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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-FIFTH SESSION

HOUSE FILE NO. 3533

February 28, 2008

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The bill was read for the first time and referred to the Committee on Commerce and Labor

A bill for an act

relating to financial institutions; regulating consumer small loans; amending Minnesota Statutes 2006, sections 47.59, subdivision 2; 47.60, subdivisions 1, 4, 6, by adding subdivisions; 332.31, subdivision 3, by adding a subdivision; 332.32; 332.335, by adding a subdivision; Minnesota Statutes 2007 Supplement, section 47.60, subdivision 2.

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

Section 1. Minnesota Statutes 2006, section 47.59, subdivision 2, is amended to read:

Subd. 2. **Application.** Extensions of credit or purchases of extensions of credit by financial institutions under sections 47.20, 47.21, 47.201, 47.204, 47.58, 47.60, 48.153, 48.185, 48.195, 59A.01 to 59A.15, 334.01, 334.011, 334.012, 334.022, 334.06, and 334.061 to 334.19 may, but need not, be made according to those sections in lieu of the authority set forth in this section to the extent those sections authorize the financial institution to make extensions of credit or purchase extensions of credit under those sections. If a financial institution elects to make an extension of credit or to purchase an extension of credit under those other sections, the extension of credit or the purchase of an extension of credit is subject to those sections and not this section, except this subdivision, and except as expressly provided in those sections. A financial institution may also charge an organization a rate of interest and any charges agreed to by the organization and may calculate and collect finance and other charges in any manner agreed to by that organization. Except for extensions of credit a financial institution elects to make under section 334.01, 334.011, 334.012, 334.022, 334.06, or 334.061 to 334.19, chapter 334 does not apply to extensions of credit made according to this section or the sections listed in this subdivision. This subdivision does not authorize a financial institution to extend credit or purchase an extension of credit under any of the sections listed in this subdivision

if the financial institution is not authorized to do so under those sections. A financial institution extending credit under any of the sections listed in this subdivision shall specify in the promissory note, contract, or other loan document the section under which the extension of credit is made. Any financial institution other than a state or federally chartered bank or credit union providing a consumer small loan, as that term is defined in section 47.60, subdivision 1, must comply with the provisions of section 47.60.

Sec. 2. Minnesota Statutes 2006, section 47.60, subdivision 1, is amended to read:

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

(a) "Consumer small loan" ~~is a loan transaction in which cash is advanced to a borrower for the borrower's own~~ means a loan, whether closed-end credit or open-end credit, for personal, family, or household ~~purpose~~ purposes which at the time of origination has a principal amount or credit limit of $600 or less and requires a minimum payment for any period of more than 15 percent of the initial principal balance or credit limit. A consumer small loan ~~is a short-term, unsecured loan to be repaid in a single installment. The cash advance of a consumer small loan is equal to or less than $350. A consumer small loan includes an indebtedness evidenced by but not limited to a promissory note or agreement to defer the presentation of a personal check for a fee~~ does not include any transaction governed under chapter 53C or sections 325G.15 and 325G.16.

(b) "Consumer small loan lender" ~~is a financial institution as defined in section 47.59 or~~ means a person ~~registered with the commissioner and~~ engaged in the business of making consumer small loans. A consumer small loan lender does not include a state or federally chartered bank or credit union.

(c) "Advertise" means to solicit business through any means or medium.

Sec. 3. Minnesota Statutes 2006, section 47.60, is amended by adding a subdivision to read:

Subd. 1a. **Loan limit.** A consumer small loan made under this section may not exceed $600.

Sec. 4. Minnesota Statutes 2007 Supplement, section 47.60, subdivision 2, is amended to read:

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

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

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

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

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

(5) on amounts in excess of $350 and not greater than the maximum in subdivision 1a, a charge may be added equal to five percent of the loan proceeds plus a $5 administrative fee.

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

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

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

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

(f) A loan made under this section must not be repaid by the proceeds of another loan made under this section by the same lender or related interest. The proceeds from a loan made under this section must not be applied to another loan from the same lender or related interest. No loan to a single borrower made pursuant to this section shall be split or divided and no single borrower shall have outstanding more than one loan with the result of collecting a higher charge than permitted by this section or in an aggregate amount of principal exceed at any one time the maximum ~~of $350~~ in subdivision 1a.

