

HOUSE BILL NO. 116

INTRODUCED BY J. ECK

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA DEFERRED DEPOSIT LOAN ACT; EXTENDING THE TIME TO REQUEST A HEARING; ADDING PENALTIES INCLUDING FORFEITURE OF LOAN PRINCIPAL FOR LOANS MADE BY UNLICENSED PERSONS; ELIMINATING THE CAP ON CIVIL PENALTIES FOR A SINGLE ADMINISTRATIVE ACTION; REVISING LICENSING AND REPORTING REQUIREMENTS; AUTHORIZING THE DEPARTMENT OF ADMINISTRATION TO PARTICIPATE IN A NATIONWIDE LICENSING SYSTEM FOR PURPOSES OF LICENSING DEFERRED DEPOSIT LOAN LICENSEES; GRANTING RULEMAKING AUTHORITY; AMENDING SECTIONS 31-1-705, 31-1-706, 31-1-707, 31-1-712, 31-1-713, AND 31-1-714, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 31-1-705, MCA, is amended to read:

"31-1-705. License -- application requirements -- business locations. (1) A person may not engage in or offer to engage in the business of making deferred deposit loans unless licensed by the department. A license may be granted to a person located within the state or to a person located outside of the state who uses the internet, facsimiles, or third persons to conduct transactions with consumers in this state.

(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 \$500. The department may direct that applicants remit fees to the department through a nationwide licensing system.

(3) The application for licensure must be ~~in writing, under oath, and in the form~~ and submitted in the manner prescribed by that the department directs. ~~The application must contain:~~

- ~~_____ (a) the name of the applicant;~~
- ~~_____ (b) the date of formation if a business entity;~~
- ~~_____ (c) the physical address of each deferred deposit loan office to be operated by the applicant;~~
- ~~_____ (d) the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers; and~~



1 ~~_____ (e) any other pertinent information that the department may require.~~

2 (4) ~~A license may not be issued for longer than 1 year. The license year must coincide with the calendar~~
 3 ~~year, and the license fee for any period less than 6 months is \$250. The license year is the calendar year, and~~
 4 ~~all licenses expire on December 31 of each year.~~

5 (5) Each licensee shall post a bond in the amount of \$10,000 for each location at or from which deferred
 6 deposit loan transactions are conducted with consumers in this state. The bond must continue in effect for 2 years
 7 after the licensee ceases operation in the state. The bond must be available to pay damages authorized under
 8 this part and penalties to consumers harmed by any violation of this part and to pay civil penalties, restitution, and
 9 costs ordered by the department pursuant to 31-1-712 for any violation of this part.

10 (6) ~~More than one place of business may not be maintained under the same license, but the department~~
 11 ~~may issue more than one license to the same licensee upon compliance with the provisions of this section~~
 12 ~~governing issuance of a single license. A person shall obtain a license for the person's principal place of~~
 13 ~~business and a separate branch license for each additional place of business or location at or from which deferred~~
 14 ~~deposit loan transactions are conducted with consumers in this state.~~

15

16 **Section 2.** Section 31-1-706, MCA, is amended to read:

17 "**31-1-706. License renewal fee.** (1) A person licensed under 31-1-705 shall pay, ~~on or before~~
 18 ~~December 1 of each year, a~~ an annual license renewal fee of \$500 for each license that the person holds under
 19 this part.

20 (2) ~~Failure to pay any yearly license renewal fee required by this section within the time prescribed will~~
 21 ~~result in the automatic revocation of the license subject to renewal. The department may direct that fees due the~~
 22 ~~department under subsection (1) be remitted to the department through a nationwide licensing system.~~

23

24 **Section 3.** Section 31-1-707, MCA, is amended to read:

25 "**31-1-707. Denial of license and license renewal.** (1) (a) Except as provided in subsection (1)(b), the
 26 department shall deny any new license or refuse to renew any license if:

27 (i) the applicant does not meet the qualifications stated in this part or in rules adopted pursuant to this
 28 part;

29 (ii) the department finds that the criminal history of any employee of the applicant at the time of
 30 application or renewal demonstrates any conviction involving fraud or financial dishonesty or if the department's

