

SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION

S.F. No. 1635

(SENATE AUTHORS: SEEBERGER, Fateh and Klein)

DATE	D-PG	OFFICIAL STATUS
02/13/2023	809	Introduction and first reading
		Referred to Commerce and Consumer Protection
03/02/2023		Comm report: To pass as amended
		Second reading

1.1 A bill for an act

1.2 relating to financial institutions; adding a definition of "annual percentage rate";

1.3 regulating interest rates for consumer short-term and small loans; prohibiting

1.4 evasion from consumer short-term and small loan requirements; amending

1.5 Minnesota Statutes 2022, sections 47.59, subdivision 2; 47.60, subdivisions 1, 2,

1.6 by adding a subdivision; 47.601, subdivisions 1, 2, 6, by adding a subdivision;

1.7 53.04, subdivision 3a; 56.131, subdivision 1.

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

1.9 Section 1. Minnesota Statutes 2022, section 47.59, subdivision 2, is amended to read:

1.10 Subd. 2. **Application.** Extensions of credit or purchases of extensions of credit by

1.11 financial institutions under sections 47.20, 47.21, 47.201, 47.204, 47.58, ~~47.60~~, 48.153,

1.12 48.185, 48.195, 59A.01 to 59A.15, 334.01, 334.011, 334.012, 334.022, 334.06, and 334.061

1.13 to 334.19 may, but need not, be made according to those sections in lieu of the authority

1.14 set forth in this section to the extent those sections authorize the financial institution to make

1.15 extensions of credit or purchase extensions of credit under those sections. If a financial

1.16 institution elects to make an extension of credit or to purchase an extension of credit under

1.17 those other sections, the extension of credit or the purchase of an extension of credit is

1.18 subject to those sections and not this section, except this subdivision, and except as expressly

1.19 provided in those sections. A financial institution may also charge an organization a rate of

1.20 interest and any charges agreed to by the organization and may calculate and collect finance

1.21 and other charges in any manner agreed to by that organization. Except for extensions of

1.22 credit a financial institution elects to make under section 334.01, 334.011, 334.012, 334.022,

1.23 334.06, or 334.061 to 334.19, chapter 334 does not apply to extensions of credit made

1.24 according to this section or the sections listed in this subdivision. This subdivision does not

1.25 authorize a financial institution to extend credit or purchase an extension of credit under

2.1 any of the sections listed in this subdivision if the financial institution is not authorized to
 2.2 do so under those sections. A financial institution extending credit under any of the sections
 2.3 listed in this subdivision shall specify in the promissory note, contract, or other loan document
 2.4 the section under which the extension of credit is made.

2.5 Sec. 2. Minnesota Statutes 2022, section 47.60, subdivision 1, is amended to read:

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

2.8 (a) "Consumer small loan" is a loan transaction in which cash is advanced to a borrower
 2.9 for the borrower's own personal, family, or household purpose. A consumer small loan is
 2.10 a short-term, unsecured loan to be repaid in a single installment. The cash advance of a
 2.11 consumer small loan is equal to or less than \$350. A consumer small loan includes an
 2.12 indebtedness evidenced by but not limited to a promissory note or agreement to defer the
 2.13 presentation of a personal check for a fee.

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

2.17 (c) "Annual percentage rate" means a measure of the cost of credit, expressed as a yearly
 2.18 rate, that relates the amount and timing of value received by the consumer to the amount
 2.19 and timing of payments made. Annual percentage interest rate includes all interest, finance
 2.20 charges, and fees. The annual percentage rate shall be determined in accordance with either
 2.21 the actuarial method or the United States Rule method.

2.22 Sec. 3. Minnesota Statutes 2022, section 47.60, subdivision 2, is amended to read:

2.23 Subd. 2. **Authorization, terms, conditions, and prohibitions.** (a) ~~In lieu of the interest,~~
 2.24 ~~finance charges, or fees in any other law~~ connection with a consumer small loan, a consumer
 2.25 small loan lender may charge the following: an annual percentage rate of up to 36 percent.
 2.26 No other charges or payments are permitted or may be received by the lender in connection
 2.27 with a consumer small loan.

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

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

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

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

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

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

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

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

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

3.22 Sec. 4. Minnesota Statutes 2022, section 47.60, is amended by adding a subdivision to
3.23 read:

3.24 Subd. 8. **No evasion.** (a) No person shall engage in any device, subterfuge, or pretense
3.25 to evade the requirements of this section, including but not limited to:

3.26 (1) making loans disguised as a personal property sale and leaseback transaction;

3.27 (2) disguising loan proceeds as a cash rebate for the pretextual installment sale of goods
3.28 or services; or

3.29 (3) making, offering, assisting, or arranging for a debtor to obtain a loan with a greater
3.30 rate or amount of interest, consideration, charge, or payment than is permitted by this section
3.31 through any method including mail, telephone, Internet, or any electronic means regardless
3.32 of whether a person has a physical location in this state.

