

HOUSE BILL NO. 138
INTRODUCED BY J. MANGAN
BY REQUEST OF THE DEPARTMENT OF COMMERCE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA DEFERRED DEPOSIT LOAN ACT TO PROVIDE FOR AND REGULATE PREAUTHORIZED LOAN PAYMENTS AND FEES ELECTRONICALLY DEDUCTED FROM A CONSUMER'S ACCOUNT; PROVIDING THAT THE MONTANA DEFERRED DEPOSIT LOAN ACT DOES NOT APPLY TO COLLECTION AGENCIES; CLARIFYING THAT A LICENSE TO MAKE DEFERRED DEPOSIT LOANS IS BASED ON THE CALENDAR YEAR; PROVIDING FOR A LICENSE RENEWAL FEE; AND AMENDING SECTIONS 31-1-703, 31-1-704, 31-1-705, 31-1-714, 31-1-715, 31-1-722, AND 31-1-723, MCA."

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

Section 1. 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.

~~(1)~~(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.

~~(2)~~(3) "Consumer" means a natural person who, singly or jointly with another natural person, enters into a deferred deposit loan.

~~(3)~~(4) "Deferred deposit lender" or "licensee" means a person engaged in the business of making deferred deposit loans.

~~(4)~~(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; ~~or~~

(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.

~~(5)~~(6) "Department" means the department of commerce.

~~(6)~~(7) "Person" means a natural person, sole proprietorship, firm, partnership, corporation, or other entity."

SECTION 2. 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) banks, savings and loan associations, credit unions, or other state or federally regulated financial institutions; ~~or~~

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

(c) a collection agency licensed to do 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 3. Section 31-1-705, MCA, is amended to read:

"31-1-705. License -- business locations -- rules. (1) A person may not engage in or offer to engage in the business of making deferred deposit loans unless licensed by the department.

(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 \$375.

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

(a) 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;

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

(c) 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

(d) other information that the department considers necessary has been provided.

(4) A license may not be issued for longer than 1 year, ~~and a renewal of a license may not be provided~~

~~if the licensee has violated a provision of this part. The license year must coincide with the calendar year, and the license fee for any period less than 6 months is \$187.50.~~

(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."

NEW SECTION. Section 4. License renewal fee. (1) A person licensed under 31-1-705 shall pay, on or before December 1 of each year, a license renewal fee of \$125 for each license that the person holds under this part.

(2) Failure to pay any yearly license renewal fee required by this section within the time prescribed will result in the automatic revocation of the license subject to renewal.

Section 5. Section 31-1-714, MCA, is amended to read:

"31-1-714. Information and annual reports. (1) Each licensee shall keep and use books, accounts, and records that will enable the department to determine if the licensee is complying with the provisions of this part and maintain any other records required by the department. The department is authorized to examine the records at any reasonable time. The records must be kept for 4 years following the last entry on a loan and must be kept according to generally accepted accounting procedures that include an examiner being able to review the recordkeeping and reconcile each consumer loan with documentation maintained in the consumer's loan file records.

(2) Each licensee shall file, on forms prescribed by the department, an annual report with the department on or before March 31 for the 12-month period in the preceding year ending as of December 31. The report must disclose in detail and under appropriate headings:

- (a) the resources, assets, and liabilities of the licensee at the beginning and the end of the period;
- (b) the income, expense, gain, loss, and balance sheets;
- (c) the total number of deferred deposit loans made in the year ending as of December 31 of the previous year;
- (d) the total number of deferred deposit loans outstanding as of December 31 of the previous year;

(e) the minimum and maximum amount of checks for which deposits were deferred in the year ending as of December 31 of the previous year;

(f) the total number and dollar amount of returned checks, the total number and dollar amount of checks recovered, and the total number and dollar amount of checks charged off during the year ending as of December 31 of the previous year; ~~and~~

(g) the total number and dollar amount of agreements involving electronic transactions or deductions, the total number and dollar amount of electronic deductions made by the licensee, and the total number and dollar amount of electronic deductions for insufficient funds charged off during the year ending as of December 31 of the previous year; and

~~(g)~~(h) verification that the licensee has not used a criminal process or caused a criminal process to be used in the collection of any deferred deposit loans or used any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default during the year ending as of December 31 of the previous year.

(3) A report must be verified by the oath or affirmation of the owner, manager, or president of the deferred deposit lender.

(4) (a) If a licensee conducts another business or is affiliated with other licensees under this part or if any other situation exists under which allocations of expense are necessary, the licensee shall make the allocation according to appropriate and reasonable accounting principles as approved by the department.

