

HOUSE BILL NO. 29
INTRODUCED BY J. PARKER
BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA DEFERRED DEPOSIT LOAN ACT AND THE MONTANA TITLE LOAN ACT; INCREASING LICENSING FEES; REMOVING THE REQUIREMENT THAT THE DEPARTMENT OF ADMINISTRATION ANNUALLY EXAMINE EACH DEFERRED DEPOSIT LENDER'S OPERATION; MODIFYING BOOKKEEPING REQUIREMENTS FOR LENDERS; PROHIBITING ADDITIONAL DEFERRED DEPOSIT LOANS TO CONSUMERS WITH AN OUTSTANDING DEFERRED DEPOSIT LOAN; CREATING A DATABASE OF CONSUMERS WITH OUTSTANDING DEFERRED DEPOSIT LOANS AND REQUIRING DEFERRED DEPOSIT LENDERS TO SUBSCRIBE TO THE DATABASE; PROVIDING FOR REPAYMENT PLANS FOR A CONSUMER WITH A DEFERRED DEPOSIT LOAN OUTSTANDING AFTER THE TERM OF THE LOAN; CAPPING THE INTEREST RATE ON LOANS; MODIFYING LICENSE SUSPENSION AND REVOCATION PROVISIONS; AUTHORIZING THE DEPARTMENT TO CONDUCT INVESTIGATIONS AND ISSUE SUBPOENAS AND CEASE AND DESIST ORDERS; AUTHORIZING THE DEPARTMENT TO SEEK COURT-ORDERED INJUNCTIONS; AND AMENDING SECTIONS 31-1-702, 31-1-703, 31-1-705, 31-1-706, 31-1-711, 31-1-712, 31-1-713, 31-1-714, 31-1-715, 31-1-721, 31-1-722, 31-1-723, 31-1-724, 31-1-802, 31-1-803, 31-1-811, 31-1-815, 31-1-816, 31-1-817, 31-1-818, 31-1-825, AND 31-1-826, MCA."

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

Section 1. Section 31-1-702, MCA, is amended to read:

"31-1-702. Purpose -- rules -- fees. (1) The purpose of this part is to protect consumers who enter into short-term, high-rate loans, including deferred deposit 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) 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 31-1-703, 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.

(2) "Check" means a negotiable instrument, as defined in 30-3-104, that is drawn on a state or federal bank, credit union, or savings and loan association and is payable on demand at the maturity of a deferred deposit loan.

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

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

(5) "Deferred deposit loan" or "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;

(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.

(6) "Department" means the department of administration.

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

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~~ \$500.

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

(i) 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;

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

(iii) 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, other than deferred deposit loans, in default; and

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

(b) The department may not issue or renew a license if the criminal history of the employees of the applicant demonstrates any convictions involving fraud or financial dishonesty or if the department's findings show adverse civil judgments involving fraudulent or dishonest financial dealings.

(4) A license may not be issued for longer than 1 year. The license year must coincide with the calendar year, and the license fee for any period less than 6 months is ~~\$187.50~~ \$250.

(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."

Section 4. Section 31-1-706, MCA, is amended to read:

"31-1-706. 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~~ \$500 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 31-1-711, MCA, is amended to read:

"31-1-711. ~~Annual examinations~~ Examinations -- fee. (1) The department ~~shall~~ may conduct ~~annually~~ an examination of each licensee's deferred deposit lending operation to ensure that the licensee is in compliance with the provisions of this part.

(2) A licensee shall pay the department a fee in the amount of \$300 a day for each examiner required

to conduct an ~~annual~~ examination.

(3) A licensee shall make available to a department examiner the information required under 31-1-714 or as required by rule.

