

**SENATE**  
**STATE OF MINNESOTA**  
**NINETY-THIRD SESSION**

**S.F. No. 4138**

(SENATE AUTHORS: SEEBERGER)

| DATE       | D-PG  | OFFICIAL STATUS   |
|------------|-------|---|
| 02/22/2024 | 11717 | Introduction and first reading  |
|            |       | Referred to Commerce and Consumer Protection                                |
| 03/20/2024 |       | Comm report: To pass as amended and re-refer to Judiciary and Public Safety |

- 1.1 A bill for an act
- 1.2 relating to commerce; establishing consumer protections with respect to residential
- 1.3 real estate; requiring background checks for a residential loan originator; requiring
- 1.4 financial institution information be kept confidential; amending Minnesota Statutes
- 1.5 2022, sections 45.011, subdivision 1; 58.06, by adding a subdivision; proposing
- 1.6 coding for new law in Minnesota Statutes, chapters 65A; 332; 513; proposing
- 1.7 coding for new law as Minnesota Statutes, chapter 46A; repealing Minnesota
- 1.8 Statutes 2022, section 332.3351.
- 1.9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.10 Section 1. Minnesota Statutes 2022, section 45.011, subdivision 1, is amended to read:
- 1.11 Subdivision 1. **Scope.** As used in chapters 45 to 80C, 80E to 83, 155A, 216C, 332, 332A,
- 1.12 332B, 345, and 359, and sections 81A.22 to 81A.37; 123A.21, subdivision 7, paragraph
- 1.13 (a), clause (23); 123A.25; 325D.30 to 325D.42; 326B.802 to 326B.885; 386.62 to 386.78;
- 1.14 471.617; ~~and 471.982;~~ and 513.80, unless the context indicates otherwise, the terms defined
- 1.15 in this section have the meanings given them.
- 1.16 Sec. 2. [46A.08] CONFIDENTIALITY.
- 1.17 Subdivision 1. **Financial institution information.** (a) Any documents, materials, or
- 1.18 other information in the control or possession of the department that are furnished by a
- 1.19 licensee or a licensee's employee or agent acting on behalf of a financial institution pursuant
- 1.20 to section 46A.06 or that are obtained by the commissioner in an investigation or examination
- 1.21 pursuant to section 46A.07: (1) are classified as confidential, protected nonpublic, or both;
- 1.22 (2) are not subject to subpoena; and (3) are not subject to discovery or admissible in evidence
- 1.23 in any private civil action.

2.1 (b) Notwithstanding paragraph (a), clauses (1) to (3), the commissioner is authorized to  
2.2 use the documents, materials, or other information in the furtherance of any regulatory or  
2.3 legal action brought as a part of the commissioner's duties.

2.4 Subd. 2. **Certain testimony prohibited.** Neither the commissioner nor any person who  
2.5 received documents, materials, or other information while acting under the authority of the  
2.6 commissioner is permitted or required to testify in a private civil action concerning  
2.7 confidential documents, materials, or information subject to subdivision 1.

2.8 Subd. 3. **Information sharing.** In order to assist in the performance of the commissioner's  
2.9 duties under sections 46A.01 to 46A.08, the commissioner may:

2.10 (1) share documents, materials, or other information, including the confidential and  
2.11 privileged documents, materials, or information subject to subdivision 1, with other state,  
2.12 federal, and international regulatory agencies, with the Conference of State Bank Supervisors,  
2.13 the Conference of State Bank Supervisors' affiliates or subsidiaries, and with state, federal,  
2.14 and international law enforcement authorities, provided that the recipient agrees in writing  
2.15 to maintain the confidentiality and privileged status of the document, material, or other  
2.16 information;

2.17 (2) receive documents, materials, or information, including otherwise confidential and  
2.18 privileged documents, materials, or information, from the Conference of State Bank  
2.19 Supervisors, the Conference of State Bank Supervisors' affiliates or subsidiaries, and from  
2.20 regulatory and law enforcement officials of other foreign or domestic jurisdictions, and  
2.21 must maintain as confidential or privileged any document, material, or information received  
2.22 with notice or the understanding that the document, material, or information is confidential  
2.23 or privileged under the laws of the jurisdiction that is the source of the document, material,  
2.24 or information;

