

2009 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB447)

Received: **01/12/2010**

Received By: **mkunkel**

Wanted: **As time permits**

Identical to LRB:

For: **Donna Seidel (608) 266-0654**

By/Representing: **Chris McKinney**

This file may be shown to any legislator: **NO**

Drafter: **mkunkel**

May Contact:

Addl. Drafters:

Subject: **Fin. Inst. - int. rates/loans**

Extra Copies: **ARG**

Submit via email: **YES**

Requester's email: **Rep.Seidel@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Payday lenders

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mkunkel 01/18/2010 csundber 01/18/2010	csicilia 01/18/2010		_____			
/P1			phenry 01/18/2010	_____	sbasford 01/19/2010		
/P2	mkunkel 01/22/2010	csicilia 01/22/2010	rschluet 01/22/2010	_____	cduerst 01/22/2010		

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	mkunkel 02/04/2010	csicilia 02/04/2010	phenry 02/04/2010 _____	_____	sbasford 02/04/2010	sbasford 02/04/2010	
/2	mkunkel 02/05/2010	nmatzke 02/05/2010	rschluet 02/05/2010 _____	_____	mbarman 02/05/2010	mbarman 02/05/2010	

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Handwritten notes:
295 1/22
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1/22/10

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/? mkunkel

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DH
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DH/CMH
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FE Sent For:

Kunkel, Mark

From: McKinny, Chris
Sent: Monday, December 21, 2009 2:59 PM
To: Kunkel, Mark
Subject: PAYDAY LENDING MEETING.doc

Hey Mark,

Here is the document that I was referring to on the phone. As you will see, there are still a couple of areas that need a bit of work. I just wanted to get something into drafting ASAP so we can move relatively quickly on this in January. Please let me know what questions you have and I will work with the workgroup (Seidel, Zepnick, Fields, Jorgensen, Smith, Hintz) to get answers for you. Just so you know, this document has not been shared with anyone outside of the workgroup. Thanks for your help and have a great Christmas!

Chris

PAYDAY LENDING

I. Areas of Agreement:

- 
 - Compromise will be drafted as a substitute amendment and exec'd out of the Financial Institutions Committee**

 - A decision needs to be made regarding which bill this will be drafted as a sub to (we need your help with this Mark-the options are Hintz's AB 392, Zepnick's AB 311 or Jorgensen's AB 447)
- **Database**

 - 

Must address privacy concerns, namely no use of social security number or bank account information
 - 

Self-funded through fee (with portion of fee going towards financial literacy materials as well)

 - Amount of fee to be determined but not to exceed \$1 per transaction
 - This fee needs to be protected from raids
- 

• **One Loan at a Time**
- 

• **Right to Rescind**

 - end of following business day (Rep. Jorgensen)
- 

• **Cooling-Off Period**

 - loan must be paid off and an additional **24 hours** must pass before an applicant can take out another loan; OR:

- for borrowers who enter into a repayment plan, a one pay period cool off after the original loan is paid off in full

✓
✓
✓

No Rollovers (with reasonable repayment provisions)

No prepayment penalty

Initial Disclosure Requirements

- Elements of Rep. Jorgensen's bill (to be provided at least 15 minutes before entering into a payday loan):
 1. total amount of all fees and costs, in dollars, and the APR (if applicable);
 2. a copy of all written information materials; ✓
 3. disclosure of the right to rescind by the end of the next business day; ✓
 4. loan provider must retain, for at least three years, a record of compliance with these provisions;

✓

Financial Literacy Program

- Funded through database fee (see above)
- money will be given to DFI to allocate to previously existing community based program grants

✓
✓

Meeting participants are not to discuss proposal with others

Maximum Amount Borrowed:

- Incorporate all finance charges and fees into maximum amount
 - ~~\$15 per \$100 borrowed~~
- Consideration of ability to pay
 - ~~maximum of 25% (?) per pay period/monthly (gross) or \$600, whichever is less~~

✓

Repayment Plan Provisions:

- Timeframe for repayment plan-a maximum of four equal installments with a 0% finance charge

✓

Loan Collateral Restrictions

- Auto-title loans (Rep. Zepnick)

✓
✓

Annual (or more frequent) Report to DFI (per Rep. Jorgensen's bill)?