~~(4) Completion of an annual examination must, in the absence of the department's finding just cause to revoke or suspend a license, constitute grounds for license renewal."~~

Section 6. Section 31-1-712, MCA, is amended to read:

"31-1-712. License revocation or suspension -- restitution -- penalty. (1) ~~If the~~ The department finds, after due shall provide a 10-day written notice of a proposed violation that includes a statement of the alleged violation and provision for a hearing or an opportunity for hearing, as provided in the Montana Administrative Procedure Act. The notice must be based on a finding that any person, licensee, or officer, agent, employee, or representative, whether licensed or unlicensed, of the person or 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, or has operated without a required license. ~~the~~ 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 or to engage in the business of making loans. In addition, the department may order restitution to borrowers and reimbursement for the department's cost in bringing the administrative action.

(2) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or, in the case of an unlicensed business, to the last-known address of record.

~~(2)~~(3) 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.

(4) The department may reinstate any suspended or revoked license if there is not a fact or condition existing at the time of reinstatement that would have justified the department refusing to originally issue the license. If a license has been suspended or revoked for cause, an application may not be made for the issuance of a new license or the reinstatement of a suspended or revoked license for a period of 6 months from the date of suspension or revocation.

(5) All civil fines collected must be deposited in the state general fund."

Section 7. Section 31-1-713, MCA, is amended to read:

"31-1-713. Complaint procedure. (1) The department shall maintain a list of licensees that is available to interested persons and to the general public. The department shall also establish by rule a procedure under which an aggrieved consumer or any member of the public may file a complaint against a licensee or an unlicensed person who violates any provision of this part.

(2) The department, after giving reasonable notice, may hold hearings, subject to the contested case provisions of Title 2, chapter 4, part 6, upon the request of a party to the complaint, make findings of fact or conclusions of law, issue cease and desist orders, refer the matter to the appropriate law enforcement agency for prosecution for a violation of this part, seek injunctive or other relief in district court, or suspend or revoke a license granted under this part."

Section 8. 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 2 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~~ deferred deposit 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, including:
 - (i) the number of individual consumers with 12 or fewer new deferred deposit loans; and
 - (ii) the number of individual consumers with 13 or more new deferred deposit loans;
 - (d) the average deferred deposit loan amount, average annual interest percentage rate, and average deferred deposit loan term;
 - (e) the number of deferred deposit loans rescinded;

~~(d)~~(f) the total number of deferred deposit loans outstanding as of December 31 of the previous year;

~~(e)~~(g) 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)~~(h) 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;

~~(g)~~(i) 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

~~(h)~~(j) 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, other than deferred deposit 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 9. Section 31-1-715, MCA, is amended to read:

"31-1-715. Loan requirements -- right of rescission -- arbitration -- repayment plan. (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~~ interest allowed in 31-1-722(2), may not exceed 25% of the consumer's net income as documented by the licensee or \$300, whichever is less.

(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) (a) The loan agreement must contain a provision that the consumer may rescind the transaction if, by 5 p.m. of the licensee's first business day following the day that the loan was executed, the consumer provides the licensee with cash or certified funds equaling 100% of the amount loaned to the consumer.

(b) A licensee may not charge a consumer any fee or interest if the consumer rescinds the loan as provided in subsection (5)(a).

(c) Except as provided in subsection (5)(a), a consumer does not have a right to rescind the loan unless the licensee agrees to the rescission.

(6) (a) A loan agreement may not contain a mandatory arbitration clause that is oppressive, unconscionable, unfair, or in substantial derogation of a consumer's rights.

(b) A mandatory arbitration clause that complies with the applicable standards of the American arbitration association must be presumed to not violate the provisions of subsection (6)(a).

(7) 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.

(8) 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.

(9) 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.

(10) If the consumer has or has had one or more deferred deposit loans outstanding for 31 consecutive days and has requested a repayment plan, any outstanding loan must be payable under the terms of a repayment plan as provided for in this section. The consumer has until 28 days after the default date of a loan to request a repayment plan for any loan that becomes eligible for a repayment plan under this section. Within 48 hours after the request for a repayment plan, the licensee shall prepare a repayment plan agreement and both parties shall execute the agreement. The repayment plan agreement must be executed in the same manner in which the loan was executed and must be evidenced in writing.

