

SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH SESSION

S.F. No. 2621

(SENATE AUTHORS: LATZ and Hayden)

DATE	D-PG	OFFICIAL STATUS
03/12/2014	6171	Introduction and first reading Referred to Commerce
03/19/2014	6388	Author added Hayden

A bill for an act

1.1 relating to commerce; regulating certain lenders, loans, lending practices, health
 1.2 insurance benefits, and property and casualty cancellations and nonrenewals;
 1.3 establishing a communications fraud act and prescribing criminal and civil
 1.4 penalties; amending Minnesota Statutes 2012, sections 47.60, subdivision 2;
 1.5 47.601, subdivision 2; 53.05; 53C.01, subdivisions 8, 12; 53C.02; 53C.08,
 1.6 subdivision 1, by adding a subdivision; 72A.20, by adding a subdivision; 332.32;
 1.7 proposing coding for new law in Minnesota Statutes, chapters 53C; 609.
 1.8

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

1.10 Section 1. Minnesota Statutes 2012, section 47.60, subdivision 2, is amended to read:

1.11 Subd. 2. **Authorization, terms, conditions, and prohibitions.** (a) In lieu of the
 1.12 interest, finance charges, or fees in any other law, a consumer small loan lender may
 1.13 charge the following, but in no event may these charges exceed an annual percentage rate
 1.14 of interest of 30 percent:

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

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

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

1.21 (4) for amounts in excess of \$250 and not greater than the maximum in subdivision
 1.22 1, paragraph (a), a charge may be added equal to six percent of the loan proceeds with a
 1.23 minimum of \$17.50 plus a \$5 administrative fee.

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

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

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

2.6 (e) On a loan transaction in which cash is advanced in exchange for a personal
2.7 check, a return check charge may be charged as authorized by section 604.113, subdivision
2.8 2, paragraph (a). The civil penalty provisions of section 604.113, subdivision 2, paragraph
2.9 (b), may not be demanded or assessed against the borrower.

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

2.17 Sec. 2. Minnesota Statutes 2012, section 47.601, subdivision 2, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.12 (e) A licensee may not knowingly enter into a consumer short-term loan with a
3.13 borrower if that borrower is in an extended repayment plan with any licensee until 14
3.14 days after the plan is paid in full.

3.15 Sec. 3. Minnesota Statutes 2012, section 53.05, is amended to read:

3.16 **53.05 POWERS, LIMITATION.**

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

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

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

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

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

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

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

3.34 (7) lend money in excess of 20 percent of the total of its capital stock and surplus at
3.35 all its authorized locations to a person primarily liable. Companies not issuing investment

4.1 certificates of indebtedness under section 53.04 need not comply with the requirement if
 4.2 the amount of money lent does not exceed \$100,000 of principal as defined by section
 4.3 47.59, subdivision 1, paragraph (p).

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

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

4.9 (9) make a consumer short-term loan, as defined in section 47.601, under any section
 4.10 of law other than section 47.60.

4.11 Sec. 4. Minnesota Statutes 2012, section 53C.01, subdivision 8, is amended to read:

4.12 Subd. 8. **Retail installment contract.** "Retail installment contract" means any
 4.13 agreement, entered into in this state, evidencing a retail installment sale of a motor vehicle,
 4.14 other than for the purpose of resale, when purchased primarily for personal, family or
 4.15 household use, pursuant to which title to, or a lien upon the motor vehicle is retained by
 4.16 the retail seller as security for the retail buyer's obligation. This term includes a mortgage,
 4.17 conditional sale contract, or any contract for the bailment or leasing of a motor vehicle by
 4.18 which the bailee or lessee contracts to pay as compensation for its use a sum substantially
 4.19 equivalent to the retail installment sale price of the motor vehicle and by which it is agreed
 4.20 that the bailee or lessee is bound to become, or has the option of becoming, the owner of
 4.21 such motor vehicle for no additional consideration or for nominal additional consideration.
 4.22 "Retail installment contract" does not include any agreement, entered into ~~in this state,~~
 4.23 evidencing an installment sale of a motor vehicle purchased primarily for use in business.
 4.24 For purposes of this subdivision, "business" means a commercial or industrial enterprise
 4.25 which is carried on for the purpose of active or passive investment or profit.

4.26 Sec. 5. Minnesota Statutes 2012, section 53C.01, subdivision 12, is amended to read:

4.27 Subd. 12. **Sales finance company.** "Sales finance company" means a person
 4.28 engaged, in whole or in part, in the business of purchasing retail installment contracts ~~in~~
 4.29 ~~this state~~ from one or more retail sellers. The term includes a bank, trust company, or
 4.30 industrial loan and thrift company, if so engaged. The term also includes a retail seller
 4.31 engaged, in whole or in part, in the business of creating and holding retail installment
 4.32 contracts. The term does not include the pledges of an aggregate number of the contracts
 4.33 to secure a bona fide loan thereon.

