

SENATE BILL NO. 74
INTRODUCED BY L. JENT
BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA TITLE LOAN ACT; INCLUDING TITLE LOAN LICENSEES IN THE DEFINITION OF REGULATED LENDERS; EXPANDING THE SCOPE OF THE ACT TO INCLUDE PAWNBROKERS; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO CONDUCT INVESTIGATIONS AND TO ISSUE SUBPOENAS AND CEASE AND DESIST ORDERS; AUTHORIZING THE DEPARTMENT TO SEEK COURT-ORDERED INJUNCTIONS; PROVIDING FOR RESTITUTION; AND AMENDING SECTIONS 31-1-111, 31-1-802, 31-1-803, 31-1-811, 31-1-816, 31-1-817, AND 31-1-825, MCA."

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

Section 1. Section 31-1-111, MCA, is amended to read:

"31-1-111. Definition of regulated lender. The term "regulated lender", as used in 31-1-112 and 31-1-116, means:

(1) a bank, building and loan association, savings and loan association, trust company, credit union, credit association, consumer loan licensee, title loan licensee, development corporation, bank holding company, or a mutual or stock insurance company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by:

(a) an agency of the state of Montana; or

(b) an agency of the federal government;

(2) a subsidiary of an entity described in subsection (1);

(3) a Montana state agency or a federal agency that is authorized to lend money;

(4) a corporation or other entity established by congress or the state of Montana that is owned, in whole or in part, by the United States or the state of Montana and that is authorized to lend money."

Section 2. Section 31-1-802, MCA, is amended to read:

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

lenders are unregulated.

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

~~(3) This part does not apply to pawnbrokers.~~

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

(5) THIS PART DOES NOT APPLY TO A PERSON WHO MAKES LESS THAN FOUR LOANS A YEAR AND COMPLIES WITH THE PROVISIONS OF TITLE 31, CHAPTER 1, PART 1."

Section 3. Section 31-1-803, MCA, is amended to read:

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

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

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

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

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

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

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

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

(8) "Title loan" means ~~a loan secured by an unencumbered state-issued certificate of title or certificate of ownership to personal property, with an original term of 30 days interest rate that exceeds 36% per year.;~~

(A) A NONPURCHASE MONEY LOAN SECURED BY AN UNENCUMBERED STATE-ISSUED CERTIFICATE OF TITLE OR

CERTIFICATE OF OWNERSHIP TO PERSONAL PROPERTY; OR

(B) A LOAN THAT IS SECURED IN A SUBSTANTIALLY EQUIVALENT MANNER TO A LOAN DESCRIBED IN SUBSECTION (8)(A) AND THAT IS DESIGNATED AS A TITLE LOAN BY THE DEPARTMENT.

(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.

(10) "Title loan office" means the 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 4. Section 31-1-811, MCA, is amended to read:

"31-1-811. License revocation or suspension -- UNLICENSED ACTIVITY -- restitution -- penalty. (1) If the department finds, after providing a 10-day written notice that includes a statement of alleged violations and a hearing or an opportunity for hearing, as provided in the Montana Administrative Procedure Act, 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 department may impose a civil penalty not to exceed \$1,000 for each violation AND NOT TO EXCEED \$5,000 FOR EACH ADMINISTRATIVE ACTION 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 issue an order requiring restitution to borrowers and reimbursement of 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 DEPARTMENT'S REFUSAL 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 PENALTIES COLLECTED PURSUANT TO THIS SECTION must be deposited in the state general fund."

NEW SECTION. Section 5. 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 any 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 it.

(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 subsection (4) is punishable pursuant to 45-7-309.

NEW SECTION. Section 6. 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 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 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 part.

NEW SECTION. Section 7. 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 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 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 8. 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 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 9. 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~~ may contract for and ~~must~~ receive for making and carrying any title loan authorized by this part may not exceed:

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

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

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

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

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

Section 10. 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 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) charge any fee that is not specifically allowed under the provisions of this part;
- ~~(l)~~ knowingly violate any provision of or rule promulgated pursuant to this part; or
- ~~(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 11. Codification instruction.** [Sections 5 through 7] 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 5 through 7].

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