

SENATE
STATE OF MINNESOTA
NINETIETH SESSION

S.F. No. 3599

(SENATE AUTHORS: CHAMBERLAIN)

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OFFICIAL STATUS
Introduction and first reading
Referred to Commerce and Consumer Protection Finance and Policy

- 1.1 A bill for an act
- 1.2 relating to commerce; modifying allowable finance charges for loans; amending
- 1.3 Minnesota Statutes 2016, section 47.59, subdivisions 3, 6.
- 1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.5 Section 1. Minnesota Statutes 2016, section 47.59, subdivision 3, is amended to read:
- 1.6 Subd. 3. **Finance charge for loans.** (a) With respect to a loan, including a loan pursuant
- 1.7 to open-end credit but excluding open-end credit pursuant to a credit card, a financial
- 1.8 institution may contract for and receive a finance charge on the unpaid balance of the
- 1.9 principal amount not to exceed the greater of:
- 1.10 (1) an annual percentage rate not exceeding ~~21.75~~ 29.99 percent; or
- 1.11 (2) the total of:
- 1.12 (i) ~~33~~ 36 percent per year on that part of the unpaid balance of the principal amount not
- 1.13 exceeding ~~\$1,125~~ \$5,000; and
- 1.14 (ii) ~~19~~ 25 percent per year on that part of the unpaid balance of the principal amount
- 1.15 exceeding ~~\$1,125~~ \$5,000.
- 1.16 With respect to open-end credit pursuant to a credit card, the financial institution may
- 1.17 contract for and receive a finance charge on the unpaid balance of the principal amount at
- 1.18 an annual percentage rate not exceeding 18 percent per year.
- 1.19 (b) On a loan where the finance charge is calculated according to the method provided
- 1.20 for in paragraph (a), clause (2), the finance charge must be contracted for and earned as
- 1.21 provided in that provision or at the single annual percentage rate computed to the nearest

one-tenth of one percent that would earn the same total finance charge at maturity of the contract as would be earned by the application of the graduated rates provided in paragraph (a), clause (2), when the debt is paid according to the agreed terms and the calculations are made according to the actuarial method.

(c) With respect to a loan, the finance charge must be considered not to exceed the maximum annual percentage rate permitted under this section if the finance charge contracted for and received does not exceed the equivalent of the maximum annual percentage rate calculated in accordance with Code of Federal Regulations, title 12, part 226, but using the definition of finance charge provided in this section.

(d) This subdivision does not limit or restrict the manner of calculating the finance charge, whether by way of add-on, discount, discount points, precomputed charges, single annual percentage rate, variable rate, interest in advance, compounding, average daily balance method, or otherwise, if the annual percentage rate does not exceed that permitted by this section. Discount points permitted by this paragraph and not collected but included in the principal amount must not be included in the amount on which credit insurance premiums are calculated and charged.

(e) With respect to a loan secured by real estate, if a finance charge is calculated or collected in advance, or included in the principal amount of the loan, and the borrower prepays the loan in full, the financial institution shall credit the borrower with a refund of the charge to the extent that the annual percentage rate yield on the loan would exceed the maximum rate permitted under paragraph (a), taking into account the prepayment. The refund need not be made if it would be less than \$7.50.

(f) With respect to all other loans, if the finance charge is calculated or collected in advance, or included in the principal amount of the loan, and the borrower prepays the loan in full, the financial institution shall credit the borrower with a refund of the charge to the extent the annual percentage rate yield on the loan would exceed the annual percentage rate on the loan as originally determined under paragraph (a) and taking into account the prepayment. The refund need not be made if it would be less than \$7.50.

(g) For the purpose of calculating the refund under this subdivision, the financial institution may assume that the contract was paid before the date of prepayment according to the schedule of payments under the loan and that all payments were paid on their due dates.

(h) For loans repayable in substantially equal successive monthly installments, the financial institution may calculate the refund under paragraph (f) as the portion of the finance

charge allocable on an actuarial basis to all wholly unexpired payment periods following the date of prepayment, based on the annual percentage rate on the loan as originally determined under paragraph (a), and for the purpose of calculating the refund may assume that all payments are made on the due date.

(i) The dollar amounts in this subdivision, subdivision 6, paragraph (a), clause (4), and the dollar amount of original principal amount of closed-end credit in subdivision 6, paragraph (d), shall change periodically, as provided in this section, according to and to the extent of changes in the implicit price deflator for the gross domestic product, 2005 = 100, compiled by the United States Department of Commerce, and hereafter referred to as the index. The index for December 2011 is the reference base index for adjustments of dollar amounts.

(j) The designated dollar amounts shall change on July 1 of each even-numbered year if the percentage of change, calculated to the nearest whole percentage point, between the index for December of the preceding year and the reference base index is ten percent or more; but

(1) the portion of the percentage change in the index in excess of a multiple of ten percent shall be disregarded and the dollar amounts shall change only in multiples of ten percent of the amounts appearing in Laws 1995, chapter 202, on May 24, 1995; and

(2) the dollar amounts shall not change if the amounts required by this section are those currently in effect pursuant to Laws 1995, chapter 202, as a result of earlier application of this section.

(k) If the index is revised, the percentage of change pursuant to this section shall be calculated on the basis of the revised index. If a revision of the index changes the reference base index, a revised reference base index shall be determined by multiplying the reference base index then applicable by the rebasing factor furnished by the Department of Commerce. If the index is superseded, the index referred to in this section is the one represented by the Department of Commerce as reflecting most accurately changes in the purchasing power of the dollar for consumers.

