

SENATE BILL NO. 26
INTRODUCED BY MANGAN
BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING TITLE LOAN LAWS; CLARIFYING THE DEFINITION OF "FINANCIAL INSTITUTIONS"; ESTABLISHING A SPECIAL REVENUE ACCOUNT UNDER THE MONTANA TITLE LOAN ACT TO BE USED BY THE DEPARTMENT OF ADMINISTRATION IN ITS SUPERVISORY CAPACITY; DEFINING "TITLE LOAN"; CREATING A CIVIL PENALTY FOR CERTAIN ACTIONS BY TITLE LENDERS; ALLOWING TITLE LENDERS TO IMPOSE A SERVICE CHARGE FOR INSUFFICIENT FUNDS CHECKS; LIMITING CRIMINAL AND CIVIL REMEDIES OF TITLE LENDERS TO THOSE REMEDIES AVAILABLE UNDER THE MONTANA TITLE LOAN ACT; EXCLUDING TITLE LOANS FROM THE DEFINITION OF "CONSUMER LOANS"; REQUIRING A VIOLATION FOR CIVIL REMEDIES TO BE INTENTIONAL; AMENDING SECTIONS 31-1-802, 31-1-803, 31-1-811, 31-1-817, 31-1-825, 31-1-826, AND 32-5-102, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 31-1-802, MCA, is amended to read:

"31-1-802. Purpose -- rules -- scope -- fees. (1) The purpose of this part is to protect consumers who enter into short-term, high-rate loans with lenders from abuses that occur in the credit marketplace when the lenders are unregulated.

(2) The department may adopt rules to implement the provisions of this part. The rules may include but are not limited to rules establishing forms and procedures for licensing, rules pertaining to acceptable practices at a business location, rules establishing disclosure requirements, and rules establishing complaint and hearing procedures.

(3) This part does not apply to ~~banks, savings and loan associations, credit unions, other state or federally regulated~~ financial institutions, as defined in 32-8-502, or pawnbrokers.

(4) This part may not be construed as affecting in any way the method of perfecting security interests on personal property provided for elsewhere in law.

(5) Fees collected under this part must be deposited in an account in the state special revenue fund to be used by the department in carrying out its supervisory functions under this part."

Section 2. Section 31-1-803, MCA, is amended to read:

"31-1-803. Definitions. For the purposes of this part, the following definitions apply:

(1) "Borrower" means the owner of any titled personal property who pledges the property to a title lender pursuant to a title loan agreement.

(2) "Capital assets" means the assets of a person less the liabilities of that person. Assets and liabilities must be measured according to generally accepted accounting principles.

(3) "Certificate of title" means a state-issued certificate of title or certificate of ownership for personal property deposited with a title lender as security for a title loan pursuant to a title loan agreement.

(4) "Department" means the department of administration provided for in 2-15-1001.

(5) "Person" means an individual, corporation, partnership, limited partnership, limited liability company, limited liability partnership, association, or other entity.

(6) "Pledged property" means personal property the ownership of which is evidenced and delineated by a state-issued certificate of title.

(7) "Title lender" means a person who has qualified to engage in the business of making title loans pursuant to this part and maintains at least one title loan office in this state.

(8) "Title loan" means a loan secured by an unencumbered state-issued certificate of title or certificate of ownership to personal property, with an original term of 30 days.

~~(8)~~(9) "Title loan agreement" means a written agreement between a borrower and a title lender in a form that complies with the requirements of this part.

~~(9)~~(10) "Title loan office" means the location or premises where a title lender regularly conducts business.

~~(10)~~(11) "Titled personal property" means any personal property the ownership of which is evidenced and delineated by a state-issued certificate of title."

Section 3. Section 31-1-811, MCA, is amended to read:

"31-1-811. License revocation or suspension -- penalty. (1) If the department finds, after notice and hearing or opportunity for hearing, as provided in the Montana Administrative Procedure Act, that ~~a~~ any person, licensee, or an officer, agent, employee, or representative of the licensee has violated any of the provisions of this part, has failed to comply with the rules, regulations, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, or has furnished false information to the department, the department may impose a civil penalty not to exceed \$1,000 for each violation and may issue an order revoking or suspending the right of the person or licensee, directly or through an officer, agent,

employee, or representative, to do business in this state as a licensee.

