

1                    SENATE BILL NO. 5  
 2 INTRODUCED BY HAZELBAKER  
 3 -----

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
 5 CLARIFY THE LAWS RELATING TO CREDIT TRANSACTIONS AND  
 6 RELATIONSHIPS; AMENDING 18-318, 18-403, 18-510, 18-515,  
 7 29-208, 30-106, 30-208, 30-407, 30-504, 30-505, 47-124,  
 8 66-1601, 66-1607, 74-604, 74-606, AND 74-611, R.C.M. 1947;  
 9 AND REPEALING 29-207, R.C.M. 1947."

10  
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12        Section 1. Section 18-318, R.C.M. 1947, is amended to  
 13 read as follows:

14        "18-318. Assignment of real property. ~~Where~~ When an  
 15 assignment for the benefit of creditors embraces real  
 16 property, it is subject to the provisions of sections 73-201  
 17 ~~to through~~ 73-205, as well as to those of this chapter."

18        Section 2. Section 18-403, R.C.M. 1947, is amended to  
 19 read as follows:

20        "18-403. Exemptions. ~~This act~~ Section 18-402 shall not  
 21 apply to:

22        (1) ~~Those those~~ situations involving debt adjusting  
 23 incurred incidentally in the lawful practice of law in this  
 24 state;

25        (2) ~~Banks banks~~ and fiduciaries--as duly authorized

1 and admitted to transact business in this state and  
 2 performing credit and financial adjusting service in the  
 3 regular course of their principal business;

4        (3) ~~Title title~~ insurers and abstract companies, while  
 5 doing an escrow business;

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 7 court orders;

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17        (9) ~~Any any~~ person (other than a collection agency)  
 18 whose maximum fees or charges for all services in adjusting  
 19 the debtor's debts are ~~ten-per-cent-(10%)~~ of the amounts as  
 20 paid by the debtor;

21        (10) ~~Any any~~ person who, at the request of a debtor,  
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2 Section 3. Section 18-510, R.C.M. 1947, is amended to  
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5 reporting agency shall, upon request and proper  
6 identification of any consumer, clearly and accurately  
7 disclose to the consumer:

8 (a) the nature and substance of all information  
9 (except medical information) in its files on the consumer at  
10 the time of the request; and

11 (b) the sources of the information.

12 (2) The requirements of subsection (1) respecting the  
13 disclosure of sources of information and the recipients of  
14 consumer reports furnished prior to the ~~effective date of~~  
15 ~~the act July 1, 1975, do not apply to existing consumer~~  
16 ~~reporting agencies~~ except to the extent that the matter  
17 involved is contained in the files of the consumer reporting  
18 agency on that date."

19 Section 4. Section 18-515, R.C.M. 1947, is amended to  
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21 "18-515. Requirements on users of consumer reports.

22 (1) Whenever credit or insurance for personal, family, or  
23 household purposes, or employment involving a consumer is  
24 denied or the charge for such credit or insurance is  
25 increased either wholly or partly because of information

1 contained in a consumer report from a consumer reporting  
2 agency, the user of the consumer report shall so advise the  
3 consumer against whom such adverse action has been taken and  
4 supply the name and address of the consumer reporting agency  
5 making the report.

6 (2) Whenever credit for personal, family, or household  
7 purposes involving a consumer is denied or the charge for  
8 such credit is increased either wholly or partly because of  
9 information obtained from a person other than a consumer  
10 reporting agency bearing upon the consumer's credit  
11 worthiness, credit standing, credit capacity, character,  
12 general reputation, personal characteristics, or mode of  
13 living, the user of such information shall, within a  
14 reasonable period of time, upon the consumer's written  
15 request for the reasons for such adverse action received  
16 within ~~sixty~~ (60) days after ~~learning the consumer learned~~  
17 of such adverse action, disclose the nature of the  
18 information to the consumer. The user of such information  
19 shall clearly and accurately disclose to the consumer his  
20 right to make such written request at the time such adverse  
21 action is communicated to the consumer.

22 (3) No person may be held liable for any violation of  
23 this section if he shows by a preponderance of the evidence  
24 that at the time of the alleged violation he maintained  
25 reasonable procedures to assure compliance with the

1 provisions of subsections (1) and (2)."

2 Section 5. Section 29-208, R.C.M. 1947, is amended to  
3 read as follows:

4 "29-208. Certain transfers presumed fraudulent. Every  
5 transfer of personal property, other than a thing in action,  
6 ~~or a ship or cargo at sea or in a foreign port~~ and every  
7 lien thereon, other than a mortgage, when allowed by law,  
8 ~~and a contract of bottomry or respondentia is conclusively~~  
9 ~~presumed~~ if made by a person having at the time the  
10 possession or control of the property, and not accompanied  
11 by an immediate delivery and followed by an actual and  
12 continued change of possession of the things transferred, is  
13 conclusively presumed to be fraudulent and therefore void  
14 against:

15 (1) those who are his creditors while he remains in  
16 possession; and

17 (2) the successors in interest of such creditors; and  
18 against

19 (3) any persons on whom his estate devolves in trust  
20 for the benefit of others than himself; and against

21 (4) purchasers or encumbrancers in good faith  
22 subsequent to the transfer."

23 Section 6. Section 30-106, R.C.M. 1947, is amended to  
24 read as follows:

25 "30-106. Acceptance of guaranty. A mere offer to of

1 guaranty is not binding until notice of its acceptance is  
2 communicated by the guarantee to the guarantor; but an  
3 absolute guaranty is binding upon the guarantor without  
4 notice of acceptance."

