

HOUSE BILL NO. 539

INTRODUCED BY J. MANGAN

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A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A MONTANA TITLE LOAN ACT TO BE ADMINISTERED BY THE DEPARTMENT OF COMMERCE; PROVIDING FOR LICENSURE, LICENSE AND EXAMINATION FEES, DISCLOSURE REQUIREMENTS, COMPLAINT PROCEDURES, CONTRACT PROVISIONS, LOAN AMOUNT LIMITS, RULEMAKING AUTHORITY, CIVIL REMEDIES, AND CRIMINAL PENALTIES; AMENDING ~~SECTION~~ SECTIONS 31-1-106 AND 32-5-103, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 19] may be cited as the "Montana Title Loan Act".

NEW SECTION. **Section 2. Purpose -- rules -- scope.** (1) The purpose of [sections 1 through 19] is to protect consumers who enter into short-term, high-rate loans with lenders from abuses that occur in the credit marketplace when the lenders are unregulated.

(2) The department may adopt rules to implement the provisions of [sections 1 through 19]. The rules may include but are not limited to rules establishing forms and procedures for licensing, rules pertaining to acceptable practices at a business location, rules establishing disclosure requirements, and rules establishing complaint and hearing procedures.

(3) [Sections 1 through 19] do not apply to banks, savings and loan associations, credit unions, or other state or federally regulated financial institutions, OR PAWN BROKERS.

(4) [SECTIONS 1 THROUGH 19] MAY NOT BE CONSTRUED AS AFFECTING IN ANY WAY THE METHOD OF PERFECTING SECURITY INTERESTS ON PERSONAL PROPERTY PROVIDED FOR ELSEWHERE IN LAW.

NEW SECTION. **Section 3. Definitions.** For the purposes of [sections 1 through 19], the following definitions apply:

(1) "Borrower" means the owner of any titled personal property who pledges the property to a



1 title lender pursuant to a title loan agreement.

2 (2) "Capital assets" means the assets of a person less the liabilities of that person. Assets and
3 liabilities must be measured according to generally accepted accounting principles.

4 (3) "Certificate of title" means a state-issued certificate of title or certificate of ownership for
5 personal property deposited with a title lender as security for a title loan pursuant to a title loan agreement.

6 (4) "Department" means the department of commerce provided for in 2-15-1801.

7 (5) "Person" means an individual, corporation, partnership, limited partnership, limited liability
8 company, limited liability partnership, association, or other entity.

9 (6) "Pledged property" means personal property the ownership of which is evidenced and
10 delineated by a state-issued certificate of title.

11 (7) "Title lender" means a person who has qualified to engage in the business of making title loans
12 pursuant to [sections 1 through 19] and maintains at least one title loan office in this state.

13 (8) "Title loan agreement" means a written agreement between a borrower and a title lender in
14 a form that complies with the requirements of [sections 1 through 19].

15 (9) "Title loan office" means the location or premises where a title lender regularly conducts
16 business.

17 (10) "Titled personal property" means any personal property the ownership of which is evidenced
18 and delineated by a state-issued certificate of title.

19

20 NEW SECTION. **Section 4. Licensure of title lenders.** (1) It is unlawful for any person to act as
21 a title lender unless the person has first been licensed by the department.

22 (2) (a) All title loan agreements entered into by a person who acts in violation of the license
23 requirements of [sections 1 through 19] and all title pledges accepted by the person are void.

24 (b) Any borrower who enters into a title loan agreement with a person who acts in violation of the
25 provisions of [sections 1 through 19] may not be bound by the terms of the title loan agreement, and the
26 borrower's only liability is for the return of the principal sum borrowed plus interest at the rate set by
27 statute for interest on judgments.

