

HOUSE BILL NO. 65

INTRODUCED BY J. POMNICHOWSKI

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA CONSUMER LOAN ACT;
6 REVISING DEFINITIONS; REVISING EXEMPTIONS FROM LICENSING; REVISING THE SUBMISSION
7 METHOD FOR LICENSE AND LICENSE RENEWAL APPLICATION FEES; REVISING REQUIREMENTS FOR
8 THE ISSUANCE, DENIAL, SURRENDER, REVOCATION, OR SUSPENSION OF LICENSES; REVISING FEES
9 THAT MAY BE CHARGED TO LOAN CONSUMERS; ELIMINATING THE CAP ON CIVIL PENALTIES FOR A
10 SINGLE ADMINISTRATIVE ACTION; CLARIFYING INSTALLMENT AND BALLOON PAYMENT
11 REQUIREMENTS; PROVIDING THAT COMPLIANCE WITH FEDERAL LAW DOES NOT CONSTITUTE
12 AUTHORIZATION TO MODIFY THE INTEREST OR FEES THAT MAY BE CHARGED TO LOAN CONSUMERS
13 UNDER MONTANA LAW; CLARIFYING RECORDKEEPING REQUIREMENTS; PROVIDING THAT A
14 CONSUMER LOAN BORROWER MAY VOLUNTARILY CONFESS JUDGMENT ON A LOAN IN DEFAULT;
15 AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO PARTICIPATE IN A NATIONWIDE LICENSING
16 SYSTEM FOR LICENSING CONSUMER LOAN LICENSEES; GRANTING RULEMAKING AUTHORITY;
17 PROVIDING THAT THE VIOLATION OF CERTAIN SPECIFIED FEDERAL ACTS, INCLUDING THE TRUTH IN
18 LENDING ACT AND THE FAIR CREDIT REPORTING ACT, IS ALSO A VIOLATION OF THE MONTANA
19 CONSUMER LOAN ACT; PROHIBITING PRECOMPUTED INTEREST ON CONSUMER LOANS; AMENDING
20 SECTIONS 32-5-102, 32-5-103, 32-5-201, 32-5-202, 32-5-205, 32-5-207, 32-5-301, 32-5-302, 32-5-303,
21 32-5-304, 32-5-305, AND 32-5-308, MCA; REPEALING SECTION 32-5-204, MCA; AND PROVIDING A
22 DELAYED EFFECTIVE DATE."

23
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

25
26 **Section 1.** Section 32-5-102, MCA, is amended to read:

27 **"32-5-102. Definitions.** ~~Unless the context requires otherwise, in~~ For the purposes of this chapter, the
28 following definitions apply:

29 (1) "Balloon payment" means any repayment option in which the borrower is required to repay the entire
30 amount of any outstanding balance as of a specific date or at the end of a specified term and the aggregate

1 amount of the required minimum periodic payments would not fully amortize the outstanding balance by the
2 specific date or at the end of the loan term.

3 (2) (a) "Consumer loan" means credit offered or extended to an individual primarily for personal, family,
4 or household purposes, including loans for personal, family, or household purposes that are not primarily secured
5 by a mortgage, deed of trust, trust indenture, or other security interest in real estate.

6 (b) Consumer loans do not include:

7 (i) deferred deposit loans provided for in Title 31, chapter 1, part 7; or

8 ~~—— (ii) title loans provided for in Title 31, chapter 1, part 8; or~~

9 ~~—— (iii)(ii) residential mortgage loans as defined in 32-9-103.~~

10 (3) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

11 (4) "Immediate family member" means a spouse, child, sibling, parent, grandparent, grandchild,
12 stepchild, stepbrother, or stepsister and includes parent, grandparent, child, grandchild, and sibling relationships
13 based upon adoptive relationships.

