

HOUSE BILL NO. 141
INTRODUCED BY H. JACOBSON
BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA CONSUMER LOAN ACT; REVISING DEFINITIONS; INCREASING LICENSING FEES; REVISING LICENSE ISSUANCE, DENIAL, SUSPENSION, REVOCATION, AND REINSTATEMENT PROVISIONS; REVISING PROVISIONS RELATING TO FEES CHARGED CONSUMERS; REVISING PROVISIONS RELATING TO INSTALLMENT AND BALLOON PAYMENTS; MODIFYING PROVISIONS RELATING TO WAGE ASSIGNMENTS; REVISING THE DEPARTMENT OF ADMINISTRATION'S AUTHORITY TO CONDUCT INVESTIGATIONS, ISSUE SUBPOENAS, TAKE OATHS, AND EXAMINE WITNESSES; PROVIDING FOR THE ISSUANCE OF CEASE AND DESIST ORDERS BY THE DEPARTMENT; MODIFYING INJUNCTION REQUIREMENTS; PROVIDING A COMPLAINT PROCEDURE; AMENDING SECTIONS 32-5-102, 32-5-103, 32-5-201, 32-5-202, 32-5-204, 32-5-207, 32-5-208, 32-5-301, 32-5-302, 32-5-303, 32-5-305, 32-5-306, 32-5-308, 32-5-310, 32-5-401, 32-5-402, 32-5-403, 32-5-405, AND 32-5-407, MCA; ~~AND~~ REPEALING SECTIONS 32-5-104, 32-5-321, 32-5-322, 32-5-323, 32-5-324, 32-5-404, 32-5-406, 32-5-501, 32-5-502, 32-5-503, 32-5-504, 32-5-505, AND 32-5-506, MCA; AND PROVIDING EFFECTIVE DATES."

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

Section 1. 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) "Balloon payment" means any repayment option in which the borrower is required to repay the entire amount of any outstanding balance as of a specific date or at the end of a specified term and the aggregate amount of the required minimum periodic payments would not fully amortize the outstanding balance by the specific date or at the end of the loan term.

~~(1)~~(2) (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 not primarily 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;~~

~~(ii)(i) deferred deposit loans provided for in Title 31, chapter 1, part 7; or~~

~~(iii)(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) "Interest" means the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money and includes loan origination fees, points, and prepaid finance charges, as defined in 12 CFR 226.2.

~~(4)(5) "License" means one or both of the licenses~~ a license provided for by this chapter.

~~(5)(6) "Licensee" means the person holding a license.~~

~~(6)(7) "Person" means individuals, partnerships, associations, corporations, and all legal entities in the loaning business."~~

Section 2. Section 32-5-103, MCA, is amended to read:

"32-5-103. Engaging in business of making consumer loans restricted. (1) Except as provided in subsection (5), a person may not engage in the business of making consumer loans in any amount and contract for, charge, or receive directly or indirectly on or in connection with any loan any ~~charges~~ compensation, whether for interest, ~~compensation fees~~, other consideration, or expense, except as provided in and authorized by this chapter. The provisions of this chapter do not apply to any exempted person.

(2) A licensee may sell its business and assets to a bank, building and loan association, savings and loan association, trust company, credit union, credit association, development credit corporation, other licensee, or bank holding company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by an agency of the state of Montana or an agency of the federal government. All contracts for loans and all other contracts entered into by the licensee pursuant to the provisions of this chapter that are sold and transferred to an acquiring organization continue to be governed by the provisions of this chapter.

(3) The provisions of subsection (1) apply to any person who seeks to evade its applications by any device, subterfuge, or pretense.

(4) Any loan made or collected in violation of subsection (1) by a person other than a licensee or a ~~lender~~ person exempt under subsection (5) is void, and the person does not have the right to collect, receive, or retain

any principal, interest, fees, or other charges.