4.1 (b) A person is a consumer small loan lender subject to the requirements of this section
 4.2 notwithstanding the fact that a person purports to act as an agent or service provider, or acts
 4.3 in another capacity for another person that is not subject to this section, if a person:

4.4 (1) directly or indirectly holds, acquires, or maintains the predominant economic interest,
 4.5 risk, or reward in a loan or lending business; or

4.6 (2) both: (i) markets, solicits, brokers, arranges, or facilitates a loan; and (ii) holds, or
 4.7 holds the right, requirement, or first right of refusal to acquire, loans, receivables, or other
 4.8 direct or interest in a loan.

4.9 (c) A person is a consumer small loan lender subject to the requirements of this section
 4.10 if the totality of the circumstances indicate that a person is a lender and the transaction is
 4.11 structured to evade the requirements of this section. Circumstances that weigh in favor of
 4.12 a person being a lender in a transaction include but are not limited to where a person:

4.13 (1) indemnifies, insures, or protects a person not subject to this section from any costs
 4.14 or risks related to a loan;

4.15 (2) predominantly designs, controls, or operates lending activity;

4.16 (3) holds the trademark or intellectual property rights in the brand, underwriting system,
 4.17 or other core aspects of a lending business; or

4.18 (4) purports to act as an agent or service provider, or acts in another capacity, for a person
 4.19 not subject to this section while acting directly as a lender in one or more states.

4.20 Sec. 5. Minnesota Statutes 2022, section 47.601, subdivision 1, is amended to read:

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

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

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

4.26 (d) "Consumer short-term loan" means a loan to a borrower which has a principal amount,
 4.27 or an advance on a credit limit, of ~~\$1,000~~ \$1,300 or less and requires a minimum payment
 4.28 within 60 days of loan origination or credit advance of more than 25 percent of the principal
 4.29 balance or credit advance. For the purposes of this section, each new advance of money to
 4.30 a borrower under a consumer short-term loan agreement constitutes a new consumer
 4.31 short-term loan. A "consumer short-term loan" does not include any transaction made under
 4.32 chapter 325J or a loan made by a consumer short-term lender where, in the event of default

5.1 on the loan, the sole recourse for recovery of the amount owed, other than a lawsuit for
 5.2 damages for the debt, is to proceed against physical goods pledged by the borrower as
 5.3 collateral for the loan.

5.4 (e) "Consumer short-term lender" means an individual or entity engaged in the business
 5.5 of making or arranging consumer short-term loans, other than a state or federally chartered
 5.6 bank, savings bank, or credit union. For the purposes of this paragraph, arranging consumer
 5.7 short-term loans includes but is not limited to any substantial involvement in facilitating,
 5.8 marketing, lead-generating, underwriting, servicing, or collecting consumer short-term
 5.9 loans.

5.10 Sec. 6. Minnesota Statutes 2022, section 47.601, subdivision 2, is amended to read:

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

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

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

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

5.20 (i) without a required license issued by the commissioner; or

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

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

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

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

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

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

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

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

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

6.8 Sec. 7. Minnesota Statutes 2022, section 47.601, is amended by adding a subdivision to
6.9 read:

6.10 Subd. 5a. **No evasion.** (a) No person shall engage in any device, subterfuge, or pretense
6.11 to evade the requirements of this section, including but not limited to:

6.12 (1) making loans disguised as a personal property sale and leaseback transaction;

6.13 (2) disguising loan proceeds as a cash rebate for the pretextual installment sale of goods
6.14 or services; or

6.15 (3) making, offering, assisting, or arranging for a debtor to obtain a loan with a greater
6.16 rate or amount of interest, consideration, charge, or payment than is permitted by this section
6.17 through any method including mail, telephone, Internet, or any electronic means regardless
6.18 of whether a person has a physical location in this state.

6.19 (b) A person is a consumer short-term loan lender subject to the requirements of this
6.20 section notwithstanding the fact that a person purports to act as an agent or service provider,
6.21 or acts in another capacity for another person that is not subject to this section, if a person:

6.22 (1) directly or indirectly holds, acquires, or maintains the predominant economic interest,
6.23 risk, or reward in a loan or lending business; or

6.24 (2) both: (i) markets, solicits, brokers, arranges, or facilitates a loan; and (ii) holds, or
6.25 holds the right, requirement, or first right of refusal to acquire, loans, receivables, or other
6.26 direct or interest in a loan.

6.27 (c) A person is a consumer short-term loan lender subject to the requirements of this
6.28 section if the totality of the circumstances indicate that a person is a lender and the transaction
6.29 is structured to evade the requirements of this section. Circumstances that weigh in favor
6.30 of a person being a lender in a transaction include but are not limited to where a person:

7.1 (1) indemnifies, insures, or protects a person not subject to this section from any costs
 7.2 or risks related to a loan;

7.3 (2) predominantly designs, controls, or operates lending activity;

7.4 (3) holds the trademark or intellectual property rights in the brand, underwriting system,
 7.5 or other core aspects of a lending business; or

7.6 (4) purports to act as an agent or service provider, or acts in another capacity, for a person
 7.7 not subject to this section while acting directly as a lender in one or more states.