Regulation of online lending-see Minnesota example



Include prohibition on lenders selling borrower information



A bill must be in drafting before Christmas



Kunkel, Mark

From: McKinny, Chris
Sent: Thursday, December 24, 2009 6:29 AM
To: Kunkel, Mark
Subject: Bill Draft

Hey Mark,

After giving this a bit more thought, could you please make the initial draft of the payday lending sub amendment a p-draft? Thanks!

Chris McKinny
Office of Rep. Seidel

Kunkel, Mark

From: Kunkel, Mark
Sent: Thursday, January 07, 2010 4:53 PM
To: McKinny, Chris
Subject: RE: Bill Draft

Chris,

I just finished a big project and will start the payday loan substitute amendment next week. (I am out of the office tomorrow.)

Looking over the instructions, I think I will need additional guidance from you. For example:

- I'm not quite sure what you mean by repayment provisions and how they relate to the rollover prohibition.
- I'm not sure what you want to do with auto title loans. It doesn't look like Rep. Zepnick's bill addresses them.
- Can I talk to DFI about the previously existing community based financial literacy programs? I'll need a bit more guidance on how to specify them in the substitute amendment. Instead of talking to DFI, maybe you can point me in the right direction.
- You indicate that the database fee should be protected from raids. However, the legislature cannot restrict a future legislature from using the fees for a different purpose, so I don't think you can accomplish that.
- I'm not sure what you want to do about online lending. What is the Minnesota example that you mention?

Can we talk about the instructions on Monday? If so, I can probably get the new substitute amendment to you by the end of next week.

As for which bill to amend, I think that it is really up to you. Since it will be a substitute amendment, the language will entirely replace whatever bill you choose.

-- Mark

From: McKinny, Chris
Sent: Wednesday, January 06, 2010 6:59 PM
To: Kunkel, Mark
Subject: Bill Draft

Hey Mark,

I just wanted to check in to see if you had a rough timeframe for a draft on the payday lending bill. Please just let me know when you get a chance. Thanks, and have a great night.

Chris McKinny
Office of Rep. Donna Seidel
Assistant Majority Leader
608-266-0654 (office)
1-888-534-0085 (toll free)

McKinny, Chris

From: Castillo, Cecely
Sent: Friday, January 08, 2010 2:37 PM
To: McKinny, Chris
Subject: FW: Database - ID issue

Database -

also - no selling of database info -
concern about changing 1 number

FYI

-----Original Message-----

From: Hintz, Gordon
Sent: Friday, January 08, 2010 2:05 PM
To: Castillo, Cecely
Subject: RE: Database - ID issue

I suppose we do that and make penalties big.

Sent from my Windows Mobile® phone.

-----Original Message-----

From: Castillo, Cecely <Cecely.Castillo@legis.wisconsin.gov>
Sent: Thursday, January 07, 2010 1:53 PM
To: Hintz, Gordon <Gordon.Hintz@legis.wisconsin.gov>
Subject: Database - ID issue

I talked to Forbes about database capabilities.

What they have done in other states to combat an unscrupulous lender from "beating" the system with a false ID # (or 1 digit off) is:

- * Require unique ID#, Name & home address for all accounts
- * They generate a report of "redflags" of possible dups and provide it to state agency (DFI)
- * Then it is up to DFI to look into it

This would not catch a 1 time dup - but if it happens multiple times then it is a way to ID lenders working to beat the system. Says it has proven successful in other states.

He is available if you have any other questions for him RE: database

Create a new section of Wisconsin Statutes Chapter 139.09.

