

SENATE BILL 125

Introduced by B. Brown, et al.

1/17	Introduced
1/18	Referred to Judiciary
1/18	First Reading
1/23	Hearing
1/28	Committee Report--Bill Passed as Amended
2/02	2nd Reading Passed
2/04	3rd Reading Passed
	Transmitted to House
2/05	First Reading
2/05	Referred to Judiciary
3/20	Hearing
3/20	Tabled in Committee

1 *Senate* BILL NO. *125*
 2 INTRODUCED BY *Bob Brown, James Tolson, [unclear]*
 3 *for [unclear] with [unclear] Alice Mercer*

4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LOAN AND
 5 CREDIT AGREEMENTS TO BE IN WRITING IN ORDER TO BE
 6 ENFORCEABLE; AMENDING SECTION 28-2-903, MCA; AND PROVIDING
 7 AN APPLICABILITY DATE."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 **Section 1.** Section 28-2-903, MCA, is amended to read:

11 "28-2-903. What contracts must be in writing. (1) The
 12 following agreements are invalid unless the same or some
 13 note or memorandum thereof is in writing and subscribed by
 14 the party to be charged or his agent:

- 15 (a) an agreement that by its terms is not to be
- 16 performed within a year from the making thereof;
- 17 (b) a special promise to answer for the debt, default,
- 18 or miscarriage of another, except in the cases provided for
- 19 in 28-11-105;
- 20 (c) an agreement made upon consideration of marriage
- 21 other than a mutual promise to marry;
- 22 (d) an agreement for the leasing for a longer period
- 23 than 1 year or for the sale of real property or of an
- 24 interest therein. Such agreement, if made by an agent of the
- 25 party sought to be charged, is invalid unless the authority

1 of the agent is in writing and subscribed by the party
 2 sought to be charged.

3 (e) an agreement authorizing or employing an agent or
 4 broker to purchase or sell real estate for compensation or a
 5 commission.

6 (2) Evidence of an agreement described in (a) through
 7 (d) of subsection (1) or [section 2] is not admissible
 8 without the writing or secondary evidence of its contents.

9 (3) No evidence is admissible to charge a person upon a
 10 representation as to the credit of a third person unless
 11 such representation or some memorandum thereof is in writing
 12 and either subscribed by or in the handwriting of the party
 13 to be charged.

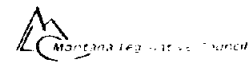
14 (4) Subsections (1) and (2) do not apply to agreements
 15 subject to the Uniform Commercial Code."

16 **NEW SECTION. Section 2.** Credit agreements to be in

17 writing. (1) A debtor or creditor may not maintain an action
 18 on a credit agreement unless the agreement is in writing,
 19 expresses consideration, sets forth the relevant terms and
 20 conditions, and is signed by the creditor and the debtor.

21 (2) As used in this section, the following definitions
 22 apply:

23 (a) "Credit agreement" means an agreement to lend or
 24 forbear repayment of money but does not include promissory
 25 notes that are not a part of a credit agreement or sales or



1 credit card transaction.

2 (b) "Creditor" means a person who is engaged primarily
3 in the business of making loans under a credit agreement
4 with a debtor.

5 (c) "Debtor" means a person who obtains credit, seeks a
6 credit agreement with a creditor, or owes money to a
7 creditor if the amount of the credit is in excess of \$10,000
8 and is not to be used primarily for personal, family, or
9 household purposes.

10 NEW SECTION. **Section 3. Codification instruction.**

11 [Section 2] is intended to be codified as an integral part
12 of Title 28, chapter 2, part 9, and the provisions of Title
13 28, chapter 2, part 9, apply to [section 2].

14 NEW SECTION. **Section 4. Applicability.** [This act]
15 applies to agreements made on or after October 1, 1991.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 125

INTRODUCED BY B. BROWN, LYNCH, KOEHNKE, THAYER,

PINSONEAULT, WILLIAMS, J. RICE, MERCER

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LOAN AND
CREDIT AGREEMENTS TO BE IN WRITING IN ORDER TO BE
ENFORCEABLE; AMENDING SECTION 28-2-903, MCA; AND PROVIDING
AN APPLICABILITY DATE."

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

Section 1. Section 28-2-903, MCA, is amended to read:

"28-2-903. What contracts must be in writing. (1) The following agreements are invalid unless the same or some note or memorandum thereof is in writing and subscribed by the party to be charged or his agent:

(a) an agreement that by its terms is not to be performed within a year from the making thereof;

(b) a special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in 28-11-105;

(c) an agreement made upon consideration of marriage other than a mutual promise to marry;

(d) an agreement for the leasing for a longer period than 1 year or for the sale of real property or of an interest therein. Such agreement, if made by an agent of the

party sought to be charged, is invalid unless the authority of the agent is in writing and subscribed by the party sought to be charged.

(e) an agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission.

(2) Evidence of an agreement described in (a) through (d) of subsection (1) or [section 2] is not admissible without the writing or secondary evidence of its contents.