5 Section 7. Section 30-208, R.C.M. 1947, is amended to  
6 read as follows:

7 "30-208. What dealings with debtor exonerate  
8 guarantor. A guarantor is exonerated, except so far as he  
9 may be indemnified by the principal, if by any act of the  
10 creditor without the consent of the guarantor the original  
11 obligation of the principal is altered in any respect or  
12 the remedies or rights of the creditor against the  
13 principal in respect thereto are in anywise any way  
14 impaired or suspended."

15 Section 8. Section 30-407, R.C.M. 1947, is amended to  
16 read as follows:

17 "30-407. Surety discharged by certain acts of the  
18 creditor. A surety is exonerated:

19 1. (1) ~~to~~ in like manner with a guarantor;

20 2. (2) ~~to~~ to the extent to which he is prejudiced by  
21 any act of the creditor which would naturally prove  
22 injurious to the remedies of the surety or inconsistent with  
23 his rights or which lessens his security; or

24 3. (3) ~~to~~ to the extent to which he is prejudiced by an  
25 omission of the creditor, when required by the surety, to do

1 anything, ~~when required by the surety~~, which it is his the  
2 creditor's duty to do."

3 Section 9. Section 30-504, R.C.M. 1947, is amended to  
4 read as follows:

5 "30-504. ~~A principal~~ Principal bound to reimburse his  
6 surety. If a surety satisfies the principal obligation, or  
7 any part thereof, whether with or without legal proceedings,  
8 the principal is bound to reimburse what he the surety has  
9 disbursed, including necessary costs and expenses; but the  
10 surety has no claim for reimbursement against other persons,  
11 though they may have been benefited by his act, except as  
12 prescribed by the next section."

13 Section 10. Section 30-505, R.C.M. 1947, is amended to  
14 read as follows:

15 "30-505. Surety's right of subrogation -- contribution  
16 from cosureties. A surety, upon satisfying the obligation of  
17 the principal, is entitled to enforce every remedy which the  
18 creditor then has against the principal to the extent of  
19 reimbursing what he the surety has expended, and also to  
20 require all his cosureties to contribute thereto, without  
21 regard to the order of time in which they became such."

22 Section 11. Section 47-124, R.C.M. 1947, is amended to  
23 read as follows:

24 "47-124. Legal interest. (1) Except as otherwise  
25 provided by the Uniform Commercial Code, ~~unless~~ unless

1 there is an express contract in writing, fixing a different  
2 rate, or a law or ordinance or resolution of a public body  
3 fixing a different rate on its obligations, interest is  
4 payable on all moneys at the rate of ~~six per cent~~ ~~(6%)~~ ~~per~~  
5 annum a year after they become due on:

- 6 (a) any instrument of writing, except a judgment;  
7 (b) on an account stated;  
8 (c) ~~and on~~ moneys lent or due on any settlement of  
9 accounts from the date on which the balance is ascertained;  
10 and  
11 (d) on moneys received to ~~for~~ the use of another and  
12 detained from him.

13 (2) In the computation of interest for a period of  
14 less than ~~one~~ ~~(1)~~ year, ~~three hundred and sixty five~~ ~~(365)~~  
15 days ~~are deemed to~~ constitute a year."

16 Section 12. Section 66-1601, R.C.M. 1947, is amended  
17 to read as follows:

18 "66-1601. Interest pawnbrokers may receive. No person  
19 ~~must~~ ~~may~~ carry on the business of pawnbroker or junk  
20 dealer by receiving goods pawned, or in pledge for loans, at  
21 any rate of interest above ~~ten per cent~~ ~~per annum~~ 10% a  
22 year without first obtaining a license. ~~There must be no~~  
23 ~~other or greater amount received by any~~ A pawnbroker or junk  
24 dealer, ~~or~~ his employees or agents, may not charge more than  
25 1% a month for interest, commission, discount, storage, or

1 and caring for property pledged ~~then the rate of three per~~  
2 ~~cent per month.~~"

3 Section 13. Section 66-1607, R.C.M. 1947, is amended  
4 to read as follows:

5 "66-1607. Penalties Violation as misdemeanor. The  
6 ~~penalties for a~~ violation of any of the provisions of this  
7 chapter ~~shall be~~ is a misdemeanor."

8 Section 14. Section 74-604, R.C.M. 1947, is amended to  
9 read as follows:

10 "74-604. Denial, suspension, or revocation of  
11 licenses. ~~(1)~~ Renewal of a license originally granted  
12 under section 74-603 may be denied, or a license may be  
13 suspended or revoked by the department on the following  
14 grounds:

15 ~~(1)(a)~~ (a) Material material misstatement of fact in the  
16 application for license;

17 ~~(2)(b)~~ willful failure to comply with any provision of  
18 this act relating to retail installment contracts;

19 ~~(3)(c)~~ defrauding any retail buyer to the buyer's  
20 damage;

21 ~~(4)(d)~~ fraudulent misrepresentation, circumvention, or  
22 concealment by the licensee through subterfuge or device of  
23 any of the material particulars or the nature thereof  
24 required to be stated or furnished to the retail buyer under  
25 this act.