- (1) The Commissioner of the Department of Financial Institutions may, by contract with a vendor or service provider or otherwise, develop and implement a system by means of which a deferred deposit lender may determine whether a consumer has an outstanding deferred deposit, the number of deferred deposits the consumer has outstanding and any other information necessary to comply with the provisions of WS 139.09. The Commissioner by rule may specify the form and contents of the system but shall ensure at a minimum that the information entered into or stored by the system is:**
- (a) Accessible to and usable by deferred deposit lenders and the Commissioner from any location in this state; and**
- (b) Secured against public disclosure, tampering, theft or unauthorized acquisition or use.**
- (2) The information in the system described in subsection (1) of this section is not subject to public inspection or disclosure and is not subject to discovery, subpoena or other compulsory process except in an action brought under this chapter.**
- (3) A vendor or service provider that operates or administers the system described in subsection (1) of this section may charge lenders a fee or fees for access to or use of the system in amounts that the director must approve by rule but in no event shall exceed one dollar per loan transaction.**
- (4) If the system described in subsection (1) of this section is developed and implemented, deferred deposit lenders subject to WS 139.09 shall enter or update information required by the system described in subsection (1) of this section at the time that the deferred deposit transaction at the time the lender is conducting the loan transaction.**

The deferred deposit lender shall continue to enter and update the required information for any loans subject to WS 139.09 that are outstanding or have not yet expired after the date on which the deferred deposit lender ceases making such loans. Within 10 business days after ceasing to make loans subject to WS 139.09 the deferred deposit lender shall submit to the Commissioner for approval a plan for continuing compliance with this subsection. The Commissioner shall promptly approve or disapprove the plan and may require the deferred deposit lender to submit a new or modified plan that ensures compliance with this subsection.

(5) The Commissioner by rule shall establish requirements for the retention, archiving and deletion of information entered into or stored by the system described in subsection (1) of this section

McKinny, Chris

From: Castillo, Cecely
Sent: Friday, January 08, 2010 4:15 PM
To: McKinny, Chris
Subject: Penalties portion

New penalties provision:

- misdemeanor ✓
- fine of not less than five hundred dollars (\$500) or more than one thousand dollars (\$1,000) – to go to Financial Literacy Trust Fund ✓

Use similar language from Gordon's 36% bill for private cause of action:

In addition, the bill allows a borrower to bring an action against a lender who violates the prohibition to recover damages in an amount equal to the greater of the following: ✓

1) twice the amount of the finance charge in connection with the loan made to the borrower; or 2) the actual damages, including incidental and consequential damages, sustained by the borrower by reason of the violation. The bill also allows the borrower to recover the costs of the action, including reasonable attorney fees.

Cecely Castillo
Office of Representative Gordon Hintz
322 West, State Capitol
608-266-2254 or
888-534-0054 toll-free
cecely.castillo@legis.wisconsin.gov

From: McKinny, Chris
Sent: Friday, January 08, 2010 1:30 PM
To: Castillo, Cecely
Subject: RE: Payday questions:

This is great Cecely-thanks! Have a great weekend! I'll keep you posted.

From: Castillo, Cecely
Sent: Friday, January 08, 2010 12:04 PM
To: McKinny, Chris
Subject: Payday questions:

1. Need to ensure language ensure only **one** loan at a time
2. Need to create penalties provision for violation of any section of the law. The Penalties \$ - will go to financial literacy fund.

FYI - Questions I asked Scott Grosz at Leg Council:

1/8/2010

Internet payday lenders:

- Rep. Hintz is interested in inserting provisions that will allow us to regulate internet lenders not based in WI
- Other states (e.g. MN) require filing with state and paying a fee.
- If we added this would out law then be applied to internet?
- How does the interstate commerce clause play into this?

Installment Loan provisions:

- One concern is that if an income test is applied only to payday lenders and exempts installment lenders then they will just alter themselves to become installment lenders as has occurred in other states
- One way to perhaps remove this loophole would be to apply an income test (max of 35% per pay period/monthly or \$600 max per month - inclusive of fees and finance charges) so this covers both payday & installment lenders?
- This would be coupled with a repayment plan provision – timeframe for repayment plan with a 0% finance charge
- DFI was concerned that this could potentially be a conflict with the Wisconsin Consumer Act – 10 day default provision
- What are our options?