(2) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license."

Section 4. Section 31-1-817, MCA, is amended to read:

"31-1-817. Interest rates -- fees charged. (1) The maximum rate of interest that a title lender shall contract for and must receive for making and carrying any title loan authorized by this part may not exceed:

- (a) 25% for each 30-day period for the portion of a loan that does not exceed \$2,000;
- (b) 18% for each 30-day period for the portion of a loan exceeding \$2,000 but not exceeding \$4,000; and
- (c) a 10% percentage rate for each 30-day period, plus fees, on the portion of a loan that exceeds \$4,000.

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

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

Section 5. Section 31-1-825, MCA, is amended to read:

"31-1-825. Prohibited acts. (1) A title lender may not:

- (a) accept a pledge from a person under 18 years of age;
- (b) make any title loan agreement giving the title lender any recourse against the borrower other than the rights granted title lenders under this part;
- (c) accept any waiver, in writing or otherwise, of any right or protection accorded a borrower pursuant to this part;
- (d) fail to exercise reasonable care to protect from loss or damage certificates of title or titled personal property in the physical possession of the title lender;
- (e) purchase titled personal property for personal use that was repossessed from the borrower by the title lender;
- (f) enter into a title loan agreement unless the borrower presents clear title to the titled personal property at the time that the loan is made and the title is retained in the physical possession of the title lender;
- (g) threaten to use or use 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 titled loans not generally available to creditors

~~to collect on loans in default~~ title lenders under this part;

(h) use any device or title loan agreement that would have the effect of charging or collecting more fees, charges, or interest than those allowed by this part;

(i) engage in unfair, deceptive, or fraudulent practices in the making or collection of a title loan;

(j) knowingly violate any provision of or rule promulgated pursuant to this part; or

(k) include any of the following provisions in the title loan agreement:

(i) a hold harmless clause, provided that a title lender is not liable to the borrower or a third party for injuries to or damages sustained by the borrower or a third party as the result of an accident involving personal property to which the title lender holds the certificate of title;

(ii) a confession of judgment clause;

(iii) any assignment of or order for payment of wages or other compensation for services;

(iv) a provision in which the consumer agrees not to assert any claim or defense arising out of the contract; or

(v) a waiver of any provision of this part.

(2) If a title lender enters into a transaction contrary to this section, any lien or security interest obtained by the title lender is void."

SECTION 6. SECTION 31-1-826, MCA, IS AMENDED TO READ:

"31-1-826. Civil remedies. (1) The remedies provided in this section are cumulative and apply to licensees and unlicensed persons to whom this part applies.

(2) Any intentional violation of this part constitutes an unfair or deceptive trade practice.

(3) A person found to have intentionally violated this part is liable to the consumer for actual and consequential damages, plus statutory damages of \$1,000 for each violation, plus costs and attorney fees.

(4) A consumer may sue for injunctive and other appropriate equitable relief to stop a person from violating any provisions of this part.

(5) The consumer may bring a class action suit to enforce this part.

(6) The remedies provided in this section are not intended to be the exclusive remedies available to a consumer for a violation of this part."

Section 7. Section 32-5-102, MCA, is amended to read:

"32-5-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions

apply:

(1) (a) "Consumer loan" means credit offered or extended to an individual primarily for personal, family, or household purposes, including loans for personal, family, or household purposes that are secured by a mortgage, deed of trust, trust indenture, or other security interest in real estate.

(b) Consumer loans do not include:

(i) loan transactions that are governed by 12 U.S.C. 1735f-7a, but a consumer loan business may engage in transactions that are governed by 12 U.S.C. 1735f-7a; or

(ii) title loans provided for in Title 31, chapter 1, part 8.

(2) "Consumer loan business" means the business of making consumer loans as a licensee under this chapter.

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

(4) "License" means one or both of the licenses provided for by this chapter.

(5) "Licensee" means the person holding a license.

(6) "Person" means individuals, partnerships, associations, corporations, and all legal entities in the loaning business."

NEW SECTION. **Section 8. Effective date.** [This act] is effective July 1, 2003.

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