2.25 (3) share documents, materials, or other information subject to subdivision 1 with a  
2.26 third-party consultant or vendor, provided the consultant agrees in writing to maintain the  
2.27 confidentiality and privileged status of the document, material, or other information; and

2.28 (4) enter into agreements governing the sharing and use of information that are consistent  
2.29 with this subdivision.

2.30 Subd. 4. **No waiver of privilege or confidentiality; information retention.** (a) The  
2.31 disclosure of documents, materials, or information to the commissioner under this section  
2.32 or as a result of sharing as authorized in subdivision 3 does not result in a waiver of any  
2.33 applicable privilege or claim of confidentiality in the documents, materials, or information.

3.1 (b) A document, material, or information disclosed to the commissioner under this section  
3.2 about a cybersecurity event must be retained and preserved by the financial institution for  
3.3 five years.

3.4 Subd. 5. **Certain actions public.** Nothing in sections 46A.01 to 46A.08 prohibits the  
3.5 commissioner from releasing final, adjudicated actions that are open to public inspection  
3.6 pursuant to chapter 13 to a database or other clearinghouse service maintained by the  
3.7 Conference of State Bank Supervisors, the Conference of State Bank Supervisors' affiliates,  
3.8 or the Conference of State Bank Supervisors' subsidiaries.

3.9 Subd. 6. **Classification, protection, and use of information by others.** Documents,  
3.10 materials, or other information in the possession or control of the Conference of State Bank  
3.11 Supervisors or a third-party consultant pursuant to sections 46A.01 to 46A.08: (1) are  
3.12 classified as confidential, protected nonpublic, and privileged; (2) are not subject to subpoena;  
3.13 and (3) are not subject to discovery or admissible in evidence in a private civil action.

3.14 Sec. 3. Minnesota Statutes 2022, section 58.06, is amended by adding a subdivision to  
3.15 read:

3.16 Subd. 5. **Background checks.** In connection with an application for a residential mortgage  
3.17 loan originator or servicer license, any person in control of an applicant must, at a minimum,  
3.18 provide the Nationwide Multistate Licensing System and Registry information concerning  
3.19 the person's identity, including:

3.20 (1) fingerprints for submission to the Federal Bureau of Investigation and a governmental  
3.21 agency or entity authorized to receive the information for a state, national, and international  
3.22 criminal history background check; and

3.23 (2) personal history and experience in a form prescribed by the Nationwide Multistate  
3.24 Licensing System and Registry, including the submission of authorization for the Nationwide  
3.25 Multistate Licensing System and Registry and the commissioner to obtain:

3.26 (i) an independent credit report obtained from a consumer reporting agency described  
3.27 in United States Code, title 15, section 1681a(p); and

3.28 (ii) information related to administrative, civil, or criminal findings by a governmental  
3.29 jurisdiction.

4.1 Sec. 4. **[65A.3025] CONDOMINIUM AND TOWNHOUSE POLICIES;**  
4.2 **COORDINATION OF BENEFITS FOR LOSS ASSESSMENT.**

4.3 Subdivision 1. Definitions. (a) For purposes of this section the following terms have  
4.4 the meanings given.

4.5 (b) "Association" has the meaning given in section 515B.1-103, clause (4).

4.6 (c) "Unit owner" has the meaning given in section 515B.1-103, clause (37).

4.7 Subd. 2. Loss assessment. (a) If a loss assessment is charged by an association to an  
4.8 individual unit owner the insurance policy in force at the time of the assessable loss must  
4.9 pay the loss assessment, up to the limits provided in the policy, notwithstanding any policy  
4.10 provisions regarding when loss assessment coverage accrues, and subject to any other terms,  
4.11 conditions, and exclusions in the policy, if the following conditions are met:

4.12 (1) the unit owner at the time of the assessable loss is the owner of the property listed  
4.13 on the policy at the time the loss assessment is charged; and

4.14 (2) if the insurance policy in force at the time of the assessable loss provides loss  
4.15 assessment coverage.