14 ~~(4)(5) "Interest" means the compensation allowed by law or fixed by the parties this chapter for the use,~~
15 ~~or forbearance, or detention of money and includes loan origination fees, points, and prepaid finance charges,~~
16 ~~as defined in 12 CFR 226.2.~~

17 ~~(5)(6) "License" means a license provided for by this chapter.~~

18 ~~(6)(7) "Licensee" means the person holding a license.~~

19 ~~(7)(8) "Person" means individuals, partnerships, associations, corporations, and all legal entities."~~

20

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

22 **"32-5-103. Engaging in business of making consumer loans restricted.** (1) Except as provided in
23 subsection (5), a person may not engage in the business of making consumer loans in any amount and contract
24 for, charge, or receive directly or indirectly on or in connection with any loan any compensation, whether for
25 interest, fees, other consideration, or expense, except as provided in and authorized by this chapter. ~~The~~
26 ~~provisions of this chapter do not apply to any exempted person.~~

27 (2) A licensee may sell its business and assets to a bank, building and loan association, savings and
28 loan association, trust company, credit union, credit association, development credit corporation, other licensee,
29 financial holding company, or bank holding company organized pursuant to state or federal statutory authority
30 and subject to supervision, control, or regulation by an agency of the state of Montana or an agency of the federal

1 government. All contracts for loans and all other contracts entered into by the licensee pursuant to the provisions
 2 of this chapter that are sold and transferred to an acquiring organization continue to be governed by the
 3 provisions of this chapter.

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

6 (4) Any loan made or collected in violation of subsection (1) by a person other than a licensee or a
 7 person exempt under subsection (5) is void, and the person does not have the right to collect, receive, or retain
 8 any principal, interest, fees, or other charges.

9 (5) The following are not required to comply with the provisions of this chapter:

10 (a) a regulated lender, as defined in 31-1-111, to whom the exemption in 31-1-112 applies; or
 11 ~~A consumer loan licensee or a person who seeks a regulated lender exemption under 31-1-112 as a consumer~~
 12 ~~loan licensee shall fully comply with this chapter. A regulated lender as defined in 31-1-111, other than a~~
 13 ~~consumer loan licensee or~~

14 (b) a person who:

15 (i) makes fewer than four consumer loans a year to immediate family members with the person's own
 16 funds;

17 (ii) ~~and does not represent that the person is a licensee, who; and~~

18 (iii) complies with the provisions of Title 31, chapter 1, part 1, ~~is not required to comply with this chapter.~~
 19 ~~A deferred deposit lender, as defined in 31-1-703, who complies with the provisions of Title 31, chapter 1, part~~
 20 ~~7, is not required to comply with this chapter. A title lender, as defined in 31-1-803, who complies with the~~
 21 ~~provisions of Title 31, chapter 1, part 8, is not required to comply with this chapter."~~

22

23 **Section 3.** Section 32-5-201, MCA, is amended to read:

24 **"32-5-201. License and renewal application and fees.** (1) (a) Each place of business operated under
 25 this chapter shall ~~properly display on the premises a nontransferable and nonassignable license~~ must be licensed.
 26 Licenses are nontransferable and nonassignable. The same person may obtain an additional license for each
 27 business location upon compliance with this chapter.

28 (b) Applications for a license or renewal must be ~~on a~~ in the form and submitted in the manner prescribed
 29 ~~and furnished~~ by the department.

30 (c) A licensee may move the licensee's place of business from one place to another upon ~~providing~~

1 ~~written notice to and receiving approval from the department prior to the move~~ advance notice to the department
 2 in the manner the department directs.

3 (d) The license application fee and license renewal fee are \$500 and are nonrefundable. ~~With each~~
 4 ~~application, the applicant shall submit \$500 as a license application fee. The license application fee is~~
 5 ~~nonrefundable. The license year is the calendar year, and the license fee for any period less than 6 months is~~
 6 ~~\$250.~~ All consumer loan licenses issued under this chapter expire on December 31.

7 (2) ~~All~~ The department's share of all licensing and examination fees collected pursuant to this chapter
 8 ~~must be paid by the department~~ deposited into the state special revenue fund for the use of the department in
 9 its supervision function.

