

SENATE BILL NO. 75

INTRODUCED BY G. VUCKOVICH

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING NONDEPOSITORY LENDING LAWS; CLARIFYING PROCEDURAL DUE PROCESS FOR BOTH DEFERRED DEPOSIT LENDERS UNDER TITLE 31 AND CONSUMER LENDERS UNDER TITLE 32; CLARIFYING THE SERVICE OF PROCESS BY CERTIFIED MAIL; CLARIFYING THAT ONLY A RESPONDENT TO A COMPLAINT IS ENTITLED TO A CONTESTED CASE HEARING; INCREASING THE TIME FOR PERSONS TO EXERCISE CERTAIN LEGAL RIGHTS; PROVIDING THE DEPARTMENT WITH ACCESS TO LENDERS' RECORDS MAINTAINED OUT OF STATE; ALLOWING AN INSUFFICIENT FUNDS FEE FOR DISHONORED FORMS OF PAYMENT OTHER THAN CHECKS ON CONSUMER LOANS; ELIMINATING A CRIMINAL PENALTY FOR VIOLATIONS OF THE MONTANA DEFERRED DEPOSIT LOAN ACT; AMENDING SECTIONS 31-1-712, 31-1-713, 31-1-727, 32-5-202, 32-5-207, 32-5-402, 32-5-407, AND 32-5-408, MCA; AND REPEALING SECTION 31-1-725, MCA."

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

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

~~"31-1-712. License revocation or suspension -- restitution -- penalty Notice of violation -- administrative hearing -- penalties -- liability. (1) The department shall provide a 14-day written notice 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 a rule promulgated under this part, or an order issued by the department; or has made a material misrepresentation to the department by act or omission, the department may issue a notice alleging the~~ STATING THE ALLEGED violation to the person. ~~has failed or refused to make required reports to the department, has furnished false information to the department, or has operated without a required license. The~~

(2) (a) The notice referred to in subsection (1) must comply with 2-4-601 and must include a statement

1 that the person has an opportunity to request an administrative hearing under the Montana Administrative
 2 Procedure Act within 14 days of the date that the department's notice was mailed to the person.

3 (b) The department shall mail the notice by certified mail to a licensee's address of record with the
 4 department or to an unlicensed person at an address for the person known to the department. The department
 5 has complied with the service of process upon mailing the notice by certified mail.

6 (3) If a person served with a notice under subsection (2) admits to or does not contest having violated
 7 or is found after an administrative hearing to have violated this part, a rule promulgated under this part, or an
 8 order issued by the department or to have made a material misrepresentation to the department by act or
 9 omission, the department may impose a civil penalty not to exceed \$1,000 for each violation and may issue an
 10 order revoking or suspending the right of the person or licensee, directly or through an officer, agent, employee,
 11 or representative, to do business in this state as a licensee or to engage in the business of making deferred
 12 deposit loans. In addition, the department may order restitution to borrowers and reimbursement for the
 13 department's cost in bringing the administrative action. The department's remedies specified in this part are
 14 cumulative, except that the remedies in 31-1-724 pertaining to a consumer's private rights of action are not
 15 available to the department.

16 ~~(2)~~(4) In addition to the penalties in subsection ~~(4)~~ (3), any deferred deposit loan made by an unlicensed
 17 person is void, and the unlicensed person may not directly or indirectly collect, receive, or retain any loan
 18 principal, interest, fees, or other charges related to the loan.

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

22 ~~(4)~~(5) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or
 23 criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

24 ~~(5)~~(6) The department may reinstate any suspended or revoked license if there is not a fact or condition
 25 existing at the time of reinstatement that would have justified the department's refusal to originally issue the
 26 license. If a license has been suspended or revoked for cause, an application may not be made for the issuance
 27 of a new license or the reinstatement of a suspended or revoked license for a period of 6 months from the date
 28 of suspension or revocation.