28

29 NEW SECTION. **Section 5. Qualifications for licensure.** (1) To be eligible for licensure as a title
30 lender, an applicant must be a natural person residing in this state, a business entity formed under the laws

1 of this state, or a foreign business entity qualified to conduct business in this state ~~and shall maintain~~
2 ~~unencumbered capital assets of at least \$25,000 at all times for each location.~~

3 (2) (a) The application for licensure must be in writing, under oath, and in the form prescribed by
4 the department.

5 (b) The application must contain:

6 (i) the name of the applicant;

7 (ii) the date of formation if a business entity;

8 (iii) the physical address of each title loan office to be operated;

9 (iv) the name and resident address of the owner or partners or, if a corporation or association, of
10 the directors, trustees, and principal officers; and

11 (v) any other pertinent information that the department may require.

12 (3) An applicant for licensure shall pay an application fee of \$500, unless less than 6 months
13 remain in the calendar year, in which case the fee is \$250, and an annual license renewal fee of \$500 for
14 each title loan office that the applicant intends to operate or operates in this state.

15 (4) (a) Each license must specify the location of the specific title loan office to which it applies
16 and must be conspicuously displayed in the title loan office.

17 (b) Before any title loan office location may be changed or moved by the title lender, the
18 department shall approve the change of location by endorsing the license for that title loan office or mailing
19 the licensee a new license for that title loan office without charge.

20 (5) (a) Upon the filing of the application and the payment of the fee by a person eligible to apply
21 for a title lender's license, the department shall issue a license to the applicant to engage in the title loan
22 business in accordance with the provisions of [sections 1 through 19] for a period that expires on the last
23 day of December following the date of its issuance.

24 (b) Each license must be uniquely numbered and may not be transferred or assigned. Renewal
25 licenses are effective for a period of 1 year.

26 (6) Each licensee shall post a bond in the amount of \$10,000 for each location. The bond must
27 continue in effect for 2 years after the licensee ceases operation in this state. The bond must be available
28 to pay damages and penalties to consumers harmed by a violation of [sections 1 through 19].

29 (7) More than one place of business may not be maintained under the same license, but the
30 department may issue more than one license to the same licensee if the licensee is otherwise qualified.

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2 NEW SECTION. Section 6. Examinations -- fees. (1) The department may conduct an examination
3 of a licensee's title lending operation at any time to ensure that the licensee is in compliance with the
4 provisions of [sections 1 through 19].

5 (2) A licensee shall pay the department a fee in the amount of \$300 a day for each examiner
6 required to conduct an annual examination.

7 (3) A licensee shall make available to a department examiner the information required under
8 [section 9] or as required by rule.

9 (4) Completion of an annual examination must, in the absence of the department's finding of just
10 cause to revoke or suspend a license, constitute grounds for license renewal.

11

12 NEW SECTION. Section 7. License revocation or suspension. (1) If the department finds, after
13 notice and hearing or opportunity for hearing, as provided in the Montana Administrative Procedure Act,
14 that a licensee or an officer, agent, employee, or representative of the licensee has violated any of the
15 provisions of [sections 1 through 19], has failed to comply with the rules, regulations, instructions, or
16 orders promulgated by the department, has failed or refused to make required reports to the department,
17 or has furnished false information to the department, the department may issue an order revoking or
18 suspending the right of the licensee, directly or through an officer, agent, employee, or representative, to
19 do business in this state as a licensee.

20 (2) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or
21 criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

22

23 NEW SECTION. Section 8. Complaint procedure. The department shall maintain a list of licensees
24 that is available to interested persons and to the general public. The department shall also establish by rule
25 a procedure under which an aggrieved consumer or any member of the public may file a complaint against
26 a licensee or an unlicensed person who violates any provision of [sections 1 through 19]. The department
27 may hold hearings, make findings of fact or conclusions of law, issue cease and desist orders, refer the
28 matter to the appropriate law enforcement agency for prosecution for a violation of [sections 1 through
29 19], seek injunctive or other relief in district court, or revoke or suspend a license granted under [sections
30 1 through 19].