10 (3) The department may direct that fees charged under subsection (1)(d) be remitted to the department
 11 through a nationwide licensing system."

12

13 **Section 4.** Section 32-5-202, MCA, is amended to read:

14 **"32-5-202. Issuance or denial of license or license renewal.** ~~Within 30 days after a complete~~
 15 ~~application for a license or a license renewal is filed with the department together with all required fees, the~~
 16 ~~department shall issue the license or license renewal~~ (1) Upon submission of a completed application and
 17 payment of all required fees, a license or renewal must be issued if the department determines that:

18 (a) the character and general fitness of the applicant ~~warrants~~ warrant the belief that the business will
 19 be operated lawfully and fairly within the provisions of this chapter;

20 (b) the applicant has not had a financial services license revoked by a regulatory agency in any
 21 jurisdiction;

22 (c) there are no outstanding civil judgments against the applicant for fraud in relation to providing
 23 consumer financial services; and

24 (d) the application does not contain material misstatements of fact or material omissions of fact.

25 (2) The department may enter an order denying the license or license renewal application subject to
 26 notifying the applicant and providing the applicant an opportunity for a hearing. All notices and orders must be
 27 served as provided in 32-5-207(2)."

28

29 **Section 5.** Section 32-5-205, MCA, is amended to read:

30 **"32-5-205. Surrender of license.** ~~Any licensee may surrender any license by delivering it to the~~

1 ~~department with written notice thereon, but such~~ A license may be surrendered on conditions of the department
 2 consistent with the protocols of a nationwide licensing system for license surrender. The license surrender shall
 3 does not affect such the licensee's civil, administrative, or criminal liability for acts committed prior to such the
 4 surrender."

5

6 **Section 6.** Section 32-5-207, MCA, is amended to read:

7 **"32-5-207. Revocation and suspension of license -- penalty -- restitution.** (1) (a) The department,
 8 after providing a ~~40-day~~ 14-day written notice to ~~the licensee~~ a person, whether licensed or unlicensed, that
 9 includes a statement of ~~the grounds for the proposed suspension or revocation and informing the licensee that~~
 10 ~~the licensee~~ alleged violations and notice that the person has the right to an administrative hearing, may issue
 11 an order ~~suspending or revoking a license~~ that includes one or more of the penalties provided for in subsection
 12 (1)(b) if it finds that the licensee person has:

13 (i) violated any provision of this chapter;

14 (ii) ~~has~~ failed to comply with any department rule, written instruction, or order; ~~has~~

15 (iii) failed or refused to make required reports; ~~has~~

16 (iv) furnished false information; ~~or has~~

17 (v) operated without a license.

18 (b) The department may impose a civil penalty of not more than \$1,000 for each violation ~~of this chapter,~~
 19 ~~not to exceed \$5,000 for each administrative action,~~ and may order restitution to borrowers and reimbursement
 20 of the department's costs in bringing an administrative action. The department may suspend or revoke the right
 21 of a person or licensee, directly or through an officer, agent, employee, or representative, to operate as a licensee
 22 or to engage in the business of making consumer loans.

23 (2) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail
 24 to the address for which the license was issued or in the case of an unlicensed ~~business person~~ person to the last-known
 25 address of record.

26 (3) A revocation; or suspension; ~~or surrender~~ of a license does not relieve the licensee from civil,
 27 administrative, or criminal liability for acts committed prior to the revocation; or suspension; ~~or surrender~~ of the
 28 license.

29 (4) All civil penalties collected pursuant to this section must be deposited in the state general fund."
 30

1 **Section 7.** Section 32-5-301, MCA, is amended to read:

2 **"32-5-301. Fees charged to consumers.** (1) A licensee may contract for and receive interest on the
3 principal amount of any loan of money. ~~Such~~ The interest, ~~including fees and charges incurred in the making of~~
4 ~~the loan but~~ excluding the fees authorized in subsections ~~(2) and (3)~~ (3) and (4), may not exceed 36% ~~per annum~~
5 a year.