5.1 Sec. 6. Minnesota Statutes 2012, section 53C.02, is amended to read:

5.2 **53C.02 SALES FINANCE COMPANY; LICENSE, FEES, REFUND.**

5.3 (a) No person shall engage in the business of a sales finance company in this state
5.4 without a license therefor as provided in sections 53C.01 to 53C.14 provided, however,
5.5 that no bank, trust company, savings bank, savings association, or credit union, whether
5.6 state or federally chartered, industrial loan and thrift company, or licensee under the
5.7 Minnesota Regulated Loan Act authorized to do business ~~in this state~~ shall be required to
5.8 obtain a license under sections 53C.01 to 53C.14.

5.9 (b) The application for a license shall be in writing, under oath and in the form
5.10 prescribed by the commissioner. The application shall contain the name of the applicant;
5.11 date of incorporation, if incorporated; the address where the business is or is to be
5.12 conducted and similar information as to any branch office of the applicant; the name and
5.13 resident address of the owner or partners, or, if a corporation or association, of the directors,
5.14 trustees and principal officers, and other pertinent information the commissioner requires.

5.15 (c) The licensee fee for the fiscal year beginning July 1 and ending June 30 of the
5.16 following year, or any part thereof shall be the sum of \$250 for the principal place of
5.17 business of the licensee, and the sum of \$125 for each branch of the licensee; maintained
5.18 ~~in this state~~. Any licensee who proves to the satisfaction of the commissioner, by affidavit
5.19 or other proof satisfactory to the commissioner, that during the 12 calendar months of the
5.20 immediately preceding fiscal year, for which the license has been paid that the licensee
5.21 has not held retail installment contracts exceeding \$15,000 in amount, shall be entitled
5.22 to a refund of that portion of each license fee paid in excess of \$25. The commissioner
5.23 shall certify to the commissioner of management and budget that the licensee is entitled to
5.24 a refund, and payment thereof shall be made by the commissioner of management and
5.25 budget. The amount necessary to pay for the refundment of the license fee is appropriated
5.26 out of the general fund. All license fees received by the commissioner under sections
5.27 53C.01 to 53C.14 shall be deposited with the commissioner of management and budget.

5.28 (d) Each license shall specify the location of the office or branch and must be
5.29 conspicuously displayed there. In case the location be changed, the commissioner shall
5.30 endorse the change of location on the license.

5.31 (e) Upon the filing of such application, and the payment of the fee, the commissioner
5.32 shall issue a license to the applicant to engage in the business of a sales finance company
5.33 under and in accordance with the provisions of sections 53C.01 to 53C.14 for a period
5.34 which shall expire the last day of June next following the date of its issuance. The license
5.35 shall not be transferable or assignable. No licensee shall transact any business provided
5.36 for by sections 53C.01 to 53C.14 under any other name.

6.1 Sec. 7. **[53C.025] BOND.**

6.2 Before a license may be issued to a sales finance company, the applicant shall file
6.3 annually with and have approved by the commissioner a surety bond, issued by a bonding
6.4 company authorized to do business in this state in the principal amount of \$..... The
6.5 bond must run to the commissioner and is for the benefit of creditors of the sales finance
6.6 company for liability incurred by the sales finance company in connection with providing
6.7 its services. The commissioner may require a licensee to file a bond in an additional
6.8 amount if the commissioner considers it necessary to meet the requirements of this
6.9 section. In determining the additional amount of the bond which may be required, the
6.10 commissioner may require the licensee to file its financial records. In no case may the
6.11 bond be less than the initial \$..... or more than the outstanding liabilities.

6.12 Sec. 8. Minnesota Statutes 2012, section 53C.08, subdivision 1, is amended to read:

6.13 Subdivision 1. **Terms and limitations.** (a) Every retail installment contract shall
6.14 be in writing, shall contain all the agreements of the parties, shall be signed by the retail
6.15 buyer and seller, and a copy signed by the retail buyer shall be furnished to such retail
6.16 buyer at the time the retail buyer executes the contract. Until the copy signed by both the
6.17 retail buyer and retail seller shall be provided to the is received by a retail buyer within
6.18 seven days after delivery of the vehicle. With respect to any contract executed prior to
6.19 August 1, 1996, which has not been paid in full by the retail buyer, the retail seller shall
6.20 provide such retail buyer a copy signed by both the retail buyer and retail seller within 120
6.21 days after August 1, 1996 who has not taken delivery of the motor vehicle, the retail buyer
6.22 may cancel the agreement and upon cancellation must receive a refund from the holder of
6.23 the retail installment contract of all payments made by the retail buyer.