1 ~~(b)(2)~~ If a licensee is a partnership, association, or  
2 corporation, it is sufficient cause for the suspension or  
3 revocation of a license that any officer, director, or  
4 trustee of a licensed association or corporation, or any  
5 member of a licensed partnership, has acted or failed to act  
6 so as to provide cause for suspending or revoking a license  
7 to that party as an individual. Each licensee is  
8 responsible for the acts of his employees while acting as  
9 his agent, if the licensee after actual knowledge of the  
10 acts retained the benefits, proceeds, profits, or advantage  
11 accruing from the acts or otherwise ratified the acts.

12 ~~(c)(3)~~ (a) A license may not be denied, suspended, or  
13 revoked, except after hearing. The department shall give the  
14 licensee at least ten-~~(10)~~ days' written notice, in the form  
15 of an order to show cause, of the time and place of the  
16 hearing by registered certified mail addressed to the  
17 licensee's principal place of business in this state ~~of the~~  
18 ~~licensee~~. The notice shall contain the grounds of complaint  
19 against the licensee.

20 (b) An order suspending or revoking a license shall  
21 recite the grounds upon which it is based. The order shall  
22 be entered upon the records of the department and is not  
23 effective until thirty-~~(30)~~ days after written notice has  
24 been forwarded by registered certified mail to the licensee  
25 at the his principal place of business.

1        ~~(c)~~ No revocation, suspension, or surrender of a  
2 license impairs or affects the obligation of a lawful retail  
3 installment contract acquired previously by the licensee."

4        Section 15. Section 74-606, R.C.M. 1947, is amended to  
5 read as follows:

6        "74-606. Powers of department. ~~(a)~~~~(1)~~ The department  
7 shall adopt rules necessary to carry out the intent and  
8 purposes of this act. All rules of general application  
9 shall be filed in the office of the department. A copy of  
10 every rule shall be mailed to each licensee, postage  
11 prepaid, at least ~~fifteen--~~~~(15)~~ days in advance of its  
12 effective date. However, the failure of a licensee to  
13 receive a copy of the rules does not exempt him from the  
14 duty of compliance with those rules lawfully adopted under  
15 the provisions of this section.

16        ~~(b)~~~~(2)~~ The department may issue subpoenas to compel  
17 the attendance of witnesses and the production of documents,  
18 papers, books, records, and other evidence before it in any  
19 matter over which it has jurisdiction, control, or  
20 supervision pertaining to this act. The department may  
21 administer oaths and affirmations to a person whose  
22 testimony is required.

23        ~~(c)~~~~(3)~~ If a person refuses to obey a subpoena, or to  
24 give testimony, or to produce evidence as required by it, a  
25 judge of the district court of the county in which the

1 licensed premises are located may, upon application and  
2 proof of the refusal, issue a subpoena or subpoena duces  
3 tecum for the witness to appear before the department and to  
4 give testimony, and to produce evidence as may be required  
5 by ~~it~~. The clerk of court shall then issue the subpoena,  
6 as directed, under the seal of the court, requiring the  
7 person to whom it is directed to appear at the time and  
8 place designated in it.

9        ~~(d)~~~~(4)~~ If a person served with a subpoena refuses to  
10 obey it, or to give testimony, or to produce evidence as  
11 required by it, the department may apply to the judge of the  
12 court issuing the subpoena for an attachment-against arrest  
13 warrant for that person, as for a contempt. The judge, upon  
14 satisfactory proof of the refusal, shall issue an  
15 attachment, arrest warrant, directed to any sheriff,  
16 constable, or police officer, for the arrest of that person  
17 and, upon his being brought before the judge, proceed to a  
18 hearing of the case. The judge may enforce compel:

19        (a) obedience to the subpoena; and  
20        (b) the answering of any question; and  
21        (c) the production of any evidence that may be proper  
22 or by a fine not exceeding one hundred dollars--~~(100)~~--or  
23 by imprisonment in the county jail, or by both fine and  
24 imprisonment and to compel  
25        (d) the witness to pay the costs of the proceeding.

1        (5) Failure to comply with the requirements of  
2        subsections (4)(a), (b), or (c) is punishable by a fine not  
3        exceeding \$100 or by imprisonment in the county jail, or  
4        both."

5        Section 16. Section 74-611, R.C.M. 1947, is amended to  
6        read as follows:

7        "74-611. Penalties. ~~(a)(1)~~ Any person who shall  
8        knowingly ~~violate any~~ violates a provision of this act or  
9        engage ~~engages~~ in the business of a sales finance company in  
10       this state without a license therefor as provided in this  
11       act shall be is guilty of a misdemeanor and upon conviction  
12       shall be punished by a fine of not more than ~~five-hundred~~  
13       ~~dollars-(\$500)~~ or by imprisonment for not more than ~~six--(6)~~  
14       ~~months~~ 2 or both.

15       ~~(b)(2)~~ Any person violating sections 74-607 to ~~through~~  
16       74-610, except as the result of an accidental and bona fide  
17       error of computation, shall be barred from recovery of any  
18       finance ~~charge~~ delinquency or collection charge on the  
19       contract."

20       Section 17. Repealer. Section 29-207, R.C.M. 1947, is  
21       repealed.

-End-

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PAMELA DUENSING  
ADMINISTRATIVE ASSISTANT

ROBERTA MOODY  
SUPERVISOR, ALTER SYSTEM



# Montana Legislative Council

State Capitol  
Helena, 59601

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DIRECTOR, RESEARCH

LC0023

1977 Legislature  
Code Commissioner Bill - Summary

Senate Bill No. 5

TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO CREDIT  
TRANSACTIONS AND RELATIONSHIPS.

