents, (4) origination fees, (5) interest on interest after default, and (6) costs and charges incurred for determining qualification for the consumer loan proceeds and disbursement of the consumer loan proceeds.

(l) “Periodic rate” means a rate of finance charge that is or may be imposed by a Lender on a balance for a day, week, month, or other time period.

(m) “Security interest” means an interest in property that secures performance of a consumer loan obligation.

### **CHAPTER 3 CONSUMER LENDING**

#### **Section 28-3-1 LOANS AUTHORIZED.**

Consumer loans are authorized only as defined in this title and its implementing regulations. This title does not apply to transactions involving extensions of credit for business or commercial purposes.

#### **Section 28-3-2 COMPLIANCE WITH FEDERAL LAW.**

Lenders shall at all times comply with the provisions of this title, rules and regulations promulgated pursuant to this title, and all other applicable Tribal and federal laws including, without limitation, the Federal Consumer Protection Laws.

#### **Section 28-3-3 CONSENT TO TRIBAL JURISDICTION.**

(a) Any Lender conducting a consumer lending business or engaging in a consumer lending transaction within the jurisdiction of the Flandreau Santee Sioux Tribe is deemed to have consented and submitted to the jurisdiction of the Flandreau Santee Sioux Tribal Court as to any cause of action brought against that Lender.

(b) Service of process upon any Lender deemed by this title to have consented and submitted to the jurisdiction of the Flandreau Santee Sioux Tribal Court of may be made pursuant to the Tribal Court Rules of Civil Procedure, title 4 of this Code.

(c) Only Lenders organized pursuant to title 25 or title 27 of the Flandreau Santee Sioux Tribal Law and Order Code or pursuant to section 17 of the Indian Reorganization Act, as amended, 25 U.S.C. § 477 may make consumer loans or extend credit within the exterior boundaries of the reservation of the Flandreau Santee Sioux Tribe.

(a) Unless a maximum interest rate or charge is specifically established elsewhere in the code, there is no maximum interest rate or charge, or usury rate restriction between or among persons, corporations, limited liability companies, estates, fiduciaries, associations, or any other entities if they establish the interest rate or charge by written agreement.

(b) Such rate of interest, so long as it does not violate this title, rules and regulations promulgated pursuant to this title, the Federal Consumer Protection Laws or any federal usury law, may be charged on a periodic rate basis.

(c) If a Lender proposes to increase the interest rate during the term of the loan, notice of such proposed increase shall be communicated in writing to the borrower at least thirty days prior to the proposed increase.

(d) When a rate of interest is prescribed by a law or contract, without specifying the period of time by which such rate is to be calculated, it is to be deemed an annual rate.

#### **Section 28-3-5 PROHIBITED ACTS BY LENDERS.**

A Lender shall not:

(a) Engage in any lending other than that allowed under this Title.

(b) Assess any interest or fee that is not provided in this title.

(c) Use or cause to be published or disseminated any advertisement that contains false, misleading or deceptive statements or representations.

(d) Engage in unfair, deceptive or fraudulent practices.

(e) At any one time hold from any consumer more than two consumer loans.

#### **Section 28-3-6 VIOLATIONS; CIVIL PENALTY.**

(a) Any Lender who violates any provision of this title shall be subject to a civil penalty not to exceed five thousand dollars (\$5,000) per violation and forfeiture of all interest collected by the Lender.

(b) A Lender is not liable for a civil penalty if it corrects the violation, pays any refund due, and notifies the consumer within forty-five (45) days of its occurrence.

#### **Section 28-3-7 BOOKS, ACCOUNTS AND RECORDS.**

(a) A Lender shall maintain at each location at which it conducts business all

books, accounts and records that the Executive Committee or its designee reasonably requires. The Lender shall:

(1) Ensure that the books, accounts and records are sufficiently detailed to comply with this title and the Federal Consumer Protection Laws.

(2) Maintain the books, accounts and records separately from any other business in which the Lender is engaged and shall retain the books, accounts and records for at least five (5) years.