6.24 (b) No provisions for confession of judgment or power of attorney therefor contained
6.25 in any retail installment contract or contained in a separate agreement relating thereto,
6.26 shall be valid or enforceable.

6.27 (c) The holder of a precomputed retail installment contract may, if the contract so
6.28 provides, collect a delinquency and collection charge on each installment in arrears for a
6.29 period not less than ten days in an amount not in excess of five percent of each installment
6.30 or \$5, whichever is greater. In addition to such delinquency and collection charge, the
6.31 retail installment contract, whether interest-bearing or precomputed, may provide for the
6.32 payment of attorneys' fees not exceeding 15 percent of the amount due and payable under
6.33 such contract where such contract is referred to an attorney not a salaried employee of the
6.34 holder of the contract for collection plus the court costs.

7.1 (d) Unless written notice has been given to the retail buyer of actual or intended
 7.2 assignment of a retail installment contract, payment thereunder or tender thereof made
 7.3 by the retail buyer to the last known holder of such contract shall be binding upon all
 7.4 subsequent holders or assignees.

7.5 (e) Upon written request from the retail buyer, the holder of the retail installment
 7.6 contract shall give or forward to the retail buyer a written statement of the dates and
 7.7 amounts of payments and the total amount unpaid under such contract. A retail buyer shall
 7.8 be given a written receipt for any payment when made in cash.

7.9 Sec. 9. Minnesota Statutes 2012, section 53C.08, is amended by adding a subdivision
 7.10 to read:

7.11 Subd. 6. **Regulatory agency.** A retail installment contract must contain the
 7.12 following statement: "This contract is regulated under the provisions of Minnesota
 7.13 Statutes, chapter 53C. The regulatory agency is: Minnesota Department of Commerce, 85
 7.14 Seventh Place East, Suite 500, St. Paul, Minnesota 55101-2198."

7.15 Sec. 10. Minnesota Statutes 2012, section 72A.20, is amended by adding a subdivision
 7.16 to read:

7.17 Subd. 40. **Claims arising from natural causes; limitations on cancellations**
 7.18 **and nonrenewals.** An insurer shall not cancel, refuse to renew, reduce the limits of
 7.19 coverage, or eliminate coverage for damages to property based solely on claims arising
 7.20 from natural causes.

7.21 For purposes of this subdivision: (1) a "natural cause" is an act occasioned
 7.22 exclusively by the violence of nature where the policyholder's action did not cause the
 7.23 damage or injury; and (2) "solely" means that claims arising from natural causes and that
 7.24 are beyond the insured's control cannot be the event that triggers the cancellation, refusal
 7.25 to renew, reduction in the limits of coverage, or elimination of coverage.

7.26 Sec. 11. Minnesota Statutes 2012, section 332.32, is amended to read:

7.27 **332.32 EXCLUSIONS.**

7.28 (a) The term "collection agency" shall not include persons whose collection activities
 7.29 are confined to and are directly related to the operation of a business other than that of
 7.30 a collection agency such as, but not limited to banks when collecting accounts owed to
 7.31 the banks and when the bank will sustain any loss arising from uncollectible accounts,
 7.32 abstract companies doing an escrow business, real estate brokers, public officers, persons
 7.33 acting under order of a court, lawyers exempt attorneys at law, trust companies, insurance

8.1 companies, credit unions, savings associations, loan or finance companies unless they
 8.2 are engaged in asserting, enforcing or prosecuting unsecured claims which have been
 8.3 purchased from any person, firm, or association when there is recourse to the seller for
 8.4 all or part of the claim if the claim is not collected. For purposes of this paragraph,
 8.5 "exempt attorneys at law" means attorneys licensed or otherwise authorized to practice
 8.6 law in this state:

8.7 (1) whose exclusive and principal practice does not involve collection activities; and
 8.8 (2) who do not have a business relationship with a collection agency that involves
 8.9 collection activities.

8.10 (b) The term "collection agency" shall not include a trade association performing
 8.11 services authorized by section 604.15, subdivision 4a, but the trade association in
 8.12 performing the services may not engage in any conduct that would be prohibited for a
 8.13 collection agency under section 332.37.

8.14 Sec. 12. **[609.8051] COMMUNICATIONS FRAUD.**

8.15 Subdivision 1. Definitions. (a) As used in this section, the terms in paragraphs
 8.16 (b) to (f) have the meanings given them.

