A bill for an act

relating to financial institutions; regulating payday lending; amending Minnesota Statutes 2008, sections 47.59, subdivision 2; 47.60, subdivision 2, by adding a subdivision; 53.05; Minnesota Statutes 2009 Supplement, sections 47.60, subdivision 1; 47.601, subdivisions 2, 6.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2008, section 47.59, subdivision 2, is amended to read:

Subd. 2. **Application.** Extensions of credit or purchases of extensions of credit by financial institutions under sections 47.20, 47.21, 47.201, 47.204, 47.58, ~~47.60,~~ 48.153, 48.185, 48.195, 59A.01 to 59A.15, 334.01, 334.011, 334.012, 334.022, 334.06, and 334.061 to 334.19 may, but need not, be made according to those sections in lieu of the authority set forth in this section to the extent those sections authorize the financial institution to make extensions of credit or purchase extensions of credit under those sections. If a financial institution elects to make an extension of credit or to purchase an extension of credit under those other sections, the extension of credit or the purchase of an extension of credit is subject to those sections and not this section, except this subdivision, and except as expressly provided in those sections. A financial institution may also charge an organization a rate of interest and any charges agreed to by the organization and may calculate and collect finance and other charges in any manner agreed to by that organization. Except for extensions of credit a financial institution elects to make under section 334.01, 334.011, 334.012, 334.022, 334.06, or 334.061 to 334.19, chapter 334 does not apply to extensions of credit made according to this section or the sections listed in this subdivision. This subdivision does not authorize a financial institution to extend credit or purchase an extension of credit under any of the sections listed in this subdivision if the financial institution is not authorized to do so under those sections. A financial

institution extending credit under any of the sections listed in this subdivision shall specify in the promissory note, contract, or other loan document the section under which the extension of credit is made.

EFFECTIVE DATE. This section is effective August 1, 2010, and applies to loans made on or after that date.

Sec. 2. Minnesota Statutes 2009 Supplement, section 47.60, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** For purposes of this section, the terms defined have the meanings given them:

(a) "Consumer small loan" ~~is~~ means a loan transaction in which cash is advanced to a borrower for the borrower's own personal, family, or household purpose. A consumer small loan is a short-term, unsecured loan to be repaid in a single installment. ~~The cash advance of a consumer small loan is equal to or less than $350.~~ A consumer small loan includes an indebtedness evidenced by but not limited to a promissory note or agreement to:

(1) defer the presentation of a personal check for a fee;

(2) permit preauthorized drafts or debits; or

(3) extend a line of credit.

(b) "Consumer small loan lender" ~~is~~ means a ~~financial institution as defined in section 47.59 or a~~ business entity registered with the commissioner and engaged in the business of making consumer small loans.

EFFECTIVE DATE. This section is effective August 1, 2010, and applies to loans made on or after that date.

Sec. 3. Minnesota Statutes 2008, section 47.60, subdivision 2, is amended to read:

Subd. 2. ~~**Authorization, terms, conditions, and prohibitions**~~ **Interest rates and fees.** (a) ~~In lieu of the interest, finance charges, or fees in any other law,~~ A consumer small loan lender may charge no more than the following:

(1) on any loan amount up to and including $50, a charge of $5.50 may be added;

(2) on loan amounts in excess of $50, but not more than $100, ~~a charge may be added equal to~~ an interest charge of up to ten percent of the loan proceeds, plus a $5 administrative fee;

(3) on loan amounts in excess of $100, but not more than $250, ~~a charge may be added equal to~~ an interest charge of up to seven percent of the loan proceeds with a minimum of $10, plus a $5 administrative fee;

(4) for loan amounts in excess of $250 ~~and not greater than the maximum in subdivision 1, paragraph (a), a charge may be added equal to~~, an interest charge of up to six percent of the loan proceeds with a minimum of $17.50, plus a $5 administrative fee.

(b) ~~The term of a loan made under this section shall be for no more than 30 calendar days.~~

~~(c)~~ After maturity, the contract rate must not exceed 2.75 percent per month of the remaining loan proceeds after the maturity date calculated at a rate of 1/30 of the monthly rate in the contract for each calendar day the balance is outstanding.

