

A bill for an act

relating to financial institutions; regulating payday lending; providing penalties and remedies; amending Minnesota Statutes 2008, section 47.60, subdivision 6; proposing coding for new law in Minnesota Statutes, chapter 47.

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

Section 1. Minnesota Statutes 2008, section 47.60, subdivision 6, is amended to read:

Subd. 6. **Penalties for violation.** ~~A person~~ An individual or entity or the person's entity's members, officers, directors, agents, and employees who violate or participate in the violation of any of the provisions of this section ~~may be~~ is liable in the same manner as in section ~~56.19~~ 47.601. A violation of any provision of this section is considered to be a violation of section 325F.69 and all remedies of section 8.31 are available for such a violation.

EFFECTIVE DATE. This section is effective August 1, 2009, and applies to loans made on or after that date.

Sec. 2. **[47.601] CONSUMER SHORT-TERM LOANS.**

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

(b) "Borrower" means an individual who obtains a consumer short-term loan primarily for personal, family, or household purposes.

(c) "Commissioner" means the commissioner of commerce.

(d) "Consumer short-term loan" means a loan to a borrower which has a principal amount, or an advance on a credit limit, of \$1,000 or less and requires a minimum payment within 60 days of loan origination or credit advance of more than 25 percent

of the principal balance or credit advance. For the purposes of this section, each new advance of money to a borrower under a consumer short-term loan agreement constitutes a new consumer short-term loan.

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

(f) "Conventional term loan" means a closed-end loan in a principal amount no less than the amount owed on the consumer short-term loan on which the borrower is currently obligated, with:

(1) payment intervals the same as were required for the consumer short-term loan with the shortest payment interval made to the borrower;

(2) a periodic payment amount of \$1 less than the amount required for the lowest periodic payment exclusive of principal on the consumer short-term loan made to the borrower;

(3) an annual percentage rate of no more than 33 percent; and

(4) no other charges, prepayment penalties, or other fees, except that a late fee not in excess of \$3 may be charged for untimely payment if the terms of the late fee are reasonable and a prominent notice of the late fee amount has been provided to the borrower.

(g) "Loan inquiry" means an inquiry to a consumer short-term lender by a borrower currently obligated on a consumer short-term loan, or who has been obligated on a consumer short-term loan within the prior 30 days, about obtaining a new consumer short-term loan, expressing concern about paying amounts due on a consumer short-term loan, or any inquiry in connection with refinancing or repayment of a consumer short-term loan. An inquiry includes written or oral communication in any form or through any means of communication.

Subd. 2. **Loan churning prohibited.** A consumer short-term lender may not make a consumer short-term loan to a borrower who has obtained a consumer short-term loan from that lender within the prior six months. A consumer short-term lender must offer a conventional term loan to any such borrower who makes a loan inquiry.

Subd. 3. **Additional short-term loans.** Notwithstanding subdivision 2, a consumer short-term lender may respond to loan inquiries from a borrower in connection with the initial consumer short-term loan and one subsequent consumer short-term loan by offering and making a new consumer short-term loan. If the consumer short-term lender does not offer a new consumer short-term loan in response to one of these two inquiries, or after the origination of two additional consumer short-term loans under this subdivision

following the initial consumer short-term loan, a consumer short-term lender must offer a conventional term loan to any borrower who makes a loan inquiry.

Subd. 4. **Discouraging inquiry of conventional term loan.** A consumer short-term lender shall not make any representation or engage in any practice to discourage the acceptance of a conventional term loan from that lender or another consumer short-term lender or to discourage a loan inquiry. A consumer short-term lender who engages in a pattern of making additional consumer short-term loans to borrowers as permitted under subdivision 3 while not making a substantially similar number of conventional term loans to borrowers shall be presumed, subject to contrary clear and convincing proof by the consumer short-term lender, to have violated this subdivision.

Subd. 5. **Consumer short-term loan contract.** (a) No contract or agreement between a consumer short-term loan lender and a borrower residing in Minnesota may contain the following:

(1) a mandatory arbitration provision;

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

(3) a provision choosing a forum for dispute resolution other than the Minnesota courts; or

(4) a provision limiting class actions.