7.8 Sec. 8. Minnesota Statutes 2022, section 47.601, subdivision 6, is amended to read:

7.9 Subd. 6. **Penalties for violation; private right of action.** (a) Except for a "bona fide
 7.10 error" as set forth under United States Code, chapter 15, section 1640, subsection (c), an
 7.11 individual or entity who violates subdivision 2 ~~or~~ 3, or 5a is liable to the borrower for:

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

7.13 (2) actual, incidental, and consequential damages;

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

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

7.16 (5) injunctive relief.

7.17 (b) In addition to the remedies provided in paragraph (a), a loan is void, and the borrower
 7.18 is not obligated to pay any amounts owing if the loan is made:

7.19 (1) by a consumer short-term lender who has not obtained an applicable license from
 7.20 the commissioner;

7.21 (2) in violation of any provision of subdivision 2 or 3; or

7.22 (3) in which interest, fees, charges, or loan amounts exceed the interest, fees, charges,
 7.23 or loan amounts allowable under ~~sections 47.59, subdivision 6, and~~ section 47.60, subdivision
 7.24 2.

7.25 Sec. 9. Minnesota Statutes 2022, section 53.04, subdivision 3a, is amended to read:

7.26 Subd. 3a. **Loans.** (a) The right to make loans, secured or unsecured, at the rates and on
 7.27 the terms and other conditions permitted under chapters 47 and 334. Loans made under this
 7.28 authority must be in amounts in compliance with section 53.05, clause (7). A licensee making
 7.29 a loan under this chapter secured by a lien on real estate shall comply with the requirements
 7.30 of section 47.20, subdivision 8. A licensee making a loan that is a consumer small loan, as

8.1 defined in section 47.60, subdivision 1, paragraph (a), must comply with section 47.60. A
 8.2 licensee making a loan that is a consumer short-term loan, as defined in section 47.601,
 8.3 subdivision 1, paragraph (d), must comply with section 47.601.

8.4 (b) Loans made under this subdivision may be secured by real or personal property, or
 8.5 both. If the proceeds of a loan secured by a first lien on the borrower's primary residence
 8.6 are used to finance the purchase of the borrower's primary residence, the loan must comply
 8.7 with the provisions of section 47.20.

8.8 (c) An agency or instrumentality of the United States government or a corporation
 8.9 otherwise created by an act of the United States Congress or a lender approved or certified
 8.10 by the secretary of housing and urban development, or approved or certified by the
 8.11 administrator of veterans affairs, or approved or certified by the administrator of the Farmers
 8.12 Home Administration, or approved or certified by the Federal Home Loan Mortgage
 8.13 Corporation, or approved or certified by the Federal National Mortgage Association, that
 8.14 engages in the business of purchasing or taking assignments of mortgage loans and undertakes
 8.15 direct collection of payments from or enforcement of rights against borrowers arising from
 8.16 mortgage loans, is not required to obtain a certificate of authorization under this chapter in
 8.17 order to purchase or take assignments of mortgage loans from persons holding a certificate
 8.18 of authorization under this chapter.

8.19 (d) This subdivision does not authorize an industrial loan and thrift company to make
 8.20 loans under an overdraft checking plan.

8.21 Sec. 10. Minnesota Statutes 2022, section 56.131, subdivision 1, is amended to read:

8.22 Subdivision 1. **Interest rates and charges.** (a) On any loan in a principal amount not
 8.23 exceeding \$100,000 or 15 percent of a Minnesota corporate licensee's capital stock and
 8.24 surplus as defined in section 53.015, if greater, a licensee may contract for and receive
 8.25 interest, finance charges, and other charges as provided in section 47.59.

8.26 (b) A licensee making a loan that is a consumer small loan, as defined in section 47.60,
 8.27 subdivision 1, paragraph (a), must comply with section 47.60. A licensee making a loan
 8.28 that is a consumer short-term loan, as defined in section 47.601, subdivision 1, paragraph
 8.29 (d), must comply with section 47.601.

8.30 ~~(b)~~ (c) With respect to a loan secured by an interest in real estate, and having a maturity
 8.31 of more than 60 months, the original schedule of installment payments must fully amortize
 8.32 the principal and interest on the loan. The original schedule of installment payments for any

9.1 other loan secured by an interest in real estate must provide for payment amounts that are
9.2 sufficient to pay all interest scheduled to be due on the loan.

9.3 ~~(e)~~ (d) A licensee may contract for and collect a delinquency charge as provided for in
9.4 section 47.59, subdivision 6, paragraph (a), clause (4).

9.5 ~~(d)~~ (e) A licensee may grant extensions, deferments, or conversions to interest-bearing
9.6 as provided in section 47.59, subdivision 5.

9.7 Sec. 11. **EFFECTIVE DATE; APPLICATION.**

9.8 Sections 1 to 10 are effective August 1, 2023, and apply to consumer small loans and
9.9 consumer short-term loans originated on or after that date.