(This summary does not include discussion of routine form or  
grammatical changes.)

Section 1. 18-318. Changed "73-201 through 73-205"  
as this was the original intent.

Section 2. 18-403. Changed "this act" to "section 18-  
402" as 18-402 is the substantive provision. The definitions  
in 18-401 should still apply.

Section 3. 18-510(2). Added "do not apply to existing  
consumer reporting agencies" after "the effective date of  
this act". The section as written has no meaning. This  
language was apparently inadvertently dropped from the final  
version of the bill in 1975.

Section 4. 18-515(2). Changed "learning" to "the con-  
sumer learned" near end of the first sentence, to clarify who  
must learn.

Section 5. 29-208. Transfers presumed fraudulent. Al-  
though covered generally by the Uniform Fraudulent Conveyances  
Act (chapter 1, Title 29) this section does not appear to con-  
flict and is probably not impliedly repealed or repealed by  
the general repealer contained in the Uniform Fraudulent Con-  
veyances Act (Sec. 14, ch. 126, Laws 1945). See discussion  
concerning repeal of 29-207. However, much of the language  
concerning ships or cargoes at sea, and contracts of bottomry  
or respondantia has little or no application in Montana. The  
section was copied from California law originally. Changes  
were made to delete archaic and non-applicable language, however,  
it might be just as advisable to specifically repeal the entire  
section.



Section 6. 30-106. Changed as follows for grammatical reasons: "A mere offer ~~to~~ of quaranty is . . ."

Section 7. 30-208. Added "are" before "in anywise impaired or suspended" to make sentence grammatically correct.

Section 8. 30-407(3). Changed "his" to "the creditors" to clarify whose duty is involved.

Sections 9 and 10. 30-504, 30-505. Changed "he" to "the surety" to clarify who "he" is.

Section 11. 47-124. Changed ". . . moneys received ~~to~~ for the use of another . . ." to clarify.

Section 12. 66-1601. Changed "No person ~~must~~ may . . ." for grammatical reasons. Changed "or" to "and" to include any combination of interest, commission, discount, storage, or custodial charges as not to exceed a total charge of 3% a month.

Section 13. 66-1607. Delete "the penalties for . . ." since a misdemeanor is not a penalty, but rather a type of crime.

Section 14. 74-604(c), (now (3)(a)). Changed "registered mail" to "certified mail" in two places since there is no need to insure contents. Certified mail requires a return receipt, which is all that's required here.

Section 15. 74-606. Substituted "warrant" for "attachment" as this use of attachment is improper and warrant appears to be the proper term.

Section 16. 74-611. Changed "74-607 ~~to~~ through 74-610" to reflect original intent.

Section 17. Repeals.

29-207. Transfers, etc., with intent to defraud creditors. This section seems to be the precursor of 29-107 - conveyance with intent to defraud - which is a part of the Fraudulent Conveyances Act. It appears inconsistent with 29-107, however, in that 29-107 specifically is not applicable to conveyances made with intent presumed in law to hinder, delay or defraud. 29-207 makes no such exception. That the two are inconsistent is important because the act which enacted the Uniform Fraudulent Conveyances Act, and hence 29-107, contained a general repealer to the effect that all prior laws inconsistent with that act were thereby repealed. Section 14, chapter 126, Laws 1945.

General repealers are given effect by the Montana Supreme Court, as indicated by the following language in Charette v. District Court, 107 M 489, 494,

"The repealing clause does not operate as an express repeal of chapter 10. Courts in general, in speaking of these repealing clauses, have held that they add nothing to the repealing effect of the act of which they are a part, as without the clause all prior conflicting laws, or parts of laws, would be repealed by implication. Their chief purpose seems to be to limit the extent of the repeal effected by the act to those laws, or parts of laws, which are actually inconsistent with the act."

With this construction of a general repealer clause, since only a court can make an authoritative decision as to whether a prior law is inconsistent, it awaits such a court decision before the inconsistent statute can be written off. Because our purpose is to clean up this type of situation, it is recommended that the legislature specifically repeal 29-207, without awaiting any court decision. Except for the inconsistency noted above, 29-207 merely duplicates 29-107 and the consequent right of the creditor in 29-109 to void any fraudulent conveyance.

Since under Charette only prior law which is actually inconsistent with a subsequent act is repealed by a general repealer, the rest of the sections following 29-207 are probably still valid. They do not appear to be inconsistent, and therefore even though the general subject area has been covered by the later Uniform Fraudulent Conveyances Act, the general repealer would prevent implied repeal of all parts of the former act which are not inconsistent.

Approved by Committee  
on Business and Industry

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2 performing credit and financial adjusting service in the  
3 regular course of their principal business;

4        (3) ~~title title~~ insurers and abstract companies, while  
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6        (4) ~~judicial~~ judicial officers or others acting under  
7 court orders;

8        (5) ~~Nonprofit~~ nonprofit or charitable corporations or  
9 associations engaged in debt adjusting;

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14 the course of arranging adjustment of debts with business  
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16        (8) ~~Employers employers~~ for their employees;

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18 whose maximum fees or charges for all services in adjusting  
19 the debtor's debts are ~~ten-per-cent-(10%)~~ of the amounts as  
20 paid by the debtor;

21        (10) ~~Any any~~ person who, at the request of a debtor,  
22 arranges for or makes a loan to the debtor, and who, at the  
23 authorization of the debtor, acts as an adjuster of the  
24 debtor's debts in the disbursement of the proceeds of the  
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17 of such adverse action, disclose the nature of the  
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20 right to make such written request at the time such adverse  
21 action is communicated to the consumer.