- 1 findings show civil judgments involving fraudulent or dishonest financial dealings;
- 2 (iii) the financial responsibility, experience, character, and general fitness of the applicant do not warrant
- 3 the belief that the business will be operated lawfully and fairly and within the provisions of this part;
- 4 (iv) the applicant does not have unencumbered assets of at least \$25,000 for each location to be
- 5 operated by the applicant;
- 6 (v) the applicant has not provided a sworn statement that the applicant will not in the future, directly or
- 7 indirectly, use a criminal process to collect the payment of deferred deposit loans or any civil process to collect
- 8 the payment of deferred deposit loans not generally available to creditors to collect on loans in default;
- 9 (vi) other information that the department considers necessary has not been provided; or
- 10 (vii) the applicant makes any material misstatement of fact or any material omission of fact in the
- 11 application.
- 12 (b) A denial is not required pursuant to subsection (1)(a)(ii) if the department finds that the applicant
- 13 dismissed the employee promptly upon learning of the employee's conviction involving fraud or financial
- 14 dishonesty or of civil judgments involving fraudulent or dishonest financial dealings by the employee.
- 15 (2) The department shall provide written notice to the applicant of the denial or refusal, setting forth in
- 16 the notice the grounds upon which the denial or refusal is based.
- 17 (3) The applicant has the right to a hearing under the Montana Administrative Procedure Act on any
- 18 denial or refusal to issue a license. The request for a hearing must be made within ~~40~~ 14 days of the date of
- 19 receipt of the written notice of denial or refusal.
- 20 (4) An applicant whose application for licensure or renewal has been denied or refused may not reapply
- 21 for 1 year following the denial or refusal."

22

23 **Section 4.** Section 31-1-712, MCA, is amended to read:

24 **"31-1-712. License revocation or suspension -- restitution -- penalty.** (1) The department shall

25 provide a ~~40-day~~ 14-day written notice of a proposed violation that includes a statement of the alleged violation

26 and provision for a hearing or an opportunity for hearing, as provided in the Montana Administrative Procedure

27 Act. The notice must be based on a finding that any person, licensee, or officer, agent, employee, or

28 representative, whether licensed or unlicensed, of the person or licensee has violated any of the provisions of

29 this part, has failed to comply with the rules, regulations, instructions, or orders promulgated by the department,

30 has failed or refused to make required reports to the department, has furnished false information to the

1 department, or has operated without a required license. The department may impose a civil penalty not to exceed
 2 \$1,000 for each violation ~~and not to exceed \$5,000 for each administrative action~~ and may issue an order
 3 revoking or suspending the right of the person or licensee, directly or through an officer, agent, employee, or
 4 representative, to do business in this state as a licensee or to engage in the business of making deferred deposit
 5 loans. In addition, the department may order restitution to borrowers and reimbursement for the department's cost
 6 in bringing the administrative action.

7 (2) In addition to the penalties in subsection (1), any deferred deposit loan made by an unlicensed
 8 person is void, and the unlicensed person may not directly or indirectly collect, receive, or retain any loan
 9 principal, interest, fees, or other charges related to the loan.

10 ~~(2)~~(3) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified
 11 mail to the address for which the license was issued or, in the case of an unlicensed business, to the last-known
 12 address of record.

13 ~~(3)~~(4) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or
 14 criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

15 ~~(4)~~(5) The department may reinstate any suspended or revoked license if there is not a fact or condition
 16 existing at the time of reinstatement that would have justified the department's refusal to originally issue the
 17 license. If a license has been suspended or revoked for cause, an application may not be made for the issuance
 18 of a new license or the reinstatement of a suspended or revoked license for a period of 6 months from the date
 19 of suspension or revocation.

20 ~~(5)~~(6) All civil penalties collected pursuant to this section must be deposited in the state general fund."
 21

22 **Section 5.** Section 31-1-713, MCA, is amended to read:

23 **"31-1-713. Complaint procedure.** (1) The department shall maintain, either directly or indirectly through
 24 a nationwide licensing system, a list of licensees that is available to and accessible by interested persons and
 25 ~~to~~ the general public. The department shall also establish by rule a procedure under which an aggrieved
 26 consumer or any member of the public may file a complaint against a licensee or an unlicensed person who
 27 violates any provision of this part.

