

## CHAPTER 56

### REGULATED LOANS

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#### 56.01. NECESSITY OF LICENSE.

(a) Except as authorized by this chapter and without first obtaining a license from the commissioner, no person shall engage in the business of making loans of money, credit, goods, or things in action, in an amount or of a value not exceeding that specified in section 56.131, subdivision 1, and charge, contract for, or receive on the loan a greater rate of interest, discount, or consideration than the lender would be permitted by law to charge if he were not a licensee under this chapter.

(b) An agency or instrumentality of the United States government or a corporation otherwise created by an act of the United States Congress or a lender approved or certified by the secretary of housing and urban development, or approved or certified by the administrator of veterans affairs, or approved or certified by the administrator of the farmers home administration, or approved or certified by the federal home loan mortgage corporation, or approved or certified by the federal national mortgage association, that engages in the business of purchasing or taking assignments of mortgage loans and undertakes direct collection of payments from or enforcement of rights against borrowers arising from mortgage loans, is not required to be licensed under this chapter in order to purchase or take assignments of mortgage loans from licensees under this chapter.

*History: 1Sp1985 c 1 s 14*

#### 56.04 INVESTIGATION; ISSUANCE OF LICENSE; DENIAL; REFUNDS.

Upon the filing of the application and payment of these fees, the commissioner shall investigate the facts, and if he shall find (1) that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof if the applicant be a copartnership or association, and of the person with direct responsibility for the operation and management of the proposed office are such as to command confidence and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of this chapter, and (2) that the applicant has available for the operation of the business, at the specified location, liquid assets of at least \$50,000 (the foregoing facts being conditions precedent to the issuance of a license under this chapter), he shall thereupon issue and deliver a license to the applicant to make loans, in accordance with the provisions of this chapter, at the location specified in the application. If the commissioner shall not so find, he shall not issue a license and he shall notify the applicant of the denial and return to the applicant the sum paid by the applicant as a license fee, retaining the \$250 investigation fee to cover the costs of investigating the application. The commissioner shall approve or deny every application for license hereunder within 60 days from the filing thereof with the fees.

If the application is denied, the commissioner shall, within 20 days thereafter, file in his office a written decision and findings with respect thereto containing the

evidence and the reasons supporting the denial, and forthwith serve upon the applicant a copy thereof.

There is hereby appropriated to such persons as are entitled to such refund, from the fund or account in the state treasury to which the money was credited, an amount sufficient to make the refund and payment.

**History:** *1Sp1985 c 1 s 15*

#### **56.07 CONTROL OVER LOCATION.**

Not more than one place of business shall be maintained under the same license, but the commissioner may issue more than one license to the same licensee upon compliance with all the provisions of this chapter governing an original issuance of a license, for each such new license. To the extent that previously filed applicable information remains substantially unchanged, the applicant need not refile this information, unless requested.

When a licensee shall wish to change his place of business, he shall give written notice thereof 30 days in advance to the commissioner, who shall within 30 days of receipt of such notice, issue an amended license approving the change.

A licensed place of business shall be open during regular business hours each weekday, except for legal holidays and for any weekday the commissioner grants approval to the licensee to remain closed. A licensed place of business may be open on Saturday, but shall be closed on Sunday.

**History:** *1Sp1985 c 1 s 16*

#### **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 he 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 he 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

(2) the proceeds of the loan are used in whole or in part to satisfy the balance owed on a contract for deed. The rate of interest charged on such a loan made after August 1, 1987, shall not exceed the rate provided in section 47.20, subdivision 4a.

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 and regulations 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.

**History:** *1Sp1985 c 1 s 17*

#### 56.125 OPEN-END LOANS.

*[For text of subds 1 to 3, see M.S.1984]*

**Subd. 4. Compliance.** Prior to any licensee taking a lien upon the borrower's homestead, as defined in chapter 510, as security for any open-end loan pursuant to subdivision 2, the borrower shall be provided with a statement in substantially the following form, in bold face type of a minimum size of 12 points, signed and dated by the borrower at the time of the execution of the contract surrendering the homestead exemption, immediately adjacent to a listing of the homestead property: "I understand that some or all of the above real estate is normally protected by law from the claims of creditors, and I voluntarily give up my right to that protection for the above listed property with respect to claims arising out of this contract."

**History:** *1Sp1985 c 1 s 18*

#### 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 ten percent of a corporate licensee's contributed capital and appropriated reserves 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 \$350; and (ii) 19 percent per year on that part of the unpaid balance of the principal amount exceeding \$350; 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 one hundredth 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 paragraph (f), 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.

**Subd. 2. Additional charges.** In addition to the charges provided for by this section and section 56.155, no further or other amount whatsoever, shall be directly or indirectly charged, contracted for, or received for the loan made, except actual out of pocket expenses of the licensee to realize on a security after default, and

except for the following additional charges which may be included in the principal amount of the loan:

(a) lawful fees and taxes paid to any public officer to record, file, or release security;

(b) with respect to a loan secured by an interest in real estate, the following closing costs, if they are bona fide, reasonable in amount, and not for the purpose of circumvention or evasion of this section; provided the costs do not exceed one percent of the principal amount or \$250, whichever is greater:

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

(2) fees, if not paid to the licensee, an employee of the licensee, or a person related to the licensee, for preparation of a mortgage, settlement statement, or other documents, fees for notarizing mortgages and other documents, and appraisal fees;

(c) the premium for insurance in lieu of perfecting and releasing a security interest to the extent that the premium does not exceed the fees described in paragraph (a).

*[For text of subd 3, see M.S.1984]*

**Subd. 4. Adjustment of dollar amounts.** (a) The dollar amounts in this section, sections 56.01 and 56.12 shall change periodically, as provided in this section, according to and to the extent of changes in the implicit price deflator for the gross national product, 1972 = 100, compiled by the United States Department of Commerce, and hereafter referred to as the index. The index for December, 1980 is the reference base index for adjustments of dollar amounts, except that the index for December, 1984 is the reference base index for the minimum default charge of \$4.

(b) 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 1981, chapter 258 on the date of enactment; and

(2) the dollar amounts shall not change if the amounts required by this section are those currently in effect pursuant to Laws 1981, chapter 258 as a result of earlier application of this section.

(c) 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.

(d) The commissioner shall announce and publish:

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

(2) promptly after the changes occur, changes in the index required by paragraph (c) including, if applicable, the numerical equivalent of the reference base index under a revised reference base index and the designation or title of any index superseding the index.

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

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

*[For text of subds 5 and 6, see M.S.1984]*

**History:** *1Sp1985 c 1 s 19-21*

## **56.19 VIOLATION.**

*[For text of subd 1, see M.S.1984]*

Subd. 2a. **Penalty for intentional violations.** Any lender intentionally violating this chapter, when the violation does not also constitute a violation of any other provision of state or federal law for which there is a remedy, shall be liable to the consumer in an amount not to exceed \$100 for each violation.

*[For text of subd 3, see M.S.1984]*

Subd. 4. **Remedies exclusive.** The remedies set forth in this section and section 48.196 are exclusive. A violation of this chapter does not impair rights on a debt.

**History:** *1Sp1985 c 1 s 22,23*