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

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

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

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

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

(4) in bold, 24-point type and in a manner which is more conspicuous than other information provided, the annual percentage rate as computed under United States Code, chapter 15, section 1606;

(5) a clear description of the borrower's payment obligations under the loan; and

(6) in bold, 14-point type and in a manner which is more conspicuous than the other information provided in the loan document other than the annual percentage rate, a statement of the following verbatim notice: "You cannot be prosecuted in criminal court

to collect this loan." The notice must be located immediately preceding the signature of the borrower.

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

Subd. 6. Debt collection. A consumer short-term lender collecting or attempting to collect on an indebtedness in connection with a consumer short-term loan must not engage in the prohibited debt collection practices referenced in section 332.37.

Subd. 7. Record keeping; annual reports; notifications. In addition to any other information required to be filed under chapters 45 through 56, a consumer short-term lender must annually file a report with the commissioner that contains the following information for each calendar year:

- (1) the number of consumer short-term loans made;
- (2) the number of conventional term loans made;
- (3) the total dollar amount of consumer short-term loans made;
- (4) the total dollar amount of fees collected on consumer short-term loans;
- (5) the lowest, highest, and average loan amount for consumer short-term loans;
- (6) the average annual percentage rate and range of annual percentage rates for consumer short-term loans;
- (7) the shortest, longest, and average loan term for consumer short-term loans;
- (8) the number of individual borrowers who obtained one or more consumer short-term loans;
- (9) a breakdown of the number of individual borrowers identified in clause (8) by the number of individual borrowers who obtained one, two, three, four, five, six, and more than six consumer short-term loans;
- (10) the number of individual borrowers who obtained one, two, and more than two conventional term loans;
- (11) the total dollar amount of conventional term loans made;
- (12) the lowest, highest, and average loan amount for conventional term loans;
- (13) the average annual percentage rate and range of annual percentage rates for conventional term loans;
- (14) the shortest, longest, and average loan term for conventional term loans;
- (15) the number of individual borrowers who were delinquent on a consumer short-term loan;
- (16) the number of individual borrowers who were delinquent on a conventional term loan;

(17) the total number and dollar amount of loans charged off or written off;

(18) the number of loans made to borrowers designed to be paid through an automated clearing house or other electronic transaction;

(19) the number of loans made to borrowers through other than a physical visit to the consumer short-term lender's location including, but not limited to, loans made via the Internet or telephone; and

(20) any other information the commissioner may require in order to ensure compliance with this section.

Subd. 8. **Jurisdiction.** For the purposes of this section, a consumer short-term loan transaction involving a borrower who is a resident of Minnesota shall be deemed to take place in Minnesota.

Subd. 9. **Penalties for violation; private right of action.** (a) An individual or entity, or a member, officer, director, agent, or employee of the entity, who violates any provision of this section is liable to the borrower for:

(1) all money collected or received in connection with the loan;

(2) actual, incidental, and consequential damages;

(3) statutory damages of up to \$1,000 per violation;

(4) costs, disbursements, and reasonable attorney fees; and

(5) injunctive relief.

(b) In addition to the remedies in paragraph (a), a loan made in violation of any provision of this section is void, and the borrower is not obligated to pay any amounts owing.

(c) In addition to the remedies in paragraphs (a) and (b), an individual or entity, or a member, officer, director, agent, or employee of the entity, who violates subdivision 4 is subject to punitive damages.

(d) A private cause of action under this section by an aggrieved debtor is in the public interest.

Subd. 10. **Attorney general enforcement.** (a) The attorney general shall enforce this section under section 8.31.

(b) A violation of any provision of this section is considered to be a violation of section 325F.69, and all remedies of section 8.31 are available for such an action.

(c) A private right of action under section 8.31 by an aggrieved debtor under this section is in the public interest.

Subd. 11. **Remedies cumulative.** The remedies provided in this section are cumulative and do not restrict any remedy that is otherwise available. The provisions

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6.1 of this section are not exclusive and are in addition to any other requirements, rights,
6.2 remedies, and penalties provided by law.

6.3 **EFFECTIVE DATE.** This section is effective August 1, 2009, and applies to loans
6.4 made on or after that date.