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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 4345

04/09/2018 Authored by Davnie, Bly, Clark, Lee and Schultz
The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

1.1 A bill for an act
1.2 relating to commerce; regulating payday lending; amending Minnesota Statutes
1.3 2016, sections 47.59, subdivisions 1, 2; 47.60, subdivisions 1, 2, 4; 47.601,
1.4 subdivision 2; 53.04, subdivision 3a.

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

1.6 Section 1. Minnesota Statutes 2016, section 47.59, subdivision 1, is amended to read:

1.7 Subdivision 1. **Definitions.** For purposes of this section, the following definitions shall
1.8 apply.

1.9 (a) "Actuarial method" has the meaning given the term in Code of Federal Regulations,
1.10 title 12, part 226, and appendix J thereto.

1.11 (b) "Annual percentage rate" has the meaning given the term in Code of Federal
1.12 Regulations, title 12, part 226, but using the definition of "finance charge" used in this
1.13 section.

1.14 (c) "Borrower" means a debtor under a loan or a purchaser or debtor under a credit sale
1.15 contract.

1.16 (d) "Business purpose" means a purpose other than a personal, family, household, or
1.17 agricultural purpose.

1.18 (e) "Cardholder" means a person to whom a credit card is issued or who has agreed with
1.19 the financial institution to pay obligations arising from the issuance to or use of the card by
1.20 another person.

1.21 (f) "Consumer loan" means a loan made by a financial institution in which:

1.22 (1) the debtor is a person other than an organization;

2.1 (2) the debt is incurred primarily for a personal, family, or household purpose; and

2.2 (3) the debt is payable in installments or a finance charge is made.

2.3 (g) "Credit" means the right granted by a financial institution to a borrower to defer
2.4 payment of a debt, to incur debt and defer its payment, or to purchase property or services
2.5 and defer payment.

2.6 (h) "Credit card" means a card or device issued under an arrangement pursuant to which
2.7 a financial institution gives to a cardholder the privilege of obtaining credit from the financial
2.8 institution or other person in purchasing or leasing property or services, obtaining loans, or
2.9 otherwise. A transaction is "pursuant to a credit card" only if credit is obtained according
2.10 to the terms of the arrangement by transmitting information contained on the card or device
2.11 orally, in writing, by mechanical or electronic methods, or in any other manner. A transaction
2.12 is not "pursuant to a credit card" if the card or device is used solely in that transaction to:

2.13 (1) identify the cardholder or evidence the cardholder's creditworthiness and credit is
2.14 not obtained according to the terms of the arrangement;

2.15 (2) obtain a guarantee of payment from the cardholder's deposit account, whether or not
2.16 the payment results in a credit extension to the cardholder by the financial institution; or

2.17 (3) effect an immediate transfer of funds from the cardholder's deposit account by
2.18 electronic or other means, whether or not the transfer results in a credit extension to the
2.19 cardholder by the financial institution.

2.20 (i) "Credit sale contract" means a contract evidencing a credit sale. "Credit sale" means
2.21 a sale of goods or services, or an interest in land, in which:

2.22 (1) credit is granted by a seller who regularly engages as a seller in credit transactions
2.23 of the same kind; and

2.24 (2) the debt is payable in installments or a finance charge is made.

2.25 (j) "Finance charge" has the meaning given in Code of Federal Regulations, title 12, part
2.26 226, except that the following will not in any event be considered a finance charge:

2.27 (1) a charge as a result of default or delinquency under subdivision 6 if made for actual
2.28 unanticipated late payment, delinquency, default, or other similar occurrence, and a charge
2.29 made for an extension or deferment under subdivision 5, unless the parties agree that these
2.30 charges are finance charges;

2.31 (2) an additional charge under subdivision 6;

3.1 (3) a discount, if a financial institution purchases a loan at less than the face amount of
3.2 the obligation or purchases or satisfies obligations of a cardholder pursuant to a credit card
3.3 and the purchase or satisfaction is made at less than the face amount of the obligation;

3.4 (4) fees paid by a borrower to a broker, provided the financial institution or a person
3.5 described in subdivision 4 does not require use of the broker to obtain credit; or

3.6 (5) a commission, expense reimbursement, or other sum received by a financial institution
3.7 or a person described in subdivision 4 in connection with insurance described in subdivision
3.8 6.

3.9 (k) "Financial institution" means a state or federally chartered bank, a state or federally
3.10 chartered bank and trust, a trust company with banking powers, a state or federally chartered
3.11 saving bank, a state or federally chartered savings association, an industrial loan and thrift
3.12 company organized under chapter 53, a regulated lender organized under chapter 56, or an
3.13 operating subsidiary of any such institution.