28 (2) The department may hold hearings, subject to the contested case provisions of Title 2, chapter 4,
 29 part 6, upon the request of a party to the complaint, make findings of fact or conclusions of law, issue cease and
 30 desist orders, refer the matter to the appropriate law enforcement agency for prosecution for a violation of this

1 part, seek injunctive or other relief in district court, or suspend or revoke a license granted under this part."

2

3 **Section 6.** Section 31-1-714, MCA, is amended to read:

4 **"31-1-714. Information and annual reports.** (1) Each licensee shall keep and use books, accounts,
5 and records that will enable the department to determine if the licensee is complying with the provisions of this
6 part and maintain any other records required by the department. The department is authorized to examine the
7 records at any reasonable time. The records must be kept for 2 years following the last entry on a loan and must
8 be kept according to generally accepted accounting procedures that include an examiner being able to review
9 the recordkeeping and reconcile each deferred deposit loan with documentation maintained in the consumer's
10 loan file records.

11 (2) Each licensee shall ~~file, on forms prescribed by the department,~~ submit an annual report with the
12 department on ~~or before March 31 for the 12-month period in the preceding year ending as of December 31~~ the
13 date and in the form and manner that the department directs regarding the licensee's deferred deposit loan
14 activity with consumers in this state during the preceding calendar year. The report must ~~disclose in detail and~~
15 ~~under appropriate headings~~ contain the following information:

- 16 (a) the resources, assets, and liabilities of the licensee at the beginning and the end of the period;
17 (b) the income, expense, gain, loss, and balance sheets;
18 (c) the total number of deferred deposit loans made in the year ending as of December 31 of the previous
19 year, including:
20 (i) the number of individual consumers with 12 or fewer new deferred deposit loans; and
21 (ii) the number of individual consumers with 13 or more new deferred deposit loans;
22 (d) the average deferred deposit loan amount, average annual interest percentage rate, and average
23 deferred deposit loan term;
24 (e) the number of deferred deposit loans rescinded;
25 (f) the total number of deferred deposit loans outstanding as of December 31 of the previous year;
26 (g) the minimum and maximum amount of checks for which deposits were deferred in the year ending
27 as of December 31 of the previous year;
28 (h) the total number and dollar amount of returned checks, the total number and dollar amount of checks
29 recovered, and the total number and dollar amount of checks charged off during the year ending as of December
30 31 of the previous year;

1 (i) the total number and dollar amount of agreements involving electronic transactions or deductions, the
 2 total number and dollar amount of electronic deductions made by the licensee, and the total number and dollar
 3 amount of electronic deductions for insufficient funds charged off during the year ending as of December 31 of
 4 the previous year; and

5 (j) verification that the licensee has not used a criminal process or caused a criminal process to be used
 6 in the collection of any deferred deposit loans or used any civil process to collect the payment of deferred deposit
 7 loans not generally available to creditors to collect on loans in default during the year ending as of December 31
 8 of the previous year.

9 (3) A report must be executed by an individual representative of the licensee in the manner the
 10 department may direct, and the department may require that the report be executed in conformance with any
 11 protocols of a nationwide licensing system verified by the oath or affirmation of the owner, manager, or president
 12 of the deferred deposit lender.

13 (4) (a) If a licensee conducts another business or is affiliated with other licensees under this part or if
 14 any other situation exists under which allocations of expense are necessary, the licensee shall make the
 15 allocation according to appropriate and reasonable accounting principles as approved by the department.

16 (b) Information about any other business conducted on the same premises where deferred deposit loans
 17 are made must be provided as required by the department.

18 (5) Each licensee shall file a copy of the disclosure documents described in 31-1-721 with the
 19 department prior to the date of commencement of business at each location, at the time any changes are made
 20 to the documents, and annually upon renewal of the license. These documents must be available to interested
 21 parties and to the general public through the department."
 22

23 **NEW SECTION. Section 7. Department authorized to participate in nationwide licensing system**
 24 **for purposes of licensing deferred deposit loan licensees -- rulemaking.** (1) The department may participate
 25 in a nationwide licensing system for licensing purposes under this part and may require deferred deposit loan
 26 license applicants to apply for licensure in the manner that the department may direct on applications approved
 27 by the nationwide licensing system.

28 (2) The department may establish rules that are necessary to comply with the nationwide licensing
 29 system protocols and procedures pertaining to fees, renewal dates, amending or surrendering a license, and any
 30 other activity necessary for participation in the nationwide licensing system.