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2 NEW SECTION. **Section 9. Information and annual reports.** (1) Each licensee shall keep books,
3 accounts, and records that will enable the department to determine if the licensee is complying with the
4 provisions of [sections 1 through 19] and shall maintain any other records required by the department. The
5 department is authorized to examine the records at any reasonable time. The records must be kept for 2
6 years following the last entry on a title loan and must be kept according to generally accepted accounting
7 procedures that include an examiner being able to review the recordkeeping and reconcile each title loan
8 with documentation maintained in the borrower's loan file records.

9 (2) Each licensee shall file, on forms prescribed by the department, an annual report with the
10 department on or before March 31 for the 12-month period in the preceding year ending as of December
11 31. The report must disclose in detail and under appropriate headings:

12 (a) the resources, assets, and liabilities of the licensee at the beginning and the end of the period;
13 (b) the income, expense, gain, loss, and balance sheets;
14 (c) the total number of title loans made in the year ending as of December 31 of the previous year;
15 (d) the total number of title loans outstanding as of December 31 of the previous year; and
16 (e) verification that the licensee has not used a criminal process or caused a criminal process to
17 be used in the collection of any title loans or used any civil process to collect the payment of title loans
18 not available to title lenders under [sections 1 through 19].

19 (3) A report must be verified by the oath or affirmation of the owner, manager, or president of the
20 title lender.

21 (4) (a) If a licensee conducts another business or is affiliated with other licensees under [sections
22 1 through 19] or if any other situation exists under which allocations of expense are necessary, the
23 licensee shall make the allocation according to appropriate and reasonable accounting principles as
24 approved by the department.

25 (b) Information about any other business conducted on the same premises where title loans are
26 made must be provided as required by the department.

27 (5) Each licensee shall file a copy of the disclosure pamphlets described in [section 13] with the
28 department prior to the date of commencement of business at each location, at the time that any changes
29 are made to the pamphlets, and annually upon renewal of the license. These pamphlets must be available
30 to interested parties and to the general public through the department.

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2 NEW SECTION. Section 10. Title loan requirements -- liability of borrower. (1) Any licensed title
3 lender may engage in the business of making loans secured by a certificate of title subject to the provisions
4 of [sections 1 through 19].

5 (2) Every title loan must be reduced to writing in a title loan agreement. Each title loan agreement
6 must provide that:

7 (a) the title lender agrees to make a loan of money to the borrower and that the borrower agrees
8 to give the title lender a security interest in unencumbered titled personal property owned by the borrower;

9 (b) the borrower consents to the title lender keeping possession of the certificate of title;

10 (c) the borrower has the exclusive right to redeem the certificate of title by repaying the loan of
11 money in full and by complying with the title loan agreement for an agreed
12 period of time;

13 ~~(d) the title lender shall renew the title loan agreement for additional 30-day periods upon the~~
14 ~~borrower's request and the payment by the borrower of any interest and fees due at the~~
15 ~~time of each renewal. However, the loan may not be extended for more than two 30-day periods.~~

16 (D) (I) THE TITLE LENDER MAY RENEW THE TITLE LOAN FOR ADDITIONAL 30-DAY PERIODS BEYOND THE ORIGINAL
17 TERM PROVIDED THAT BEGINNING WITH THE SIXTH EXTENSION OR CONTINUATION, AND FOR EACH SUBSEQUENT EXTENSION
18 OR CONTINUATION, THE BORROWER MUST REDUCE THE PRINCIPAL AMOUNT BY AT LEAST 10% OF THE ORIGINAL PRINCIPAL
19 AMOUNT OF THE LOAN; AND

20 (II) IF THE BORROWER FAILS TO REDUCE THE PRINCIPAL AMOUNT AS REQUIRED BY SUBSECTION (2)(D)(I), THE TITLE
21 LENDER MAY AT ITS OPTION:

