

CHAPTER 68—S.F.No. 806

An act relating to financial institutions; regulating payday lending; providing penalties and remedies; amending Minnesota Statutes 2008, sections 47.60, subdivisions 4, 6; 53.09, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 47.

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

Section 1. Minnesota Statutes 2008, section 47.60, subdivision 4, is amended to read:

Subd. 4. **Books of account; annual report; schedule of charges; disclosures.** (a) A lender filing under subdivision 3 shall keep and use in the business books, accounts, and records as will enable the commissioner to determine whether the filer is complying with this section.

(b) A lender filing under subdivision 3 shall annually on or before March 15 file a report to the commissioner giving the information the commissioner reasonably requires concerning the business and operations during the preceding calendar year, including the information required to be reported under section 47.601, subdivision 5.

(c) A lender filing under subdivision 3 shall display prominently in each place of business a full and accurate schedule, to be approved by the commissioner, of the charges to be made and the method of computing those charges. A lender shall furnish a copy of the contract of loan to a person obligated on it or who may become obligated on it at any time upon the request of that person. This is in addition to any disclosures required by the federal Truth in Lending Act, United States Code, title 15.

(d) A lender filing under subdivision 3 shall, upon repayment of the loan in full, mark indelibly every obligation signed by the borrower with the word "Paid" or "Canceled" within 20 days after repayment.

(e) A lender filing under subdivision 3 shall display prominently, in each licensed place of business, a full and accurate statement of the charges to be made for loans made under this section. The statement of charges must be displayed in a notice, on plastic or other durable material measuring at least 12 inches by 18 inches, headed "CONSUMER NOTICE REQUIRED BY THE STATE OF MINNESOTA." The notice shall include, immediately above the statement of charges, the following sentence, or a substantially similar sentence approved by the commissioner: "These loan charges are higher than otherwise permitted under Minnesota law. Minnesota law permits these higher charges only because short-term small loans might otherwise not be available to consumers. If you have another source of a loan, you may be able to benefit from a lower interest rate and other loan charges." The notice must not contain any other statement or information, unless the commissioner has determined that the additional statement or information is necessary to prevent confusion or inaccuracy. The notice must be designed with a type size that is large enough to be readily noticeable and legible. The form of the notice must be approved by the commissioner prior to its use.

EFFECTIVE DATE. This section is effective for reports made for the 2009 calendar year.

Sec. 2. Minnesota Statutes 2008, section 47.60, subdivision 6, is amended to read:

Subd. 6. **Penalties for violation.** A person ~~or the person's members, officers, directors, agents, and employees~~ who ~~violates~~ violates or ~~participate~~ participates in the violation of any of the provisions of this section ~~may be~~ is liable in the same manner as in section ~~56.19~~ 47.601, subdivision 7.

EFFECTIVE DATE. This section is effective August 1, 2009, and applies to loans made on or after that date.

Sec. 3. **[47.601] CONSUMER SHORT-TERM LOANS.**

Subdivision 1. **Definitions.** (a) For the purposes of this section, the terms defined in this subdivision have the meanings given.

(b) "Borrower" means an individual who obtains a consumer short-term loan primarily for personal, family, or household purposes.

(c) "Commissioner" means the commissioner of commerce.

(d) "Consumer short-term loan" means a loan to a borrower which has a principal amount, or an advance on a credit limit, of \$1,000 or less and requires a minimum payment within 60 days of loan origination or credit advance of more than 25 percent of the principal balance or credit advance. For the purposes of this section, each new advance of money to a borrower under a consumer short-term loan agreement constitutes a new consumer short-term loan. A "consumer short-term loan" does not include any transaction made under chapter 325J or a loan made by a consumer short-term lender where, in the event of default on the loan, the sole recourse for recovery of the amount owed, other than a lawsuit for damages for the debt, is to proceed against physical goods pledged by the borrower as collateral for the loan.

(e) "Consumer short-term lender" means an individual or entity engaged in the business of making or arranging consumer short-term loans, other than a state or federally chartered bank, savings bank, or credit union.

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, 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.

Subd. 3. **Debt collection.** A consumer short-term lender collecting or attempting to collect on an indebtedness in connection with a consumer short-term loan must not engage in the prohibited debt collection practices referenced in section 332.37.

Subd. 4. **Record keeping; annual reports; notifications.** In addition to any other information required to be filed under chapters 45 through 56, a consumer short-term lender must annually file a report with the commissioner that contains the following information for each calendar year:

(1) the total dollar amount, over and above principal, collected on consumer short-term loans;

(2) the average annual percentage rate and range of annual percentage rates for consumer short-term loans;

(3) the number of individual borrowers who obtained one or more consumer short-term loans;

(4) a breakdown of the number of individual borrowers identified in clause (3) by the number of individual borrowers who obtained:

(i) five or more loans;

(ii) ten or more loans;

(iii) 15 or more loans; and

(iv) 20 or more loans; and

(5) the total number and dollar amount of loans charged off or written off.

Subd. 5. **Jurisdiction.** For the purposes of this section, a consumer short-term loan transaction is deemed to take place in the state of Minnesota if the borrower is a Minnesota resident and the borrower completes the transaction, either personally or electronically, while physically located in the state of Minnesota.

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 interest, fees, charges, or loan amounts exceed the interest, fees, charges, or loan amounts allowable under sections 47.59, subdivision 6, and 47.60, subdivision 2.

Subd. 7. Attorney general enforcement. The attorney general shall enforce this section under section 8.31.

Subd. 8. Remedies cumulative. The remedies provided in this section are cumulative and do not restrict any remedy that is otherwise available. The provisions of this section are not exclusive and are in addition to any other requirements, rights, remedies, and penalties provided by law.

EFFECTIVE DATE. This section is effective August 1, 2009, and applies to loans made on or after that date.

Sec. 4. Minnesota Statutes 2008, section 53.09, subdivision 2, is amended to read:

Subd. 2. Annual report. (1) Each industrial loan and thrift company shall annually on or before the first day of March file a report with the commissioner stating in detail, under appropriate heads, its assets and liabilities at the close of business on the last day of the preceding calendar year and, if applicable, information required under section 47.601, subdivision 5. This report shall be made under oath in the form prescribed by the commissioner.

(2) Each industrial loan and thrift company which holds authority to accept accounts pursuant to section 53.04, subdivision 5, shall in place of the requirement in clause (1) submit the reports required of state banks pursuant to section 48.48.

(3) Within 30 days following a change in controlling ownership of the capital stock of an industrial loan and thrift company, it shall file a written report with the commissioner stating in detail the nature of such change in ownership.

EFFECTIVE DATE. This section is effective for reports made for the 2009 calendar year.

Presented to the governor May 8, 2009

Signed by the governor May 12, 2009, 4:46 p.m.