(11) Under the terms of the repayment plan provided for in subsection (10):

(a) the licensee may not impose any charge on the consumer for requesting or using a repayment plan, including finance charges, interest, or fees, except a fee may be charged for insufficient funds as provided under 31-1-722. Performance of the terms of the repayment plan extinguishes the consumer's obligation on the loan.

(b) the consumer must be allowed to repay the loan in at least four equal installments with at least 15

days between installments. The term of the repayment plan must be at least 60 days and may not exceed 90 days. The first payment under the repayment plan may not be due until at least 15 days after the repayment plan is signed by both parties. The consumer may prepay the amount due under the repayment plan at any time without charge or penalty.

(c) the licensee may require, as a condition of the repayment plan, that the consumer schedule an appointment with a licensed credit counseling agency within 7 days of executing the repayment plan and may require that the consumer agree to and comply with a repayment plan approved by the counseling agency;

(d) the length of time between installments may be extended by the parties as long as the total period of repayment does not exceed 90 days. Any modification must be in writing and signed by both parties.

(e) the licensee may not present the consumer's check for payment unless the consumer fails to comply with the executed repayment plan.

(12) A licensee is prohibited from making a deferred deposit loan to a consumer:

(a) who has an outstanding deferred deposit loan that is subject to a repayment plan; or

(b) until at least 7 days from the date that the consumer pays the outstanding balance of the loan under a repayment plan and pays the outstanding balance of all other deferred deposit loans.

(13) (a) A consumer may make partial payments in any amount on a deferred deposit loan that is subject to a repayment plan without charge at any time before the due date of a required payment under the repayment plan.

(b) After each payment, whether the payment is in part or in full, the licensee shall give a signed and dated receipt to the consumer showing the amount paid and the balance due on the deferred deposit loan.

(14) A licensee may not accept postdated checks for payments under a repayment plan.

(15) A licensee may voluntarily agree to enter into a repayment plan with a consumer at any time, but if the consumer is eligible for a repayment plan under this section, the voluntary repayment plan constitutes a repayment plan under this section and the provisions of this section apply to the voluntary repayment plan."

Section 10. 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) the name, address, and phone number of the consumer obtaining the deferred deposit loan;

(c) ~~an itemization of the fees and interest charges to be paid by the consumer~~ all disclosures required under the federal Truth in Lending Act, 15 U.S.C. 1601, et seq.;

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

(e) 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) At the time that a deferred deposit loan is made, the licensee shall provide the consumer with a written notice of the consumer's right to request a repayment plan, using the following language in at least 14-point bold type, on the first page of the loan agreement:

"STATE LAW PROHIBITS A DEFERRED DEPOSIT LENDER (THIS BUSINESS) FROM ALLOWING YOU TO "ROLL OVER" YOUR DEFERRED DEPOSIT LOAN. THIS MEANS THAT YOU MAY NOT BE ASKED OR REQUIRED TO PAY AN ADDITIONAL FEE IN ORDER TO FURTHER DELAY THE DEPOSIT OR PRESENTMENT OF YOUR CHECK FOR PAYMENT. IF YOU STILL OWE ON ONE OR MORE DEFERRED DEPOSIT LOANS AFTER 31 DAYS AND IF YOU INFORM THE PROVIDER IN PERSON THAT YOU CANNOT COVER THE CHECK OR PAY IN FULL THE AMOUNT OWING AT THE END OF THE TERM OF THIS AGREEMENT, YOU WILL BE ENTITLED TO ENTER A REPAYMENT PLAN. THE REPAYMENT PLAN WILL GIVE YOU AT LEAST 60 DAYS TO REPAY YOUR LOAN IN INSTALLMENTS WITH NO ADDITIONAL FINANCE CHARGES, INTEREST, FEES, OR OTHER CHARGES OF ANY KIND. AS A CONDITION OF THIS REPAYMENT PLAN, YOU MAY BE REQUIRED TO COMPLETE CONSUMER CREDIT COUNSELING WITH A LICENSED AGENCY INCLUDED ON THE LIST THAT WILL BE PROVIDED TO YOU BY THIS LENDER. YOU MAY ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY THAT AGENCY. IF YOU DO NOT COMPLY WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY THAT

AGENCY, WE MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT AT THE END OF THE 60-DAY GRACE PERIOD."

