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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 2293

02/25/2014 Authored by Atkins; Murphy, E.; Davnie; Lien and Anzele

The bill was read for the first time and referred to the Committee on Commerce and Consumer Protection Finance and Policy

1.1 A bill for an act
1.2 relating to commerce; regulating payday lending; amending Minnesota Statutes
1.3 2012, sections 47.59, subdivision 2; 47.601, subdivisions 1, 2, 3; 53.05.

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

1.5 Section 1. Minnesota Statutes 2012, section 47.59, subdivision 2, is amended to read:

1.6 Subd. 2. **Application.** Extensions of credit or purchases of extensions of credit by
1.7 financial institutions under sections 47.20, 47.21, 47.201, 47.204, 47.58, ~~47.60~~, 48.153,
1.8 48.185, 48.195, 59A.01 to 59A.15, 334.01, 334.011, 334.012, 334.022, 334.06, and
1.9 334.061 to 334.19 may, but need not, be made according to those sections in lieu of
1.10 the authority set forth in this section to the extent those sections authorize the financial
1.11 institution to make extensions of credit or purchase extensions of credit under those
1.12 sections. If a financial institution elects to make an extension of credit or to purchase an
1.13 extension of credit under those other sections, the extension of credit or the purchase of an
1.14 extension of credit is subject to those sections and not this section, except this subdivision,
1.15 and except as expressly provided in those sections. A financial institution may also
1.16 charge an organization a rate of interest and any charges agreed to by the organization
1.17 and may calculate and collect finance and other charges in any manner agreed to by that
1.18 organization. Except for extensions of credit a financial institution elects to make under
1.19 section 334.01, 334.011, 334.012, 334.022, 334.06, or 334.061 to 334.19, chapter 334
1.20 does not apply to extensions of credit made according to this section or the sections listed
1.21 in this subdivision. This subdivision does not authorize a financial institution to extend
1.22 credit or purchase an extension of credit under any of the sections listed in this subdivision
1.23 if the financial institution is not authorized to do so under those sections. A financial
1.24 institution extending credit under any of the sections listed in this subdivision shall

2.1 specify in the promissory note, contract, or other loan document the section under which
 2.2 the extension of credit is made.

2.3 Sec. 2. Minnesota Statutes 2012, section 47.601, subdivision 1, is amended to read:

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

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

2.7 (c) "Borrower" means an individual who obtains or seeks to obtain a consumer
 2.8 short-term loan primarily for personal, family, or household purposes.

2.9 ~~(e)~~ (d) "Commissioner" means the commissioner of commerce.

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

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

2.23 (g) "Debt-to-income ratio" means the ratio of the borrower's total monthly debt
 2.24 obligations to the borrower's gross monthly income. For purposes of this paragraph, "total
 2.25 monthly debt obligations" consists of the sum of a borrower's rent or mortgage-related
 2.26 obligations, any other secured or unsecured debt obligations, and payments for child
 2.27 support and alimony.

2.28 Sec. 3. Minnesota Statutes 2012, section 47.601, subdivision 2, is amended to read:

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

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

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

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

3.5 (i) without a required license issued by, or a required registration with, the
3.6 commissioner; or

3.7 (ii) in which interest rates, fees, charges, or loan amounts exceed those allowable
3.8 under section ~~47.59, subdivision 6, or 47.60, subdivision 2, other than by de minimis~~
3.9 ~~amounts if no pattern or practice exists.~~

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

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

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

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

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

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

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

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

3.25 Sec. 4. Minnesota Statutes 2012, section 47.601, subdivision 3, is amended to read:

3.26 Subd. 3. ~~Debt collection~~ **Requirements; prohibitions.** (a) A consumer short-term
3.27 lender collecting or attempting to collect on an indebtedness in connection with a
3.28 consumer short-term loan must not engage in the prohibited debt collection practices
3.29 referenced in section 332.37.

3.30 (b) No consumer short-term lender shall make a consumer short-term loan without
3.31 first determining and documenting that the borrower has a reasonable ability to repay the
3.32 loan. In determining whether the borrower has a reasonable ability to repay the loan,
3.33 the consumer short-term lender must, at a minimum, verify the borrower's current and
3.34 anticipated income and expenses, and the borrower's credit history. For purposes of
3.35 this paragraph, a borrower does not have the reasonable ability to repay the loan if the

4.1 payments for the proposed consumer short-term loan transaction cause the borrower to
4.2 have a debt-to-income ratio higher than 41 percent.

4.3 (c) A consumer short-term lender may not make a consumer short-term loan to a
4.4 borrower that will cause a borrower to have, as of the date of the loan and within the
4.5 immediately preceding 365 days:

4.6 (1) more than four consumer short-term loans; or

4.7 (2) consumer short-term loan debt totaling more than 90 days.

4.8 In determining the number of loans and days of indebtedness, a consumer
4.9 short-lender must aggregate the consumer short-term loan transaction for which the
4.10 determination is being made with all the consumer short-term loans the borrower has
4.11 taken from all consumer short-term lenders within the immediately preceding 365 days.
4.12 A consumer short-term lender may not make a consumer short-term loan to a borrower
4.13 if the lender is unable to verify the number of loans the borrower has taken or the days
4.14 the borrower has been indebted in total from all consumer short-term lenders within the
4.15 immediately preceding 365 days.