6 (2) ~~If provided for in the contract, an additional fee may be charged for any amount past due according~~
7 ~~to the original terms of the contract, whether by reason of default or extension agreement. The fee charged may~~
8 ~~be the greater of \$15 or 5% of the amount past due, not to exceed \$50. The fee charged for any past due amount~~
9 ~~may be charged only once. Except as provided in subsection (3), other fees may not be charged for default or~~
10 ~~extension of the contract by the borrower. The following third-party fees may be financed, at the borrower's option,~~
11 and included in the principal amount of any loan:

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

14 (b) 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 any
16 instrument securing the loan;

17 (c) the premium for any credit insurance;

18 (d) bona fide fees or charges related to real estate security paid to third parties;

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

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

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

22 (h) appraisal fees;

23 (i) fees for credit reports; and

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

25 (3) (a) If provided for in the contract, a licensee may grant a deferral at any time. A deferral postpones
26 the scheduled due date of the earliest unpaid installment and all subsequent installments as originally scheduled
27 or as previously deferred for a period equal to the agreed-upon deferral period. The deferral period is that period
28 during which an installment is not scheduled to be paid by reason of the deferral.

29 (b) A licensee may charge an additional fee for each deferral. The fee charged may be the greater of
30 \$15 or 5% of the amount currently due, not to exceed \$50.

- 1 (c) Other fees may not be charged by the lender for any deferrals granted by the lender.
- 2 (4) The licensee may include in the principal amount of any loan:
- 3 ~~— (a) the actual fees paid a public official or agency of the state for filing, recording, or releasing any~~
 4 ~~instrument securing the loan;~~
- 5 ~~— (b) the premium for insurance in lieu of filing or recording any instrument securing the loan to the extent~~
 6 ~~that the premium does not exceed the fees that would otherwise be payable for filing, recording, or releasing any~~
 7 ~~instrument securing the loan;~~
- 8 ~~— (c) bona fide fees or charges related to real estate security paid to third parties;~~
- 9 ~~— (d) fees or premiums for title examination, title insurance, or similar purposes, including survey;~~
- 10 ~~— (e) fees for preparation of a deed, settlement statement, or other documents;~~
- 11 ~~— (f) fees for notarizing deeds and other documents;~~
- 12 ~~— (g) appraisal fees;~~
- 13 ~~— (h) fees for credit reports; and~~
- 14 ~~— (i) fees paid to a trustee for release of a trust deed. If provided for in the contract, a licensee may charge~~
 15 ~~a fee for any amount past due, whether as a result of a default under the original contract terms or of a default~~
 16 ~~under the terms of an extension agreement. The fee charged may be the greater of \$15 or 5% of the amount past~~
 17 ~~due, not to exceed \$50. The fee charged for any past-due amount may be charged only once. Other fees may~~
 18 ~~not be charged for any default of the contract by the borrower.~~
- 19 (5) (a) ~~Other fees may not~~ No other fees or charges may be directly or indirectly contracted for or
 20 received by any licensee except those specifically authorized by this chapter. A licensee may not divide into
 21 separate parts any contract made for the purpose of or with the effect of obtaining fees in excess of those
 22 authorized by this chapter. ~~#~~ In addition to other remedies and penalties provided for in this chapter, if any amount
 23 in excess of the fees permitted by this chapter is charged, contracted for, or received, the licensee shall forfeit
 24 to the borrower a sum that is double the amount that is in excess of the fees authorized by this chapter.
- 25 (b) This section does not apply to fees for services rendered in connection with a loan after the loan has
 26 been consummated and if the borrower's participation in the services is strictly voluntary."
 27

28 **Section 8.** Section 32-5-302, MCA, is amended to read:

29 **"32-5-302. Installment and balloon payments.** (1) Except as provided in subsection (4), if the loan
 30 contract requires installment payments, the contract must provide that principal and interest be payable at

1 approximately equal periodic intervals, except that payment dates may be omitted to accommodate borrowers
2 with seasonal incomes.