22 (A) DECLARE OUTSTANDING PRINCIPAL AND ANY FINANCE CHARGES DUE AND PAYABLE; OR

23 (B) SOLELY FOR THE PURPOSE OF CALCULATING THE FINANCE CHARGE, REDUCE THE AMOUNT OF THE PRINCIPAL
24 BALANCE BY 10%, WITH THE UNDERSTANDING THAT THAT PORTION OF THE PRINCIPAL IS STILL OWED BY THE BORROWER
25 BUT THAT PORTION OF THE LOAN MAY NOT ACCRUE INTEREST OR FINANCE CHARGES AFTER THAT DATE;

26 (e) when the certificate of title is redeemed, the title lender shall release its security interest in the
27 titled personal property and return the personal property certificate of title
28 to the borrower;

29 (f) (i) upon failure of the borrower to redeem the certificate of title at the end of the original 30-day
30 agreement period or at the end of any agreed-upon 30-day renewal or subsequent

1 renewals, the borrower shall deliver the titled personal property to the title lender at the location specified
2 in the title loan agreement; AND

3 (ii) THE BORROWER SHALL DELIVER THE TITLED PERSONAL PROPERTY TO THE TITLE LENDER IN SUBSTANTIALLY THE
4 SAME CONDITION THAT IT WAS IN AT THE TIME THAT THE BORROWER ENTERED INTO THE LOAN, MINUS NORMAL WEAR AND
5 TEAR;

6 (g) if the borrower fails to deliver the titled personal property to the title lender, the title lender
7 must be allowed to take possession of the titled personal property;

8 (h) upon obtaining possession of the titled personal property, the title lender is authorized to sell
9 the titled personal property and to convey to the buyer good title, subject to the waiting periods provided
10 for in [section 14]; and

11 (i) a borrower who does not redeem a pledged certificate of title is not personally liable to the title
12 lender to repay principal, interest, or expenses incurred in connection with the title loan and that the title
13 lender shall look solely to the titled personal property for satisfaction of the amounts owed under the title
14 loan agreement.

15 (3) THE SECURITY INTEREST PROVIDED FOR IN SUBSECTION (2)(A) IS NOT PERFECTED UNLESS IT IS FILED IN
16 ACCORDANCE WITH 23-2-611 OR 61-3-103.

17 ~~(3)~~(4) Any borrower who obtains a title loan from a title lender under false pretenses by hiding or
18 not disclosing the existence of a valid prior lien or security interest affecting the titled personal property
19 is personally liable to the title lender for the full amount stated in the title loan agreement, including interest
20 and expenses incurred by the title lender in connection with the loan.

21

22 NEW SECTION. Section 11. Interest rates -- fees charged -- repossession charges. (1) ~~(a)~~ The
23 maximum rate of interest that a title lender shall contract for and must receive for making and carrying any
24 title loan authorized by [sections 1 through 19] may not exceed:

25 ~~(i)(A)~~ (i)(A) 25% for each 30-day period for ~~any~~ THE PORTION OF A loan that does not exceed ~~\$1,000~~
26 \$2,000;

27 ~~(ii)(B)~~ (ii)(B) ~~10%~~ 18% for each 30-day period for ~~loans~~ THE PORTION OF A LOAN exceeding ~~\$1,000~~ \$2,000
28 ~~up to~~ BUT NOT EXCEEDING ~~\$2,000~~ \$4,000; and

29 ~~(iii)(C)~~ (iii)(C) a ~~3%~~ 10% annual percentage rate FOR EACH 30-DAY PERIOD, plus fees, on ~~all loans~~ THE PORTION
30 OF A LOAN that ~~exceed~~ EXCEEDS ~~\$2,000~~ \$4,000.

1 ~~(b) (i)(2)~~ Title lenders, ~~on loans that are in excess of \$2,000, may charge, contract for, and~~
 2 receive a fee, which may not be considered interest, to defray the ordinary cost of operations MAY CHARGE
 3 THEIR ACTUAL COSTS OF RECORDING LIENS ON BORROWERS' CERTIFICATES OF TITLE.

