

CHAPTER 56

REGULATED LOANS

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56.10 EXAMINATIONS; INTERPRETIVE OPINIONS.

Subdivision 1. For the purpose of discovering violations of this chapter or securing information lawfully required by the commissioner hereunder, the commissioner may, at any time, either personally or by a person or persons duly designated, investigate the loans and business and examine the books, accounts, records, and files used therein, of every licensee and of every person who shall be engaged in the business described in section 56.01, whether the person shall act or claim to act as principal or agent, or under or without the authority of this chapter. For that purpose the commissioner and a duly designated representative shall have free access to the offices and places of business, books, accounts, papers, records, files, safes, and vaults of all such persons. The commissioner and all persons duly designated shall have authority to require the attendance of and to examine, under oath, all persons whomsoever whose testimony the commissioner may require relative to the loan or the business or to the subject matter of any examination, investigation, or hearing.

Each licensee shall pay to the commissioner such amount as may be required under section 46.131, and the commissioner may maintain an action for the recovery of such costs in any court of competent jurisdiction.

Subd. 2. The commissioner may honor requests from interested parties for interpretive opinions in connection with the administration of this chapter. No provision of this chapter or of any other chapter to which this chapter refers which imposes any penalty shall apply to any act done or omitted to be done in conformity with any written interpretive opinion of the commissioner, notwithstanding that such written interpretive opinion may, after such act or omission, be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

History: 1993 c 257 s 36

56.12 ADVERTISING; TAKING OF SECURITY; PLACE OF BUSINESS.

No licensee shall advertise, print, display, publish, distribute, or broadcast, or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner any statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action which is false, misleading, or deceptive. The commissioner may order any licensee to desist from any conduct which the commissioner shall find to be a violation of the foregoing provisions.

The commissioner may require that rates of charge, if stated by a licensee, be stated fully and clearly in such manner as the commissioner may deem necessary to prevent misunderstanding thereof by prospective borrowers. In lieu of the disclosure requirements of this section and section 56.14, a licensee may give the disclosures required by the federal Truth-in-Lending Act.

A licensee may take a lien upon real estate as security for any loan exceeding \$2,700 in principal amount made under this chapter. The provisions of sections 47.20 and 47.21 do not apply to loans made under this chapter, except as provided in this section. No loan secured by a first lien on a borrower's primary residence shall be made pursuant to this section if the proceeds of the loan are used to finance the purchase of the borrower's primary residence, unless:

(1) the proceeds of the loan are used to finance the purchase of a manufactured home or a prefabricated building; or

(2) the proceeds of the loan are used in whole or in part to satisfy the balance owed on a contract for deed.

If the proceeds of the loan are used to finance the purchase of the borrower's primary residence, the licensee shall consent to the subsequent transfer of the real estate if the existing borrower continues after transfer to be obligated for repayment of the entire remaining indebtedness. The licensee shall release the existing borrower from all obligations under the loan instruments, if the transferee (1) meets the standards of credit worthiness normally used by persons in the business of making loans, including but not limited to the ability of the transferee to make the loan payments and satisfactorily maintain the property used as collateral, and (2) executes an agreement in writing with the licensee whereby the transferee assumes the obligations of the existing borrower under the loan instruments. Any such agreement shall not affect the priority, validity or enforceability of any loan instrument. A licensee may charge a fee not in excess of one-tenth of one percent of the remaining unpaid principal balance in the event the loan is assumed by the transferee and the existing borrower continues after the transfer to be obligated for repayment of the entire assumed indebtedness. A licensee may charge a fee not in excess of one percent of the remaining unpaid principal balance in the event the remaining indebtedness is assumed by the transferee and the existing borrower is released from all obligations under the loan instruments, but in no event shall the fee exceed \$150.

A licensee making a loan under this chapter secured by a lien on real estate shall comply with the requirements of section 47.20, subdivision 8.