(g) A consumer small loan lender shall have an affirmative duty to inquire of a prospective borrower whether or not the prospective borrower is a covered member of the armed forces or a dependent of such a member, as those terms are defined in United States Code, title 10, section 987.

(h) No consumer small loan shall be made by a consumer small loan lender to any borrower who is indebted, or has been indebted, at any time during the prior 21 calendar days, to the consumer small loan lender or any related interest for any amount, whether or not the indebtedness is related to a consumer small loan.

(i) Section 609.52 shall not apply to a transaction made under this section.

(j) The holder or assignee of a check written by a borrower in connection with a consumer small loan takes the instrument subject to all claims and defenses of the borrower.

(k) Threatening to use or using the criminal process to collect for nonpayment of a consumer small loan is prohibited.

(l) No contract or agreement between a consumer small loan lender and borrower may contain a mandatory arbitration provision. Any such provision is void and unenforceable.

Sec. 5. Minnesota Statutes 2006, section 47.60, is amended by adding a subdivision to read:

Subd. 2a. **Installment payment plans.** (a) Prior to entering into an agreement to make a loan of $75 or more under this section, a consumer small loan lender must orally and in writing offer a prospective borrower the option to repay the loan in installments.

(b) The offer shall be written in the language in which the loan agreement is negotiated with the borrower. The borrower may request a copy of the offer in any language in which the lender advertises.

(c) The written offer of an installment payment agreement must be provided to a prospective borrower on a single sheet of paper, separately from any other document or writing, and must state in the following language and format:

RIGHT TO INSTALLMENT PAYMENT PLAN

You have the right to pay off this loan in installments.

You have the right to pay off this loan of $..... in five (5) payments. The cost of each payment is (insert amount). The cost of interest and fees you would pay under an installment plan is (insert APR).

Example

If you borrow $500, you make five payments. The total you pay is $530.

If instead you took five consecutive loans, the total you'd pay is $2,650.

Rate Comparison

If you borrow $100 and pay in installments, your rate is 166%.

If you borrow $100 and pay in one payment, your rate is 390%.

(d) The heading "RIGHT TO AN INSTALLMENT PAYMENT PLAN" shall be centered, in capital letters, and in bold, underlined 22-point type. All remaining text shall be in capital and small case letters. The headings "Examples" and "Rate Comparison" shall be centered and in bold, underlined type. "You have the right to pay off this loan in installments" shall be centered in bold letters. The other sentences shall be indented one-half inch from the margin. There shall be two spaces between each sentence, except there shall be three spaces (1) between the heading "RIGHT TO AN INSTALLMENT PAYMENT PLAN" and the sentence "You have the right to pay off this loan in installments"; (2) between the sentence "The cost of interest and fees (your rate) under an installment plan is (insert APR)" and the heading "Examples"; and (3) between the sentence "If instead you took five consecutive loans, the total you'd pay is $2,650" and the heading "Rate Comparison."

(e) Each installment payment shall constitute 20 percent of the total due on the loan. For the purposes of this subdivision, the "total due on the loan" means the principal, interest, and fees allowable under subdivision 2. No additional charges may be added.

(f) The first installment may not be due any earlier than two weeks from the execution of the repayment contract and each installment payment may not be due any earlier than two weeks from the date the previous installment was due.

Sec. 6. Minnesota Statutes 2006, 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 aggregate information and separate information for each branch office the commissioner reasonably requires concerning the business and operations during the preceding calendar year., including:

(1) the number of loans made;

(2) the total dollar amount of loans made;

(3) the number of individual borrowers to whom loans were made;

(4) the number of borrowers who took five or more, 12 or more, and 20 or more loans;

(5) the number of borrowers who used the installment payment plan under subdivision 2a;

(6) the number of loans written off as uncollectible;

(7) the total dollar amount of loans written off as uncollectible; and

(8) any other information the commissioner requires.

(c) A lender filing under subdivision 3 shall display prominently in each place of business and in every language in which the lender advertises, 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 and in every language in which the lender advertises, 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.

