

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING TITLE LOAN LAWS; PROVIDING THAT
5 PAWNBROKERS MAKING TITLE LOANS ARE SUBJECT TO THE ACT; PROVIDING THAT THE MINIMUM
6 TERM OF A TITLE LOAN MAY NOT BE LESS THAN 30 DAYS AND MUST BE EXTENDED FOR A MINIMUM
7 OF 14 DAYS FOR EACH \$100 LOANED ABOVE \$500; ESTABLISHING THE MAXIMUM INTEREST RATE FOR
8 A TITLE LOAN AT A 36 PERCENT ANNUAL INTEREST RATE; PROVIDING THAT A TITLE LOAN LENDER
9 MAY NOT MAKE SIMULTANEOUS OR CONSECUTIVE LOANS ON THE SAME TITLED PROPERTY;
10 ELIMINATING THE REQUIREMENT THAT A VIOLATION OF TITLE LOAN LAWS MUST BE INTENTIONAL
11 FOR THE PURPOSE OF CIVIL REMEDIES; AND AMENDING SECTIONS 31-1-802, 31-1-803, 31-1-816,
12 31-1-817, 31-1-818, 31-1-825, AND 31-1-826, MCA."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
16 **Section 1.** Section 31-1-802, MCA, is amended to read:

17 **"31-1-802. Purpose -- rules -- scope -- fees.** (1) The purpose of this part is to protect consumers who
18 enter into short-term, high-rate loans with lenders from abuses that occur in the credit marketplace when the
19 lenders are unregulated.

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

24 (3) This part does not apply to financial institutions, as defined in 32-8-502, ~~or pawnbrokers.~~

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

27 (5) Fees collected under this part must be deposited in an account in the state special revenue fund to
28 be used by the department in carrying out its supervisory functions under this part."
29

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



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

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

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

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

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

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

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

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

15 (8) "Title loan" means a loan secured by an unencumbered state-issued certificate of title or certificate
16 of ownership to personal property, with an original term of not less than 30 days.

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

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

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

22

23 **Section 3.** Section 31-1-816, MCA, is amended to read:

24 **"31-1-816. Title loan requirements -- liability of borrower.** (1) Any licensed title lender may engage
25 in the business of making loans secured by a certificate of title subject to the provisions of this part.

26 (2) Every title loan must be reduced to writing in a title loan agreement. Each title loan agreement must
27 provide that:

28 (a) the title lender agrees to make a loan of money to the borrower and that the borrower agrees to give
29 the title lender a security interest in unencumbered titled personal property owned by the borrower;

30 (b) the borrower consents to the title lender keeping possession of the certificate of title;

1 (c) the borrower has the exclusive right to redeem the certificate of title by repaying the loan of money
2 in full and by complying with the title loan agreement for an agreed period of time;

3 (d) the term of a title loan may not be less than 30 days for any amount up to \$500 and that the
4 minimum term of a title loan must be increased by at least 14 days for each additional \$100 loaned;

5 ~~(d)~~(e) (i) the title lender may renew the title loan for additional 30-day periods beyond the original term
6 provided that beginning with the sixth extension or continuation, and for each subsequent extension or
7 continuation, the borrower must reduce the principal amount by at least 10% of the original principal amount of
8 the loan; and

9 (ii) if the borrower fails to reduce the principal amount as required by subsection ~~(2)(d)(i)~~ (2)(e)(i), the
10 title lender may at its option:

11 (A) declare outstanding principal and any finance charges due and payable; or

12 (B) solely for the purpose of calculating the finance charge, reduce the amount of the principal balance
13 by 10%, with the understanding that that portion of the principal is still owed by the borrower but that portion of
14 the loan may not accrue interest or finance charges after that date;

15 ~~(e)~~(f) when the certificate of title is redeemed, the title lender shall release its security interest in the
16 titled personal property and return the personal property certificate of title to the borrower;

17 ~~(f)~~(g) (i) upon failure of the borrower to redeem the certificate of title at the end of the original 30-day
18 agreement period or at the end of any agreed-upon 30-day renewal or subsequent renewals, the borrower shall
19 deliver the titled personal property to the title lender at the location specified in the title loan agreement; and

20 (ii) the borrower shall deliver the titled personal property to the title lender in substantially the same
21 condition that it was in at the time that the borrower entered into the loan, minus normal wear and tear;

22 ~~(g)~~(h) if the borrower fails to deliver the titled personal property to the title lender, the title lender must
23 be allowed to take possession of the titled personal property;

24 ~~(h)~~(i) upon obtaining possession of the titled personal property, the title lender is authorized to sell the
25 titled personal property and to convey to the buyer good title, subject to the waiting periods provided for in
26 31-1-820; and

27 ~~(i)~~(j) a borrower who does not redeem a pledged certificate of title is not personally liable to the title
28 lender to repay principal, interest, or expenses incurred in connection with the title loan and that the title lender
29 shall look solely to the titled personal property for satisfaction of the amounts owed under the title loan
30 agreement.