4 ~~(ii) The fee may include the title lender's cost for investigating the title, appraisal of the titled~~
 5 personal property, insuring the titled personal property while in the possession of the borrower,
 6 documenting and recording the transaction, perfecting a security interest in the titled personal property,
 7 storage of the titled personal property in the possession of the title lender, and all other services and costs
 8 of the title lender associated with the transaction. —

9 ~~(iii) The fee may not exceed the actual amount of the costs provided for in this subsection (1)(b).~~

10 ~~(iv) A fee may not be charged on a loan that does not exceed \$2,000.~~

11 ~~(2) A title lender may assess and collect a repossession charge if the borrower fails to deliver the~~
 12 titled personal property pursuant to the terms of the title loan agreement. This charge must equal the
 13 actual expense incurred by the title lender to repossess the titled personal property, including attorney
 14 fees, but may not in any case be greater than \$500 for any single article of titled personal property.

15 ~~(3) If a title lender sells any titled personal property, the proceeds of the sale in excess of the~~
 16 amount owed on the loan and the reasonable expenses of repossession must be paid to the borrower.

17

18 NEW SECTION. **Section 12. Title loan agreements -- required disclosures.** Each title loan
 19 agreement must disclose the following:

20 (1) all disclosures required to be made under the federal Truth in Lending Act;

21 (2) that the transaction is a loan secured by the pledge of titled personal property;

22 (3) the identity of the parties to the title loan agreement, including the name, business address,
 23 telephone number, and certificate number of the title lender and the name, resident address, and
 24 identification of the borrower;

25 (4) the monthly interest rate to be charged;

26 (5) the allowable fees and expenses to be charged to the borrower upon redemption of the
 27 certificate of title;

28 (6) the date on which the borrower's exclusive right to redeem the pledged certificate of title
 29 pursuant to [section 14] expires;

30 (7) the location where the titled personal property is to be delivered if the certificate of title is not

1 redeemed and the hours that the location is open for receiving deliveries;

2 ~~(8) that the loan may not be renewed for more than two 30-day periods;~~

3 ~~(9)(8)~~ that if the titled personal property is sold by the title lender, any proceeds of the sale in
4 excess of the amount owed on the loan and the reasonable costs of repossession must be paid to the
5 borrower;

6 ~~(10)(9)~~ that any attempt by a borrower to obtain a replacement certificate of title on a motor
7 vehicle during the active term of a loan under [sections 1 through 19] may be a violation of 61-3-204 and
8 may be subject to the penalty provisions of 61-3-601; and

9 ~~(11)(10)~~ any additional disclosures considered necessary by the department.

10

11 NEW SECTION. **Section 13. Required disclosure pamphlet.** Before entering into a title loan
12 agreement, the licensee shall deliver to the consumer a pamphlet prepared by or at the direction of the
13 department that:

14 (1) explains, in simple language, all of the consumer's rights and responsibilities in a title loan
15 transaction;

16 (2) includes a telephone number to the department's office that handles concerns or complaints
17 by consumers;

18 (3) informs consumers that the department's office can provide information about whether a
19 lender is licensed and other legally available information; and

20 (4) in a manner that is more conspicuous than the other information provided in the pamphlet and
21 that is in at least 14-point bold typeface, furnishes a statement that "you cannot be prosecuted in criminal
22 court for collection of this loan".

23

24 NEW SECTION. **Section 14. Redemption of certificate of title -- failure to take possession.** (1) (a)
25 Except as otherwise provided in [sections 1 through 19], the borrower is entitled to redeem the certificate
26 of title upon timely satisfaction of all outstanding obligations agreed to in the title loan agreement.