(3) No evidence is admissible to charge a person upon a representation as to the credit of a third person unless such representation or some memorandum thereof is in writing and either subscribed by or in the handwriting of the party to be charged.

(4) Subsections (1) and (2) do not apply to agreements subject to the Uniform Commercial Code."

NEW SECTION. **Section 2.** Credit agreements to be in writing. (1) A debtor or creditor may not maintain an action on a credit agreement unless the agreement is in writing, expresses consideration, sets forth the relevant terms and conditions, and is signed by the creditor--and--the--debtor PARTY AGAINST WHOM THE AGREEMENT IS SOUGHT TO BE ENFORCED.

(2) As used in this section, the following definitions apply:

(a) "Credit agreement" means an agreement to lend or

SECOND READING



1 forbear repayment of money but does not include promissory
2 notes that are not a part of a credit agreement or sales or
3 credit card transaction.

4 (b) "Creditor" means a person who is engaged primarily
5 in the business of making loans under a credit agreement
6 with a debtor.

7 (c) "Debtor" means a person who obtains credit, seeks a
8 credit agreement with a creditor, or owes money to a
9 creditor if the amount of the credit INVOLVED IN THE
10 PARTICULAR AGREEMENT SOUGHT TO BE ENFORCED is in excess of
11 ~~\$10,000~~ \$50,000 and is not to be used primarily for
12 personal, family, or household purposes.

13 NEW SECTION. **Section 3. Codification** instruction.

14 [Section 2] is intended to be codified as an integral part
15 of Title 28, chapter 2, part 9, and the provisions of Title
16 28, chapter 2, part 9, apply to [section 2].

17 NEW SECTION. **Section 4. Applicability.** [This act]

18 applies to agreements made on or after October 1, 1991.

-End-

SENATE BILL NO. 125

INTRODUCED BY B. BROWN, LYNCH, KOEHNKE, THAYER,
PINSONEAULT, WILLIAMS, J. RICE, MERCER

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LOAN AND
CREDIT AGREEMENTS TO BE IN WRITING IN ORDER TO BE
ENFORCEABLE; AMENDING SECTION 28-2-903, MCA; AND PROVIDING
AN APPLICABILITY DATE."

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

Section 1. Section 28-2-903, MCA, is amended to read:

***28-2-903.** What contracts must be in writing. (1) The
following agreements are invalid unless the same or some
note or memorandum thereof is in writing and subscribed by
the party to be charged or his agent:

(a) an agreement that by its terms is not to be
performed within a year from the making thereof;

(b) a special promise to answer for the debt, default,
or miscarriage of another, except in the cases provided for
in 28-11-105;

(c) an agreement made upon consideration of marriage
other than a mutual promise to marry;

(d) an agreement for the leasing for a longer period
than 1 year or for the sale of real property or of an
interest therein. Such agreement, if made by an agent of the

party sought to be charged, is invalid unless the authority
of the agent is in writing and subscribed by the party
sought to be charged.

(e) an agreement authorizing or employing an agent or
broker to purchase or sell real estate for compensation or a
commission.

(2) Evidence of an agreement described in (a) through
(d) of subsection (1) or [section 2] is not admissible
without the writing or secondary evidence of its contents.

(3) No evidence is admissible to charge a person upon a
representation as to the credit of a third person unless
such representation or some memorandum thereof is in writing
and either subscribed by or in the handwriting of the party
to be charged.

(4) Subsections (1) and (2) do not apply to agreements
subject to the Uniform Commercial Code."

NEW SECTION. **Section 2.** Credit agreements to be in
writing. (1) A debtor or creditor may not maintain an action
on a credit agreement unless the agreement is in writing,
expresses consideration, sets forth the relevant terms and
conditions, and is signed by the ~~creditor--and--the--debtor~~
PARTY AGAINST WHOM THE AGREEMENT IS SOUGHT TO BE ENFORCED.

(2) AS used in this section, the following definitions
apply:

(a) "Credit agreement" means an agreement to lend or

THIRD READING



1 forbear repayment of money but does not include promissory
2 notes that are not a part of a credit agreement or sales or
3 credit card transaction.

4 (b) "Creditor" means a person who is engaged primarily
5 in the business of making loans under a credit agreement
6 with a debtor.

7 (c) "Debtor" means a person who obtains credit, seeks a
8 credit agreement with a creditor, or owes money to a
9 creditor if the amount of the credit INVOLVED IN THE
10 PARTICULAR AGREEMENT SOUGHT TO BE ENFORCED is in excess of
11 ~~\$10,000~~ \$50,000 and is not to be used primarily for
12 personal, family, or household purposes.

13 NEW SECTION. Section 3. Codification instruction.
14 [Section 2] is intended to be codified as an integral part
15 of Title 28, chapter 2, part 9, and the provisions of Title
16 28, chapter 2, part 9, apply to [section 2].

17 NEW SECTION. Section 4. Applicability. [This act]
18 applies to agreements made on or after October 1, 1991.

-End-