Cecely Castillo
Office of Representative Gordon Hintz
322 West, State Capitol
608-266-2254 or
888-534-0054 toll-free
cecely.castillo@legis.wisconsin.gov

CREDIT NOTES from meeting with Chris McKinnon

Ant
Finance

✓ Max borrowed \$600

OR

3.5% Gross monthly income

✓ Monthly income whatever is less

No followers

Database - see sample

✓ can't use SSN as identifying #
name, address, + personal identifiable #
that is not SSN

✓ Name and number linked

✓ Fee for database

✓ OFI asset loan for literacy program

off to Leg Fund
use PR appropriate -

✓ Repayment provisions

- no default penalties

- must be 4 equal payments } sub, to
Key to pay period } \$600 max

✓ For AB 310 to this bill

✓ Minnesota Laptop to specific
including out of state
internet

✓ UGF - based on Minnesota law

✓ Peralt's

○ - more info from Mintz's installed
ISSUE



House Research Bill Summary

File Number: H.F. 3533

Date: February 29, 2008

Version: As introduced

Authors: Davnie

Subject: Payday lending

Analyst: Tom Pender, 651-296-1885

This publication can be made available in alternative formats upon request. Please call 651-296-6753 (voice); or the Minnesota State Relay Service at 1-800-627-3529 (TTY) for assistance. Summaries are also available on our website at: www.house.mn/hrd/hrd.htm.

Overview

This bill tightens state regulation of small short-term loans to consumers, which are known as "payday loans." State law permits higher interest rates and fees for these loans than for loans that are larger or have longer terms.

Section

- 1 **Application.** Requires certain types of lenders to comply with the statute that regulates payday loans. (The effect is to eliminate the ability under current law of those lenders to make payday loans under other sections of law that are more favorable to the lenders.)
- 2 **Definitions.** Amends definitions in the payday lending law. The changes in general expand the boundaries of the loans that are subject to the law (section 47.60) that regulates payday loans. Excludes transactions regulated as motor vehicle installment loans or as consumer credit sales.
- 3 **Loan limit.** Prohibits payday loans made under section 47.60 to exceed \$600.
- 4 **Authorization, terms, conditions, and prohibitions.**
- (a) Eliminates the ability of a payday lender to charge on a payday loan interest, finance charges, or other fees authorized under some other section. Makes changes (in clause 4) to keep charges the same as under current law for loans between \$250-\$350.
- Establishes limits on charges for payday loans between \$350-\$600 (not considered payday loans under current law) of five percent of the loan amount plus \$5.
- (d) Prohibits check cashing charges unless authorized in this section.
- (e) Limits the number of return check charges to one, for loans in which the borrower gives the lender a personal check as collateral for the loan. This prohibits resubmitting the same bounced check to the bank multiple times, or at least charging the borrower for more than one submission.
- (f) Makes a conforming change to match section 3.
- (g) Requires payday lenders to ask prospective borrowers whether they qualify for favorable treatment by lenders under federal law for military personnel and their dependents.
- (h) Prohibits making payday loans to a borrower indebted, or who has been indebted, during the prior 21 calendar days, to any payday lender for any type of debt. In other words, there needs to be a three-week interval between loans.
- (i) Provides that the criminal theft law does not apply to payday loans.
- (j) Provides that the holder or assignee of a check written by a borrower in connection with a payday loan takes the check subject to claims and defenses of the borrower. This means the traditional "holder in due course doctrine" does not apply.

604.113
suba. 2
par. (a)

(k) Prohibits using or threatening to use the criminal process to collect a delinquent payday loan.

(l) Prohibits a mandatory arbitration clause in a payday loan contract.

5 **Installment payment plans.**

(a) Requires a payday lender to offer a prospective borrower the option of repaying the loan in installments, if the loan is for \$75 or more.

(b) Requires the written offer to be in the same language used in the loan agreement. Permits a borrower to request a copy of the offer in any language in which the lender advertises.

(c) Requires this written offer to be on a separate sheet of paper. Specifies the form of the offer, including examples and interest rate comparisons of repaying in installments versus a single payment.

(d) Specifies more language and formatting of the written offer of paying in installments.

(e) Requires that each installment payment be 20 percent of the total amount payable on the loan. Prohibits adding additional charges.

(f) Says the first installment cannot be due earlier than two weeks after the loan was made. Requires at least a two-week interval between the other four installments.

6 **Books of account; annual report; schedule of charges.**

(b) Requires payday lenders to file much more detailed aggregate information with the commissioner of commerce than is required under current law.