(b) The Executive Committee or its designee may cause to be examined each Lender annually and more frequently if the Executive Committee considers it necessary. In conducting such examination, the Executive Committee or its designee shall appoint an agent to examine the books, accounts and records to determine if the Lender has complied with this title, any implementing regulations adopted pursuant to this title and the Federal Consumer Protection Laws. The Lender shall pay the cost of the examination as may be required by the Executive Committee.

#### **Section 28-3-8        REPORTS.**

(a) A Lender shall provide to the Executive Committee or its designee a quarterly report. Each report shall contain information sufficient for the Executive Committee to determine compliance with this title. The report shall include, at a minimum, the following information:

(1) A description of the consumer loans made, its gross revenue from the lending operations, the number of consumers served, a detailed description of any consumer complaints and other problems experienced by the Lender, and a description of any substantive changes in practices related to the loans made.

(2) A description of any pending or threatened litigation, claims and assessments and the status of any of litigation concerning the Lender.

(3) A sworn statement that the Lender has complied and will continue to comply with this title and the Federal Consumer Protection Laws.

(b) A Lender shall provide to the Executive Committee or its designee annually a copy of an independent compliance audit.

#### **Section 28-3-9        PUBLIC NOTICE.**

A Lender shall make a copy of this title and any implementing regulations readily available to any person upon written request.

### **TRUTH IN LENDING**

**Section 28-4-1            DISCLOSURES TO CONSUMERS.**

(a) Before making a consumer loan or extending credit to a consumer, the Lender shall disclose in writing in a clear and conspicuous manner to the consumer each of the following items:

- (1) the conditions under which interest or other finance charge may be imposed, including the time period within which the consumer loan may be repaid without incurring interest or other finance charge;
- (2) the method of determining the balance upon which interest or other finance charge will be imposed;
- (3) the method of determining the amount of interest or other finance charge;
- (4) the periodic rate or rates used to compute the interest or other finance charge and the balances to which they will apply, and the corresponding annual percentage rate;
- (5) identification of any other loan service costs and their method of calculation;
- (6) if the consumer loan is secured, a statement of what property will be taken as security; and
- (7) a separate statement setting forth the protections and remedies provided to the Consumer by sections 28-4-2, 28-4-3, 28-5-1, and 28-6-1 of this title.

(b) For each billing cycle, the Lender shall send to the consumer a statement setting forth the following:

- (1) the outstanding balance of the account at the beginning of the statement period;
- (2) the amount and date of each consumer loan or extension of credit;
- (3) the amount of any interest or other finance charge added to the account during the period;
- (4) the periodic rate or rates charged, the corresponding annual percentage rate, and the balances against which they are applied;
- (5) the balance on which the interest was computed and a statement of how the balance was determined, including whether the balance is determined without first deducting all credits during the period;

- (6) the outstanding balance of the account at the end of the period;
  - (7) the date by which payment must be made to avoid additional interest, if any;
- and
- (8) the address and telephone number to be used by the Lender for the purpose of receiving billing inquiries.

**Section 28-4-2 RIGHT OF RESCISSION.**

(a) In any consumer loan in which a security interest is acquired in any property used as the principal dwelling of the consumer, the consumer shall have the right to rescind the transaction until the third business day following the closing of the transaction by notifying the Lender of his intention to rescind.

(b) The Lender shall clearly and conspicuously disclose in writing to the consumer the right under this Section. The Lender shall also provide appropriate forms for the consumer to exercise his right to rescind.

(c) When a consumer exercises his right under this section, he is not liable for any interest or loan service costs and any security interest given becomes null and void. Any money paid or property given by the Consumer will be returned within ten (10) days.

**Section 28-4-3 ERRORS IN BILLING.**

(a) If a Consumer, within sixty (60) days after the date of a statement, notifies the Lender in writing of an error in billing, the Lender shall, within sixty (60) days of the notice:

(1) Make appropriate correction to the account, including the crediting of any interest on amounts erroneously billed; or

(2) Send a written explanation or clarification to the Consumer after conducting an investigation, setting forth why the Lender believes the billing was correct.

(b) The notice given by the Consumer shall enable the Lender to identify the name and account of the Consumer, state the amount of the billing error, and the reasons why the Consumer believes that the statement contains a billing error.