27 (b) Upon expiration or default of a title loan agreement and of the renewal or renewals of the title
28 loan agreement, if any, the title lender shall give written notification to the borrower of the borrower's right
29 to redeem the certificate of title and shall retain possession of the certificate of title for at least 20 days
30 after providing the notification.

1 (c) If the borrower fails to redeem the certificate of title before the lapse of the 20-day holding
2 period, the borrower shall forfeit all right, title, and interest in and to the titled personal property to the title
3 lender, who acquires an absolute right of title to the titled personal property. The title lender may sell or
4 dispose of the pledged property.

5 (2) The title lender has, upon default by the borrower of any obligation pursuant to the title loan
6 agreement, the right to take possession of the titled personal property.

7 (3) In taking possession, the title lender or the title lender's agent may proceed without judicial
8 process if this can be done without breach of the peace or, if necessary, may proceed by judicial process.

9 (4) If the title lender takes possession of the titled personal property, either personally or through
10 its agent, at any time during the 20-day holding period provided in subsection (1), the title lender shall
11 retain possession, either personally or through its agent, of the titled personal property until the expiration
12 of the 20-day holding period.

13 (5) If during the 20-day holding period the borrower redeems the certificate of title by paying all
14 outstanding principal, interest, and other fees stated in the title loan agreement and, if applicable,
15 repossession fees and storage fees, the borrower must be given possession of the certificate of title and
16 the titled personal property without further charge.

17

18 NEW SECTION. **Section 15. Records of title loan agreements.** (1) Each title lender shall keep a
19 consecutively numbered record of each title loan agreement executed. In addition to a copy of the title loan
20 agreement, the record must include the following:

21 (a) a clear and accurate description of the titled personal property, including its vehicle
22 identification or serial number, license plate number, year, make, model, type, and color, if applicable;

23 (b) the date of the title loan agreement;

24 (c) the amount of the loan made pursuant to the title loan agreement;

25 (d) the date of maturity of the loan; and

26 (e) the name, social security number, resident address, and type and an identification number of
27 a photo identification of the borrower and whether the borrower is over 18 years of age.

28 (2) The title lender shall make a good and useable photocopy of the photo identification of the
29 borrower or shall take an instant photograph of the borrower, which photocopy or photograph must be
30 attached to the title lender's copy of the title loan agreement.

1 (3) The borrower and the title lender or the title lender's employee or agent shall sign the title loan
2 agreement, and the borrower must be provided with a copy at the time of signing.

3 (4) (a) The title lender shall keep the numbered record and a copy of a title loan agreement for a
4 period of not less than 2 years from the date of the closing of the last transaction reflected in the record.
5 The date of the last transaction, as used in this subsection, means, in the case in which a borrower
6 redeemed the pledged certificate of title, the date of the redemption and, in the case in which a borrower
7 does not redeem the pledged certificate of title, the date on which the title lender sells the titled personal
8 property.

9 (b) A title lender who ceases engaging in the business of making title loans shall keep all records
10 in the title lender's possession for a period of not less than 2 years from the date on which the title lender
11 ceased engaging in the business.

12 (5) The records required to be maintained by this section must be made available for inspection
13 by any employee of the department upon request during ordinary business hours without
14 warrant or court order.

15

16 NEW SECTION. **Section 16. Safekeeping of certificates of title -- liability insurance -- liability.** (1)
17 A person engaged in the business of title lending shall provide a safe place for the keeping of the pledged
18 certificates of title and for the keeping of pledged property delivered to the title lender pursuant to the
19 terms of any title loan agreement.

20 (2) ~~(a)~~ A person engaged in the business of title lending shall maintain premises liability insurance
21 in an amount of not less than \$100,000 for each occurrence for the benefit of consumers and employees
22 who visit or work at the title lending office.

23 ~~(b) The insurance must provide coverage for, among other risks, injuries caused by the criminal~~
24 ~~acts of third parties.~~

25 (3) A person engaged in the business of title lending is immune from liability for any loss or injury
26 occasioned or caused by the use of pledged property unless the pledged property is actually in the
27 possession of the title lender.