(l) The commissioner shall:

(1) announce and publish on or before April 30 of each year in which dollar amounts are to change, the changes in dollar amounts required by paragraph (j);

(2) announce and publish promptly after the changes occur, changes in the index required by paragraph (k) including, if applicable, the numerical equivalent of the reference base

4.1 index under a revised reference base index and the designation or title of any index
4.2 superseding the index; and

4.3 (3) promptly notify the revisor of statutes in writing of the changes announced and
4.4 published by the commissioner pursuant to clauses (1) and (2). The revisor shall publish
4.5 the changes in the next edition of Minnesota Statutes.

4.6 (m) A person does not violate this chapter with respect to a transaction otherwise
4.7 complying with this chapter if that person relies on dollar amounts either determined
4.8 according to paragraph (j), clause (2), or appearing in the last publication of the commissioner
4.9 announcing the then current dollar amounts.

4.10 (n) The adjustments provided in this section shall not be affected unless explicitly
4.11 provided otherwise by law.

4.12 Sec. 2. Minnesota Statutes 2016, section 47.59, subdivision 6, is amended to read:

4.13 Subd. 6. **Additional charges.** (a) For purposes of this subdivision, "financial institution"
4.14 includes a person described in subdivision 4, paragraph (a). In addition to the finance charges
4.15 permitted by this section, a financial institution may contract for and receive the following
4.16 additional charges that may be included in the principal amount of the loan or credit sale
4.17 unpaid balances:

4.18 (1) official fees and taxes;

4.19 (2) charges for insurance as described in paragraph (b);

4.20 (3) with respect to a loan or credit sale contract secured by real estate, the following
4.21 "closing costs," if they are bona fide, reasonable in amount, and not for the purpose of
4.22 circumvention or evasion of this section:

4.23 (i) fees or premiums for title examination, abstract of title, title insurance, surveys, or
4.24 similar purposes;

4.25 (ii) fees for preparation of a deed, mortgage, settlement statement, or other documents,
4.26 if not paid to the financial institution;

4.27 (iii) escrows for future payments of taxes, including assessments for improvements,
4.28 insurance, and water, sewer, and land rents;

4.29 (iv) fees for notarizing deeds and other documents;

4.30 (v) appraisal and credit report fees; and

(vi) fees for determining whether any portion of the property is located in a flood zone and fees for ongoing monitoring of the property to determine changes, if any, in flood zone status;

(4) a delinquency charge on a payment, including the minimum payment due in connection with open-end credit, not paid in full on or before the tenth day after its due date in an amount not to exceed five percent of the amount of the payment or \$7.80, whichever is greater;

(5) for a returned check or returned automatic payment withdrawal request, an amount not in excess of the service charge limitation in section 604.113, except that, on a loan transaction that is a consumer small loan as defined in section 47.60, subdivision 1, paragraph (a), in which cash is advanced in exchange for a personal check, the civil penalty provisions of section 604.113, subdivision 2, paragraph (b), may not be demanded or assessed against the borrower; and

(6) charges for other benefits, including insurance, conferred on the borrower that are of a type that is not for credit.

(b) An additional charge may be made for insurance written in connection with the loan or credit sale contract, which may be included in the principal amount of the loan or credit sale unpaid balances:

(1) with respect to insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, if the financial institution furnishes a clear, conspicuous, and specific statement in writing to the borrower setting forth the cost of the insurance if obtained from or through the financial institution and stating that the borrower may choose the person through whom the insurance is to be obtained;

(2) with respect to credit insurance or mortgage insurance providing life, accident, health, or unemployment coverage, if the insurance coverage is not required by the financial institution, and this fact is clearly and conspicuously disclosed in writing to the borrower, and the borrower gives specific, dated, and separately signed affirmative written indication of the borrower's desire to do so after written disclosure to the borrower of the cost of the insurance; and

(3) with respect to the vendor's single interest insurance, but only (i) to the extent that the insurer has no right of subrogation against the borrower; and (ii) to the extent that the insurance does not duplicate the coverage of other insurance under which loss is payable to the financial institution as its interest may appear, against loss of or damage to property for which a separate charge is made to the borrower according to clause (1); and (iii) if a

clear, conspicuous, and specific statement in writing is furnished by the financial institution to the borrower setting forth the cost of the insurance if obtained from or through the financial institution and stating that the borrower may choose the person through whom the insurance is to be obtained.

(c) In addition to the finance charges and other additional charges permitted by this section, a financial institution may contract for and receive the following additional charges in connection with open-end credit, which may be included in the principal amount of the loan or balance upon which the finance charge is computed:

(1) annual charges, not to exceed \$50 per annum, payable in advance, for the privilege of opening and maintaining open-end credit;

(2) charges for the use of an automated teller machine;

(3) charges for any monthly or other periodic payment period in which the borrower has exceeded or, except for the financial institution's dishonor would have exceeded, the maximum approved credit limit, in an amount not in excess of the service charge permitted in section 604.113;

(4) charges for obtaining a cash advance in an amount not to exceed the service charge permitted in section 604.113; and

(5) charges for check and draft copies and for the replacement of lost or stolen credit cards.

(d) In addition to the finance charges and other additional charges permitted by this section, a financial institution may contract for and receive a ~~onetime~~ loan administrative fee not exceeding ~~\$25~~ \$75 in connection with closed-end credit, which may be included in the principal balance upon which the finance charge is computed. ~~This paragraph applies only to closed-end credit in an original principal amount of \$6,480 or less. The determination of an original principal amount must exclude the administrative fee contracted for and received according to this paragraph.~~ A financial institution may not contract for and receive a loan administrative fee from the same borrower within 90 days of a previous loan administrative fee assessed to the borrower. A financial institution may not contract for and receive a loan administrative fee from the same borrower more than three times in a year.

Sec. 3. EFFECTIVE DATE.

This act is effective for loans made on or after August 1, 2018.