22 (3) No person may be held liable for any violation of  
23 this section if he shows by a preponderance of the evidence  
24 that at the time of the alleged violation he maintained  
25 reasonable procedures to assure compliance with the

1 provisions of subsections (1) and (2)."

2 Section 5. Section 29-208, R.C.M. 1947, is amended to  
3 read as follows:

4 "29-208. Certain transfers presumed fraudulent. Every  
5 transfer of personal property, other than a thing in action,  
6 ~~or a ship or cargo at sea or in a foreign port,~~ and every  
7 lien thereon, other than a mortgage, when allowed by law,  
8 ~~and a contract of bottomry or respondentia, is conclusively~~  
9 ~~presumed, if made by a person having at the time the~~  
10 ~~possession or control of the property, and not accompanied~~  
11 ~~by an immediate delivery, and followed by an actual and~~  
12 ~~continued change of possession of the things transferred, is~~  
13 conclusively presumed to be fraudulent, and therefore void  
14 against:

15 (1) those who are his creditors while he remains in  
16 possession; and

17 (2) the successors in interest of such creditors; and  
18 against

19 (3) any persons on whom his estate devolves in trust  
20 for the benefit of others than himself; and against

21 (4) purchasers or encumbrancers in good faith  
22 subsequent to the transfer."

23 Section 6. Section 30-106, R.C.M. 1947, is amended to  
24 read as follows:

25 "30-106. Acceptance of guaranty. A mere offer to of

1 guaranty is not binding until notice of its acceptance is  
2 communicated by the guarantee to the guarantor; but an  
3 absolute guaranty is binding upon the guarantor without  
4 notice of acceptance."

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7 "30-208. What dealings with debtor exonerate  
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9 may be indemnified by the principal, if by any act of the  
10 creditor without the consent of the guarantor, the original  
11 obligation of the principal is altered in any respect, or  
12 the remedies or rights of the creditor against the  
13 principal, in respect thereto, are in anywise any way  
14 impaired or suspended."

15 Section 8. Section 30-407, R.C.M. 1947, is amended to  
16 read as follows:

17 "30-407. Surety discharged by certain acts of the  
18 creditor. A surety is exonerated:

19 1. ~~to~~ in like manner with a guarantor;

20 2. ~~to~~ to the extent to which he is prejudiced by  
21 any act of the creditor which would naturally prove  
22 injurious to the remedies of the surety or inconsistent with  
23 his rights, or which lessens his security; or

24 3. ~~to~~ to the extent to which he is prejudiced by an  
25 omission of the creditor, when required by the surety, to do

1 anything, ~~when required by the surety~~, which it is his ~~the~~  
2 ~~creditor's~~ duty to do."

3 Section 9. Section 30-504, R.C.M. 1947, is amended to  
4 read as follows:

5 "30-504. ~~A principal~~ Principal bound to reimburse his  
6 surety. If a surety satisfies the principal obligation, or  
7 any part thereof, whether with or without legal proceedings,  
8 the principal is bound to reimburse what he ~~the surety~~ has  
9 disbursed, including necessary costs and expenses; but the  
10 surety has no claim for reimbursement against other persons,  
11 though they may have been benefited by his act, except as  
12 prescribed by the next section."

13 Section 10. Section 30-505, R.C.M. 1947, is amended to  
14 read as follows:

15 "30-505. Surety's right of subrogation -- contribution  
16 from cosureties. A surety, upon satisfying the obligation of  
17 the principal, is entitled to enforce every remedy which the  
18 creditor then has against the principal to the extent of  
19 reimbursing what he ~~the surety~~ has expended, and also to  
20 require all his cosureties to contribute thereto, without  
21 regard to the order of time in which they became such."

22 Section 11. Section 47-124, R.C.M. 1947, is amended to  
23 read as follows:

24 "47-124. Legal interest. (1) Except as otherwise  
25 provided by the Uniform Commercial Code, ~~unless~~ unless

1 there is an express contract in writing, fixing a different  
2 rate, or a law or ordinance or resolution of a public body  
3 fixing a different rate on its obligations, interest is  
4 payable on all moneys at the rate of ~~six per cent--(6%)--per~~  
5 ~~annum~~ a year after they become due on:

6 (a) any instrument of writing, except a judgment;  
7 (b) on an account stated;  
8 (c) ~~and--on~~ moneys lent or due on any settlement of  
9 accounts from the date on which the balance is ascertained;  
10 and  
11 (d) on moneys received to for the use of another and  
12 detained from him.

13 (2) In the computation of interest for a period of  
14 less than ~~one--(1) year, three-hundred-and--sixty-five--(365)~~  
15 ~~days are deemed to constitute a year.~~

16 Section 12. Section 66-1601, R.C.M. 1947, is amended  
17 to read as follows:

18 "66-1601. Interest pawnbrokers may receive. No person  
19 ~~must--~~ ~~may~~ carry on the business of pawnbroker or junk  
20 dealer by receiving goods pawned, or in pledge for loans, at  
21 any rate of interest above ~~ten per cent--per--annum~~, 10% a  
22 year without first obtaining a license. ~~There must be no~~  
23 ~~other or greater amount received by any~~ A pawnbroker or junk  
24 dealer, or his employees or agents, may not charge more than  
25 3% a month for interest, commission, discount, storage, or

1 and caring for property pledged ~~then the rate of three per~~  
2 cent per month."