(5) A consumer loan licensee or a person who seeks a regulated lender exemption under 31-1-112 as a consumer loan licensee shall fully comply with this chapter. A regulated lender as defined in 31-1-111, other than a consumer loan licensee, or a ~~lender~~ person who makes fewer than four consumer loans a year with the person's own funds and does not represent that the person is a licensee, who complies with the provisions of Title 31, chapter 1, part 1, is not required to comply with this chapter. A deferred deposit lender, as defined in 31-1-703, who complies with the provisions of Title 31, chapter 1, part 7, is not required to comply with this chapter. A title lender, as defined in 31-1-803, who complies with the provisions of Title 31, chapter 1, part 8, is not required to comply with this chapter."

Section 3. Section 32-5-201, MCA, is amended to read:

"32-5-201. License application and fees --supplementary license. (1) (a) ~~A~~ Each place of business operated under this chapter shall properly display on the premises a nontransferable and nonassignable license. The same person may obtain additional licenses for each business location upon compliance with this chapter ~~as to each license~~.

(b) ~~Application~~ Applications for a license or renewal ~~shall~~ must be on a form prescribed and furnished by the department.

(c) A licensee may move ~~his~~ the licensee's place of business from one place to another ~~within a county without obtaining a new license, provided he obtains written permission from~~ upon providing written notice to and receiving approval from the department prior to the move.

(d) With each application the applicant shall submit ~~\$50~~ \$500 as an investigation fee and ~~\$125~~ as a license application fee. ~~The license fee shall be returned to the applicant if the application is denied. The license application fee is nonrefundable.~~ The license year is the calendar year, and the license fee for any period less than 6 months is ~~\$62.50~~ \$250. ~~A license remains in force until surrendered, suspended, or revoked.~~

~~(2) No licensee under the provisions of this chapter shall lend money in a total sum greater than \$1,000 to any borrower or to any borrower and spouse except under the following circumstances:~~

~~—— (a) When any person holding a license provided for in subsection (1) desires to make loans for any amount in excess of \$1,000, the holder of such license may apply to the department for a supplementary license and pay therefor an additional license fee of \$75 per calendar year or one-half of said sum for any period less than 6 months.~~

~~—— (b) The department shall grant, on application, a supplementary license to a holder of a license provided~~

for in subsection (1).

~~———— (c) Section 32-5-204 shall be applicable as to time of payment of supplementary license fee and penalty for failure to pay the same.~~

~~———— (d) Provisions of 32-5-301 relating to refunds, fees, and charges and the other provisions of this chapter not inconsistent with this section shall be applicable to loans made under authority of a supplementary license.~~

~~(3)(2) All moneys collected under the authority of licensing and examination fees collected pursuant to this chapter ~~shall~~ must be paid by the department into the state special revenue fund for the use of the department in its supervision function.~~

~~(4) The amount of \$1,000 in subsection (2) is subject to change pursuant to the provisions of 32-5-104."~~

Section 4. Section 32-5-202, MCA, is amended to read:

"32-5-202. Issuance or denial of license or license renewal. ~~(4)~~ Within 30 days after an a complete application for a license or a license renewal is filed with the department together with ~~the~~ all required fees, the department shall issue the license; or license renewal if the department determines that the character and general fitness of the applicant ~~is such as to warrant~~ warrants the belief that the business will be operated lawfully and fairly within the provisions of this chapter; The department may or enter an order denying the license or license renewal application subject to notifying the applicant and providing the applicant an opportunity for a hearing, if it finds to the contrary. All notices and orders must be served as provided in 32-5-207(2).

~~(2) A copy of the order granting or denying a license, together with a summary of the department's findings, shall be filed in the office of the department and shall be a public record. A copy of the order denying a license, together with a summary of the department's findings, shall be mailed postage prepaid to the applicant at the address stated in the application."~~

Section 5. Section 32-5-204, MCA, is amended to read:

"32-5-204. License renewal fee. Every licensee shall pay to the department, on or before December 1, ~~pay to the department the sum of \$125 a nonrefundable license fee of \$500~~ for each license held ~~as a license fee~~ for the succeeding calendar year. Failure to pay ~~such~~ the license fee within the time prescribed ~~shall~~ results in an automatic revocation of the ~~automatically revoke~~ such license."