No licensee shall conduct the business of making loans under this chapter within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, if the commissioner finds that the character of the other business is such that it would facilitate evasions of this chapter or of the rules lawfully made hereunder. The commissioner may promulgate rules dealing with such other businesses.

No licensee shall transact the business or make any loan provided for by this chapter under any other name or at any other place of business than that named in the license. No licensee shall take any confession of judgment or any power of attorney. No licensee shall take any note or promise to pay that does not accurately disclose the principal amount of the loan, the time for which it is made, and the agreed rate or amount of charge, nor any instrument in which blanks are left to be filled in after execution. Nothing herein is deemed to prohibit the making of loans by mail or arranging for settlement and closing of real estate secured loans by an unrelated qualified closing agent at a location other than the licensed location.

History: 1993 c 257 s 37

56.125 OPEN-END LOANS.

[For text of subds 1 and 2, see M.S.1992]

Subd. 3. Charges. In addition to the charges authorized in subdivision 1, a licensee may contract for and receive in connection with an open-end loan agreement the additional charges, fees, costs, and expenses with respect to the line of credit limit permitted by sections 56.131, subdivisions 1, paragraph (f), clauses (4) and (5), 2, 5, and 6; and 56.155 with respect to other loans, with the following variations:

(1) If credit life, disability, or involuntary unemployment insurance is provided and if the insured dies, becomes disabled, or becomes involuntarily unemployed when there is an outstanding open-end loan indebtedness, the amount of the insurance may not exceed the total balance of the loan due on the date of the borrower's death or on the date of the last billing statement in the case of credit life insurance, or all minimum payments which become due on the loan during the covered period of disability in the case of credit disability insurance, or during the covered period of involuntary unemployment in the case of credit involuntary unemployment insurance. The additional charge for credit life insurance, credit disability insurance, or credit involuntary unem-

ployment insurance must be calculated in each billing cycle by applying the current monthly premium rate for the insurance to the unpaid balances in the borrower's account.

(2) The amount, terms, and conditions of any credit insurance against loss or damage to property must be reasonable in relation to the character and value of the property insured.

[For text of subd 4, see M.S. 1992]

History: 1993 c 343 s 4

56.131 MAXIMUM RATES AND CHARGES.

Subdivision 1. Interest rates and charges. (a) On any loan in a principal amount not exceeding \$35,000 or 15 percent of a Minnesota corporate licensee's capital stock and surplus as defined in section 53.015, if greater, a licensee may contract for and receive interest, calculated according to the actuarial method, not exceeding the equivalent of the greater of any of the following:

(1) the total of: (i) 33 percent per year on that part of the unpaid balance of the principal amount not exceeding \$750; and (ii) 19 percent per year on that part of the unpaid balance of the principal amount exceeding \$750; or

(2) 21.75 percent per year on the unpaid balance of the principal amount.

(b) On any loan where interest has been calculated according to the method provided for in paragraph (a), clause (1), interest must be contracted for and earned as provided in that provision or at the single annual percentage rate computed to the nearest 1/100 of one percent that would earn the same total interest at maturity of the contract as would be earned by the application of the graduated rates provided in paragraph (a), clause (1), when the debt is paid according to the agreed terms and the calculations are made according to the actuarial method.

(c) Loans may be interest-bearing or precomputed.

(d) To compute time on interest-bearing and precomputed loans, including, but not limited to the calculation of interest, a day is considered 1/30 of a month when calculation is made for a fraction of a calendar month. A year is 12 calendar months. A calendar month is that period from a given date in one month to the same numbered date in the following month, and if there is no same numbered date, to the last day of the following month. When a period of time includes a whole month and a fraction of a month, the fraction of a month is considered to follow the whole month.

In the alternative, for interest-bearing loans, a licensee may charge interest at the rate of 1/365 of the agreed annual rate for each actual day elapsed.