28 (4) A person engaged in the business of title lending is strictly liable to the borrower for any loss
29 to pledged property in the possession of the title lender but only if the borrower makes a redemption of
30 the pledged property prior to the expiration of the 20-day holding period provided in [section 14].

1

2 NEW SECTION. Section 17. Prohibited acts. (1) A title lender may not:

3 (a) accept a pledge from a person under 18 years of age;

4 (b) make any title loan agreement giving the title lender any recourse against the borrower other
5 than the rights granted title lenders under [sections 1 through 19];6 ~~(c) enter into a title loan agreement in which the amount of money loaned in consideration of the~~
7 ~~pledge of any single certificate of title exceeds \$5,000;~~8 ~~(d)~~(C) accept any waiver, in writing or otherwise, of any right or protection accorded a borrower
9 pursuant to [sections 1 through 19];10 ~~(e)~~(D) fail to exercise reasonable care to protect from loss or damage certificates of title or titled
11 personal property in the physical possession of the title lender;12 ~~(f)~~(E) purchase titled personal property ~~in the operation of its business~~ FOR PERSONAL USE THAT WAS
13 REPOSSESSED FROM THE BORROWER BY THE TITLE LENDER;14 ~~(g)~~(F) enter into a title loan agreement unless the borrower presents clear title to the titled personal
15 property at the time that the loan is made and the title is retained in the physical possession of the title
16 lender;17 ~~(h)~~(G) threaten to use or use a criminal process in this or any other state to collect on the loan
18 made to a consumer in this state or any civil process to collect the payment of titled loans not generally
19 available to creditors to collect on loans in default;20 ~~(i)~~(H) use any device or title loan agreement that would have the effect of charging or collecting
21 more fees, charges, or interest than those allowed by [sections 1 through 19];22 ~~(j)~~(I) engage in unfair, deceptive, or fraudulent practices in the making or collection of a title loan;23 ~~(k)~~(J) knowingly violate any provision of or rule promulgated pursuant to [sections 1 through 19];

24 or

25 ~~(l)~~(K) include any of the following provisions in the title loan agreement:26 (i) a hold harmless clause, PROVIDED THAT A TITLE LENDER IS NOT LIABLE TO THE BORROWER OR A THIRD
27 PARTY FOR INJURIES TO OR DAMAGES SUSTAINED BY THE BORROWER OR A THIRD PARTY AS THE RESULT OF AN ACCIDENT
28 INVOLVING PERSONAL PROPERTY TO WHICH THE TITLE LENDER HOLDS THE CERTIFICATE OF TITLE;

29 (ii) a confession of judgment clause;

30 ~~(iii) a waiver of the right to a jury trial, if applicable, in any action brought by or against a~~

1 consumer;

2 ~~—— (iv) a mandatory arbitration clause;~~

3 ~~(v)(iii)~~ any assignment of or order for payment of wages or other compensation for services;

4 ~~(vi)(iv)~~ a provision in which the consumer agrees not to assert any claim or defense arising out of
5 the contract; or

6 ~~(vii)(v)~~ a waiver of any provision of [sections 1 through 19].

7 (2) If a title lender enters into a transaction contrary to this section, any lien or security interest
8 obtained by the title lender is void.

9

10 NEW SECTION. Section 18. Civil remedies. (1) The remedies provided in this section are
11 cumulative and apply to licensees and unlicensed persons to whom [sections 1 through 19] apply.

12 (2) Any violation of [sections 1 through 19] constitutes an unfair or deceptive trade practice.

13 (3) A person found to have violated [sections 1 through 19] is liable to the consumer for actual
14 and consequential damages, plus statutory damages of \$1,000 for each violation, plus costs and attorney
15 fees.