Section 11. 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.~~ The maximum rate of interest that a deferred deposit licensee may receive for making and carrying any deferred deposit loan authorized by this part may not exceed an annual percentage rate of 36%, exclusive of the insufficient funds fees authorized in subsections (3) and (4).

(3) If there are insufficient funds to pay a check on the date of presentment, a licensee may charge a fee, not to exceed \$30. 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. A licensee may not collect damages under 27-1-717(3) for an insufficient funds check.

(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 \$30. 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. A licensee may not collect damages under 27-1-717(3) for an electronic deduction for which there are insufficient funds.

(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 12. 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 ~~any other person commit~~ 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, other than deferred deposit 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 the department determines would have the effect of charging or collecting more fees, charges, or interest than those ~~allowed~~ specifically authorized 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;~~

(a) entering into a different type of transaction with the consumer;

(b) entering into a sales-leaseback arrangement;

(c) offering catalog sales;

(d) entering into transactions in which a consumer receives a purported cash rebate that is advanced by someone offering internet content services, or some other product or service, when the cash rebate does not represent a discount or an adjustment of the purchase price for the product or service;

(e) charging for insurance;

(f) renewing or rolling over a loan with the consumer; or

(g) entering any other transaction with the consumer that is designed to evade the applicability of this part;

(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, An unconscionable loan includes but is not limited to, whether the amount of the a loan that 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 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. entering into a deferred deposit loan with a consumer who has an outstanding deferred deposit loan with that licensee or any other licensee;~~

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

(16) making a deferred deposit loan to any consumer who has paid off a deferred deposit loan within the prior 7 days;

~~(16)~~(17) 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) any assignment of or order for payment of wages or other compensation for services;

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

contract; or

(f) a waiver of any provision of this part."

NEW SECTION. Section 13. Consumer database -- subscription. (1) The department shall maintain a database that records all deferred deposit loans made to Montana consumers for the purpose of ensuring that consumers cannot have more than one deferred deposit loan outstanding at a time. The database must contain each consumer's name, address, and current outstanding deferred deposit loan.

(2) All licensees are required to subscribe to the database and verify if a consumer has any outstanding deferred deposit loans. If a consumer has an outstanding deferred deposit loan with any licensee, then a licensee is prohibited from entering into another deferred deposit loan with the consumer.

(3) The department may contract with a third-party vendor to develop and maintain the database.

(4) A fee may be charged to licensees for access to the database. A fee also may be charged to the consumer and may not exceed the actual fee charged to a licensee for access to the database.

NEW SECTION. Section 14. Investigations by department -- subpoenas -- oaths -- examination of witnesses and evidence. (1) The department may investigate any matter, upon complaint or otherwise, if it appears that a person has engaged in or offered to engage in an act or practice that is in violation of any provision of this part or any rule adopted or order issued by the department pursuant to this part.

(2) The department may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or supervision pertaining to this part. The department may administer oaths and affirmations to a person whose testimony is required.

(3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by the subpoena, a judge of the district court of Lewis and Clark County or the county in which the licensed premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department to give testimony and produce evidence as may be required. The clerk of court shall then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it is directed to appear at the time and place designated in the subpoena.

(4) If a person served with a subpoena refuses to obey the subpoena or to give testimony or produce evidence as required by the subpoena, the department may proceed under the contempt provisions of Title 3, chapter 1, part 5.

(5) Failure to comply with the requirements of a court-ordered subpoena is punishable pursuant to 45-7-309.