3 (2) An installment contracted for may not be substantially larger than any preceding installment. If a loan
4 contract provides for monthly installment payments, the first installment must be payable at any time within 45
5 days of the date of the making of the loan and ~~interest may be charged for the number of days in excess of 30~~
6 ~~from the date of the making of the loan and may be added to the scheduled amount of the installments.~~

7 (3) A licensee may not enter into any loan contract in which a borrower agrees to pay principal or interest
8 in one lump sum unless the payment is due not less than 45 days from the date of the making of the loan and
9 not more than 1 year from the date of the making of the loan.

10 (4) Loans with a balloon payment are permissible so long as all installment payments cover at least the
11 interest that has accrued since the previous installment payment."

12

13 **Section 9.** Section 32-5-303, MCA, is amended to read:

14 **"32-5-303. Borrower to receive copy of contract or statement of contents.** (1) At the time a loan is
15 made, there must be delivered to the borrower or borrowers the disclosures required by the federal Consumer
16 Credit Protection Act and the federal Truth in Lending Act, 15 U.S.C. 1601, et seq., and a copy of the loan
17 contract or a written statement showing in clear and distinct terms:

18 ~~(1)~~(a) the name and address of the lender and of one of the borrowers or a maker of the loan;

19 ~~(2)~~(b) the date of the loan contract;

20 ~~(3)~~(c) the description or schedule of payments;

21 ~~(4)~~(d) the principal amount of the loan excluding interest;

22 ~~(5)~~(e) the rate and amount of interest as provided in the contract;

23 ~~(6)~~(f) the amount collected or paid out for each kind of insurance, if any;

24 ~~(7)~~(g) the amount collected or paid out for filing and other fees as allowed in this chapter;

25 ~~(8)~~(h) the collateral or security for the loan including all other accommodation or other joint makers or
26 comakers; and

27 ~~(9)~~(i) that the borrower may prepay the loan in whole or in part without penalty at any time during a
28 licensee's regular business hours.

29 (2) Compliance with the disclosure requirements of the Truth in Lending Act, 15 U.S.C. 1601, et seq.,
30 does not constitute authorization to enlarge or modify the interest or the fees that may be charged under

1 32-5-301."

2

3 **Section 10.** Section 32-5-304, MCA, is amended to read:

4 **"32-5-304. Receipts -- return of note.** Every licensee shall:

5 (1) give to the borrower a plain, dated, and complete receipt ~~in a form approved by the department~~ for
6 every payment made in cash on account of any loan at the time the payment is made;

7 (2) endorse indelibly on a loan ledger or card or maintain a record by reliable electronic means of, which
8 ~~must be kept by the licensee~~, the amount and date of each payment made by the borrower; and ~~Subject to the~~
9 ~~prior written approval of the department, mechanical data processing methods may be used. The department may~~
10 ~~approve any system containing information that is equivalent to that required on a loan ledger or card.~~

11 (3) upon repayment of the loan in full, mark indelibly every obligation and security signed by the borrower
12 with the word "paid" or "canceled" or otherwise memorialize satisfaction of the obligation and release any
13 mortgage, restore any pledge, and cancel and return to the borrower any note and any assignment given to the
14 licensee within 10 days after the repayment. Reconveyance of a deed of trust must be in accordance with
15 71-1-307 through 71-1-309. The canceled ~~notes~~ note and canceled ~~assignments~~ assignment or other instrument
16 clearly identifying the note or assignment and stating that it has been paid in full must be mailed to the borrower
17 at the borrower's last-known address unless returned to the borrower in person.

18 (4) Licensees shall maintain records in accordance with 32-5-307."