(c) Requires the payday lender's schedule of loan charges, which must be displayed in each office, to be in every language in which the lender advertises. Strikes a sentence that is moved to the following section.

(e) Conforms to paragraph (c) on the "every language" concept for the disclosure of charges. Removes a sentence now required to be in a disclosure; the sentence gives a reason why Minnesota permits higher charges on payday loans.

7 **Written contracts; contract disclosures.** Requires the lender to give the borrower a copy of the loan contract. Says what must be included in the loan contract.

8 **Penalties for violation; private right of action.**

(a) Makes it a gross misdemeanor to make a loan larger than \$600 under the law that applies to payday loans.

(b) Creates a private cause of action (right to sue) for the borrower against the payday lender if the lender violates section 3, 4, 5, or 7 of this bill. The borrower has the right to recover all fees and charges owing or paid, statutory damages of \$1,000 per violation unless the violation was an unintentional bona fide error, and costs and reasonable attorney fees.

9 **Collection agency.** Amends the definition of "collection agency" to include a "consumer small loan collector," as defined in the next section. This section and the three that follow it have the effect of subjecting a payday lender to regulation, but not licensing, as a collection agency (debt collector) when collecting its own payday loans.

10 **Consumer small loan collector.** Defines this term to mean a payday lender collecting its own payday loans.

11 **Exclusions.** Says that a payday lender that collects only its own loans is not exempt from regulation as a collection agency.

12 **Additional requirements of consumer small loan collections.** Subjects payday lenders to all regulations (other than licensing) of collection agencies and to Department of Commerce enforcement powers for use in enforcing that regulation.

Attachments: Picture (Metafile); Picture (Metafile); Picture (Metafile)

Minn. Stat. § 47.60 (2009)

47.60 CONSUMER SMALL LOANS

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 personal, family, or household purpose. 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.

(b) "Consumer small loan lender" is a financial institution as defined in section 47.59 or a business entity registered with the commissioner and engaged in the business of making consumer small loans.

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 amounts in excess of \$250 and not greater than the maximum in subdivision 1, paragraph (a), a charge may be added equal to six percent of the loan proceeds with a minimum of \$17.50 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 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 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.

Subd. 3. Filing.

Before a business entity other than a financial institution as defined by section 47.59 engages in the business of making consumer small loans to Minnesota residents, the business entity shall file with the commissioner as a consumer small loan lender. The filing must be on a form prescribed by the commissioner together with a fee of \$250 for each place of business and contain the following information in addition to the information required by the commissioner:

- (1) evidence that the filer has available for the operation of the business at the location specified, liquid assets of at least \$50,000; and
- (2) a biographical statement on the principal person responsible for the operation and management of the business to be certified.

Revocation of the filing is the same as in the case of a regulated lender license in section 56.09.

For purposes of this subdivision, "business entity" includes one that does not have a physical location in Minnesota that makes a consumer small loan electronically via the Internet.

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 information the commissioner reasonably requires concerning the business and operations during the preceding calendar year, including the information required to be reported under section 47.601, subdivision 5.
- (c) A lender filing under subdivision 3 shall display prominently in each place of business 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, 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.

Subd. 5. Complaints alleging violation.

A person obligated to or having been obligated to a consumer small loan lender filing under subdivision 3 and having reason to believe that this section has been violated may file with the commissioner a written complaint setting forth the details of the alleged violation. The commissioner, upon receipt of the complaint, may inspect the pertinent books, records, letters, and contracts of the lender and borrower involved. The commissioner may assess against the lender a fee covering the necessary costs of an investigation under this section. The commissioner may maintain an action for the recovery of the costs in a court of competent jurisdiction.

Subd. 6. Penalties for violation.

A person who violates or participates in the violation of any of the provisions of this section is liable in the same manner as in section 47.601, subdivision 7.