29 ~~(6)~~(7) All civil penalties collected pursuant to this section must be deposited in the state general fund."
 30

1 **Section 2.** Section 31-1-713, MCA, is amended to read:

2 "**31-1-713. ~~Complaint procedure~~ Department obligations -- complaints.** (1) The department shall
3 maintain, either directly or indirectly through a nationwide licensing system, a list of licensees that is available to
4 and accessible by interested persons and the general public.

5 (2) The department shall also establish by rule a procedure under which an aggrieved consumer or any
6 member of the public may file a complaint against a licensee or an unlicensed person ~~who violates any provision~~
7 ~~of this part.~~

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

12 (3) If the department determines there is a reason PROBABLE CAUSE to issue and serve a notice under
13 31-1-712 to a licensed or unlicensed person against whom a complaint has been filed by a consumer or other
14 member of the public, the department is obligated to provide only the licensee or the unlicensed person with the
15 opportunity to request an administrative hearing."

16

17 **Section 3.** Section 31-1-727, MCA, is amended to read:

18 "**31-1-727. Cease and desist orders.** (1) ~~If it appears to the department~~ determines that a person has
19 engaged in or is about to engage in any act or practice constituting a violation of any provision of this part or any
20 rule adopted or order issued by the department pursuant to this part, the department may issue an order directing
21 the person to cease and desist from continuing the act or practice after ~~reasonable~~ issuance and service of a
22 notice and opportunity for a hearing as provided in 31-1-712. The order may apply only to the alleged act or
23 practice constituting a violation of this ~~chapter~~ part.

24 (2) The department may issue a temporary order pending the hearing that:

25 (a) remains in effect until ~~40~~ 14 days after the hearings examiner issues proposed findings of fact and
26 conclusions of law and a proposed order; or

27 (b) becomes final if the person to whom notice is ~~addressed~~ issued and served as provided in 31-1-712
28 does not request a hearing within 40 14 days after receipt of the date on which the notice was sent by certified
29 mail.

30 ~~(2)~~(3) A violation of an order issued pursuant to this section is subject to the penalty provisions of this

1 part."

2

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

4 **"32-5-202. Issuance or denial of license or license renewal.** (1) Upon submission of a completed
5 application and payment of all required fees, a license or renewal must be issued if the department determines
6 that:

7 (a) the character and general fitness of the applicant warrant the belief that the business will be operated
8 lawfully and fairly within the provisions of this chapter;

9 (b) the applicant has not had a financial services license revoked by a regulatory agency in any
10 jurisdiction;

11 (c) there are no outstanding civil judgments against the applicant for fraud in relation to providing
12 consumer financial services; and

13 (d) the application does not contain material misstatements of fact or material omissions of fact.

14 (2) The department may enter an order denying the license or license renewal application subject to
15 notifying the applicant and providing the applicant an opportunity for a hearing. All notices and orders must be
16 served issuance and service of notice and opportunity for an administrative hearing as provided in 32-5-207(2)."

17

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

19 ~~"32-5-207. Revocation and suspension of license -- penalty -- restitution~~ **Notice of violation --**
20 **administrative hearing -- penalties -- liability.** (1) ~~(a) The~~ If the department, after providing a 14-day written

21 notice to a person, whether has reason PROBABLE CAUSE to believe that a licensed or unlicensed, that includes
22 a statement of alleged violations and notice that the person has the right to an administrative hearing, may issue
23 an order that includes one or more of the penalties provided for in subsection (1)(b) if it finds that the person has:

24 ~~_____ (i) violated any provision of this chapter;~~

25 ~~_____ (ii) failed to comply with any department rule, written instruction, or order;~~

26 ~~_____ (iii) failed or refused to make required reports;~~

27 ~~_____ (iv) furnished false information; or~~

28 ~~_____ (v) operated without a license~~ person has violated this chapter, a rule promulgated under this chapter,
29 or an order issued by the department or has made a material misrepresentation to the department by act or
30 omission, the department may issue a notice alleging the STATING THE ALLEGED violation to the person.

1 (2) (a) The notice referred to in subsection (1) must comply with 2-4-601 and must include a statement
 2 that the person has an opportunity to request an administrative hearing under the Montana Administrative
 3 Procedure Act within 14 days of the date that the department's notice was mailed to the person.

