

HOUSE BILL NO. 646
INTRODUCED BY E. FRANKLIN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING DEFERRED DEPOSIT LOAN REQUIREMENTS; PROVIDING THAT THE MINIMUM TERM FOR A DEFERRED DEPOSIT LOAN IS 14 DAYS FOR EACH \$50 OWED; PROVIDING THAT NOTICE BE PLACED ON THE BACK OF THE CHECK GIVEN BY A CONSUMER OBTAINING A DEFERRED DEPOSIT LOAN THAT THE CHECK IS PART OF A DEFERRED DEPOSIT LOAN TRANSACTION; REQUIRING CERTAIN NOTICES BE PLACED CONSPICUOUSLY ON THE PREMISES OF A DEFERRED DEPOSIT LOAN BUSINESS; PROVIDING THAT THE MAXIMUM AMOUNT OF INTEREST THAT MAY BE CHARGED ON A DEFERRED DEPOSIT LOAN IS 36 PERCENT A YEAR; ALLOWING FOR PARTIAL PAYMENTS OF A DEFERRED DEPOSIT LOAN; REQUIRING THE REBATE OF UNEARNED INTEREST TO A CONSUMER RETIRING A DEFERRED DEPOSIT LOAN PRIOR TO ITS DUE DATE; AND AMENDING SECTIONS 31-1-715, 31-1-721, 31-1-722, AND 31-1-723, MCA."

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

Section 1. 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~~ must have a minimum term of at least 14 days for each \$50 owed on the loan.

(2) The amount of the deferred deposit loan, exclusive of the interest allowed in 31-1-722(2) and the fee allowed in 31-1-722(2)(3), 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.

(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.

(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.

(8) Upon receipt of a consumer's check for a deferred deposit loan, the licensee shall immediately stamp the back of the check with an endorsement that states: "This check is being negotiated as part of a deferred

deposit loan pursuant to Title 31, chapter 1, part 7, of the Montana Code Annotated, and the holder of this check takes it subject to all claims and defenses of the maker."

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

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

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

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

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

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

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

(b) an itemization of the fees and interest charges to be paid by the consumer;

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

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

(3) In addition to the notices specified in subsections (1) and (2), the following notices must be posted in a conspicuous location on a licensee's premises in at least 14 point bold typeface:

(a) a notice informing consumers that the licensee cannot use a criminal process against a consumer to collect a deferred deposit loan; and

(b) a notice containing a schedule of all interest rates and fees to be charged on a deferred deposit loan, with an example of the amounts to be charged on a \$300 loan payable in 14 days and payable in 30 days along with the corresponding annual interest rate."

Section 3. 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~~ In addition to the administrative fee provided for in subsection (3), a licensee may not charge a consumer interest on a deferred deposit loan in an amount greater than 36% a year.

(3) A licensee may not charge an administrative fee greater than \$5 for each deferred deposit loan entered into with a consumer.

~~(3)~~(4) 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)~~(5) 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.

(6) A consumer must be permitted to make without charge partial payments of not less than \$5 at any time on a deferred deposit loan.

(7) After receipt of a payment, whether in full or in part on a deferred deposit loan, a licensee shall provide the person making the payment with a signed, dated receipt showing the amount paid and the balance due on the loan.

(8) If a loan is repaid before its due date, unearned interest charges must be rebated to the consumer based on a method at least as favorable to the consumer as the actuarial method.

~~(5)~~(9) 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 4. 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;
- (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;
- (7) engaging in unfair, deceptive, or fraudulent practices in the making or collection of a deferred deposit loan;
- (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.
- (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;
- (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;
- (13) accepting payment of the deferred deposit loan through the proceeds of another deferred deposit loan provided by the same licensee or any affiliate;
- (14) making a deferred deposit loan that, when combined with another outstanding deferred deposit loan owed to the licensee, exclusive of the interest allowed in 31-1-722(2) and the fee allowed in 31-1-722(2)(3),

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.

(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.

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

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

(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;

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

(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 5. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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