(e) With respect to interest-bearing loans:

(1) Interest must be computed on unpaid principal balances outstanding from time to time, for the time outstanding. Each payment must be applied first to the accumulated interest and the remainder of the payment applied to the unpaid principal balance; provided however, that if the amount of the payment is insufficient to pay the accumulated interest, the unpaid interest continues to accumulate to be paid from the proceeds of subsequent payments and is not added to the principal balance.

(2) Interest must not be payable in advance or compounded. However, if part or all of the consideration for a new loan contract is the unpaid principal balance of a prior loan, then the principal amount payable under the new loan contract may include any unpaid interest which has accrued. The unpaid principal balance of a precomputed loan is the balance due after refund or credit of unearned interest as provided in paragraph (f), clause (3). The resulting loan contract is deemed a new and separate loan transaction for all purposes.

(f) With respect to precomputed loans:

(1) Loans must be repayable in substantially equal and consecutive monthly installments of principal and interest combined, except that the first installment period

may be more or less than one month by not more than 15 days, and the first installment payment amount may be larger than the remaining payments by the amount of interest charged for the extra days and must be reduced by the amount of interest for the number of days less than one month to the first installment payment; and monthly installment payment dates may be omitted to accommodate borrowers with seasonal income.

(2) Payments may be applied to the combined total of principal and precomputed interest until the loan is fully paid. Payments must be applied in the order in which they become due.

(3) When any loan contract is paid in full by cash, renewal or refinancing, or a new loan, one month or more before the final installment due date, a licensee shall refund or credit the borrower with the total of the applicable charges for all fully unexpired installment periods, as originally scheduled or as deferred, which follow the day of prepayment; if the prepayment is made other than on a scheduled payment date, the nearest scheduled installment payment date must be used in the computation; provided further, if the prepayment occurs prior to the first installment due date, the licensee may retain 1/30 of the applicable charge for a first installment period of one month for each day from the date of the loan to the date of prepayment, and shall refund or credit the borrower with the balance of the total interest contracted for. If the maturity of the loan is accelerated for any reason and judgment is entered, the licensee shall credit the borrower with the same refund as if prepayment in full had been made on the date the judgment is entered.

(4) If an installment, other than the final installment, is not paid in full within ten days of its scheduled due date, a licensee may contract for and receive a default charge not exceeding five percent of the amount of the installment, but not less than \$4.

A default charge under this subdivision may not be collected on an installment paid in full within ten days of its scheduled due date, or deferred installment due date with respect to deferred installments, even though a default or deferral charge on an earlier installment has not been paid in full. A default charge may be collected at the time it accrues or at any time thereafter.

(5) If the parties agree in writing, either in the loan contract or in a subsequent agreement, to a deferment of wholly unpaid installments, a licensee may grant a deferment and may collect a deferment charge as provided in this section. A deferment postpones the scheduled due date of the earliest unpaid installment and all subsequent installments as originally scheduled, or as previously deferred, for a period equal to the deferment period. The deferment period is that period during which no installment is scheduled to be paid by reason of the deferment. The deferment charge for a one-month period may not exceed the applicable charge for the installment period immediately following the due date of the last undeferred payment. A proportionate charge may be made for deferment for periods of more or less than one month. A deferment charge is earned pro rata during the deferment period and is fully earned on the last day of the deferment period. Should a loan be prepaid in full during a deferment period, the licensee shall make or credit to the borrower a refund of the unearned deferment charge in addition to any other refund or credit made for prepayment of the loan in full.

(6) If two or more installments are delinquent one full month or more on any due date, and if the contract so provides, the licensee may reduce the unpaid balance by the refund credit which would be required for prepayment in full on the due date of the most recent maturing installment in default. Thereafter, and in lieu of any other default or deferment charges, the single annual percentage rate permitted by this subdivision may be charged on the unpaid balance until fully paid.

(7) Following the final installment as originally scheduled or deferred, the licensee, for any loan contract which has not previously been converted to interest-bearing under clause (6), may charge interest on any balance remaining unpaid, including unpaid default or deferment charges, at the single annual percentage rate permitted by this subdivision until fully paid.