4.16 (b) If a loss assessment is charged by an association to an individual unit owner the  
4.17 insurance policy in force at the time the loss assessment is charged must pay the assessment,  
4.18 up to the limits provided in the policy, notwithstanding any policy provisions regarding  
4.19 when loss assessment coverage accrues, and subject to any other terms, conditions, and  
4.20 exclusions in the policy, if the following conditions are met:

4.21 (1) the unit owner at the time of the loss assessment is charged is different than the unit  
4.22 owner at the time of the assessable loss; and

4.23 (2) the insurance policy in force at the time the loss assessment is charged provides loss  
4.24 assessment coverage.

4.25 (c) For a loss assessment under paragraph (b), an insurer may require evidence  
4.26 documenting that the transfer of ownership occurred prior to the assessment before the  
4.27 insurer affords coverage.

4.28 Sec. 5. **[332.3352] WAIVER OF LICENSING AND REGISTRATION.**

4.29 The commissioner of commerce may, by order, waive the licensing and registration  
4.30 requirements of this chapter for a nonresident collection agency and its affiliated collectors  
4.31 if: (1) a written reciprocal licensing agreement is in effect between the commissioner and

5.1 the licensing officials of the collection agency's home state; and (2) the collection agency  
 5.2 is licensed in good standing in that state.

5.3 **Sec. 6. [513.80] RESIDENTIAL REAL ESTATE SERVICE AGREEMENTS;**  
 5.4 **UNFAIR SERVICE AGREEMENTS.**

5.5 Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have  
 5.6 the meanings given.

5.7 (b) "County recorder" has the meaning given in section 13.045, subdivision 1.

5.8 (c) "Person" means natural persons, corporations both foreign and domestic, trusts,  
 5.9 partnerships both limited and general, incorporated or unincorporated associations,  
 5.10 companies, business entities, and any other legal entity or any other group associated in fact  
 5.11 although not a legal entity or any agent, assignee, heir, employee, representative, or servant  
 5.12 thereof.

5.13 (d) "Record" or "recording" means placement of a document or instrument in the official  
 5.14 county public land records.

5.15 (e) "Residential real property" means real property that is located in Minnesota occupied,  
 5.16 or intended to be occupied, by one to four families as their residence.

5.17 (f) "Service agreement" means a contract under which a person agrees to provide real  
 5.18 estate broker services as defined in section 82.55, subdivision 19, in connection with the  
 5.19 purchase or sale of residential real property.

5.20 (g) "Service provider" means an individual or entity that provides services to a person  
 5.21 pursuant to a service agreement.

5.22 Subd. 2. **Unfair service agreements; prohibition.** (a) A service agreement subject to  
 5.23 this section is unfair and prohibited if any part of the agreement provides an exclusive right  
 5.24 to a service provider for a term in excess of one year after the time the service agreement  
 5.25 is entered into and:

5.26 (1) purports to run with the land or to be binding on future owners of interests in the real  
 5.27 property;

5.28 (2) allows for assignment of the right to provide service without notice to and consent  
 5.29 of the residential real property's owner, including a contract for deed vendee;

5.30 (3) is recorded or purports to create a lien, encumbrance, or other real property security  
 5.31 interest; or

6.1 (4) contains a provision that purports to automatically renew the agreement upon its  
 6.2 expiration.