3 Section 13. Section 66-1607, R.C.M. 1947, is amended  
4 to read as follows:

5 "66-1607. Penalties Violation as misdemeanor. The  
6 penalties for a violation of any of the provisions of this  
7 chapter ~~shall be~~ is a misdemeanor."

8 Section 14. Section 74-604, R.C.M. 1947, is amended to  
9 read as follows:

10 "74-604. Denial, suspension, or revocation of  
11 licenses. ~~(1)~~ Renewal of a license originally granted  
12 under section 74-603 may be denied, or a license may be  
13 suspended or revoked by the department on the following  
14 grounds:

15 ~~(1)(a)~~ Material misstatement of fact in the  
16 application for license;

17 ~~(2)(b)~~ willful failure to comply with any provision of  
18 this act relating to retail installment contracts;

19 ~~(3)(c)~~ defrauding any retail buyer to the buyer's  
20 damage;

21 ~~(4)(d)~~ fraudulent misrepresentation, circumvention, or  
22 concealment by the licensee through subterfuge or device of  
23 any of the material particulars or the nature thereof  
24 required to be stated or furnished to the retail buyer under  
25 this act.

1 ~~(b)(2)~~ If a licensee is a partnership, association, or  
2 corporation, it is sufficient cause for the suspension or  
3 revocation of a license that any officer, director, or  
4 trustee of a licensed association or corporation, or any  
5 member of a licensed partnership, has acted or failed to act  
6 so as to provide cause for suspending or revoking a license  
7 to that party as an individual. Each licensee is  
8 responsible for the acts of his employees while acting as  
9 his agent, if the licensee after actual knowledge of the  
10 acts retained the benefits, proceeds, profits, or advantage  
11 accruing from the acts or otherwise ratified the acts.

12 ~~(c)(3)~~ (a) A license may not be denied, suspended, or  
13 revoked, except after hearing. The department shall give the  
14 licensee at least ~~ten~~ ten days' written notice, in the form  
15 of an order to show cause, of the time and place of the  
16 hearing by registered certified mail addressed to the  
17 licensee's principal place of business in this state ~~of the~~  
18 licensee. The notice shall contain the grounds of complaint  
19 against the licensee.

20 (b) An order suspending or revoking a license shall  
21 recite the grounds upon which it is based. The order shall  
22 be entered upon the records of the department and is not  
23 effective until ~~thirty~~ thirty days after written notice has  
24 been forwarded by registered certified mail to the licensee  
25 at the his principal place of business.

1        ~~(c)~~ No revocation, suspension, or surrender of a  
 2 license impairs or affects the obligation of a lawful retail  
 3 installment contract acquired previously by the licensee."

4        Section 15. Section 74-606, R.C.M. 1947, is amended to  
 5 read as follows:

6        "74-606. Powers of department. ~~(a)(1)~~ The department  
 7 shall adopt rules necessary to carry out the intent and  
 8 purposes of this act. All rules of general application  
 9 shall be filed in the office of the department. A copy of  
 10 every rule shall be mailed to each licensee, postage  
 11 prepaid, at least ~~fifteen--(15)~~ days in advance of its  
 12 effective date. However, the failure of a licensee to  
 13 receive a copy of the rules does not exempt him from the  
 14 duty of compliance with those rules lawfully adopted under  
 15 the provisions of this section.

16        ~~(b)(2)~~ The department may issue subpoenas to compel  
 17 the attendance of witnesses and the production of documents,  
 18 papers, books, records, and other evidence before it in any  
 19 matter over which it has jurisdiction, control, or  
 20 supervision pertaining to this act. The department may  
 21 administer oaths and affirmations to a person whose  
 22 testimony is required.

23        ~~(c)(3)~~ If a person refuses to obey a subpoena, or to  
 24 give testimony, or to produce evidence as required by it, a  
 25 judge of the district court of the county in which the

1 licensed premises are located may, upon application and  
 2 proof of the refusal, issue a subpoena or subpoena duces  
 3 tecum for the witness to appear before the department and to  
 4 give testimony, and to produce evidence as may be required  
 5 ~~by--it.~~ The clerk of court shall then issue the subpoena,  
 6 as directed, under the seal of the court, requiring the  
 7 person to whom it is directed to appear at the time and  
 8 place designated in it.

9        ~~(d)(4)~~ If a person served with a subpoena refuses to  
 10 obey it, or to give testimony, or to produce evidence as  
 11 required by it, the department may apply to the judge of the  
 12 court issuing the subpoena for an ~~attachment-against~~ arrest  
 13 warrant for that person, as for a contempt. The judge, upon  
 14 satisfactory proof of the refusal, shall issue an  
 15 ~~attachment~~ arrest warrant, directed to any sheriff,  
 16 constable, or police officer, for the arrest of that person,  
 17 and, upon his being brought before the judge, proceed to a  
 18 hearing of the case. The judge may enforce compel:

19        (a) obedience to the subpoena; and  
 20        (b) the answering of any question; and  
 21        (c) the production of any evidence that may be proper;  
 22 ~~or by a fine, not exceeding one hundred dollars--(\$100)--or~~  
 23 ~~by--imprisonment--in--the--county--jail--or--by--both--fine--and~~  
 24 ~~imprisonment--and--to--compel~~  
 25        (d) the witness to pay the costs of the proceeding.



