

HOUSE BILL NO. 555
INTRODUCED BY R. BITNEY

A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE AMOUNT THAT MAY BE CHARGED FOR A PAST-DUE LOAN PAYMENT FROM 5 PERCENT OF THE AMOUNT PAST DUE TO THE GREATER OF 5 PERCENT OF THE AMOUNT PAST DUE OR \$15; AND AMENDING SECTION 32-5-301, MCA."

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

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

"32-5-301. Charges, refunds, penalties, filing fees. (1) A licensee or holder of a supplementary license under this part may contract for and receive on any loan of money interest charges as provided under 31-1-112.

(2) Charges in subsection (1) must be computed at the applicable rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. The charges must be added to the principal of the loan and may not be discounted or deducted from the principal or paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day is considered one-thirtieth of a month.

(3) (a) When any loan contract, new loan, renewal, or otherwise for a period of not more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges that is due the borrower as determined by schedules prepared under the rule of 78ths or sum of the digits principle as follows: the amount of the refund or credit must be as great a proportion of the total charges originally contracted for as the sum of the consecutive monthly balances of the contract scheduled to follow the date of prepayment bears to the sum of all the consecutive monthly balances of the contract, both sums to be determined according to the payment schedule originally contracted for.

(b) When any loan contract, new loan, renewal, or otherwise for a period of more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges that is due the borrower that is applicable to all fully unexpired months in the contract as originally scheduled or, if deferred, as deferred, following the date of prepayment. For this purpose the applicable charge is the charge that would have been earned for that contract if charges had not been precomputed, by applying to the unpaid principal balance, by the actuarial method, the annual percentage rate

disclosed pursuant to federal law, based on the assumption that all payments were made as originally scheduled. For all loans that may be subject to this section, charges are computed initially in the same manner used to determine the annual percentage rate.

(4) If the contract so provides, the additional charge for any amount past due according to the original terms of the contract, whether by reason of default or extension agreement, may be the greater of 5% of the amount past due or \$15, and that amount may be charged only once.

(5) (a) The licensee may include in the principal amount of any loan:

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

(ii) the premium for insurance in lieu of filing or recording any instrument securing the loan to the extent that the premium does not exceed the fees that would otherwise be payable for filing, recording, or releasing any instrument securing the loan.

(b) The licensee may include in the principal amount of any loan bona fide charges related to real estate security and paid to third parties, including:

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

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

(iii) fees for notarizing deeds and other documents;

(iv) appraisal fees;

(v) fees for credit reports; and

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

(6) Further or other charges may not be directly or indirectly contracted for or received by any licensee except those specifically authorized by this chapter. A licensee may not divide into separate parts any contract made for the purpose of or with the effect of obtaining charges in excess of those authorized by this chapter. If any amount in excess of the charges permitted by this chapter is charged, contracted for, and received, except as the result of an accidental and bona fide error of computation, the licensee may not collect or receive any charges.

(7) Subsections (2), (3), and (6) of this section apply only to loans on which charges are made on an add-on basis and do not apply to loans on which charges are made on an interest-bearing basis.

(8) If a consumer loan is prepaid in whole or in part for any reason, including after a default, prior to the final payment due date and the amount of prepayment exceeds 10% of the then-outstanding principal balance of the loan, a licensee may charge a prepayment charge as follows:

(a) 10% of the then-outstanding principal balance of the loan if the prepayment occurs during the first 6 months after the date of the loan;

(b) 7% of the then-outstanding principal balance of the loan if the prepayment occurs more than 6 months after the date of the loan, but on or before 18 months after the date of the loan; or

(c) 3.5% of the then-outstanding principal balance of the loan if the prepayment occurs more than 18 months after the date of the loan, but before 61 months after the date of the loan.

(9) A prepayment charge may not be collected if:

(a) the prepayment results solely because of the enforcement of a "due on sale" clause in a real estate mortgage or deed of trust that secures the loan;

(b) the loan provided is prepaid by another loan made by the same licensee or an affiliate of the licensee;
or

(c) prepayment occurs as a result of a payment made by a credit life insurance policy or other insurance policy."

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