\l "refpt_L1CENAV" \l "refpt_L1CENAV"History:

1995 c 202 art 3 s 2; 1996 c 305 art 1 s 14; 1996 c 414 art 2 s 7; 1999 c 151 s 17; 2000 c 427 s 6; 2007 c 44 s 3; 2007 c 57 art 3 s 9; 2009 c 37 art 3 s 2,3; 2009 c 68 s 1,2

NOTES:

Subdivision 6 was also amended by Laws 2009, chapter 37, article 3, section 4, to read as follows: 56.19

LexisNexis (R) Notes:

\l "refpt_L1CENAVLR" \l "refpt_L1CENAVLR"Law Reviews:

1. 87 Minn. L. Rev. 1, ARTICLE: Payday Loans: Shrewd Business or Predatory Lending?.
2. 33 Wm. Mitchell L. Rev. 223, ARTICLE: MINNESOTA STATUTES CHAPTER 325N: A MODEL FOR SUBSTANTIVE CONSUMER PROTECTION.
3. 35 Wm. Mitchell L. Rev. 1134, POVERTY LAW: A NOOSE AROUND THE NECK: PREVENTING ABUSIVE PAYDAY LENDING PRACTICES AND PROMOTING LOWER COST ALTERNATIVES.

604.113 ISSUANCE OF WORTHLESS CHECK

Subdivision 1. Definitions.

- (a) The definitions provided in this subdivision apply to this section.
- (b) "Check" means a check, draft, order of withdrawal, or similar negotiable or nonnegotiable instrument.
- (c) "Credit" means an arrangement or understanding with the drawee for the payment of the check.
- (d) "Dishonor" has the meaning given in section 336.3-502, but does not include dishonor due to a stop payment order requested by an issuer who has a good faith defense to payment on the check. "Dishonor" does include a stop payment order requested by an issuer if the account did not have sufficient funds for payment of the check at the time of presentment, except for stop payment orders on a check found to be stolen.
- (e) "Payee" or "holder" includes an agent of the payee or holder.

Subd. 2. Acts constituting.

Whoever issues any check that is dishonored is liable for the following penalties:

- (a) A service charge, not to exceed \$30, may be imposed immediately on any dishonored check by the payee or holder of the check, regardless of mailing a notice of dishonor, if notice of the service charge was conspicuously displayed on the premises when the check was issued. If a law enforcement agency obtains payment of a dishonored check on behalf of the payee or holder, up to the entire amount of the service charge may be retained by the law enforcement agency for its expenses. Only one service charge may be imposed under this paragraph for each dishonored check. The displayed notice must also include a provision notifying the issuer of the check that civil penalties may be imposed for nonpayment.
- (b) If the amount of the dishonored check is not paid within 30 days after the payee or holder has mailed notice of dishonor pursuant to section 609.535 and a description of the penalties contained in this subdivision, whoever issued the dishonored check is liable to the payee or holder of the check for:
 - (1) the amount of the check, the service charge as provided in paragraph (a), plus a civil penalty of up to \$100 or the value of the check, whichever is greater. In determining the amount of the penalty, the court shall consider the amount of the check and the reason for nonpayment. The civil penalty may not be imposed until 30 days following the mailing of the notice of dishonor. A payee or holder of the check may make a written demand for payment of the civil liability by sending a copy of this section and a description of the liability contained in this section to the issuer's last known address. Notice as provided in paragraph (a) must also include notification that additional civil penalties will be imposed for dishonored checks for nonpayment after 30 days;
 - (2) interest at the rate payable on judgments pursuant to section 549.09 on the face amount of the check from the date of dishonor; and
 - (3) reasonable attorney fees if the aggregate amount of dishonored checks issued by the issuer to all payees

within a six-month period is over \$1,250.

(c) This subdivision prevails over any provision of law limiting, prohibiting, or otherwise regulating service charges authorized by this subdivision, but does not nullify charges for dishonored checks, which do not exceed the charges in paragraph (a) or terms or conditions for imposing the charges which have been agreed to by the parties in an express contract.

(d) A sight draft may not be used as a means of collecting the civil penalties provided in this section without prior consent of the issuer.

(e) The issuer of a dishonored check is not liable for the penalties described in paragraph (b) if a pretrial diversion program under section 628.69 has been established in the jurisdiction where the dishonored check was issued, the issuer was accepted into the program, and the issuer successfully completes the program.

Subd. 3. Notice of dishonor required.