16 (4) A consumer may sue for injunctive and other appropriate equitable relief to stop a person from
17 violating any provisions of [sections 1 through 19].

18 (5) The consumer may bring a class action suit to enforce [sections 1 through 19].

19 (6) The remedies provided in this section are not intended to be the exclusive remedies available
20 to a consumer for a violation of [sections 1 through 19].

21

22 NEW SECTION. Section 19. Criminal penalties. A person, including a member, officer, or director
23 of a title lender, who knowingly violates [sections 1 through 19] is guilty of a misdemeanor and, on
24 conviction, is subject to a fine in an amount not exceeding \$1,000 or imprisonment not exceeding 6
25 months, or both.

26

27 SECTION 20. SECTION 31-1-106, MCA, IS AMENDED TO READ:

28 "**31-1-106. Legal interest.** (1) Except as otherwise provided by the Uniform Commercial Code,
29 ~~or~~ 31-1-111 and 31-1-112, or [section 11], unless there is an express contract in writing fixing a different
30 rate or a law or ordinance or resolution of a public body fixing a different rate on its obligations, interest

1 is payable on all ~~moneys~~ money at the rate of 10% a year after ~~they become~~ it becomes due on:

2 (a) any instrument of writing, except a judgment;

3 (b) an account stated;

4 (c) ~~moneys~~ money lent or due on any settlement of accounts from the date on which the balance
5 is ascertained; and

6 (d) ~~moneys~~ money received for the use of another person and detained from ~~him~~ that person.

7 (2) In the computation of interest for a period of less than 1 year, 365 days constitute a year."
8

9 **Section 21.** Section 32-5-103, MCA, is amended to read:

10 **"32-5-103. Engaging in business of making consumer loans restricted.** (1) Except as provided in
11 subsection (5), a person may not engage in the business of making consumer loans in any amount and
12 contract for, charge, or receive directly or indirectly on or in connection with any loan any charges,
13 whether for interest, compensation, consideration, or expense, except as provided in and authorized by
14 this chapter. The provisions of this chapter do not apply to any exempted person.

15 (2) A licensee may sell its business and assets to a bank, building and loan association, savings
16 and loan association, trust company, credit union, credit association, development credit corporation, or
17 bank holding company organized pursuant to state or federal statutory authority and subject to supervision,
18 control, or regulation by an agency of the state of Montana or an agency of the federal government. All
19 contracts for loans and all other contracts entered into by the licensee pursuant to the provisions of this
20 chapter that are sold and transferred to an acquiring organization continue to be governed by the
21 provisions of this chapter.

22 (3) The provisions of subsection (1) apply to any person who seeks to evade its applications by
23 any device, subterfuge, or pretense.

24 (4) Any act by a licensee in the making of a contract or in the collection of a loan made under the
25 contract that violates the provisions of this chapter is void. The licensee has no right to collect, receive,
26 or retain any principal, interest, or charges.

27 (5) A consumer loan licensee or a person who seeks a regulated lender exemption under 31-1-112
28 as a consumer loan licensee shall fully comply with this chapter. A regulated lender as defined in
29 31-1-111, other than a consumer loan licensee, or a lender who complies with the provisions of Title 31,
30 chapter 1, part 1, is not required to comply with this chapter. A deferred deposit lender, as defined in

1 31-1-703, who complies with the provisions of Title 31, chapter 1, part 7, is not required to comply with
2 this chapter. A title lender, as defined in [section 3], who complies with the provisions of [sections 1
3 through 19], is not required to comply with this chapter."

4

5 NEW SECTION. Section 22. Codification instruction. [Sections 1 through 19] are intended to be
6 codified as an integral part of Title 31, chapter 1, and the provisions of Title 31, chapter 1, apply to
7 [sections 1 through 19].

8

9 NEW SECTION. Section 23. Applicability. [This act] applies to title loan agreements entered into
10 or renewed after January 1, 2002.

11

- END -