6.3 (b) The following are not unfair service agreements under this section:

6.4 (1) a home warranty or similar product that covers the cost of maintaining a major home  
 6.5 system or appliance for a fixed period;

6.6 (2) an insurance contract;

6.7 (3) a mortgage loan or a commitment to make or receive a mortgage loan;

6.8 (4) an option or right of refusal to purchase a residential real property;

6.9 (5) a declaration of any covenants, conditions, or restrictions created in the formation  
 6.10 of a homeowners association, a group of condominium owners, or other common interest  
 6.11 community or an amendment to the covenants, conditions, or restrictions;

6.12 (6) a maintenance or service agreement entered by a homeowners association in a  
 6.13 common interest community;

6.14 (7) a security agreement governed by chapter 336 that relates to the sale or rental of  
 6.15 personal property or fixtures; or

6.16 (8) a contract with a gas, water, sewer, electric, telephone, cable, or other utility service  
 6.17 provider.

6.18 (c) This section does not impair any lien right granted under Minnesota law or that is  
 6.19 judicially imposed.

6.20 Subd. 3. **Recording prohibited.** (a) A person is prohibited from:

6.21 (1) presenting or sending an unfair service agreement or notice or memorandum of an  
 6.22 unfair service agreement to any county recorder to record; or

6.23 (2) causing an unfair service agreement or notice or memorandum of an unfair service  
 6.24 agreement to be recorded by a county recorder.

6.25 (b) If a county recorder records an unfair service agreement, the county recorder does  
 6.26 not incur liability.

6.27 (c) If an unfair service agreement is recorded, the recording does not create a lien or  
 6.28 provide constructive notice to any third party, bona fide purchaser, or creditor.

6.29 Subd. 4. **Unfair service agreements unenforceable.** A service agreement that is unfair  
 6.30 under this section is unenforceable and does not create a contractual obligation or relationship.

7.1 Any waiver of a consumer right, including a right to trial by jury, in an unfair service  
7.2 agreement is void.

7.3 Subd. 5. **Unfair service agreements; solicitation.** Encouraging any consumer to enter  
7.4 into an unfair service agreement by any service provider constitutes:

7.5 (1) an unfair method of competition; and

7.6 (2) an unfair or deceptive act or practice under section 82.81, subdivision 12, paragraph  
7.7 (c), and section 325F.69.

7.8 Subd. 6. **Enforcement authority.** (a) This section may be enforced by the attorney  
7.9 general under section 8.31, except that any private cause of action brought under subdivision  
7.10 7 is subject to the limitation under subdivision 7, paragraph (d).

7.11 (b) The commissioner of commerce may enforce this section with respect to a service  
7.12 provider's real estate license.

7.13 Subd. 7. **Remedies.** (a) A consumer that is party to an unfair service agreement related  
7.14 to residential real property or a person with an interest in the property that is the subject of  
7.15 that agreement may bring an action under section 8.31 or 325F.70 in district court in the  
7.16 county where the property is located.

7.17 (b) If an unfair service agreement or a notice or memorandum of an unfair service  
7.18 agreement is recorded against any residential real property, any judgment obtained under  
7.19 this section, after being certified by the clerk having custody of the unfair service agreement  
7.20 or notice or memorandum of the unfair service agreement, may be recorded and indexed  
7.21 against the real property encumbered or clouded by the unfair service agreement.

7.22 (c) The remedies provided under this section are not exclusive and do not reduce any  
7.23 other rights or remedies a party may have in equity or in law.

7.24 (d) No private action may be brought under this section more than six years after the  
7.25 date the term printed in the unfair service agreement expires.

7.26 Sec. 7. **REPEALER.**

7.27 Minnesota Statutes 2022, section 332.3351, is repealed.

**332.3351 EXEMPTION FROM LICENSURE.**

A collection agency shall be exempt from the licensing and registration requirements of this chapter if all of the following conditions are met:

- (1) the agency is located in another state that regulates and licenses collection agencies, but does not require a Minnesota collection agency to obtain a license to collect debts in the agency's state if the agency's collection activities are limited in the same manner;
- (2) the agency's collection activities are limited to collecting debts not incurred in this state from consumers located in this state; and
- (3) the agency's collection activities in Minnesota are conducted by means of interstate communications, including telephone, mail, electronic mail, or facsimile transmission.