Notice of nonpayment or dishonor that includes a citation to this section and section 609.535, and a description of the penalties contained in these sections, shall be sent by the payee or holder of the check to the drawer by certified mail, return receipt requested, or by regular mail, supported by an affidavit of service by mailing, to the address printed or written on the check.

The issuance of a check with an address printed or written on it is a representation by the drawer that the address is the correct address for receipt of mail concerning the check. Failure of the drawer to receive a regular or certified mail notice sent to that address is not a defense to liability under this section, if the drawer has had actual notice for 30 days that the check has been dishonored.

An affidavit of service by mailing shall be retained by the payee or holder of the check.

Subd. 4. Proof of identity.

The check is prima facie evidence of the identity of the issuer if the person receiving the check:

(a) records the following information about the issuer on the check, unless it is printed on the face of the check:

(1) name;

(2) home or work address;

(3) home or work telephone number; and

(4) identification number issued pursuant to section 171.07;

(b) compares the issuer's physical appearance, signature, and the personal information recorded on the check with the issuer's identification card issued pursuant to section 171.07; and

(c) initials the check to indicate compliance with these requirements.

Subd. 5. Defenses.

Any defense otherwise available to the issuer also applies to liability under this section.

\\ "refpt_LICENAV" \\ "refpt_LICENAV"**History:**

1983 c 225 s 6; 1984 c 576 s 26; 1985 c 140 s 1,2; 1991 c 256 s 8,9; 1992 c 565 s 113; 1996 c 414 art 1 s 41; 1997 c 157 s 65,66; 1999 c 218 s 1; 2001 c 204 s 1; 2004 c 174 s 3

47.60 CONSUMER SMALL LOANS.

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 personal, family, or household purpose. 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.

(b) "Consumer small loan lender" is a financial institution as defined in section 47.59 or a business entity registered with the commissioner and engaged in the business of making consumer small loans.

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 amounts in excess of \$250 and not greater than the maximum in subdivision 1, paragraph (a), a charge may be added equal to six percent of the loan proceeds with a minimum of \$17.50 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 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 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.

Subd. 3. **Filing.** Before a business entity other than a financial institution as defined by section 47.59 engages in the business of making consumer small loans to Minnesota residents, the business entity shall file with the commissioner as a consumer small loan lender. The filing must be on a form prescribed by the commissioner together with a fee of \$250 for each place of business and contain the following information in addition to the information required by the commissioner:

(1) evidence that the filer has available for the operation of the business at the location specified, liquid assets of at least \$50,000; and

(2) a biographical statement on the principal person responsible for the operation and management of the business to be certified.

Revocation of the filing is the same as in the case of a regulated lender license in section 56.09.

For purposes of this subdivision, "business entity" includes one that does not have a physical location in Minnesota that makes a consumer small loan electronically via the Internet.

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 information the commissioner reasonably requires concerning the business and operations during the preceding calendar year, including the information required to be reported under section 47.601, subdivision 5.

(c) A lender filing under subdivision 3 shall display prominently in each place of business 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, 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.

Subd. 5. Complaints alleging violation. A person obligated to or having been obligated to a consumer small loan lender filing under subdivision 3 and having reason to believe that this section has been violated may file with the commissioner a written complaint setting forth the details of the alleged violation. The commissioner, upon receipt of the complaint, may inspect the pertinent books, records, letters, and contracts of the lender and borrower involved. The commissioner may assess against the lender a fee covering the necessary costs of an investigation under this section. The commissioner may maintain an action for the recovery of the costs in a court of competent jurisdiction.

Subd. 6. Penalties for violation. A person who violates or participates in the violation of any of the provisions of this section is liable in the same manner as in section 47.601, subdivision 7.

History: 1995 c 202 art 3 s 2; 1996 c 305 art 1 s 14; 1996 c 414 art 2 s 7; 1999 c 151 s 17; 2000 c 427 s 6; 2007 c 44 s 3; 2007 c 57 art 3 s 9; 2009 c 37 art 3 s 2,3; 2009 c 68 s 1,2

NOTE: Subdivision 6 was also amended by Laws 2009, chapter 37, article 3, section 4, to read as follows:

"Subd. 6. **Penalties for violation.** A business entity or the 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 liable in the same manner as in section 56.19."