Section 6. Section 32-5-207, MCA, is amended to read:

"32-5-207. Revocation and suspension of license -- penalty -- restitution. (1) (a) The department,

~~upon 10 days' after providing a 10-day written notice to the licensee and that includes a statement of the grounds for the proposed suspension or revocation and upon reasonable opportunity to be heard at a public hearing, if requested by the licensee, may suspend for not more than 30 days or revoke a license if it finds the licensee has knowingly violated any provision of this chapter. When the department enters an order revoking or suspending a license, it shall mail a copy of the order by certified or registered mail to the licensee at the address for which the license was issued. informing the licensee that the licensee has the right to an administrative hearing, may issue an order suspending or revoking a license if it finds that the licensee has violated any provision of this chapter, has failed to comply with any department rule, written instruction, or order, has failed or refused to make required reports, has furnished false information, or has operated without a license.~~

(b) The department may impose a civil penalty of not more than \$1,000 for each violation of this chapter, NOT TO EXCEED \$5,000 FOR EACH ADMINISTRATIVE ACTION, and may order restitution to borrowers and reimbursement of the department's costs in bringing an administrative action. The department may suspend or revoke the right of a person or licensee, directly or through an officer, agent, employee, or representative, to operate as a licensee or to engage in the business of making consumer loans.

(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.

(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) All civil penalties collected pursuant to this section must be deposited in the state general fund."

Section 7. Section 32-5-208, MCA, is amended to read:

"32-5-208. Reinstatement. The department may reinstate any ~~suspended or revoked~~ license if ~~no there is not a fact or condition then exists~~ existing at the time of reinstatement that which clearly would have justified the department in refusing originally to issue such the license. In any case where the license has been revoked for cause, no an application shall may not be made for issuance of a new license or the reinstatement of a revoked license for a period of 6 months from the date of revocation."

Section 8. Section 32-5-301, MCA, is amended to read:

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

charges as provided under 31-1-112.

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

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

~~————(b) When any loan contract, new loan, renewal, or otherwise for a period of more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges that is due the borrower that is applicable to all fully unexpired months in the contract as originally scheduled or, if deferred, as deferred, following the date of prepayment. For this purpose the applicable charge is the charge that would have been earned for that contract if charges had not been precomputed, by applying to the unpaid principal balance, by the actuarial method, the annual percentage rate disclosed pursuant to federal law, based on the assumption that all payments were made as originally scheduled. For all loans that may be subject to this section, charges are computed initially in the same manner used to determine the annual percentage rate.~~

~~(4)(2) If provided for in the contract so provides, the an additional charge fee may be charged for any amount past due according to the original terms of the contract, whether by reason of default or extension agreement;. The fee charged may be the greater of \$15 or 5% of the amount past due or \$15, not to exceed \$50. and that The fee charged for any past-due amount may be charged only once. Except as provided in subsection (3), other fees may not be charged for default or extension of the contract by the borrower.~~

~~(3) (a) If provided for in the contract, a licensee may grant a deferral at any time. A deferral postpones the scheduled due date of the earliest unpaid installment and all subsequent installments as originally scheduled or as previously deferred for a period equal to the agreed-upon deferral period. The deferral period is that period~~

during which an installment is not scheduled to be paid by reason of the deferral.

(b) A licensee may charge an additional fee for each deferral. The fee charged may be the greater of \$15 or 5% of the amount currently due, not to exceed \$50.

(c) Other fees may not be charged by the lender for any deferrals granted by the lender.

~~(5)(4)~~ (a) The licensee may include in the principal amount of any loan:

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

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

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

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

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

~~(iii)(f)~~ fees for notarizing deeds and other documents;

~~(iv)(g)~~ appraisal fees;

~~(v)(h)~~ fees for credit reports; and

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

~~(6)(5)~~ (a) ~~Further or other charges~~ Other fees may not be directly or indirectly contracted for or received by any licensee except those specifically authorized by this chapter. A licensee may not divide into separate parts any contract made for the purpose of or with the effect of obtaining ~~charges~~ fees in excess of those authorized by this chapter. If any amount in excess of the ~~charges~~ fees permitted by this chapter is charged, contracted for, and or received, ~~except as the result of an accidental and bona fide error of computation~~, the licensee shall forfeit to the borrower a sum that is double the amount that is in excess of the ~~charges~~ fees authorized by this chapter.

