



AN ACT REVISING THE MONTANA DEFERRED DEPOSIT LOAN ACT TO REQUIRE THE DEPARTMENT OF ADMINISTRATION TO REFUSE TO ISSUE OR RENEW A DEFERRED DEPOSIT LENDER'S LICENSE ON VARIOUS GROUNDS INCLUDING AN APPLICANT'S MAKING MATERIAL MISSTATEMENTS OF FACT; PROVIDING THAT A PERSON MAY NOT APPLY FOR A LICENSE FOR 1 YEAR FOLLOWING A DENIAL OR REFUSAL BY THE DEPARTMENT TO ISSUE OR RENEW A LICENSE; PROVIDING THAT THE VIOLATION OF CERTAIN SPECIFIED FEDERAL ACTS, INCLUDING THE TRUTH IN LENDING ACT AND THE FAIR CREDIT REPORTING ACT, IS ALSO A VIOLATION OF THE MONTANA DEFERRED DEPOSIT LOAN ACT; GRANTING THE DEPARTMENT RULEMAKING AUTHORITY; ELIMINATING THE EXEMPTION FROM THE PROVISIONS OF THE MONTANA DEFERRED DEPOSIT LOAN ACT FOR A COLLECTION AGENCY THAT HAS ENTERED INTO AN AGREEMENT WITH A DEFERRED DEPOSIT LENDER FOR THE COLLECTION OF CLAIMS; REVISING LICENSE APPLICATION REQUIREMENTS; REVISING THE DEPARTMENT'S FEES FOR EXAMINING LICENSEES; PROVIDING THAT A COLLECTION AGENCY ACTING ON BEHALF OF A LICENSEE MAY NOT COLLECT CERTAIN DAMAGES; AND AMENDING SECTIONS 31-1-704, 31-1-705, 31-1-711, AND 31-1-722, MCA.

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

Section 1. Denial of license and license renewal. (1) (a) Except as provided in subsection (1)(b), the department shall deny any new license or refuse to renew any license if:

(i) the applicant does not meet the qualifications stated in this part or in rules adopted pursuant to this part;

(ii) the department finds that the criminal history of any employee of the applicant at the time of application or renewal demonstrates any conviction involving fraud or financial dishonesty or if the department's findings show civil judgments involving fraudulent or dishonest financial dealings;

(iii) the financial responsibility, experience, character, and general fitness of the applicant do not warrant the belief that the business will be operated lawfully and fairly and within the provisions of this part;

(iv) the applicant does not have unencumbered assets of at least \$25,000 for each location to be operated by the applicant;

(v) the applicant has not provided a sworn statement that the applicant will not in the future, directly or indirectly, use a criminal process to collect the payment of deferred deposit loans or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default;

(vi) other information that the department considers necessary has not been provided; or

(vii) the applicant makes any material misstatement of fact or any material omission of fact in the application.

(b) A denial is not required pursuant to subsection (1)(a)(ii) if the department finds that the applicant dismissed the employee promptly upon learning of the employee's conviction involving fraud or financial dishonesty or of civil judgments involving fraudulent or dishonest financial dealings by the employee.

(2) The department shall provide written notice to the applicant of the denial or refusal, setting forth in the notice the grounds upon which the denial or refusal is based.

(3) The applicant has the right to a hearing under the Montana Administrative Procedure Act on any denial or refusal to issue a license. The request for a hearing must be made within 10 days of the date of receipt of the written notice of denial or refusal.

(4) An applicant whose application for licensure or renewal has been denied or refused may not reapply for 1 year following the denial or refusal.

Section 2. Violation of specified federal laws -- rulemaking authority. (1) A violation of any applicable provision of the Truth in Lending Act, 15 U.S.C. 1601, et seq., the Equal Credit Opportunity Act, 15 U.S.C. 1691, et seq., the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq., the Fair Debt Collection Practices Act, 15 U.S.C. 1692, et seq., the Financial Services Modernization Act of 1999 (Gramm-Leach-Bliley Act), 15 U.S.C. 6801, et seq., the USA PATRIOT Act of 2001, as reauthorized, Public Law 107-56, or the John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109-364, or any regulation promulgated under those acts is also a violation of this part.

(2) The department shall adopt rules to implement this section.

Section 3. Section 31-1-704, MCA, is amended to read:

"31-1-704. Scope. (1) This part applies to deferred deposit lenders and to persons who facilitate, enable, or act as a conduit for persons making deferred deposit loans.

(2) This part does not apply to:

~~(a) retail sellers who cash checks incidental to or independent of a sale and who do not charge more than \$2 a check for the service; or~~

~~(b) a collection agency doing business in this state that has entered into an agreement with a deferred deposit lender for the collection of claims owed or due or asserted to be owed or due the deferred deposit lender."~~

Section 4. Section 31-1-705, MCA, is amended to read:

"31-1-705. License -- application requirements -- business locations. (1) A person may not engage in or offer to engage in the business of making deferred deposit loans unless licensed by the department. A license may be granted to a person located within the state or to a person located outside of the state who uses the internet, facsimiles, or third persons to conduct transactions with consumers in this state.

(2) An applicant for a license to engage in the business of making deferred deposit loans shall pay to the department a license application fee of \$500.