8.17 (b) "Communicate" means to originate, emit, disseminate, transmit, transfer, or
 8.18 cause another person to originate, emit, disseminate, transmit, or transfer, signs, signals,
 8.19 writing, images, sounds, data, or intelligences of any nature, in whole or in part by
 8.20 any method including, but not limited to, mail, television, Internet, cable, wire, fiber
 8.21 optic, wireless, radio, satellite, electromagnetic, photoelectronic, or photooptical system,
 8.22 including telecommunications and data communications.

8.23 (c) "Scheme to defraud" means an ongoing course of conduct with the intent to
 8.24 obtain money, property, services, or identity from one or more persons by false or
 8.25 fraudulent statements, pretenses, representations, or promises.

8.26 (d) "Telecommunication" means the origination, emission, dissemination,
 8.27 transmission, or reception of a communication by any method, including, but not limited
 8.28 to, a fiber optic, electronic, magnetic, optical, digital, or analog method.

8.29 (e) "Property," "services," and "value" have the meanings given in section 609.52.

8.30 (f) "Identity" has the meaning given in section 609.527.

8.31 Subd. 2. Fraud. (a) A person is guilty of communications fraud and may
 8.32 be sentenced as provided in subdivision 3 if the person knowingly engages in a
 8.33 communication with the purpose of executing or otherwise furthering a scheme to defraud.

8.34 (b) If a person violates paragraph (a), and the violation occurs as part of a course
 8.35 of conduct involving additional violations or attempted violations of paragraph (a), or

9.1 violations, attempted violations, or conspiracies to violate section 609.52 or 609.527, the
9.2 court may aggregate the value of the money, property, services, and identities obtained or
9.3 attempted to be obtained by the person.

9.4 Subd. 3. **Penalty.** A person who commits communications fraud may be sentenced
9.5 as follows:

9.6 (1) if the violation involves a single victim and the total combined value of the
9.7 money, property, services, or identity the person obtained or intended to obtain is \$250 or
9.8 less, the person may be sentenced as provided in section 609.52, subdivision 3, clause (5);

9.9 (2) if the violation involves a single victim and the total combined value of the
9.10 money, property, services, or identity the person obtained or intended to obtain is more
9.11 than \$250 but not more than \$500, the person may be sentenced as provided in section
9.12 609.52, subdivision 3, clause (4);

9.13 (3) if the offense involves two or three victims or the total combined value of the
9.14 money, property, services, or identities the person obtained or intended to obtain is more
9.15 than \$500 but not more than \$2,500, the person may be sentenced as provided in section
9.16 609.52, subdivision 3, clause (3);

9.17 (4) if the offense involves more than three but not more than seven victims or the
9.18 total combined value of the money, property, services, or identities the person obtained
9.19 or intended to obtain is more than \$2,500, the person may be sentenced as provided in
9.20 section 609.52, subdivision 3, clause (2); and

9.21 (5) if the offense involves eight or more victims or the total combined value of the
9.22 money, property, services, or identities the person obtained or intended to obtain is more
9.23 than \$35,000, the person may be sentenced as provided in section 609.52, subdivision
9.24 3, clause (1).

9.25 Subd. 4. **Vulnerable adults.** When the victim of the violation is a vulnerable adult,
9.26 as defined by section 609.232, subdivision 11, a person who violates subdivision 2 may
9.27 also be subject to the criminal penalties of section 609.2335.

9.28 Subd. 5. **No bar to conviction.** Notwithstanding section 609.035 or 609.04, a
9.29 prosecution for or conviction of the crime of communications fraud under subdivision 2 is
9.30 not a bar to conviction of or punishment for any other crime.

9.31 Subd. 6. **Venue.** Notwithstanding anything to the contrary in section 627.01, a
9.32 violation committed under subdivision 2 may be prosecuted in:

9.33 (1) the county where the offense occurred;

9.34 (2) the county of the residence or place of business of the victim; or

10.1 (3) if violations are committed by a person in more than one county, the person may
10.2 be prosecuted in any county in which one of the violations was committed for all of the
10.3 violations aggregated under this section.

10.4 Subd. 7. **Civil action.** A person who has been injured by a violation of subdivision
10.5 2 may bring a civil action for three times the amount of actual damages sustained by
10.6 that person or \$1,500, whichever is greater, and costs and disbursements including, at a
10.7 minimum, reasonable attorney fees.

10.8 **EFFECTIVE DATE.** This section is effective August 1, 2014, and applies to
10.9 violations committed on or after that date.