1        ~~(5) Failure to comply with the requirements of~~  
2 ~~subsections (4)(a), (b), or (c) is punishable by a fine not~~  
3 ~~exceeding \$100 or by imprisonment in the county jail, or~~  
4 ~~both."~~

5        Section 16. Section 74-611, R.C.M. 1947, is amended to  
6 read as follows:

7        "74-611. Penalties. ~~(a)(1)~~ Any person who shall  
8 knowingly ~~violate any~~ violates a provision of this act or  
9 engage ~~engages~~ in the business of a sales finance company in  
10 this state without a license therefor as provided in this  
11 act shall ~~be~~ is guilty of a misdemeanor and upon conviction  
12 shall be punished by a fine of not more than five-hundred  
13 dollars ~~(\$500)~~ or by imprisonment for not more than six ~~---(6)~~  
14 months, or both.

15        ~~(b)(2)~~ Any person violating sections 74-607 to through  
16 74-610, except as the result of an accidental and bona fide  
17 error of computation, shall be barred from recovery of any  
18 finance ~~charge~~ delinquency, or collection charge on the  
19 contract."

20        Section 17. Repealer. Section 29-207, R.C.M. 1947, is  
21 repealed.

-End-

1                    SENATE BILL NO. 5  
2 INTRODUCED BY HAZELBAKER

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
5 CLARIFY THE LAWS RELATING TO CREDIT TRANSACTIONS AND  
6 RELATIONSHIPS; AMENDING 18-318, 18-403, 18-510, 18-515,  
7 29-208, 30-106, 30-208, 30-407, 30-504, 30-505, 47-124,  
8 66-1601, 66-1607, 74-604, 74-606, AND 74-611, R.C.M. 1947;  
9 AND REPEALING 29-207, R.C.M. 1947."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
12        Section 1. Section 18-318, R.C.M. 1947, is amended to  
13 read as follows:

14        "18-318. Assignment of real property. ~~Where~~ ~~when~~ an  
15 assignment for the benefit of creditors embraces real  
16 property, it is subject to the provisions of ~~sections~~ 73-201  
17 ~~to~~ through 73-205, as well as to those of this chapter."

18        Section 2. Section 18-403, R.C.M. 1947, is amended to  
19 read as follows:

20        "18-403. Exemptions. ~~This act~~ Section 18-402 shall not  
21 apply to:

- 22        (1) ~~These~~ ~~those~~ situations involving debt adjusting  
23 incurred incidentally in the lawful practice of law in this  
24 state;
- 25        (2) ~~Banks~~ ~~banks~~ and fiduciaries--as duly authorized

1 and admitted to transact business in this state and  
2 performing credit and financial adjusting service in the  
3 regular course of their principal business;

4        (3) ~~Title~~ title insurers and abstract companies, while  
5 doing an escrow business;

6        (4) ~~Judicial~~ judicial officers or others acting under  
7 court orders;

8        (5) ~~Nonprofit~~ nonprofit or charitable corporations or  
9 associations engaged in debt adjusting;

10        (6) ~~These~~ ~~those~~ situations involving debt adjusting  
11 incurred incidentally in connection with the lawful practice  
12 ~~as~~ of a certified public accountant;

13        (7) ~~Bona~~ bona fide trade or mercantile associations in  
14 the course of arranging adjustment of debts with business  
15 establishments;

16        (8) ~~Employers~~ employers for their employees;

17        (9) ~~Any~~ any person (other than a collection agency)  
18 whose ~~maximum~~ fees or charges for all services in adjusting  
19 the debtor's debts are ~~ten-per-cent-(10%)~~ of the amounts as  
20 paid by the debtor;

21        (10) ~~Any~~ any person who, at the request of a debtor,  
22 arranges for or makes a loan to the debtor, and who, at the  
23 authorization of the debtor, acts as an adjuster of the  
24 debtor's debts in the disbursement of the proceeds of the  
25 loan, without compensation for the services rendered in

1 adjusting the debts."

2 Section 3. Section 18-510, R.C.M. 1947, is amended to  
3 read as follows:

4 "18-510. Disclosures to consumers. (1) Every consumer  
5 reporting agency shall, upon request and proper  
6 identification of any consumer, clearly and accurately  
7 disclose to the consumer:

8 (a) the nature and substance of all information  
9 (except medical information) in its files on the consumer at  
10 the time of the request; and

11 (b) the sources of the information.

12 (2) The requirements of subsection (1) respecting the  
13 disclosure of sources of information and the recipients of  
14 consumer reports furnished prior to the ~~effective date of~~  
15 ~~the act July 1, 1975, do not apply to existing consumer~~  
16 ~~reporting agencies~~ except to the extent that the matter  
17 involved is contained in the files of the consumer reporting  
18 agency on that date."

19 Section 4. Section 18-515, R.C.M. 1947, is amended to  
20 read as follows:

21 "18-515. Requirements on users of consumer reports.  
22 (1) Whenever credit or insurance for personal, family, or  
23 household purposes, or employment involving a consumer is  
24 denied or the charge for such credit or insurance is  
25 increased either wholly or partly because of information

1 contained in a consumer report from a consumer reporting  
2 agency, the user of the consumer report shall so advise the  
3 consumer against whom such adverse action has been taken and  
4 supply the name and address of the consumer reporting agency  
5 making the report.

