

1 SENATE BILL NO. 397

2 INTRODUCED BY K. GILLAN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA DEFERRED DEPOSIT LOAN ACT AND
5 THE MONTANA TITLE LOAN ACT BY CAPPING THE INTEREST RATE THAT MAY BE CHARGED ON
6 DEFERRED DEPOSIT LOANS AND TITLE LOANS; PROVIDING FOR REPAYMENT PLANS FOR A
7 CONSUMER WITH A DEFERRED DEPOSIT LOAN OUTSTANDING AFTER THE TERM OF THE LOAN;
8 AMENDING SECTIONS 31-1-106, 31-1-715, 31-1-721, 31-1-722, AND 31-1-817, MCA; AND PROVIDING AN
9 APPLICABILITY DATE."

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

12

13 **Section 1.** Section 31-1-106, MCA, is amended to read:

14 **"31-1-106. Legal interest.** (1) Except as otherwise provided by the Uniform Commercial Code, ~~31-1-111~~
15 ~~and 31-1-112, or 31-1-722, or 31-1-817,~~ unless there is an express contract in writing fixing a different rate or a
16 law or ordinance or resolution of a public body fixing a different rate on its obligations, interest is payable on all
17 money at the rate of 10% a year after it becomes due on:

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

19 (b) an account stated;

20 (c) money lent or due on any settlement of accounts from the date on which the balance is ascertained;

21 and

22 (d) money received for the use of another person and detained from that person.

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

24

25 **Section 2.** Section 31-1-715, MCA, is amended to read:26 **"31-1-715. Loan requirements -- right of rescission -- arbitration -- completion of transaction.** (1)

27 A deferred deposit loan may not have a term that exceeds 31 days.

28 (2) The amount of the deferred deposit loan, exclusive of the ~~fee~~ interest allowed in 31-1-722(2), may
29 not exceed \$300.

30 (3) The minimum amount of a deferred deposit loan is \$50.

1 (4) The check written by the consumer in a deferred deposit loan must be made payable to the licensee.

2 (5) (a) The loan agreement must contain a provision that the consumer may rescind the transaction if,
3 by 5 p.m. of the licensee's first business day following the day that the loan was executed, the consumer provides
4 the licensee with cash or certified funds equaling 100% of the amount loaned to the consumer.

5 (b) A licensee may not charge a consumer any fee or interest if the consumer rescinds the loan as
6 provided in subsection (5)(a).

7 (c) Except as provided in subsection (5)(a), a consumer does not have a right to rescind the loan unless
8 the licensee agrees to the rescission.

9 (6) (a) A loan agreement may not contain a mandatory arbitration clause that is oppressive,
10 unconscionable, unfair, or in substantial derogation of a consumer's rights.

11 (b) A mandatory arbitration clause that complies with the applicable standards of the American arbitration
12 association must be presumed to not violate the provisions of subsection (6)(a).

13 (7) Only the licensee may make an electronic deduction from the consumer's account. The licensee shall
14 ensure that information obtained from the consumer about the consumer's account remains confidential.

15 (8) The licensee shall provide the consumer, or each consumer if there is more than one, with a copy
16 of the loan documents described in 31-1-721 upon consummation of the loan.

17 (9) The holder or assignee of any check written by a consumer in connection with a deferred deposit loan
18 takes the instrument subject to all claims and defenses of the consumer.

19 ~~(10) A deferred deposit loan transaction is completed when the licensee receives payment in full from
20 the consumer in cash or, if payment is made by check or electronic transfer from the consumer's account, when
21 the check or electronic transfer is debited to the consumer's account by the consumer's financial institution. Once
22 a deferred deposit loan transaction is complete, a licensee may enter into a new deferred deposit loan with the
23 consumer. Deferred deposit loans may not be renewed or extended.~~

24 (10) If the consumer has or has had one or more deferred deposit loans outstanding for 31 consecutive
25 days and has requested a repayment plan, any outstanding loan must be payable under the terms of a repayment
26 plan as provided for in this section. The consumer has until 28 days after the default date of a loan to request a
27 repayment plan for any loan that becomes eligible for a repayment plan under this section. Within 48 hours after
28 the request for a repayment plan, the licensee shall prepare a repayment plan agreement and both parties shall
29 execute the agreement. The repayment plan agreement must be executed in the same manner in which the loan
30 was executed and must be evidenced in writing.