NEW SECTION. Section 15. Cease and desist orders. (1) If it appears to the department that a person has engaged in or is about to engage in an act or practice constituting a violation of any provision of this part or any rule adopted or order issued by the department pursuant to this part, the department may issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The department may issue a temporary order pending the hearing that:

(a) remains in effect until 10 days after the hearings examiner issues proposed findings of fact and conclusions of law and a proposed order; or

(b) becomes final if the person to whom the notice is addressed does not request a hearing within 15 days after receipt of the notice.

(2) A violation of an order issued pursuant to this section is subject to the penalty provisions of this part.

NEW SECTION. Section 16. Injunctions -- receivers. (1) Whenever the department has reason to believe that a person is using, has used, or is about to knowingly use any method, act, or practice that violates any provision of this part or any rule adopted or order issued by the department pursuant to this part, the department, upon determining that proceeding would be in the public interest, may bring an action in the name of the state against the person to restrain by temporary or permanent injunction or temporary restraining order the use of the unlawful method, act, or practice.

(2) The notice for an action pursuant to subsection (1) must state generally the relief sought and must be served at least 20 days before the hearing of the action in which the relief sought is a temporary or permanent injunction. The notice for a temporary restraining order is governed by 27-19-315.

(3) An action under this section may be brought in the district court in the county in which a person resides or has the person's principal place of business or in the district court of Lewis and Clark County.

(4) A district court may issue temporary or permanent injunctions or temporary restraining orders to restrain and prevent violations of this part, and an injunction must be issued without bond to the department. If the department is successful in obtaining an injunction or restraining order under this section, the department is entitled to an award of reasonable attorney fees and costs.

(5) In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which the action is brought may impound and appoint a receiver for the property and business of the

defendant, including books, papers, documents, or records pertaining to the property or business, or as much of the property or business as the court considers reasonably necessary to prevent violations of this part. The receiver, when appointed and qualified, has the powers and duties as to custody, collection, administration, winding up, and liquidation of the property and business that are conferred upon the receiver by the court.

Section 17. Section 31-1-724, MCA, is amended to read:

"31-1-724. 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~~ A violation of this part constitutes an unfair or deceptive trade practice.

(3) ~~Any~~ 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 18. 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, including title 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 ~~pawnbrokers~~ transactions in which the consumer relinquishes physical possession of property being pawned to the pawnbroker.

(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 19. 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~~ titled personal property that does not serve as a residence, which has been designated as security for a title loan pursuant to the title loan agreement between the borrower and title lender.

(7) "Title lender" means a person who ~~has qualified to engage~~ engages 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" or "loan" means a loan transaction secured by an unencumbered state-issued certificate of title or certificate of ownership to personal property, ~~with an original term of 30 days~~ that does not serve as a residence.

(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~~ which the borrower assigns the title lender a security interest in titled personal property owned by the borrower and deposits with the title lender the title or certificate of ownership for the property.

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

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

Section 20. Section 31-1-811, MCA, is amended to read:

"31-1-811. License revocation or suspension -- restitution -- penalty. (1) ~~If the~~ The department finds, ~~after~~ shall provide a 10-day written notice of a proposed violation that includes a statement of the alleged violation

and provision for a hearing or an opportunity for hearing, as provided in the Montana Administrative Procedure Act; The notice must be based on a finding that any person, licensee, or officer, agent, employee, or representative, whether licensed or unlicensed, of the person or 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, or has operated without a required license. the 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 or to engage in the business of making title loans. In addition, the department may order restitution to borrowers and reimbursement for the department's cost in bringing the administrative action.

(2) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or, in the case of an unlicensed business, to the last-known address of record.

~~(2)~~(3) 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.

(4) The department may reinstate any suspended or revoked license if there is not a fact or condition existing at the time of reinstatement that would have justified the department refusing to originally issue the license. If a license has been suspended or revoked for cause, an application may not be made for the issuance of a new license or the reinstatement of a suspended or revoked license for a period of 6 months from the date of suspension or revocation.