~~(3) (a) The department may not issue or renew a license unless findings are made that:~~

~~—— (i) the financial responsibility, experience, character, and general fitness of the applicant warrant the belief that the business will be operated lawfully and fairly and within the provisions of this part;~~

~~—— (ii) the applicant has unencumbered assets of at least \$25,000 for each location;~~

~~—— (iii) the applicant has provided a sworn statement that the applicant will not in the future, directly or indirectly, use a criminal process to collect the payment of deferred deposit loans or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default; and~~

~~—— (iv) other information that the department considers necessary has been provided.~~

~~—— (b) The department may not issue or renew a license if the criminal history of the employees of the applicant demonstrates any convictions involving fraud or financial dishonesty or if the department's findings show adverse civil judgments involving fraudulent or dishonest financial dealings.~~

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

(a) the name of the applicant;

- (b) the date of formation if a business entity;
- (c) the physical address of each deferred deposit loan office to be operated by the applicant;
- (d) the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers; and
- (e) any other pertinent information that the department may require.

(4) A license may not be issued for longer than 1 year. The license year must coincide with the calendar year, and the license fee for any period less than 6 months is \$250.

(5) Each licensee shall post a bond in the amount of \$10,000 for each location. The bond must continue in effect for 2 years after the licensee ceases operation in the state. The bond must be available to pay damages and penalties to consumers harmed by any violation of this part.

(6) More than one place of business may not be maintained under the same license, but the department may issue more than one license to the same licensee upon compliance with the provisions of this section governing issuance of a single license."

Section 5. Section 31-1-711, MCA, is amended to read:

"31-1-711. Examinations -- fee. (1) The department may conduct an examination of each licensee's deferred deposit lending operation to ensure that the licensee is in compliance with the provisions of this part.

(2) (a) A licensee shall pay the department a fee in the amount of ~~\$300 a day~~ \$37.50 an hour for each examiner required to conduct an examination.

(b) The department may charge a licensee for no more than three examinations a year under this section.

(3) A licensee shall make available to a department examiner the information required under 31-1-714 or as required by rule."

Section 6. Section 31-1-722, MCA, is amended to read:

"31-1-722. Prohibited and permitted fees -- attorney fees and costs. (1) A licensee may not charge or receive, directly or indirectly, any interest, fees, or charges except those specifically authorized by this section.

(2) A licensee may not charge a fee for each deferred deposit loan entered into with a consumer that exceeds 25% of the principal amount of the deferred deposit loan that is advanced or, in the case of an electronic

transaction, 25% of the principal amount of the deferred deposit loan.

(3) If there are insufficient funds to pay a check on the date of presentment, a licensee may charge a fee, not to exceed \$30. Only one fee may be collected pursuant to this subsection with respect to a particular check even if it has been redeposited and returned more than once. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment. A licensee or any collection agency acting as an agent of a licensee, as a holder in due course of a licensee, or under an agreement with a licensee to collect amounts due or asserted to be due may not collect damages under 27-1-717(3) for an insufficient funds check.

(4) If the loan involves an electronic deduction and there are insufficient funds to deduct on the date on which the payment is due, a licensee may charge a fee, not to exceed \$30. Only one fee may be collected pursuant to this subsection with respect to a particular loan even if the licensee has attempted more than once to deduct the amount due from the consumer's account. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment. A licensee or any collection agency acting as an agent of a licensee, as a holder in due course of a licensee, or under an agreement with a licensee to collect amounts due or asserted to be due may not collect damages under 27-1-717(3) for an electronic deduction for which there are insufficient funds.

(5) If the loan agreement in 31-1-721 requires, reasonable attorney fees and court costs may be awarded to the party in whose favor a final judgment is rendered in any action on a deferred deposit loan entered into pursuant to this part."

Section 7. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 31, chapter 1, part 7, and the provisions of Title 31, chapter 1, part 7, apply to [sections 1 and 2].

- END -

I hereby certify that the within bill,
SB 0054, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2009.

Speaker of the House

Signed this _____ day
of _____, 2009.

SENATE BILL NO. 54
INTRODUCED BY D. STEINBEISSER
BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

AN ACT REVISING THE MONTANA DEFERRED DEPOSIT LOAN ACT TO REQUIRE THE DEPARTMENT OF ADMINISTRATION TO REFUSE TO ISSUE OR RENEW A DEFERRED DEPOSIT LENDER'S LICENSE ON VARIOUS GROUNDS INCLUDING AN APPLICANT'S MAKING MATERIAL MISSTATEMENTS OF FACT; PROVIDING THAT A PERSON MAY NOT APPLY FOR A LICENSE FOR 1 YEAR FOLLOWING A DENIAL OR REFUSAL BY THE DEPARTMENT TO ISSUE OR RENEW A LICENSE; PROVIDING THAT THE VIOLATION OF CERTAIN SPECIFIED FEDERAL ACTS, INCLUDING THE TRUTH IN LENDING ACT AND THE FAIR CREDIT REPORTING ACT, IS ALSO A VIOLATION OF THE MONTANA DEFERRED DEPOSIT LOAN ACT; GRANTING THE DEPARTMENT RULEMAKING AUTHORITY; ELIMINATING THE EXEMPTION FROM THE PROVISIONS OF THE MONTANA DEFERRED DEPOSIT LOAN ACT FOR A COLLECTION AGENCY THAT HAS ENTERED INTO AN AGREEMENT WITH A DEFERRED DEPOSIT LENDER FOR THE COLLECTION OF CLAIMS; REVISING LICENSE APPLICATION REQUIREMENTS; REVISING THE DEPARTMENT'S FEES FOR EXAMINING LICENSEES; PROVIDING THAT A COLLECTION AGENCY ACTING ON BEHALF OF A LICENSEE MAY NOT COLLECT CERTAIN DAMAGES; AND AMENDING SECTIONS 31-1-704, 31-1-705, 31-1-711, AND 31-1-722, MCA.