- 1 (11) Under the terms of the repayment plan provided for in subsection (10):
2 (a) the licensee may not impose any charge on the consumer for requesting or using a repayment plan,
3 including finance charges, interest, or fees, except that a fee may be charged for insufficient funds as provided
4 under 31-1-722. Performance of the terms of the repayment plan extinguishes the consumer's obligation on the
5 loan.
6 (b) the consumer must be allowed to repay the loan in at least four equal installments with at least 15
7 days between installments. The term of the repayment plan must be at least 60 days and may not exceed 90
8 days. The first payment under the repayment plan may not be due until at least 15 days after the repayment plan
9 is signed by both parties. The consumer may prepay the amount due under the repayment plan at any time
10 without charge or penalty.
11 (c) the licensee may require, as a condition of the repayment plan, that the consumer schedule an
12 appointment with a licensed credit counseling agency within 7 days of executing the repayment plan and may
13 require that the consumer agree to and comply with a repayment plan approved by the counseling agency;
14 (d) the length of time between installments may be extended by the parties as long as the total period
15 of repayment does not exceed 90 days. Any modification must be in writing and signed by both parties.
16 (e) the licensee may not present the consumer's check for payment unless the consumer fails to comply
17 with the executed repayment plan.
18 (12) A licensee is prohibited from making a deferred deposit loan to a consumer:
19 (a) who has an outstanding deferred deposit loan that is subject to a repayment plan; or
20 (b) until at least 7 days from the date that the consumer pays the outstanding balance of the loan under
21 a repayment plan and pays the outstanding balance of all other deferred deposit loans.
22 (13) (a) A consumer may make partial payments in any amount on a deferred deposit loan that is subject
23 to a repayment plan without charge at any time before the due date of a required payment under the repayment
24 plan.
25 (b) After each payment, whether the payment is in part or in full, the licensee shall give a signed and
26 dated receipt to the consumer showing the amount paid and the balance due on the deferred deposit loan.
27 (14) A licensee may not accept postdated checks for payments under a repayment plan.
28 (15) A licensee may voluntarily agree to enter into a repayment plan with a consumer at any time, but
29 if the consumer is eligible for a repayment plan under this section, the voluntary repayment plan constitutes a
30 repayment plan under this section and the provisions of this section apply to the voluntary repayment plan."

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2 **Section 3.** Section 31-1-721, MCA, is amended to read:

3 **"31-1-721. Required disclosures -- loan agreement.** (1) Before entering into a deferred deposit loan,
4 the licensee shall deliver to the consumer a pamphlet prepared by or at the direction of the department that:

5 (a) explains, in simple language, all of the consumer's rights and responsibilities in a deferred deposit
6 loan transaction;

7 (b) includes a telephone number to the department's office that handles concerns or complaints by
8 consumers; and

9 (c) informs consumers that the department's office can provide information about whether a lender is
10 licensed and other legally available information.

11 (2) Licensees shall provide consumers with a written agreement on a form specified or approved by the
12 department that can be kept by the consumer, which must include the following information:

13 (a) the name, address, and phone number of the licensee making the deferred deposit loan and the
14 initials or other written means of identifying the individual employee who signs the agreement on behalf of the
15 licensee;

16 (b) the name, address, and phone number of the consumer obtaining the deferred deposit loan;

17 (c) all disclosures required by the federal Truth in Lending Act, 15 U.S.C. 1601, et seq.;

18 (d) a clear description of the consumer's payment obligations under the loan; and

19 (e) in a manner that is more conspicuous than the other information provided in the loan document and
20 that is in at least 14-point bold typeface, a statement that "you cannot be prosecuted in criminal court for collection
21 of this loan". The statement must be located immediately preceding the signature of the consumer.

22 (3) At the time that a deferred deposit loan is made, the licensee shall provide the consumer with a
23 written notice of the consumer's right to request a repayment plan, using the following language in at least
24 14-point bold type, on the first page of the loan agreement:

25 "STATE LAW PROHIBITS A DEFERRED DEPOSIT LENDER (THIS BUSINESS) FROM ALLOWING YOU TO
26 "ROLL OVER" YOUR DEFERRED DEPOSIT LOAN. THIS MEANS THAT YOU MAY NOT BE ASKED OR
27 REQUIRED TO PAY AN ADDITIONAL FEE IN ORDER TO FURTHER DELAY THE DEPOSIT OR
28 PRESENTMENT OF YOUR CHECK FOR PAYMENT. IF YOU STILL OWE ON ONE OR MORE DEFERRED
29 DEPOSIT LOANS AFTER 31 DAYS AND IF YOU INFORM THE PROVIDER IN PERSON THAT YOU CANNOT
30 COVER THE CHECK OR PAY IN FULL THE AMOUNT OWING AT THE END OF THE TERM OF THIS