~~(d) No insurance charges or other charges must be permitted to be charged, collected, or imposed on a consumer small loan except as authorized in this section.~~

~~(e) On a loan transaction in which cash is advanced in exchange for a personal check, a return check charge may be charged as authorized by section 604.113, subdivision 2, paragraph (a). The civil penalty provisions of section 604.113, subdivision 2, paragraph (b), may not be demanded or assessed against the borrower.~~

~~(f) A loan made under this section must not be repaid by the proceeds of another loan made under this section by the same lender or related interest. The proceeds from a loan made under this section must not be applied to another loan from the same lender or related interest. No loan to a single borrower made pursuant to this section shall be split or divided and no single borrower shall have outstanding more than one loan with the result of collecting a higher charge than permitted by this section or in an aggregate amount of principal exceed at any one time the maximum of $350.~~

EFFECTIVE DATE. This section is effective August 1, 2010, and applies to loans made on or after that date.

Sec. 4. Minnesota Statutes 2008, section 47.60, is amended by adding a subdivision to read:

Subd. 2a. **Terms, conditions, and prohibitions.** (a) The term of a loan made under this section shall be no more than 30 calendar days.

(b) The maximum amount that may be lent under this section is $350.

(c) No insurance charges or other charges may be charged, collected, or imposed on a consumer small loan except as authorized in this section.

(d) On a loan transaction in which cash is advanced in exchange for a personal check, a return check charge may be charged as authorized by section 604.113, subdivision

2, paragraph (a). The civil penalty provisions of section 604.113, subdivision 2, paragraph (b), may not be requested, demanded, or assessed against the borrower.

(e) A loan made under this section must not be repaid by the proceeds of another loan made under this section or under section 47.601 by the same lender or affiliate of that lender. The proceeds from a loan made under this section must not be applied to another loan made under this section or under section 47.601 by the same lender or an affiliate of that lender.

(f) No loan to a single borrower made under this section shall be split or divided, and no single borrower shall have outstanding more than one loan from the same lender or an affiliate of that lender, with the result of collecting a higher charge than permitted by this section or in an aggregate amount of principal that exceeds at any time the maximum of $350.

EFFECTIVE DATE. This section is effective August 1, 2010, and applies to loans made on or after that date.

Sec. 5. Minnesota Statutes 2009 Supplement, section 47.601, subdivision 2, is amended to read:

Subd. 2. **Consumer short-term loan contract.** (a) No contract or agreement between a consumer short-term loan lender and a borrower residing in Minnesota may contain the following:

(1) a provision selecting a law other than Minnesota law under which the contract is construed or enforced;

(2) a provision choosing a forum for dispute resolution other than the state of Minnesota; or

(3) a provision limiting class actions against a consumer short-term lender for violations of subdivision 3 or for making consumer short-term loans:

(i) without a required license issued by the commissioner; or

(ii) in which interest rates, fees, charges, or loan amounts exceed those allowable under section ~~47.59, subdivision 6, or~~ 47.60, subdivision 2 or 2a, whichever is applicable, other than by de minimis amounts if no pattern or practice exists.

(b) Any provision prohibited by paragraph (a) is void and unenforceable.

(c) A consumer short-term loan lender must furnish a copy of the written loan contract to each borrower. The contract and disclosures must be written in the language in which the loan was negotiated with the borrower and must contain:

(1) the name; address, which may not be a post office box; and telephone number of the lender making the consumer short-term loan;

(2) the name and title of the individual employee or representative who signs the contract on behalf of the lender;

(3) an itemization of the fees and interest charges to be paid by the borrower;

(4) in bold, 24-point type, the annual percentage rate as computed under United States Code, chapter 15, section 1606; and

(5) a description of the borrower's payment obligations under the loan.

(d) The holder or assignee of a check or other instrument evidencing an obligation of a borrower in connection with a consumer short-term loan takes the instrument subject to all claims by and defenses of the borrower against the consumer short-term lender.