Sec. 7. Minnesota Statutes 2006, section 47.60, is amended by adding a subdivision to read:

Subd. 4a. **Written contracts; contract disclosures.** (a) A consumer small loan lender must furnish a copy of the written contract of the loan to each borrower. The contract and disclosures shall be written in the language in which they were negotiated with the borrower.

(b) The written contract must contain:

(1) the name, address, and telephone number of the lender making the consumer small loan, and the name and title of the individual employee who signs the contract on behalf of the lender;

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

(3) the annual percentage rate as computed pursuant to United States Code, title 15, section 1606;

(4) a clear description of the borrower's payment obligations under the loan, including the right to enter into an installment payment plan; and

(5) in bold, 14-point type and in a manner which is more conspicuous than the other information provided in the loan document, a statement that "You cannot be prosecuted in criminal court to collect this loan." The notice shall be located immediately preceding the signature of the borrower.

(c) The borrower may request a copy of the loan contract and disclosures in any language in which the consumer small loan lender advertises. The consumer small loan lender shall provide, on a separate sheet of paper attached at the back of the contract, the following disclosure in each language in which the consumer small loan lender advertises: "You have the right to receive a copy of this contract in (name of language)."

Sec. 8. Minnesota Statutes 2006, section 47.60, subdivision 6, is amended to read:

Subd. 6. **Penalties for violation; private right of action.** (a) A person or the person's members, officers, directors, agents, and employees ~~who violate or participate in the violation of any of the provisions of this section may be liable in the same manner as in section 56.19~~ making a consumer small loan without complying with subdivision 3 is guilty of a gross misdemeanor.

(b) A consumer small loan lender making a consumer small loan to a borrower in this state, regardless of the physical location of the lender, who violates any of the provisions of subdivision 1a, 2, 2a, or 4a is liable to the borrower for:

(1) all fees and charges owing or paid;

(2) statutory damages of $1,000 per violation, provided that a consumer small lender shall not be liable for statutory damages if the violation was not intentional and resulted from a bona fide clerical or mechanical error, notwithstanding the existence of reasonable procedures the lender had in place to avoid such errors. The lender has the burden of proving that an error was not intentional and was bona fide; and

(3) costs and reasonable attorney fees.

Sec. 9. Minnesota Statutes 2006, section 332.31, subdivision 3, is amended to read:

Subd. 3. **Collection agency.** "Collection agency" means and includes any person engaged in the business of collection for others any account, bill or other indebtedness except as hereinafter provided. It includes persons who furnish collection systems carrying a name which simulates the name of a collection agency and who supply forms or form letters to be used by the creditor, even though such forms direct the debtor to make payments directly to the creditor rather than to such fictitious agency. "Collection agency" also includes a consumer small loan collector.

Sec. 10. Minnesota Statutes 2006, section 332.31, is amended by adding a subdivision to read:

Subd. 8. **Consumer small loan collector.** A "consumer small loan collector" means a consumer small loan lender, as defined in section 47.60, collecting consumer small loans not for others.

Sec. 11. Minnesota Statutes 2006, section 332.32, is amended to read:

332.32 EXCLUSIONS.

The term "collection agency" shall not include persons whose collection activities are confined to and are directly related to the operation of a business other than that of a collection agency such as, but not limited to banks when collecting accounts owed to the banks and when the bank will sustain any loss arising from uncollectible accounts, abstract companies doing an escrow business, real estate brokers, public officers, persons acting under order of a court, lawyers, trust companies, insurance companies, credit unions, savings associations, loan or finance companies unless they are engaged in asserting, enforcing or prosecuting unsecured claims which have been purchased from any person, firm, or association when there is recourse to the seller for all or part of the claim if the claim is not collected. A consumer small loan collector is not excluded from the requirements of this chapter.

Sec. 12. Minnesota Statutes 2006, section 332.335, is amended by adding a subdivision to read:

Subd. 5. **Additional requirements of consumer small loan collectors.** Consumer small loan collectors are exempt from the collector registration requirements and collection agency licensing requirements of this chapter, but are subject to all other provisions of sections 45.027 and 332.31 to 332.45. A consumer small loan collector does not have to obtain a certificate of exemption under subdivision 2.