(5) All civil fines collected must be deposited in the state general fund."

Section 21. Section 31-1-815, MCA, is amended to read:

"31-1-815. Information and annual reports. (1) Each licensee shall keep books, accounts, and records that will enable the department to determine if the licensee is complying with the provisions of this part and shall 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 2 years following the last entry on a title loan and must be kept according to generally accepted accounting procedures that include an examiner being able to review the recordkeeping and reconcile each title loan with documentation maintained in the borrower'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 title loans made in the year ending as of December 31 of the previous year;
- (d) the total number of title loans outstanding as of December 31 of the previous year; ~~and~~
- (e) the total number of title loans satisfied through sale of pledged property; and

~~(e)~~(f) verification that the licensee has not used a criminal process or caused a criminal process to be used in the collection of any title loans or used any civil process to collect the payment of title loans not available to title lenders under this part.

(3) A report must be verified by the oath or affirmation of the owner, manager, or president of the title 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 title loans are made must be provided as required by the department.

(5) Each licensee shall file a copy of the disclosure pamphlets described in 31-1-819 with the department prior to the date of commencement of business at each location, at the time that any changes are made to the pamphlets, and annually upon renewal of the license. These pamphlets must be available to interested parties and to the general public through the department."

Section 22. Section 31-1-816, MCA, is amended to read:

"31-1-816. Title loan requirements -- liability of borrower -- right of rescission -- arbitration. (1)

Any licensed title lender may engage in the business of making loans secured by a certificate of title subject to the provisions of this part.

(2) ~~Every~~ Each title loan must have a term of 30 days and must be reduced to writing in a title loan agreement. Each title loan agreement must provide that:

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

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

(c) (i) the borrower has the exclusive right to redeem the certificate of title by repaying the loan of money

in full and by complying with the title loan agreement for an agreed period of time;

(ii) the borrower may rescind the transaction if, by 5 p.m. of the title lender's first business day following the day that the loan was executed, the borrower provides the title lender with cash or certified funds equaling 100% of the amount loaned to the borrower. A title lender may not charge a borrower any fee or interest if the borrower rescinds the loan as provided in this subsection (2)(c)(ii). Except as provided in this subsection (2)(c)(ii), a borrower does not have a right to rescind the loan unless the title lender agrees to the rescission.

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

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

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

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

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

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

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

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

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

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

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

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

(5) (a) A loan agreement may not contain a mandatory arbitration clause that is oppressive, unconscionable, unfair, or in substantial derogation of a borrower's rights.

(b) A mandatory arbitration clause that complies with the applicable standards of the American arbitration association must be presumed to not violate the provisions of subsection (5)(a)."

Section 23. 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: an annual percentage rate of 36%, exclusive of the recording costs and service charges provided for in subsections (2) and (3).

~~(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 24. Section 31-1-818, MCA, is amended to read:

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

- (1) all disclosures required to be made under the federal Truth in Lending Act, 15 U.S.C. 1601, et seq.;
- (2) that the transaction is a loan secured by the pledge of titled personal property;
- (3) the identity of the parties to the title loan agreement, including the name, business address, telephone

number, and certificate number of the title lender and the name, resident address, and identification of the borrower;

(4) the ~~monthly interest rate to be charged~~ total cost of the title loan as an annual interest percentage rate;

(5) the allowable fees and expenses to be charged to the borrower upon redemption of the certificate of title;

(6) the date on which the borrower's exclusive right to redeem the pledged certificate of title pursuant to 31-1-820 expires;

(7) the location where the titled personal property is to be delivered if the certificate of title is not redeemed and the hours that the location is open for receiving deliveries;

(8) that, if the titled personal property is sold by the title lender, any proceeds of the sale in excess of the amount owed on the loan and the reasonable costs of repossession must be paid to the borrower;

(9) that any attempt by a borrower to obtain a replacement certificate of title on a motor vehicle during the active term of a loan under this part may be a violation of 61-3-204 and may be subject to the penalty provisions of 61-3-601; and

(10) any additional disclosures considered necessary by the department."

