

Amendments to Senate Bill No. 424
1st Reading Copy

Requested by Senator Corey Stapleton

For the Senate Business, Labor, and Economic Affairs Committee

Prepared by Pat Murdo
February 18, 2005 (7:21am)

1. Title, page 1, line 8.

Following: "AUDITOR;"

Insert: "PROVIDING FOR A DEPUTY COMMISSIONER OF BANKING AND
FINANCIAL INSTITUTIONS;"

2. Title, page 1, line 10.

Following: "ADMINISTRATION;"

Insert: "TRANSFERRING OVERSIGHT OF RETAIL INSTALLMENT SALES,
DEFERRED DEPOSIT LOANS, AND TITLE LOANS FROM THE DEPARTMENT
OF ADMINISTRATION TO THE STATE AUDITOR;"

3. Title, page 1, line 12.

Following: "17-3-312,"

Insert: "31-1-202, 31-1-703, 31-1-803,"

4. Page 2.

Following: line 30

Insert: "(16) deputy commissioner of banking and financial
institutions;"

Renumber: subsequent subsections

5. Page 3.

Following: line 15

Insert: "Section 4. Section 31-1-202, MCA, is amended to read:
"31-1-202. Definitions. (1) Unless the context requires
otherwise, in this part the following definitions apply:

(a) "Cash sale price" means the price stated in a retail
installment contract or in a sales slip or other memorandum
furnished by a retail seller to a retail buyer under or in
connection with a retail charge account agreement for which the
seller would have sold or furnished to the buyer and the buyer
would have bought or obtained from the seller the goods or
services that are the subject matter of the retail installment
transaction, if the sale had been a sale for cash. The cash sale
price may include any taxes, registration, certificate of title,
license, and official fees and cash sale prices for services, if

any, and for accessories and their installation and for delivering, servicing, repairing, or improving the goods.

(b) "Department" means the ~~department of administration~~ office of the state auditor provided for in Title 2, chapter 15, part 10 6.

(c) "Finance charge" means the amount, as limited by 31-1-241, in addition to the principal balance, agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or services to be paid for by the buyer in one or more deferred installments.

(d) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or coupons exchangeable for chattels personal but not including money or things in action. The term includes goods that, at the time of the sale or subsequently, are to be so affixed to realty as to become a part of the realty, whether or not severable from it.

(e) "Holder" means:

(i) the retail seller of the goods or services under the retail installment contract or retail charge account agreement or a person who establishes and administers retail charge account agreements with retail buyers;

(ii) the assignee, if the retail installment contract or the retail charge account agreement or the balance in the account under either has been sold or otherwise transferred; or

(iii) any other person entitled to the rights of the retail seller under any retail installment contract or any retail charge account agreement.

(f) "Manufactured structure" means any structure, transportable in one or more sections, designed to be used as a single-family dwelling or commercial building with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure.

(g) (i) "Motor vehicle" means any new or used automobile, motorcycle, quadricycle, truck, trailer, semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used to transport persons or property on a public highway.

(ii) The term does not include any vehicle that runs only on rails or tracks or in the air.

(h) "Official fees" means:

(i) the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction; or

(ii) the premium for insurance in lieu of filing, recording, or otherwise perfecting any title or lien retained or taken by a seller in connection with a retail installment transaction to the extent that the premium does not exceed the fees that would otherwise be payable for filing, recording, or otherwise

perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

(i) "Person" means an individual, partnership, corporation, association, and any other group, however organized.

(j) "Principal balance" means the cash sale price of the goods or services that are the subject matter of a retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is made and stated in the contract, for insurance and other benefits and official fees, minus the amount of the buyer's downpayment in money or goods.

(k) "Recreational vehicle" means a vehicular type unit that either has its own motor power or is mounted on or drawn by another vehicle, primarily designed as temporary living quarters for recreational, camping, or travel use.

(l) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction and not for the purpose of resale.

(m) "Retail charge account agreement" means an instrument in writing prescribing the terms of retail installment transactions that may be made under it from time to time under which a retail seller gives to a retail buyer the privilege of using a credit card issued by the retail seller or any other person or other credit confirmation or identification for the purpose of purchasing goods or services from the retail seller, from the retail seller and any other person, or from a person licensed or franchised by the retail seller and under the terms of which a finance charge may be computed in relation to the buyer's average daily balance in the account during the billing cycle or the buyer's balance from time to time.