4 (b) The department's notice must be sent by certified mail to a licensee's address of record with the
 5 department or to an unlicensed person at an address for the person known to the department.

6 (c) The department has complied with the service of process upon mailing the notice by certified mail
 7 as provided in subsection (2)(b).

8 ~~(b)(3)~~ The if a person served with a notice under this section admits to or does not contest having
 9 violated or is found after an administrative hearing to have violated a provision of this chapter, a rule promulgated
 10 under this chapter, or an order issued by the department or to have made a material misrepresentation to the
 11 department by act or omission, the department may impose a civil penalty of not more than \$1,000 for each
 12 violation and may order restitution to borrowers and reimbursement of the department's costs in bringing an
 13 administrative action. The department may suspend or revoke the right of a person or licensee, directly or through
 14 an officer, agent, employee, or representative, to operate as a licensee or to engage in the business of making
 15 consumer loans.

16 (4) The department's remedies specified in this chapter are cumulative.

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

20 ~~(3)(5)~~ A revocation or suspension of a license does not relieve the licensee from civil, administrative, or
 21 criminal liability for acts committed prior to the revocation or suspension of the license.

22 ~~(4)(6)~~ All civil penalties collected pursuant to this section must be deposited in the state general fund."

23

24 **Section 6.** Section 32-5-402, MCA, is amended to read:

25 **"32-5-402. Investigations by department -- subpoenas -- oaths -- examination of witnesses and**
 26 **evidence.** (1) The department may at any time investigate any transaction with borrowers and may examine the
 27 books, accounts, and records ~~in this state~~ to discover violations of this chapter by:

28 (a) a licensee; or

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

30 (2) The department or the department's authorized representatives must be given free access to the

1 offices and places of business and files of all licensees. The department may investigate any matter, upon
2 complaint or otherwise, if it appears that a person has engaged in or offered to engage in any act or practice that
3 is in violation of any provision of this chapter or any rule adopted or order issued by the department pursuant to
4 this chapter.

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

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

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

18 (6) Failure to comply with the requirements of a court-ordered subpoena is punishable pursuant to
19 45-7-309."
20

21 **Section 7.** Section 32-5-407, MCA, is amended to read:

22 **"32-5-407. Attorney fees -- bad check fee.** (1) If provided in the contract, reasonable attorney fees may
23 be awarded to the party in whose favor final judgment is rendered in any action on a contract entered into
24 pursuant to the provisions of this chapter.

25 (2) In addition to any other fees authorized by this chapter, a licensee may charge a borrower the greater
26 of \$25 or the licensee's actual expense for each check, draft, converted check, electronic funds transfer, or other
27 authorization or order for the payment of money received in payment of a loan, that is dishonored for any reason."
28

29 **Section 8.** Section 32-5-408, MCA, is amended to read:

30 **"32-5-408. Cease and desist orders.** (1) If it appears to the department determines that a person has

1 engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or
 2 any rule adopted or order issued by the department pursuant to this chapter, the department may issue an order
 3 directing the person to cease and desist from continuing the act or practice after ~~reasonable~~ issuance and service
 4 of a notice and opportunity for a an administrative hearing as provided in 32-5-207. The order may apply only to
 5 the alleged act or practice constituting a violation of this chapter.

6 (2) The department may issue a temporary order pending the hearing that:

7 (a) remains in effect until ~~40~~ 14 days after the hearings examiner issues proposed findings of fact and
 8 conclusions of law and a proposed order; or

9 (b) becomes final if the person to whom notice is ~~addressed~~ issued and served does not request a
 10 hearing within ~~40~~ 14 days after ~~receipt of~~ the date on which the notice was sent by certified mail as provided in
 11 32-5-207.

12 (2)(3) A violation of an order issued pursuant to this section is subject to the penalty provisions of this
 13 chapter."

14
 15 NEW SECTION. **Section 9. Repealer.** The following section of the Montana Code Annotated is
 16 repealed:

17 31-1-725. Criminal penalties.

18 - END -