3.14 (l) "Loan" means:

3.15 (1) the creation of debt by the financial institution's payment of money to the borrower
3.16 or a third person for the account of the borrower;

3.17 (2) the creation of debt pursuant to a credit card in any manner, including a cash advance
3.18 or the financial institution's honoring a draft or similar order for the payment of money
3.19 drawn or accepted by the borrower, paying or agreeing to pay the borrower's obligation, or
3.20 purchasing or otherwise acquiring the borrower's obligation from the obligee or the borrower's
3.21 assignee;

3.22 (3) the creation of debt by a cash advance to a borrower pursuant to an overdraft line of
3.23 credit arrangement;

3.24 (4) the creation of debt by a credit to an account with the financial institution upon which
3.25 the borrower is entitled to draw immediately;

3.26 (5) the forbearance of debt arising from a loan; and

3.27 (6) the creation of debt pursuant to open-end credit.

3.28 "Loan" does not include the forbearance of debt arising from a sale or lease, a credit
3.29 sale contract, or an overdraft from a person's deposit account with a financial institution
3.30 which is not pursuant to a written agreement to pay overdrafts with the right to defer
3.31 repayment thereof.

3.32 (m) "Official fees" means:

4.1 (1) fees and charges which actually are or will be paid to public officials for determining
 4.2 the existence of or for perfecting, releasing, terminating, or satisfying a security interest or
 4.3 mortgage relating to a loan or credit sale, and any separate fees or charges which actually
 4.4 are or will be paid to public officials for recording a notice described in section 580.032,
 4.5 subdivision 1; and

4.6 (2) premiums payable for insurance in lieu of perfecting a security interest or mortgage
 4.7 otherwise required by a financial institution in connection with a loan or credit sale, if the
 4.8 premium does not exceed the fees and charges described in clause (1), which would otherwise
 4.9 be payable.

4.10 (n) "Open-end credit" has the meaning given in Code of Federal Regulations, title 12,
 4.11 part 226.

4.12 ~~(n)~~ (o) "Organization" means a corporation, government, government subdivision or
 4.13 agency, trust, estate, partnership, joint venture, cooperative, limited liability company,
 4.14 limited liability partnership, or association.

4.15 ~~(o)~~ (p) "Person" means a natural person or an organization.

4.16 ~~(p)~~ (q) "Principal" means the total of:

4.17 (1) the amount paid to, received by, or paid or repayable for the account of, the borrower;
 4.18 and

4.19 (2) to the extent that payment is deferred:

4.20 (i) the amount actually paid or to be paid by the financial institution for additional charges
 4.21 permitted under this section; and

4.22 (ii) prepaid finance charges.

4.23 Sec. 2. Minnesota Statutes 2016, section 47.59, subdivision 2, is amended to read:

4.24 Subd. 2. **Application.** Extensions of credit or purchases of extensions of credit by
 4.25 financial institutions under sections 47.20, 47.21, 47.201, 47.204, 47.58, ~~47.60~~, 48.153,
 4.26 48.185, 48.195, 59A.01 to 59A.15, 334.01, 334.011, 334.012, 334.022, 334.06, and 334.061
 4.27 to 334.19 may, but need not, be made according to those sections in lieu of the authority
 4.28 set forth in this section to the extent those sections authorize the financial institution to make
 4.29 extensions of credit or purchase extensions of credit under those sections. If a financial
 4.30 institution elects to make an extension of credit or to purchase an extension of credit under
 4.31 those other sections, the extension of credit or the purchase of an extension of credit is
 4.32 subject to those sections and not this section, except this subdivision, and except as expressly

5.1 provided in those sections. A financial institution may also charge an organization a rate of
5.2 interest and any charges agreed to by the organization and may calculate and collect finance
5.3 and other charges in any manner agreed to by that organization. Except for extensions of
5.4 credit a financial institution elects to make under section 334.01, 334.011, 334.012, 334.022,
5.5 334.06, or 334.061 to 334.19, chapter 334 does not apply to extensions of credit made
5.6 according to this section or the sections listed in this subdivision. This subdivision does not
5.7 authorize a financial institution to extend credit or purchase an extension of credit under
5.8 any of the sections listed in this subdivision if the financial institution is not authorized to
5.9 do so under those sections. A financial institution extending credit under any of the sections
5.10 listed in this subdivision shall specify in the promissory note, contract, or other loan document
5.11 the section under which the extension of credit is made.

5.12 Sec. 3. Minnesota Statutes 2016, section 47.60, subdivision 1, is amended to read:

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

5.15 (a) "Consumer small loan" is a loan transaction in which cash is advanced to a borrower
5.16 for the borrower's own personal, family, or household purpose. A consumer small loan is
5.17 a short-term, unsecured loan to be repaid in a single installment. The cash advance of a
5.18 consumer small loan is equal to or less than ~~\$350~~ \$500. A consumer small loan includes an
5.19 indebtedness evidenced by but not limited to a promissory note or agreement to defer the
5.20 presentation of a personal check for a fee.

