

SENATE BILL NO. 28
INTRODUCED BY MANGAN
BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO DEFERRED DEPOSIT LOANS; PROVIDING THAT FEES COLLECTED PURSUANT TO THE MONTANA DEFERRED DEPOSIT LOAN ACT BE DEPOSITED IN A SPECIAL REVENUE ACCOUNT FOR USE BY THE DEPARTMENT OF ADMINISTRATION IN ITS SUPERVISORY CAPACITY; CLARIFYING THE DEFINITION OF "FINANCIAL INSTITUTIONS"; PROVIDING FOR CIVIL PENALTIES FOR CERTAIN VIOLATIONS OF THE MONTANA DEFERRED DEPOSIT LOAN ACT; REQUIRING THE NAME, ADDRESS, AND PHONE NUMBER OF A CONSUMER TO BE INCLUDED ON THE WRITTEN AGREEMENT BETWEEN THE LICENSEE AND CONSUMER WITH RESPECT TO A DEFERRED DEPOSIT LOAN; ESTABLISHING THAT CERTAIN DAMAGES ARE NOT AVAILABLE TO A LICENSEE FOR INSUFFICIENT FUNDS CHECKS OR ELECTRONIC DEDUCTIONS FOR WHICH THERE ARE INSUFFICIENT FUNDS; PROVIDING THAT THE DEFINITION OF "CONSUMER LOAN" DOES NOT INCLUDE A DEFERRED DEPOSIT LOAN; INCREASING THE INSUFFICIENT FUNDS FEE FROM \$15 TO \$30; REQUIRING A VIOLATION FOR CIVIL REMEDIES TO BE INTENTIONAL; AMENDING SECTIONS ~~31-1-702~~, 31-1-704, 31-1-712, 31-1-721, 31-1-722, 31-1-724, AND 32-5-102, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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

~~"31-1-702. Purpose -- rules -- fees. (1) The purpose of this part is to protect consumers who enter into short-term, high-rate loans with lenders from abuses that occur in the credit marketplace when the lenders are unregulated:~~

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

~~(3) Fees collected under this part must be deposited in an account in the state special revenue fund for the department's use in its supervisory function under this part."~~

Section 1. Section 31-1-704, MCA, is amended to read:

"31-1-704. Scope. (1) This part applies to deferred deposit lenders and to persons who facilitate, enable, or act as a conduit for persons making deferred deposit loans.

(2) This part does not apply to:

(a) ~~banks, savings and loan associations, credit unions, or other state or federally regulated~~ financial institutions as defined in 32-8-502;

(b) retail sellers who cash checks incidental to or independent of a sale and who do not charge more than \$2 ~~per a~~ check for the service; or

(c) a collection agency licensed to do business in this state that has entered into an agreement with a deferred deposit lender for the collection of claims owed or due or asserted to be owed or due the deferred deposit lender."

Section 2. Section 31-1-712, MCA, is amended to read:

"31-1-712. License revocation -- penalty. (1) If the department finds, after due notice and hearing or opportunity for hearing, as provided in the Montana Administrative Procedure Act, that ~~a~~ any person, licensee, or ~~an~~ officer, agent, employee, or representative of the 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, the department may impose a civil penalty not to exceed \$1,000 for each violation and may issue an order revoking or suspending the right of the person or licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee.

(2) 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."

Section 3. Section 31-1-721, MCA, is amended to read:

"31-1-721. Required disclosures -- loan agreement. (1) Before entering into a deferred deposit loan, the licensee shall deliver to the consumer a pamphlet prepared by or at the direction of the department that:

(a) explains, in simple language, all of the consumer's rights and responsibilities in a deferred deposit loan transaction;

(b) includes a telephone number to the department's office that handles concerns or complaints by

consumers; and

(c) informs consumers that the department's office can provide information about whether a lender is licensed and other legally available information.

(2) Licensees shall provide consumers with a written agreement on a form specified or approved by the department that can be kept by the consumer, which must include the following information:

(a) the name, address, and phone number of the licensee making the deferred deposit loan and the initials or other written means of identifying the individual employee who signs the agreement on behalf of the licensee;

(b) the name, address, and phone number of the consumer obtaining the deferred deposit loan;

~~(b)(c)~~ an itemization of the fees and interest charges to be paid by the consumer;

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

~~(d)(e)~~ in a manner that is more conspicuous than the other information provided in the loan document and that is in at least 14-point bold typeface, a statement that "you cannot be prosecuted in criminal court for collection of this loan". The statement must be located immediately preceding the signature of the consumer."

Section 4. Section 31-1-722, MCA, is amended to read:

"31-1-722. Prohibited and permitted fees -- attorney fees and costs. (1) A licensee may not charge or receive, directly or indirectly, any interest, fees, or charges except those specifically authorized by this section.

(2) A licensee may not charge a fee for each deferred deposit loan entered into with a consumer that exceeds 25% of the principal amount of the deferred deposit loan that is advanced or, in the case of an electronic transaction, 25% of the principal amount of the deferred deposit loan.

(3) If there are insufficient funds to pay a check on the date of presentment, a licensee may charge a fee, not to exceed ~~\$15~~ \$30. Only one fee may be collected pursuant to this subsection with respect to a particular check even if it has been redeposited and returned more than once. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment. A licensee may not collect damages under 27-1-717(3) for an insufficient funds check.

(4) If the loan involves an electronic deduction and there are insufficient funds to deduct on the date on which the payment is due, a licensee may charge a fee, not to exceed ~~\$15~~ \$30. Only one fee may be collected pursuant to this subsection with respect to a particular loan even if the licensee has attempted more than once to deduct the amount due from the consumer's account. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment. A licensee may not collect damages under 27-1-717(3) for an electronic

deduction for which there are insufficient funds.

(5) If the loan agreement in 31-1-721 requires, reasonable attorney fees and court costs may be awarded to the party in whose favor a final judgment is rendered in any action on a deferred deposit loan entered into pursuant to this part."

SECTION 5. SECTION 31-1-724, MCA, IS AMENDED TO READ:

"31-1-724. Civil remedies. (1) The remedies provided in this section are cumulative and apply to licensees and unlicensed persons to whom this part applies.

(2) Any intentional violation of this part constitutes an unfair or deceptive trade practice.

(3) Any person found to have intentionally violated this part is liable to the consumer for actual and consequential damages, plus statutory damages of \$1,000 for each violation, plus costs and attorney fees.

(4) A consumer may sue for injunctive and other appropriate equitable relief to stop a person from violating any provisions of this part.

(5) The consumer may bring a class action suit to enforce this part.

(6) The remedies provided in this section are not intended to be the exclusive remedies available to a consumer for a violation of this part."

Section 6. 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) (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 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; or

(ii) deferred deposit loans provided for in Title 31, chapter 1, part 7.

(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) "License" means one or both of the licenses provided for by this chapter.

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

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

NEW SECTION. **Section 7. Effective date.** [This act] is effective July 1, 2003.

- END -