(b) This section does not apply to fees for services rendered in connection with a loan after the loan has been consummated and if the borrower's participation in the services is strictly voluntarily.

~~(7)~~ Subsections (2) and (3) apply only to loans on which charges are made on an add-on basis and do not apply to loans on which charges are made on an interest-bearing basis. The contracting for, charging of, receiving of, or financing of loan origination fees, points, or prepaid finance charges on a loan on which other charges are made on an interest-bearing basis does not make the loan subject to being considered an add-on basis loan.

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

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

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

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

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

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

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

~~or~~

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

Section 9. Section 32-5-302, MCA, is amended to read:

"32-5-302. Installment payment-- contract period and balloon payments. ~~(1) A licensee may not enter into any contract of loan:~~

~~———(a) of \$300 or less, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 21 calendar months from the date of making the contract;~~

~~———(b) for more than \$300 to and including \$1,000, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 25 calendar months from the date of making; or~~

~~———(c) for more than \$1,000 to and including \$2,500, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 48 calendar months from the date of making.~~

~~(2)(1) Each loan contract requires payment of principal and charges in installments that are Except as provided in subsection (4), if the loan contract requires installment payments, the contract must provide that principal and interest be payable at approximately equal periodic intervals, except that payment dates may be omitted to accommodate borrowers with seasonal incomes.~~

~~(2) With respect to a loan on which charges are made on an add-on basis, an An installment contracted~~

for may not be substantially larger than any preceding installment. ~~When~~ If a loan contract provides for monthly ~~installments~~ installment payments, the first installment ~~may~~ must be payable at any time within 45 days of the date of the loan and ~~the charges~~ interest may be charged for the number of days in excess of 30 from the date of the making of the loan and may be added to the scheduled amount of the installments.

(3) A licensee may not enter into any loan contract in which a borrower agrees to pay principal or interest in one lump sum unless the payment is due not less than 45 days from the date of the making of the loan and not more than 1 year from the date of the making of the loan.

(4) Loans with a balloon payment are permissible so long as all installment payments cover at least the interest that has accrued since the previous installment payment."

Section 10. Section 32-5-303, MCA, is amended to read:

"32-5-303. Borrower to receive copy of contract or statement of contents. At the time ~~the~~ a loan is made, there ~~will~~ must be delivered to the borrower, ~~or if there be two or more~~ or borrowers ~~to one of them~~; the disclosures required by the ~~Federal~~ federal Consumer Credit Protection Act and the federal Truth in Lending Act, 15 U.S.C. 1601, et seq., and a copy of the loan contract; or a written statement ~~in the English language~~ showing in clear and distinct terms:

- (1) the name and address of the lender and of one of the borrowers or a maker of the loan;
- (2) the date of the loan contract;
- (3) the description or schedule of ~~installments or description thereof~~ payments;
- (4) the principal amount of the loan excluding ~~charges~~ interest;
- (5) the rate ~~or~~ and amount of ~~charges~~ interest as provided in the contract ~~may provide~~;
- (6) the amount collected or paid out for each kind of insurance, if any;
- (7) the amount collected or paid out for filing and other fees as allowed in ~~32-5-301(5)~~ this chapter;
- (8) the collateral or security for the loan including all other accommodation or other joint makers or (comakers); and

(9) that the borrower may prepay the loan in whole or in part without penalty at any time during a licensee's regular business hours ~~and, in case the charges have been added to the principal of the loan, that such charges are subject to the refund requirements of 32-5-301(3) if such loan is prepaid in full."~~

Section 11. Section 32-5-305, MCA, is amended to read:

"32-5-305. Confessions of judgment -- incomplete instruments forbidden. ~~No~~ A licensee ~~shall~~ may

not:

(1) take any confession of judgment from the borrower or any power of attorney running to himself the licensee or to any third person to confess judgment for the borrower or to appear for the borrower in a judicial proceeding;

(2) take any note or promise to pay that does not disclose the amount of the loan, a schedule of payments or a description ~~thereof~~ of the schedule of payments, and the agreed ~~charges and in which~~ interest and fees to be charged. The note or promise may not contain blanks that are left to be filled in after execution. ~~However, such details~~ The disclosures required by this subsection need are not appear required on a certificate of title to a motor vehicle, on a policy or certificate of insurance, ~~a chattel mortgage or deed of trust covering future advances according to the law of the district or state where the property is located~~, or on customary powers in connection with bonds or stocks ~~which~~ that may be pledged as collateral; ~~or.~~

(3) take any instrument in which blanks are left to be filled in after the loan is made."