(b) Information about any other business conducted on the same premises where deferred deposit loans are made must be provided as required by the department.

(5) Each licensee shall file a copy of the disclosure documents described in 31-1-721 with the department prior to the date of commencement of business at each location, at the time any changes are made to the documents, and annually upon renewal of the license. These documents must be available to interested parties and to the general public through the department."

Section 6. Section 31-1-715, MCA, is amended to read:

"31-1-715. Loan requirements. (1) Each deferred deposit loan may not have a term that exceeds 31 days.

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

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

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

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

~~(5)~~(6) The licensee shall provide the consumer, or each consumer if there is more than one, with a copy of the loan documents described in 31-1-721 upon consummation of the loan.

~~(6)~~(7) The holder or assignee of any check written by a consumer in connection with a deferred deposit loan takes the instrument subject to all claims and defenses of the consumer."

Section 7. 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 ~~face amount of the check against which the delayed~~ 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 \$15. 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.

(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 \$15. 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.

~~(4)~~(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 8. Section 31-1-723, MCA, is amended to read:

"31-1-723. Prohibited acts. A licensee making deferred deposit loans may not commit, or have committed on behalf of the licensee, any of the following prohibited acts:

(1) engaging in the business of deferred deposit lending unless the department has first issued a valid license;

(2) threatening to use or using a criminal process in this or any other state to collect on the loan made to a consumer in this state or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default;

(3) altering the date or any other information on a check received from a consumer;

(4) altering or changing the date upon which the licensee and consumer agreed to make any electronic deductions from the consumer's account unless the consumer agrees in writing to the change;

(5) making any false, misleading, or deceptive representation to a financial institution relating to a consumer who has agreed to provide payment for a loan through an electronic deduction;

~~(4)~~(6) using any device or agreement that would have the effect of charging or collecting more fees, charges, or interest than those allowed by this part, including but not limited to entering into a different type of transaction or renewing or rolling over a loan with the consumer;

~~(5)~~(7) engaging in unfair, deceptive, or fraudulent practices in the making or collection of a deferred deposit loan;

~~(6)~~(8) entering into a deferred deposit loan with a consumer that is unconscionable. In determining whether a deferred deposit loan transaction is unconscionable, consideration must be given to, but is not limited to, whether the amount of the loan exceeds 25% of the consumer's monthly net income.

~~(7)~~(9) charging to cash a check representing the proceeds of the deferred deposit loan;

(10) charging to perform an electronic deduction or transaction to obtain the proceeds of the deferred deposit loan;

~~(8)~~(11) using or attempting to use the check provided by the consumer in a deferred deposit loan as security for purposes of any state or federal law;

(12) using or attempting to use the consumer's authorization to deduct the amount set forth in the loan agreement or any other information obtained from the consumer or the consumer's financial institution for any purpose other than to collect the proceeds of the deferred deposit loan;

~~(9)~~(13) accepting payment of the deferred deposit loan through the proceeds of another deferred deposit loan provided by the same licensee or any affiliate;

~~(10)~~(14) making a deferred deposit loan that, when combined with another outstanding deferred deposit loan owed to the licensee, exclusive of the fee allowed in 31-1-722(2), exceeds a total of \$300 when combining the face amount of the checks written in connection with each loan. Regardless of the total of the loans, a

licensee may not make a loan to a consumer who has two or more deferred deposit loans outstanding with the licensee.

~~(11)~~(15) renewing, repaying, refinancing, or consolidating a deferred deposit loan with the proceeds of another deferred deposit loan made to the same consumer. However, a licensee may without charge extend the term of the loan beyond the due date.

~~(12)~~(16) accepting any collateral for a deferred deposit loan;

~~(13)~~(17) charging any interest, fees, or charges other than those specifically authorized by this part, including but not limited to charges for insurance;

~~(14)~~(18) threatening to take any action against a consumer that is prohibited by this part or making any misleading or deceptive statements regarding the deferred deposit loan;

~~(15)~~(19) making a misrepresentation of a material fact by an applicant in obtaining or attempting to obtain a license;

~~(16)~~(20) including any of the following provisions in the loan agreement required by 31-1-721:

- (a) a hold harmless clause;
- (b) a confession of judgment clause;
- (c) a waiver of the right to a jury trial, if applicable, in any action brought by or against a consumer;
- (d) a mandatory arbitration clause;
- (e) any assignment of or order for payment of wages or other compensation for services;
- (f) a provision in which the consumer agrees not to assert any claim or defense arising out of the contract; or
- (g) a waiver of any provision of this part."

NEW SECTION. Section 9. Codification instruction. [Section ~~3~~ 4] is 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 [section ~~3~~ 4].

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