(8) With respect to a loan secured by an interest in real estate, and having a maturity of more than 60 months, the original schedule of installment payments must fully

amortize the principal and interest on the loan. The original schedule of installment payments for any other loan secured by an interest in real estate must provide for payment amounts that are sufficient to pay all interest scheduled to be due on the loan.

[For text of subds 2 to 6, see M.S.1992]

History: 1993 c 257 s 38

56.132 INSTALLMENT SALES CONTRACTS.

A person may enter into a credit sale or service contract for sale to a licensee under this chapter doing business in this state, and a licensee may purchase and enforce the contract under the terms and conditions set forth in section 51A.385, subdivisions 2 and 5 to 13.

History: 1993 c 257 s 41

56.155 INSURANCE IN CONNECTION WITH LOAN.

Subdivision 1. **Authorization.** No licensee shall, directly or indirectly, sell or offer for sale any insurance in connection with any loan made under this chapter except as and to the extent authorized by this section. The sale of credit life, credit accident and health, and credit involuntary unemployment insurance is subject to the provisions of chapter 62B, except that the term of the insurance may exceed 60 months if the term of the loan exceeds 60 months. Life, accident, health, and involuntary unemployment insurance, or any of them, may be written upon or in connection with any loan but must not be required as additional security for the indebtedness. If the debtor chooses to procure credit life insurance, credit accident and health insurance, or credit involuntary unemployment insurance as security for the indebtedness, the debtor shall have the option of furnishing this security through existing policies of insurance that the debtor owns or controls, or of furnishing the coverage through any insurer authorized to transact business in this state. A statement in substantially the following form must be made orally, except for loans by mail pursuant to section 56.12, and provided in writing in bold face type of a minimum size of 12 points to the borrower before the transaction is completed for each credit life, accident and health, and involuntary unemployment insurance coverage sold:

**CREDIT LIFE INSURANCE, CREDIT DISABILITY INSURANCE,
AND CREDIT INVOLUNTARY UNEMPLOYMENT INSURANCE
ARE NOT REQUIRED TO OBTAIN CREDIT. YOU MAY BUY ANY
INSURANCE FROM ANYONE YOU CHOOSE OR YOU MAY USE
EXISTING INSURANCE.**

The licensee shall disclose whether or not the benefits commence as of the first day of disability or involuntary unemployment and shall further disclose the number of days that an insured obligor must be disabled or involuntarily unemployed, as defined in the policy, before benefits, whether retroactive or nonretroactive, commence. In case there are multiple obligors under a transaction subject to this chapter, no policy or certificate of insurance providing credit accident and health or credit unemployment benefits may be procured by or through a licensee upon more than one of the obligors. In case there are multiple obligors under a transaction subject to this chapter, no policy or certificate of insurance providing credit life insurance may be procured by or through a licensee upon more than two of the obligors in which case they shall be insured jointly. The premium or identifiable charge for the insurance must not exceed that filed by the insurer with the department of commerce. The charge, computed at the time the loan is made for a period not to exceed the full term of the loan contract on an amount not to exceed the total amount required to pay principal and charges, may be deducted from the proceeds or may be included as part of the principal of any loan. If a borrower procures insurance by or through a licensee, the statement required by section 56.14 must disclose the cost to the borrower and the type of insurance, and the licensee shall cause to be delivered to the borrower a copy of the policy, certificate, or other evidence thereof, within a reasonable time. No licensee shall decline new or existing insurance

which meets the standards set out in this section nor prevent any obligor from obtaining this insurance coverage from other sources. Notwithstanding any other provision of this chapter, any gain or advantage to the licensee or to any employee, affiliate, or associate of the licensee from this insurance or the sale or provision thereof is not an additional or further charge in connection with the loan; nor are any of the provisions pertaining to insurance contained in this section prohibited by any other provision of this chapter.

[For text of subd 2, see M.S.1992]

History: 1993 c 257 s 42; 1993 c 343 s 5