Section 12. Section 32-5-306, MCA, is amended to read:

"32-5-306. Insurance -- real property security -- definitions. (1) Except as provided in this section, insurance may not be written by a licensee or employee, affiliate, or associate of the licensee in connection with any loan.

(2) Insurance permitted under the provisions of this section must be obtained through an insurance company authorized to conduct business in Montana by a licensed insurance producer or agency of this state. Premiums may not exceed those fixed by law or current applicable manual rates. Insurance written as authorized by this section may contain a mortgagee clause or other appropriate provisions to protect the insurable interest of the licensee.

(3) (a) When the principal amount of the loan exceeds \$300 exclusive of the portion of the loan attributable to insurance premiums and ~~charges~~ fees, the licensee may require a borrower to insure property offered as security against any substantial risk of loss, damage, or destruction for an amount not to exceed the reasonable value of the property insured or the amount of the loan, whichever is smaller, and for the customary term approximating the term of the loan contract. It is optional with the borrower to obtain insurance in an amount greater than the amount of the loan or for a longer term.

(b) A lender may not require a borrower, as a condition of obtaining or maintaining a loan secured by real property, to provide insurance on improvements to real property in an amount that exceeds the reasonable replacement value of the improvements.

(4) Subject to the laws of this state, credit life insurance, credit disability insurance, and loss of income insurance may be provided at the expense of the borrower and may be provided by a licensee upon the request of the borrower when the principal amount of the loan exceeds \$300, exclusive of the portion of the loan attributable to insurance premiums and ~~charges~~ fees.

(5) The insurance authorized by this section may be sold, obtained, or provided by or through a licensee, and the premium or identifiable ~~charge~~ fee for the insurance may be included in the principal amount of the loan. However, a licensee may not require a borrower to purchase insurance from the licensee or from any particular insurance producer, broker, or insurance company as a condition precedent for obtaining a loan. Any gain or advantage to the licensee or any employee, affiliate, or associate of the licensee from the sale, provision, or obtaining of insurance as authorized by this section may not be considered to be ~~additional charges~~ or a violation of this chapter.

(6) A licensee may not require insurance under this section until any existing insurance of the same type has expired or has been canceled ~~and the unearned portion of the premium for the canceled insurance has been rebated to the borrower.~~

~~(7) The amount of \$300 in subsections (3) and (4) is subject to change pursuant to 32-5-104 on adjustment of dollar amounts:~~

~~(8)~~(7) As used in this section:

- (a) "borrower" means a mortgagor, grantor of a deed of trust, or other debtor;
- (b) "improvement to real property" means a fixture, building, or other structure attached to real property and intended as a permanent addition to the real property; and
- (c) "lender" means a mortgagee, beneficiary of a deed of trust, or other creditor who holds a mortgage, deed of trust, or other instrument that encumbers real property as security for the repayment of a debt."

Section 13. Section 32-5-308, MCA, is amended to read:

"32-5-308. Annual report. (1) A licensee shall file an annual report before April 15 for the preceding calendar year with the department.

~~(2) The report must provide information with respect to the financial condition of the licensee and must include:~~

- ~~_____ (a) the name and address of the licensee;~~
- ~~_____ (b) a statement of income and expenses;~~
- ~~_____ (c) an analysis of charges, size of loans made, and types of security on loans;~~

~~_____ (d) an analysis of suits and foreclosures; and~~
~~_____ (e) other relevant information the department may reasonably require concerning the business conducted during the preceding calendar year for each licensed place of business of the licensee in this state.~~

~~(3)~~(2) The report must be made under oath and be in a form and contain the information prescribed by the department. The department shall publish annually an analysis and summary of the reports."