EFFECTIVE DATE. This section is effective August 1, 2010, and applies to loans made on or after that date.

Sec. 6. Minnesota Statutes 2009 Supplement, section 47.601, subdivision 6, is amended to read:

Subd. 6. **Penalties for violation; private right of action.** (a) Except for a "bona fide error" as set forth under United States Code, chapter 15, section 1640, subsection (c), an individual or entity who violates subdivision 2 or 3 is liable to the borrower for:

(1) all money collected or received in connection with the loan;

(2) actual, incidental, and consequential damages;

(3) statutory damages of up to $1,000 per violation;

(4) costs, disbursements, and reasonable attorney fees; and

(5) injunctive relief.

(b) In addition to the remedies provided in paragraph (a), a loan is void, and the borrower is not obligated to pay any amounts owing if the loan is made:

(1) by a consumer short-term lender who has not obtained an applicable license from the commissioner;

(2) in violation of any provision of subdivision 2 or 3; ~~or~~

(3) in which the interest, fees, or charges~~, or loan amounts~~ exceed the interest, fees, or charges~~, or loan amounts~~ allowable under ~~sections 47.59, subdivision 6, and~~ section 47.60, subdivision 2; or

(4) in which the loan amount or charges exceed the loan amount or charges permitted under section 47.60, subdivision 2a.

EFFECTIVE DATE. This section is effective August 1, 2010, and applies to loans made on or after that date.

Sec. 7. Minnesota Statutes 2008, section 53.05, is amended to read:

53.05 POWERS, LIMITATION.

No industrial loan and thrift company may do any of the following:

(1) carry demand banking accounts; use the word "savings" unless the institution's investment certificates, savings accounts, and savings deposits are insured by the Federal Deposit Insurance Corporation and then only if the word is not followed by the words "and loan" in its corporate name; use the word "bank" or "banking" in its corporate name; operate as a savings bank;

(2) have outstanding at any one time certificates of indebtedness, savings accounts, and savings deposits 30 times the sum of capital stock and surplus of the company;

(3) accept trusts, except as provided in section 47.75, subdivision 1, or act as guardian, administrator, or judicial trustee in any form;

(4) deposit any of its funds in any banking corporation, unless that corporation has been designated by vote of a majority of directors or of the executive committee present at a meeting duly called, at which a quorum was in attendance;

(5) change any allocation of capital made pursuant to section 53.03 or reduce or withdraw in any way any portion of the capital stock and surplus without prior written approval of the commissioner of commerce;

(6) take any instrument in which blanks are left to be filled in after execution;

(7) lend money in excess of 20 percent of the total of its capital stock and surplus at all its authorized locations to a person primarily liable. Companies not issuing investment certificates of indebtedness under section 53.04 need not comply with the requirement if the amount of money lent does not exceed $100,000 of principal as defined by section 47.59, subdivision 1, paragraph (p).

However, industrial loan and thrift companies with deposit liabilities must comply with the provisions of section 48.24; ~~or~~

(8) issue cashier's checks pursuant to section 48.151, unless and at all times the aggregate liability to all creditors on these instruments is protected by a special fund in cash or due from banks to be used solely for payment of the cashier's checks; or

(9) make a consumer short-term loan, as defined under section 47.601:

(i) that exceeds the interest, fees, charges, or loan amounts allowable under section 47.60, subdivision 2 or 2a;

(ii) the proceeds of which are repaid by the proceeds of another consumer short-term loan or by the proceeds of a consumer small loan made under section 47.60, by that individual loan and thrift company or an affiliate;

(iii) the proceeds of which are applied to another consumer short-term loan or to a consumer small loan made under section 47.60, by that individual loan and thrift company or an affiliate;

(iv) which is repaid by the proceeds of another consumer short-term loan or of a consumer loan made under section 47.60, by that individual loan and thrift company or an affiliate; or

(v) which is split or divided such that a borrower will have outstanding more than one loan, resulting in the lender collecting a higher charge than permitted under section 47.60.

EFFECTIVE DATE. This section is effective August 1, 2010, and applies to loans made on or after that date.