1 AGREEMENT, YOU WILL BE ENTITLED TO ENTER A REPAYMENT PLAN. THE REPAYMENT PLAN WILL
 2 GIVE YOU AT LEAST 60 DAYS TO REPAY YOUR LOAN IN INSTALLMENTS WITH NO ADDITIONAL FINANCE
 3 CHARGES, INTEREST, FEES, OR OTHER CHARGES OF ANY KIND. AS A CONDITION OF THIS
 4 REPAYMENT PLAN, YOU MAY BE REQUIRED TO COMPLETE CONSUMER CREDIT COUNSELING WITH
 5 A LICENSED AGENCY INCLUDED ON THE LIST THAT WILL BE PROVIDED TO YOU BY THIS LENDER. YOU
 6 MAY ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY THAT
 7 AGENCY. IF YOU DO NOT COMPLY WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY THAT
 8 AGENCY, WE MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND PURSUE ALL LEGALLY
 9 AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT AT THE END OF THE 60-DAY GRACE PERIOD."

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11 **Section 4.** Section 31-1-722, MCA, is amended to read:

12 **"31-1-722. Prohibited and permitted fees -- attorney fees and costs.** (1) A licensee may not charge
 13 or receive, directly or indirectly, any interest, fees, or charges except those specifically authorized by this section.

14 (2) ~~A licensee may not charge a fee for each deferred deposit loan entered into with a consumer that~~
 15 ~~exceeds 25% of the principal amount of the deferred deposit loan that is advanced or, in the case of an electronic~~
 16 ~~transaction, 25% of the principal amount of the deferred deposit loan. The maximum rate of interest that a~~
 17 ~~deferred deposit licensee may receive for making and carrying any deferred deposit loan authorized by this part~~
 18 ~~may not exceed an annual percentage rate of 36%, exclusive of the insufficient funds fees authorized in~~
 19 ~~subsections (3) and (4).~~

20 (3) If there are insufficient funds to pay a check on the date of presentment, a licensee may charge a
 21 fee, not to exceed \$30. Only one fee may be collected pursuant to this subsection with respect to a particular
 22 check even if it has been redeposited and returned more than once. A fee charged pursuant to this subsection
 23 is a licensee's exclusive charge for late payment. A licensee may not collect damages under 27-1-717(3) for an
 24 insufficient funds check.

25 (4) If the loan involves an electronic deduction and there are insufficient funds to deduct on the date on
 26 which the payment is due, a licensee may charge a fee, not to exceed \$30. Only one fee may be collected
 27 pursuant to this subsection with respect to a particular loan even if the licensee has attempted more than once
 28 to deduct the amount due from the consumer's account. A fee charged pursuant to this subsection is a licensee's
 29 exclusive charge for late payment. A licensee may not collect damages under 27-1-717(3) for an electronic
 30 deduction for which there are insufficient funds.

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

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5 **Section 5.** Section 31-1-817, MCA, is amended to read:

6 **"31-1-817. Interest rates -- fees charged.** (1) The maximum rate of interest that a title lender may
7 contract for and receive for making and carrying any title loan authorized by this part may not exceed: an annual
8 percentage rate of 36%, exclusive of the recording costs and service charges provided for in subsections (2) and
9 (3).

10 ~~(a) 25% for each 30-day period for the portion of a loan that does not exceed \$2,000;~~

11 ~~—— (b) 18% for each 30-day period for the portion of a loan exceeding \$2,000 but not exceeding \$4,000; and~~

12 ~~—— (c) 10% for each 30-day period, plus fees, on the portion of a loan that exceeds \$4,000.~~

13 (2) Title lenders may charge their actual costs of recording liens on borrowers' certificates of title.

14 (3) Title lenders may charge a service charge, as provided in 27-1-717, if there are insufficient funds to
15 pay a check on the date of presentment. Title lenders may not collect damages under 27-1-717(3) based upon
16 the presentment of an insufficient funds check."

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18 NEW SECTION. **Section 6. Applicability.** [This act] applies to deferred deposit loans and title loans
19 entered into on or after [the effective date of this act].

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