4.16 (d) A consumer short-term lender must independently verify the total number of
4.17 consumer short-term loans taken by the borrower and the number of days the borrower has
4.18 been indebted through consumer short-term loans within the immediately preceding 365
4.19 days. Verification must include:

4.20 (1) examination of the consumer short-term lender's own records, including records
4.21 maintained at the location at which the borrower is applying for the transaction and
4.22 records maintained at other locations within the state that are owned and operated by the
4.23 consumer short-term lender; and

4.24 (2) utilization of a private consumer reporting service.

4.25 For purposes of this subdivision, a "private consumer reporting service" means a
4.26 privately operated, real-time, electronically accessible service that the commissioner
4.27 determines to be capable of providing a consumer short-term lender with adequate
4.28 verification information necessary to ensure compliance with this paragraph.

4.29 (e) A consumer short-term lender shall have a duty to promptly report each consumer
4.30 short-term loan transaction to the private consumer credit reporting service.

4.31 (f) A consumer short-term lender shall have a duty to inquire whether the borrower
4.32 is a covered borrower, as that term is defined in Code of Federal Regulations, title 32,
4.33 section 232.3(c). No consumer short-term lender may make a consumer short-term loan to
4.34 a covered borrower:

4.35 (1) without first providing the disclosures required under Code of Federal
4.36 Regulations, title 32, section 232.5; and

5.1 (2) which violates any of the terms and conditions set forth in Code of Federal
 5.2 Regulations, title 32, section 232.4, for the issuance of consumer credit, as that term is
 5.3 defined in Code of Federal Regulations, title 32, section 232.3(b), except that for purposes
 5.4 of this section, "consumer credit" includes open-end credit.

5.5 (g) A consumer short-term lender may not engage in any device or subterfuge to
 5.6 evade the requirements of this section or section 47.60, including but not limited to:

5.7 (1) making, offering, or arranging a consumer short-term loan on terms that
 5.8 otherwise would be prohibited by this section or section 47.60;

5.9 (2) making loans disguised as personal property sales and leaseback transactions; or

5.10 (3) disguising loan proceeds as cash rebates.

5.11 (h) It is unlawful for a person to affirmatively advertise the availability of a consumer
 5.12 short-term loan if the person does not possess a valid license from, or is not duly registered
 5.13 with, the commissioner to make consumer short-term loans.

5.14 (i) Notwithstanding paragraph (f):

5.15 (1) any print, broadcast, or electronic media with which a person has contracted to
 5.16 advertise shall have absolute immunity from liability for carrying an advertisement by
 5.17 an unlicensed or unregistered person; and

5.18 (2) any person shall have absolute immunity for violation of this paragraph where
 5.19 the person contracts for an advertisement that is distributed or available in both Minnesota
 5.20 and other states, provided that the advertisement clearly and conspicuously contains
 5.21 a statement that can be readily seen, read, and understood that the consumer short-term
 5.22 loan advertised is unavailable in Minnesota.

5.23 (j) For purposes of this subdivision, "person" means an individual, firm, partnership,
 5.24 association, corporation, business trust, or other entity, however organized.

5.25 Sec. 5. Minnesota Statutes 2012, section 53.05, is amended to read:

5.26 **53.05 POWERS, LIMITATION.**

5.27 No industrial loan and thrift company may do any of the following:

5.28 (1) carry demand banking accounts; use the word "savings" unless the institution's
 5.29 investment certificates, savings accounts, and savings deposits are insured by the Federal
 5.30 Deposit Insurance Corporation and then only if the word is not followed by the words
 5.31 "and loan" in its corporate name; use the word "bank" or "banking" in its corporate name;
 5.32 operate as a savings bank;

5.33 (2) have outstanding at any one time certificates of indebtedness, savings accounts,
 5.34 and savings deposits 30 times the sum of capital stock and surplus of the company;

6.1 (3) accept trusts, except as provided in section 47.75, subdivision 1, or act as
6.2 guardian, administrator, or judicial trustee in any form;

6.3 (4) deposit any of its funds in any banking corporation, unless that corporation has
6.4 been designated by vote of a majority of directors or of the executive committee present at
6.5 a meeting duly called, at which a quorum was in attendance;

6.6 (5) change any allocation of capital made pursuant to section 53.03 or reduce or
6.7 withdraw in any way any portion of the capital stock and surplus without prior written
6.8 approval of the commissioner of commerce;

6.9 (6) take any instrument in which blanks are left to be filled in after execution;

6.10 (7) lend money in excess of 20 percent of the total of its capital stock and surplus at
6.11 all its authorized locations to a person primarily liable. Companies not issuing investment
6.12 certificates of indebtedness under section 53.04 need not comply with the requirement if
6.13 the amount of money lent does not exceed \$100,000 of principal as defined by section
6.14 47.59, subdivision 1, paragraph (p);₂

6.15 However, industrial loan and thrift companies with deposit liabilities must comply
6.16 with the provisions of section 48.24; ~~or~~

6.17 (8) issue cashier's checks pursuant to section 48.151, unless and at all times the
6.18 aggregate liability to all creditors on these instruments is protected by a special fund in
6.19 cash or due from banks to be used solely for payment of the cashier's checks; or

6.20 (9) make a "consumer short-term loan," as that term is defined under section 47.601,
6.21 under any section of law other than section 47.60.

6.22 **Sec. 6. EFFECTIVE DATE.**

6.23 Sections 1 to 5 are effective August 1, 2014, and apply to consumer short-term
6.24 loans made on or after that date.