19

20 **Section 11.** Section 32-5-305, MCA, is amended to read:

21 **"32-5-305. Confessions of judgment -- incomplete instruments forbidden.** A licensee may not:

22 (1) take any confession of judgment from the borrower or any power of attorney running to the licensee
23 or to any third person to confess judgment for the borrower or to appear for the borrower in a judicial proceeding,
24 except that this subsection does not prohibit a borrower from personally and voluntarily confessing judgment after
25 the borrower's loan is in default;

26 (2) take any note or promise to pay that does not disclose the amount of the loan, a schedule of
27 payments or a description of the schedule of payments, and the agreed interest and fees to be charged. The note
28 or promise may not contain blanks that are left to be filled in after execution. The disclosures required by this
29 subsection are not required on a certificate of title to a motor vehicle, on a policy or certificate of insurance, or
30 on customary powers in connection with bonds or stocks that may be pledged as collateral.

1 (3) take any instrument in which blanks are left to be filled in after the loan is made."
2

3 **Section 12.** Section 32-5-308, MCA, is amended to read:

4 **"32-5-308. Annual report.** (1) A licensee shall file an annual report ~~before April 15 for~~ by the date and
5 in the manner prescribed by the department covering the licensee's consumer loan activity in this state during
6 the preceding calendar year with the department.

7 (2) The report ~~must be made under oath and be in a form and~~ contain the information prescribed by the
8 department. The department ~~shall publish annually an analysis and summary of the reports~~ may require
9 information that is consistent with the protocols of a nationwide licensing system as provided in [section 13]."
10

11 NEW SECTION. **Section 13. Department authorized to participate in nationwide licensing system**
12 **for purposes of licensing consumer loan licensees -- rulemaking.** (1) The department may participate in a
13 nationwide licensing system for licensing purposes under this chapter and may require consumer loan licensees
14 to apply for licensure on applications approved by the nationwide licensing system.

15 (2) The department may establish rules that are necessary to comply with the nationwide licensing
16 system protocols and procedures pertaining to applications, fees, renewal dates, amending or surrendering a
17 license, and submission of reports necessary for participation in the nationwide licensing system.

18 (3) The department's portion of the licensing fees collected through the nationwide licensing system must
19 be deposited into the department's account in the state special revenue fund for use in the administration of this
20 part.
21

22 NEW SECTION. **Section 14. Precomputed interest prohibited.** All consumer loans made or
23 refinanced under this chapter must be made on simple interest and the interest on consumer loans made or
24 refinanced under this chapter may not be precomputed.
25

26 NEW SECTION. **Section 15. Violation of specified federal laws -- rulemaking.** (1) A violation of any
27 applicable provision of the Truth in Lending Act, 15 U.S.C. 1601, et seq., the Equal Credit Opportunity Act, 15
28 U.S.C. 1691, et seq., the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq., the Fair Debt Collection Practices
29 Act, 15 U.S.C. 1692, et seq., the Financial Services Modernization Act of 1999 (Gramm-Leach-Bliley Act), 15
30 U.S.C. 6801, et seq., the USA PATRIOT Act of 2001, as reauthorized, Public Law 107-56, the John Warner

1 National Defense Authorization Act for Fiscal Year 2007, Public Law 109-364, or any regulation promulgated
2 under those acts is also a violation of this part.

3 (2) The department shall adopt rules to implement this section.
4

5 **NEW SECTION. Section 16. Repealer.** The following section of the Montana Code Annotated is
6 repealed:

7 32-5-204. License renewal fee.
8

9 **NEW SECTION. Section 17. Codification instruction.** (1) [Section 13] is intended to be codified as
10 an integral part of Title 32, chapter 5, part 2, and the provisions of Title 32, chapter 5, part 2, apply to [section 13].

11 (2) [Sections 14 and 15] are intended to be codified as an integral part of Title 32, chapter 5, part 3, and
12 the provisions of Title 32, chapter 5, part 3, apply to [sections 14 and 15].
13

14 **NEW SECTION. Section 18. Effective date.** [This act] is effective December 31, 2013.
15

- END -