1 (3) The security interest provided for in subsection (2)(a) is not perfected unless it is filed in accordance
2 with 61-3-103.

3 (4) Any borrower who obtains a title loan from a title lender under false pretenses by hiding or not
4 disclosing the existence of a valid prior lien or security interest affecting the titled personal property is personally
5 liable to the title lender for the full amount stated in the title loan agreement, including interest and expenses
6 incurred by the title lender in connection with the loan."

7

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

9 **"31-1-817. Interest rates -- fees charged.** (1) The maximum rate of interest that a title lender ~~shall~~ may
10 contract for and ~~must~~ receive for making and carrying any title loan authorized by this part may not exceed: an
11 annual percentage rate of 36%.

12 ~~(a) 25% for each 30-day period for the portion of a loan that does not exceed \$2,000;~~

13 ~~—— (b) 18% for each 30-day period for the portion of a loan exceeding \$2,000 but not exceeding \$4,000;~~

14 ~~and~~

15 ~~—— (c) a 10% percentage rate for each 30-day period, plus fees, on the portion of a loan that exceeds~~
16 ~~\$4,000.~~

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

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

21

22 **Section 5.** Section 31-1-818, MCA, is amended to read:

23 **"31-1-818. Title loan agreements -- required disclosures.** Each title loan agreement must disclose
24 the following:

25 (1) all disclosures required to be made under the federal Truth in Lending Act;

26 (2) that the transaction is a loan secured by the pledge of titled personal property;

27 (3) the identity of the parties to the title loan agreement, including the name, business address,
28 telephone number, and certificate number of the title lender and the name, resident address, and identification
29 of the borrower;

30 (4) the ~~monthly~~ annual percentage rate of interest rate to be charged;

- 1 (5) the allowable fees and expenses to be charged to the borrower upon redemption of the certificate
2 of title;
- 3 (6) the date on which the borrower's exclusive right to redeem the pledged certificate of title pursuant
4 to 31-1-820 expires;
- 5 (7) the location where the titled personal property is to be delivered if the certificate of title is not
6 redeemed and the hours that the location is open for receiving deliveries;
- 7 (8) that if the titled personal property is sold by the title lender, any proceeds of the sale in excess of
8 the amount owed on the loan and the reasonable costs of repossession must be paid to the borrower;
- 9 (9) that any attempt by a borrower to obtain a replacement certificate of title on a motor vehicle during
10 the active term of a loan under this part may be a violation of 61-3-204 and may be subject to the penalty
11 provisions of 61-3-601; and
- 12 (10) any additional disclosures considered necessary by the department."
13

14 **Section 6.** Section 31-1-825, MCA, is amended to read:

15 **"31-1-825. Prohibited acts.** (1) A title lender may not:

- 16 (a) accept a pledge from a person under 18 years of age;
- 17 (b) make any title loan agreement giving the title lender any recourse against the borrower other than
18 the rights granted title lenders under this part;
- 19 (c) accept any waiver, in writing or otherwise, of any right or protection accorded a borrower pursuant
20 to this part;
- 21 (d) enter into more than one title loan agreement, either simultaneously or consecutively, that is secured
22 by the same titled property;
- 23 ~~(d)~~(e) fail to exercise reasonable care to protect from loss or damage certificates of title or titled personal
24 property in the physical possession of the title lender;
- 25 ~~(e)~~(f) purchase titled personal property for personal use that was repossessed from the borrower by the
26 title lender;
- 27 ~~(f)~~(g) enter into a title loan agreement unless the borrower presents clear title to the titled personal
28 property at the time that the loan is made and the title is retained in the physical possession of the title lender;
- 29 ~~(g)~~(h) hold a title for more than 30 calendar days without perfecting the title lender's security interest;
- 30 ~~(h)~~(i) threaten to use or use a criminal process in this or any other state to collect on the loan made to

1 a consumer in this state or any civil process to collect the payment of titled loans not available to title lenders
2 under this part;

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

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

6 ~~(l)~~(l) knowingly violate any provision of or rule promulgated pursuant to this part; or

7 ~~(m)~~(m) include any of the following provisions in the title loan agreement:

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

11 (ii) a confession of judgment clause;

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

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

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

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

18

19 **Section 7.** Section 31-1-826, MCA, is amended to read:

20 **"31-1-826. Civil remedies.** (1) The remedies provided in this section are cumulative and apply to
21 licensees and unlicensed persons to whom this part applies.

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

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

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

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

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

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