(c) Any Lender who fails to comply with the requirements of this section forfeits any right to collect from the Consumer the amount of the billing error indicated in the Consumer's notice and any interest thereon. The Lender may not report the amount in dispute as delinquent to any third party, nor may the Lender report or threaten to report to any person information relating to the consumer's failure to pay the amount in dispute which would reflect on the Consumer's credit rating.

**CHAPTER 5  
EQUAL CREDIT OPPORTUNITY**

**Section 28-5-1        PROHIBITED DISCRIMINATION.**

(a) It shall be unlawful for any Lender to discriminate against any consumer with respect to any aspect of a credit transaction:

(1) on the basis of race, color, religion, national origin, sex or marital status, sexual preference, or age (provided the consumer has the capacity to contract);

(2) because the consumer has previously enforced his rights under section 28-4-2 and 28-4-3; or

(3) because all or part of the consumer's income derives from any public assistance program.

(b) It shall not constitute discrimination for purposes of this Chapter for a Lender:

(1) to make an inquiry of marital status if such inquiry is for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in a determination of creditworthiness;

(2) to make an inquiry of the applicant's age or of whether the applicant's income derives from any public assistance program if such inquiry is for the purpose of determining the amount and probable continuance of income levels, credit history, or other pertinent element of creditworthiness;

(3) to use any empirically derived credit system which considers age if such system is demonstrably and statistically sound, except in the operation of such system, the age of an elderly applicant may not be assigned a negative factor or value; or

(4) to make an inquiry or to consider the age of an elderly applicant if it is to be used by the creditor in the extension of credit in favor of such applicant.

**Section 28-5-2        LOANS TO TRIBAL MEMBERS.**

Notwithstanding section 28-5-1, the Executive Committee shall have the authority to prohibit a Lender from making a consumer loan or extending credit to any member of the Flandreau Santee Sioux Tribe or to any person seeking a consumer loan or credit on behalf of the member. Such act by the Executive Committee shall exempt the Lender from the

provisions of chapter 6 of this title.

**Section 28-5-3            NOTIFICATION TO APPLICANT.**

Within ten business (10) days after receipt of a completed application for credit, a Lender shall notify the Consumer of its actions on the Consumer's application for consumer loan. Each Consumer against whom adverse action is taken shall be entitled to a statement in writing of specific reasons for such action from the Lender at the time of notification of action on the application.

**CHAPTER 6  
CONSUMER REMEDIES**

**Section 28-6-1            CONSUMER REMEDIES.**

(a) Alleged violations of this title may be reported to the Executive Committee or its designee together with facts surrounding the transaction, contracts, notices, documents, letters and other relating to the violation.

(b) Any Consumer who suffers any damage as a result of a violation of this title may bring a civil action pursuant to title 4 of the Flandreau Santee Sioux Tribal Law and Order Code in Tribal Court against the Lender to recover or obtain any of the following:

- (1) Actual damages.
- (2) Punitive damages.
- (3) An order enjoining the methods, acts, or practices resulting in a violation of this title.
- (4) Restitution of property.
- (5) Any other relief that the Tribal Court deems proper.

(c) Any civil action brought under this section shall be commenced not more than one year from the date of the commission of such violation.

(d) A Lender may not be held liable in a civil action brought under this section if the Lender shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the use of reasonable procedures adopted to avoid any such error.

(e) The Tribal Court shall award court costs and attorney's fees to a prevailing plaintiff in litigation filed pursuant to this section. Reasonable attorney's fees may be awarded to a prevailing defendant upon a finding by the Tribal Court that the plaintiff's

prosecution of the action was not in good faith.

(f) The Tribal Court may refuse to enforce any agreement or part of any agreement which it finds to be unconscionable.

## **CHAPTER 7 SEVERABILITY; INTERPRETATION**

### **Section 28-7-1 SEVERABILITY**

In the event that any section or provision of this title, or amendment made by this title, is held invalid, it is the intent of Executive Committee that the remaining sections or provisions of this title, and amendments made by this title, shall continue in full force and effect.

### **Section 28-7-2 INTERPRETATION.**

In interpreting this title, the Tribal Court may consult the Federal Consumer Protection Laws and any other relevant parts of the United States Code and Code of Federal Regulations. The terms of federal law and regulation shall apply in the case of any conflict.