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

5.24 Sec. 4. Minnesota Statutes 2016, section 47.60, subdivision 2, is amended to read:

5.25 Subd. 2. **Authorization, terms, conditions, and prohibitions.** (a) In lieu of the interest,
5.26 finance charges, or fees in any other law, a consumer small loan lender may charge the
5.27 following:

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

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

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

6.1 (4) for amounts in excess of \$250 ~~and not greater than the maximum in subdivision 1,~~
 6.2 ~~paragraph (a),~~ but not more than \$350, a charge may be added equal to six percent of the
 6.3 loan proceeds with a minimum of \$17.50 plus a \$5 administrative fee; and

6.4 (5) for amounts in excess of \$350 and not greater than the maximum in subdivision 1,
 6.5 paragraph (a), a charge may be added equal to five percent of the loan proceeds with a
 6.6 minimum of \$20 plus a \$5 administrative fee.

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

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

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

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

6.18 (f) A loan made under this section must not be repaid by the proceeds of another loan
 6.19 made under this section by the same lender or related interest. The proceeds from a loan
 6.20 made under this section must not be applied to another loan from the same lender or related
 6.21 interest. No loan to a single borrower made pursuant to this section shall be split or divided
 6.22 and no single borrower shall have outstanding more than one loan with the result of collecting
 6.23 a higher charge than permitted by this section or in an aggregate amount of principal exceed
 6.24 at any one time the maximum of ~~\$350~~ \$500.

6.25 Sec. 5. Minnesota Statutes 2016, section 47.60, subdivision 4, is amended to read:

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

6.30 (b) A lender filing under subdivision 3 shall annually on or before March 15 file a report
 6.31 to the commissioner giving the information the commissioner reasonably requires concerning
 6.32 the business and operations during the preceding calendar year, including the information
 6.33 required to be reported under section 47.601, subdivision 4.

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

7.7 (d) A lender filing under subdivision 3 shall, upon repayment of the loan in full, mark
7.8 indelibly every obligation signed by the borrower with the word "Paid" or "Canceled" within
7.9 20 days after repayment.

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

7.25 (f) Every consumer small loan lender shall report to the commissioner within 30 days
7.26 any material changes to any of the information submitted by the consumer small loan lender's
7.27 original application.

7.28 Sec. 6. Minnesota Statutes 2016, section 47.601, subdivision 2, is amended to read:

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

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

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

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

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

8.6 (ii) in which interest rates, fees, charges, or loan amounts exceed those allowable under
8.7 section 47.59, subdivision 6, paragraph (c), clause (3), or paragraph (d), or 47.60, subdivision
8.8 2, other than by de minimis amounts if no pattern or practice exists.

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

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

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

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

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

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

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

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

8.24 Sec. 7. Minnesota Statutes 2016, section 53.04, subdivision 3a, is amended to read:

8.25 Subd. 3a. **Loans.** (a) The right to make loans, secured or unsecured, at the rates and on
8.26 the terms and other conditions permitted under chapters 47 and 334. Loans made under this
8.27 authority must be in amounts in compliance with section 53.05, clause (7). A licensee making
8.28 a loan under this chapter secured by a lien on real estate shall comply with the requirements
8.29 of section 47.20, subdivision 8. To the extent a licensee under this chapter makes loans that
8.30 meet the definition of a "consumer small loan" under section 47.60, subdivision 1, paragraph

9.1 (a), or a "consumer short-term loan" under section 47.601, subdivision 1, paragraph (d),
9.2 such loans are governed by sections 47.60 and 47.601.

9.3 (b) Loans made under this subdivision may be secured by real or personal property, or
9.4 both. If the proceeds of a loan secured by a first lien on the borrower's primary residence
9.5 are used to finance the purchase of the borrower's primary residence, the loan must comply
9.6 with the provisions of section 47.20.

9.7 (c) An agency or instrumentality of the United States government or a corporation
9.8 otherwise created by an act of the United States Congress or a lender approved or certified
9.9 by the secretary of housing and urban development, or approved or certified by the
9.10 administrator of veterans affairs, or approved or certified by the administrator of the Farmers
9.11 Home Administration, or approved or certified by the Federal Home Loan Mortgage
9.12 Corporation, or approved or certified by the Federal National Mortgage Association, that
9.13 engages in the business of purchasing or taking assignments of mortgage loans and undertakes
9.14 direct collection of payments from or enforcement of rights against borrowers arising from
9.15 mortgage loans, is not required to obtain a certificate of authorization under this chapter in
9.16 order to purchase or take assignments of mortgage loans from persons holding a certificate
9.17 of authorization under this chapter.

9.18 (d) This subdivision does not authorize an industrial loan and thrift company to make
9.19 loans under an overdraft checking plan.