

1 SENATE BILL NO. 454

2 INTRODUCED BY GEBHARDT

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF "INTEREST" WITH RESPECT TO
5 CREDIT TRANSACTIONS; REVISING RESTRICTIONS ON CONSUMER LOANS; CLARIFYING WHAT
6 CONSTITUTES AN ADD-ON BASIS LOAN; AMENDING SECTIONS 31-1-104, 32-5-103, AND 32-5-301, MCA;
7 AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

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11 **Section 1.** Section 31-1-104, MCA, is amended to read:

12 **"31-1-104. Interest defined.** Interest is the compensation allowed by law or fixed by the parties for the
13 use or forbearance or detention of money and includes loan origination fees, points, and prepaid finance
14 charges, as defined in 12 CFR 226.2."

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16 **Section 2.** Section 32-5-103, MCA, is amended to read:

17 **"32-5-103. Engaging in business of making consumer loans restricted.** (1) Except as provided in
18 subsection (5), a person may not engage in the business of making consumer loans in any amount and contract
19 for, charge, or receive directly or indirectly on or in connection with any loan any charges, whether for interest,
20 compensation, consideration, or expense, except as provided in and authorized by this chapter. The provisions
21 of this chapter do not apply to any exempted person.

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

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

30 (4) Any ~~act by a licensee in the making of a contract or in the collection of a loan made under the~~

1 ~~contract that violates the provisions of this chapter~~ loan made or collected in violation of subsection (1) by a
 2 person other than a licensee or a lender exempt under subsection (5) is void. ~~The licensee and the person does~~
 3 not have the ~~has no~~ right to collect, receive, or retain any principal, interest, or charges.

4 (5) A consumer loan licensee or a person who seeks a regulated lender exemption under 31-1-112 as
 5 a consumer loan licensee shall fully comply with this chapter. A regulated lender as defined in 31-1-111, other
 6 than a consumer loan licensee, or a lender who complies with the provisions of Title 31, chapter 1, part 1, is not
 7 required to comply with this chapter. A deferred deposit lender, as defined in 31-1-703, who complies with the
 8 provisions of Title 31, chapter 1, part 7, is not required to comply with this chapter. A title lender, as defined in
 9 31-1-803, who complies with the provisions of Title 31, chapter 1, part 8, is not required to comply with this
 10 chapter."
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12 **Section 3.** Section 32-5-301, MCA, is amended to read:

13 **"32-5-301. Charges, refunds, penalties, filing fees.** (1) A licensee or holder of a supplementary
 14 license under this part may contract for and receive on any loan of money interest charges as provided under
 15 31-1-112.

16 (2) Charges in subsection (1) must be computed at the applicable rates on the full, original principal
 17 amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the
 18 fact that the loan is payable in installments. The charges must be added to the principal of the loan and may not
 19 be discounted or deducted from the principal or paid or received at the time the loan is made. For the purpose
 20 of computing charges for a fraction of a month, a day is considered one-thirtieth of a month.

21 (3) (a) When any loan contract, new loan, renewal, or otherwise for a period of not more than 61 months
 22 is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the
 23 borrower with that portion of the total charges that is due the borrower as determined by schedules prepared
 24 under the rule of 78ths or sum of the digits principle as follows: the amount of the refund or credit must be as
 25 great a proportion of the total charges originally contracted for as the sum of the consecutive monthly balances
 26 of the contract scheduled to follow the date of prepayment bears to the sum of all the consecutive monthly
 27 balances of the contract, both sums to be determined according to the payment schedule originally contracted
 28 for.

29 (b) When any loan contract, new loan, renewal, or otherwise for a period of more than 61 months is paid
 30 in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower

1 with that portion of the total charges that is due the borrower that is applicable to all fully unexpired months in
2 the contract as originally scheduled or, if deferred, as deferred, following the date of prepayment. For this
3 purpose the applicable charge is the charge that would have been earned for that contract if charges had not
4 been precomputed, by applying to the unpaid principal balance, by the actuarial method, the annual percentage
5 rate disclosed pursuant to federal law, based on the assumption that all payments were made as originally
6 scheduled. For all loans that may be subject to this section, charges are computed initially in the same manner
7 used to determine the annual percentage rate.

8 (4) If the contract so provides, the additional charge for any amount past due according to the original
9 terms of the contract, whether by reason of default or extension agreement, may be the greater of 5% of the
10 amount past due or \$15, and that amount may be charged only once.

11 (5) (a) The licensee may include in the principal amount of any loan:

12 (i) the actual fees paid a public official or agency of the state for filing, recording, or releasing any
13 instrument securing the loan; or

14 (ii) the premium for insurance in lieu of filing or recording any instrument securing the loan to the extent
15 that the premium does not exceed the fees that would otherwise be payable for filing, recording, or releasing
16 any instrument securing the loan.

17 (b) The licensee may include in the principal amount of any loan bona fide charges related to real estate
18 security and paid to third parties, including:

19 (i) fees or premiums for title examination, title insurance, or similar purposes, including survey;

20 (ii) fees for preparation of a deed, settlement statement, or other documents;

21 (iii) fees for notarizing deeds and other documents;

22 (iv) appraisal fees;

23 (v) fees for credit reports; and

24 (vi) fees paid to a trustee for release of a trust deed.

25 (6) Further or other charges may not be directly or indirectly contracted for or received by any licensee
26 except those specifically authorized by this chapter. A licensee may not divide into separate parts any contract
27 made for the purpose of or with the effect of obtaining charges in excess of those authorized by this chapter. If
28 any amount in excess of the charges permitted by this chapter is charged, contracted for, and received, except
29 as the result of an accidental and bona fide error of computation, the licensee ~~may not collect or receive any~~
30 charges shall forfeit to the borrower a sum that is double the amount that is in excess of the charges authorized

1 by this chapter.

2 (7) Subsections (2); ~~and (3), and (6) of this section~~ apply only to loans on which charges are made on
3 an add-on basis and do not apply to loans on which charges are made on an interest-bearing basis. The
4 contracting for, charging of, receiving of, or financing of loan origination fees, points, or prepaid finance charges
5 on a loan on which other charges are made on an interest-bearing basis does not make the loan subject to being
6 considered an add-on basis loan.

7 (8) If a consumer loan is prepaid in whole or in part for any reason, including after a default, prior to the
8 final payment due date and the amount of prepayment exceeds 10% of the then-outstanding principal balance
9 of the loan, a licensee may charge a prepayment charge as follows:

10 (a) 10% of the then-outstanding principal balance of the loan if the prepayment occurs during the first
11 6 months after the date of the loan;

12 (b) 7% of the then-outstanding principal balance of the loan if the prepayment occurs more than 6
13 months after the date of the loan, but on or before 18 months after the date of the loan; or

14 (c) 3.5% of the then-outstanding principal balance of the loan if the prepayment occurs more than 18
15 months after the date of the loan, but before 61 months after the date of the loan.

16 (9) A prepayment charge may not be collected if:

17 (a) the prepayment results solely because of the enforcement of a "due on sale" clause in a real estate
18 mortgage or deed of trust that secures the loan;

19 (b) the loan provided is prepaid by another loan made by the same licensee or an affiliate of the
20 licensee; or

21 (c) prepayment occurs as a result of a payment made by a credit life insurance policy or other insurance
22 policy."

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24 NEW SECTION. SECTION 4. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

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26 NEW SECTION. Section 5. Retroactive applicability. [This act] applies retroactively, within the
27 meaning of 1-2-109, to loans subject to [this act] made on or after October 1, 1985, the effective date of Chapter
28 406, Laws of 1985.

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