Section 25. 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) hold a title for more than 30 calendar days without perfecting the title lender's security interest;

(h) threaten to use or use a criminal process in this or any other state to collect on the loan made to a ~~consumer~~ borrower in this state or any civil process to collect the payment of titled loans not available to title lenders under this part;

(i) 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;

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

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

(l) charge any fee that is not specifically authorized by this part; or

~~(h)~~(m) 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."

NEW SECTION. Section 26. Investigations by department -- subpoenas -- oaths -- examination of witnesses and evidence. (1) The department may investigate any matter, upon complaint or otherwise, if it appears that a person has engaged in or offered to engage in an act or practice that is in violation of any provision of this part or any rule adopted or order issued by the department pursuant to this part.

(2) The department may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or supervision pertaining to this part. The department may administer oaths and affirmations to a person whose testimony is required.

(3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by the subpoena, a judge of the district court of Lewis and Clark County or the county in which the licensed premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the

witness to appear before the department to give testimony and produce evidence as may be required. The clerk of court shall then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it is directed to appear at the time and place designated in the subpoena.

(4) If a person served with a subpoena refuses to obey the subpoena or to give testimony or produce evidence as required by the subpoena, the department may proceed under the contempt provisions of Title 3, chapter 1, part 5.

(5) Failure to comply with the requirements of a court-ordered subpoena is punishable pursuant to 45-7-309.

NEW SECTION. Section 27. Cease and desist orders. (1) If it appears to the department that a person has engaged in or is about to engage in an act or practice constituting a violation of any provision of this part or any rule adopted or order issued by the department pursuant to this part, the department may issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The department may issue a temporary order pending the hearing that:

(a) remains in effect until 10 days after the hearings examiner issues proposed findings of fact and conclusions of law and a proposed order; or

(b) becomes final if the person to whom the notice is addressed does not request a hearing within 15 days after receipt of the notice.

(2) A violation of an order issued pursuant to this section is subject to the penalty provisions of this part.

NEW SECTION. Section 28. Injunctions -- receivers. (1) Whenever the department has reason to believe that a person is using, has used, or is about to knowingly use any method, act, or practice that violates any provision of this part or any rule adopted or order issued by the department pursuant to this part, the department, upon determining that proceeding would be in the public interest, may bring an action in the name of the state against the person to restrain by temporary or permanent injunction or temporary restraining order the use of the unlawful method, act, or practice.

(2) The notice for an action pursuant to subsection (1) must state generally the relief sought and must be served at least 20 days before the hearing of the action in which the relief sought is a temporary or permanent injunction. The notice for a temporary restraining order is governed by 27-19-315.

(3) An action under this section may be brought in the district court in the county in which a person resides or has the person's principal place of business or in the district court of Lewis and Clark County.

(4) A district court may issue temporary or permanent injunctions or temporary restraining orders to restrain and prevent violations of this part, and an injunction must be issued without bond to the department. If the department is successful in obtaining an injunction or restraining order under this section, the department is entitled to an award of reasonable attorney fees and costs.

(5) In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which the action is brought may impound and appoint a receiver for the property and business of the defendant, including books, papers, documents, or records pertaining to the property or business, or as much of the property or business as the court considers reasonably necessary to prevent violations of this part. The receiver, when appointed and qualified, has the powers and duties as to custody, collection, administration, winding up, and liquidation of the property and business that are conferred upon the receiver by the court.

Section 29. 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~~ A 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."

NEW SECTION. **Section 30. Codification instruction.** (1) [Sections 13 through 16] are 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 [sections 13 through 16].

(2) [Sections 26 through 28] are intended to be codified as an integral part of Title 31, chapter 1, part 8, and the provisions of Title 31, chapter 1, part 8, apply to [sections 26 through 28].

- END -