(n) "Retail installment contract" or "contract" means an agreement evidencing a retail installment transaction entered into in this state under which a buyer promises to pay in one or more deferred installments the time sale price of goods or services, or both. The term includes a chattel mortgage, a conditional sales contract, and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract.

(o) "Retail installment transaction" means a written contract to sell or furnish, or the sale or furnishing of, goods or services by a retail seller to a retail buyer pursuant to a retail charge account agreement or under a retail installment contract.

(p) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer in a written retail

installment contract or written retail installment transaction.

(q) (i) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes but is not limited to a bank, trust company, investment company, or savings and loan association, if engaged in purchasing retail installment contracts.

(ii) The term does not include a person who makes only isolated purchases of retail installment contracts that are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.

(r) "Services" means work, labor, and services furnished in the delivery, installation, servicing, repair, or improvement of goods.

(s) "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits, if a separate identified charge is made for insurance and benefits, and the amounts of the official fees and the finance charge.

(2) (a) This part does not apply to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by those banks or other lending institutions.

(b) This part applies to the extension of credit by those banks or other lending institutions under retail installment contracts or credit cards issued by those banks or other lending institutions."

{Internal References to 31-1-202:
x30-19-104 x31-1-501}"

Insert: "Section 5. Section 31-1-703, MCA, is amended to read:

"31-1-703. Definitions. For the purposes of this part, the following definitions apply:

(1) "Account" means any banking, checking, credit union, commercial, savings, savings and loan, brokerage, investment, or other kind of depository account held by a consumer.

(2) "Check" means a negotiable instrument, as defined in 30-3-104, that is drawn on a bank and is payable on demand at the maturity of a deferred deposit loan.

(3) "Consumer" means ~~a natural person~~ an individual who, singly or jointly with another ~~natural person~~ individual, enters into a deferred deposit loan.

(4) "Deferred deposit lender" or "licensee" means a person engaged in the business of making deferred deposit loans.

(5) "Deferred deposit loan" means an arrangement, including all representations made by the deferred deposit lender whether express or implied, in which:

(a) a person accepts a check dated on the date on which the check is written and agrees to hold the check for a period of days prior to deposit or presentment;

(b) a person accepts a check dated subsequent to the date on which the check is written and agrees to hold the check for deposit or presentment until the date written on the check; or

(c) a person accepts written authorization from a consumer to electronically deduct from the consumer's account on a specific date the amount of the loan and fees that are authorized under this part.

(6) "Department" means the ~~department of administration office of the state auditor provided for in 2-15-601.~~

(7) "Person" means ~~a natural person~~ an individual, sole proprietorship, firm, partnership, corporation, or other entity."

{ Internal References to 31-1-703:
x32-5-103 } "

Insert: "Section 6. Section 31-1-803, MCA, is amended to read:

"31-1-803. Definitions. For the purposes of this part, the following definitions apply:

(1) "Borrower" means the owner of any titled personal property who pledges the property to a title lender pursuant to a title loan agreement.

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

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

(4) "Department" means the ~~department of administration office of the state auditor provided for in 2-15-1001~~ 2-15-601.

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

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

(7) "Title lender" means a person who has qualified to engage in the business of making title loans pursuant to this part and maintains at least one title loan office in this state.

(8) "Title loan" means a loan secured by an unencumbered state-issued certificate of title or certificate of ownership to personal property, with an original term of 30 days.

(9) "Title loan agreement" means a written agreement between a borrower and a title lender in a form that complies with the requirements of this part.

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

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

{ Internal References to 31-1-803:

x32-5-103}"

Renumber: subsequent sections

6. Page 5.

Following: line 11

Insert: "(10) "Division" means the division of banking and financial institutions of the department."

Renumber: subsequent subsections

7. Page 7, line 24.

Following: "commissioner"

Insert: "-- division of banking and financial institutions -- deputy commissioner"

8. Page 7, line 26.

Strike: "(8)"

Insert: "(9)"

9. Page 8.

Following: line 23

Insert: "(8) There is within the department a division of banking and financial institutions. The head of the division is the deputy commissioner of banking and financial institutions, who shall exercise supervision and control over the activities and employees of the division. The position of deputy commissioner of banking and financial institutions is an exempt position as provided in 2-18-103. The deputy commissioner of banking and financial institutions must be hired by and serve at the pleasure of the state auditor. The deputy commissioner of banking and financial institutions must be appointed by the state auditor from a list of three names proposed and submitted by the state banking board provided for in 2-15-1025."

Renumber: subsequent subsections

10. Page 54, line 2.

Strike: "80"

Insert: "83"

Strike: "81"

Insert: "84"

- END -