Section 14. Section 32-5-310, MCA, is amended to read:

"32-5-310. Wage assignments -- limitations. (1) ~~The payment in money, credit, goods, or things in action as consideration for any sale or assignment of or order for the payment of wages, salary, commission, or other compensation for services, whether earned or to be earned, shall, for the purpose of regulation under this chapter, be considered a loan secured by such assignment, and the~~ Subject to the limitations in subsection (2), wage assignments, which include salary, wages, commissions, and other compensation for services, are permitted and any loan made subject to a wage assignment must be considered a loan secured by the wage assignment. The amount by which the assigned compensation assignment exceeds the amount of the consideration actually paid shall, for the purposes of regulation under this chapter, may not be considered interest or charges upon on the loan from the date of payment to the date the compensation is payable and must be credited to the borrower. Such transactions shall be Transactions subject to the provisions of this section are governed by and be are subject to the provisions of this chapter.

(2) Any assignment ~~or other transfer~~ to a licensee or for the benefit of a licensee of salary, wages, commissions, or other compensation for services ~~must be limited to not exceeding~~ may not exceed 10% of ~~such the~~ salary, wages, commissions, or other compensation owing at the time of the notice to the debtor's employer ~~and thereafter to become owing or that is subsequently owed. However, no such~~ An assignment or order is not valid unless it is in writing, signed in person by the borrower, or if the borrower is married, unless it is signed in person by both husband and wife, provided that written assent of a spouse is not required when husband and wife have been and are living separate and apart when such the assignment or order is made. Only Notice of the assignment must be given to the debtor's employer only if the debtor defaults in payment of the whole or some part of the loan for which such the assignment or transfer is security shall notice be given to the debtor's employer of such assignment or transfer. Such The notice must be served on the employer or a managing agent of such the employer, must be verified by the oath of the licensee or his the licensee's agent, and must include:

- (a) a correct copy of the assignment;
- (b) a statement of the amount of ~~such the~~ loan and the amount due and unpaid ~~thereon; and~~

(c) a copy of this section.

(3) The acceptance and honoring of any assignment ~~shall~~ must be at the option of the employer."

Section 15. Section 32-5-401, MCA, is amended to read:

"32-5-401. Department -- powers and duties -- adoption of rules. (1) All powers and duties of regulation and supervision conferred by this chapter are vested in the department. The department shall adopt rules necessary to carry out the intent and purposes of this chapter. ~~A copy of every rule shall be mailed to each licensee at least 15 days in advance of its effective date. However, the failure of a licensee to receive a copy of a rule does not exempt him from complying with a rule adopted under this chapter.~~

(2) All rules adopted under this chapter are binding on all ~~licensees~~ persons and enforceable by the department ~~through the power of suspension or revocation of licenses~~ as provided in this chapter."

Section 16. Section 32-5-402, MCA, is amended to read:

"32-5-402. Investigations by department -- subpoenas -- oaths -- examination of witnesses and evidence. (1) The department may at any time investigate any transaction with borrowers and may examine the books, accounts, and records in this state to discover violations of this chapter by:

~~(1)(a)~~ (a) a licensee; or

~~(2)(b)~~ (b) a person ~~whom~~ who the department has reason to believe is violating or is about to violate this chapter.

~~(2)~~ (2) The department or the department's authorized representatives must be given free access to the offices and places of business and files of all licensees. The department may investigate any matter, upon complaint or otherwise, if it appears that a person has engaged in or offered to engage in any act or practice that is in violation of any provision of this chapter or any rule adopted or order issued by the department pursuant to this chapter.

~~(3)~~ (3) 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 chapter. The department may administer oaths and affirmations to a person whose testimony is required.

~~(4)~~ (4) 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.

(5) 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.

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

Section 17. Section 32-5-403, MCA, is amended to read:

"32-5-403. ~~Annual examinations~~ Examinations -- cost. (1) The department ~~shall make an annual examination of~~ may examine the books, accounts, and records of every licensee insofar as they relate to transactions with borrowers under this chapter ~~and may make such additional examinations as the department deems necessary.~~

(2) The expenses of the department incurred in the examination of the books, accounts, and records of the licensees ~~shall~~ must be charged at a rate ~~to be~~ established by the department by rule. ~~Such fees shall~~ The amount charged must be established to recover all of the costs of the department's supervision program ~~of the department.~~ Each licensee ~~shall~~ must be billed by the department for the amount ~~so~~ charged to ~~such~~ the licensee pursuant to this section. ~~If said~~ the charge is not paid within 30 days after the mailing of ~~such~~ the bill, the license of ~~said~~ the licensee may be suspended or revoked."

NEW SECTION. Section 18. Cease and desist orders. (1) If it appears to the department that a person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule adopted or order issued by the department pursuant to this chapter, 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 ORDER MAY APPLY ONLY TO THE ALLEGED ACT OR PRACTICE CONSTITUTING A VIOLATION OF THIS CHAPTER. 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 notice is addressed does not request a hearing within 10 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 chapter.

Section 19. Section 32-5-405, MCA, is amended to read:

"32-5-405. Injunctions -- receivers. (1) Whenever the department has reasonable cause to believe that ~~any a~~ person is violating or is threatening to violate any provision of this chapter, the department may, in addition to all actions provided for in this chapter and without prejudice ~~thereto to those actions,~~ enter an order requiring such person to desist or to refrain from such violation ~~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) An action may be brought on the relation of the attorney general and the department to enjoin such person from engaging in or continuing such violation or from doing any act or acts in furtherance thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper.~~

~~(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 IF THE PERSON IS NOT A RESIDENT OF THIS STATE OR DOES NOT MAINTAIN A PLACE OF BUSINESS IN THIS STATE.~~

~~(4) A district court may issue temporary or permanent injunctions or temporary restraining orders to restrain and prevent violations of this chapter, 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.~~

~~(3)(5) In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which such the action is brought ~~shall have power and jurisdiction to~~ may impound; and ~~to~~ appoint a receiver for; the property and business of the defendant, including books, papers, documents, and records pertaining ~~thereto to the property or business or so as much thereof of the property or business~~ as the court ~~may deem~~ considers reasonably necessary to prevent violations of this chapter ~~through or by means of the use of said property and business.~~ Such ~~The~~ receiver, when appointed and qualified, ~~shall have such~~ has the powers and duties as to custody, collection, administration, winding up, and liquidation of ~~such the~~ property and~~

business ~~as shall from time to time be~~ that are conferred upon ~~him~~ the receiver by the court."

Section 20. Section 32-5-407, MCA, is amended to read:

"32-5-407. Attorney fees -- bad check charge fee. (1) If provided in the contract ~~so provides~~, reasonable attorney fees may be awarded to the party in whose favor final judgment is rendered in any action on a contract entered into pursuant to the provisions of this chapter.

(2) In addition to any other ~~charges~~ fees authorized by this chapter, a licensee may charge a borrower the greater of \$25 or the licensee's actual expense for each check, received in payment of a loan, that is dishonored for any reason."

NEW SECTION. **Section 21. 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 chapter.

(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 chapter, seek injunctive or other relief in district court, or suspend or revoke a license granted under this chapter.

NEW SECTION. **Section 22. Repealer.** Sections 32-5-104, 32-5-321, 32-5-322, 32-5-323, 32-5-324, 32-5-404, 32-5-406, 32-5-501, 32-5-502, 32-5-503, 32-5-504, 32-5-505, and 32-5-506, MCA, are repealed.

NEW SECTION. **Section 23. Codification instruction.** [Sections 18 and 21] are intended to be codified as an integral part of Title 32, chapter 5, and the provisions of Title 32, chapter 5, apply to [sections 18 and 21].

NEW SECTION. **SECTION 24. EFFECTIVE DATES.** (1) EXCEPT AS PROVIDED IN SUBSECTION (2), [THIS ACT] IS EFFECTIVE OCTOBER 1, 2008.

(2) [SECTIONS 3 AND 5 AND THIS SECTION] ARE EFFECTIVE OCTOBER 1, 2007.

- END -