6 (2) Whenever credit for personal, family, or household  
7 purposes involving a consumer is denied or the charge for  
8 such credit is increased either wholly or partly because of  
9 information obtained from a person other than a consumer  
10 reporting agency bearing upon the consumer's credit  
11 worthiness, credit standing, credit capacity, character,  
12 general reputation, personal characteristics, or mode of  
13 living, the user of such information shall, within a  
14 reasonable period of time, upon the consumer's written  
15 request for the reasons for such adverse action received  
16 within ~~sixty~~ ~~(60)~~ days after ~~learning the~~ ~~consumer learned~~  
17 of such adverse action, disclose the nature of the  
18 information to the consumer. The user of such information  
19 shall clearly and accurately disclose to the consumer his  
20 right to make such written request at the time such adverse  
21 action is communicated to the consumer.

22 (3) No person may be held liable for any violation of  
23 this section if he shows by a preponderance of the evidence  
24 that at the time of the alleged violation he maintained  
25 reasonable procedures to assure compliance with the

1 provisions of subsections (1) and (2)."

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3 absolute guaranty is binding upon the guarantor without  
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21 any act of the creditor which would naturally prove  
22 injurious to the remedies of the surety or inconsistent with  
23 his rights, or which lessens his security; or

24 3. (3) to the extent to which he is prejudiced by an  
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4 payable on all moneys at the rate of ~~six-per-cent--(6%)--per~~  
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7 (b) on an account stated;  
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9 accounts from the date on which the balance is ascertained;  
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20 dealer by receiving goods pawned, or in pledge for loans, at  
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13 suspended or revoked by the department on the following  
14 grounds:

15 ~~(1)(a)~~ (a) Material ~~material~~ misstatement of fact in the  
16 application for license;

17 ~~(2)(b)~~ willful failure to comply with any provision of  
18 this act relating to retail installment contracts;

19 ~~(3)(c)~~ defrauding any retail buyer to the buyer's  
20 damage;

21 ~~(4)(d)~~ fraudulent misrepresentation, circumvention, or  
22 concealment by the licensee through subterfuge or device of  
23 any of the material particulars or the nature thereof  
24 required to be stated or furnished to the retail buyer under  
25 this act.

1 ~~(b)(2)~~ If a licensee is a partnership, association, or  
2 corporation, it is sufficient cause for the suspension or  
3 revocation of a license that any officer, director, or  
4 trustee of a licensed association or corporation, or any  
5 member of a licensed partnership, has acted or failed to act  
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10 acts retained the benefits, proceeds, profits, or advantage  
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13 revoked, except after hearing. The department shall give the  
14 licensee at least ~~ten~~ (10) days' written notice, in the form  
15 of an order to show cause, of the time and place of the  
16 hearing by registered certified mail addressed to the  
17 licensee's principal place of business in this state ~~of the~~  
18 ~~licensee~~. The notice shall contain the grounds of complaint  
19 against the licensee.

20 (b) An order suspending or revoking a license shall  
21 recite the grounds upon which it is based. The order shall  
22 be entered upon the records of the department and is not  
23 effective until ~~thirty~~ (30) days after written notice has  
24 been forwarded by registered certified mail to the licensee  
25 at the his principal place of business.

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 2 license impairs or affects the obligation of a lawful retail  
 3 installment contract acquired previously by the licensee."

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 7 shall adopt rules necessary to carry out the intent and  
 8 purposes of this act. All rules of general application  
 9 shall be filed in the office of the department. A copy of  
 10 every rule shall be mailed to each licensee, postage  
 11 prepaid, at least ~~fifteen--(15)~~ days in advance of its  
 12 effective date. However, the failure of a licensee to  
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 12 court issuing the subpoena for an ~~attachment--against~~ arrest  
 13 warrant for that person, as for a contempt. The judge, upon  
 14 satisfactory proof of the refusal, shall issue an  
 15 ~~attachment, arrest warrant,~~ directed to any sheriff,  
 16 constable, or police officer, for the arrest of that person,  
 17 and, upon his being brought before the judge, proceed to a  
 18 hearing of the case. The judge may enforce compel

19        (a) obedience to the subpoena, and

20        (b) the answering of any question, and

21        (c) the production of any evidence that may be proper,  
 22 ~~or by a fine, not exceeding one hundred dollars--(100)--or~~  
 23 ~~by--imprisonment--in--the--county--jail--or--by--both--fine--and~~  
 24 ~~imprisonment,--and--to--compel~~

25        (d) the witness to pay the costs of the proceeding.

1       ~~(5) Failure to comply with the requirements of~~  
2       ~~subsections (4)(a), (b), or (c) is punishable by a fine not~~  
3       ~~exceeding \$100 or by imprisonment in the county jail, or~~  
4       ~~both.~~"

5       Section 16. Section 74-611, R.C.M. 1947, is amended to  
6       read as follows:

7       "74-611. Penalties. ~~(a)(1)~~ Any person who ~~shall~~  
8       ~~knowingly violate any~~ violates a provision of this act or  
9       ~~engage~~ engages in the business of a sales finance company in  
10      this state without a license ~~therefor~~ as provided in this  
11      act ~~shall be~~ is guilty of a misdemeanor and upon conviction  
12      shall be punished by a fine of not more than ~~five-hundred~~  
13      ~~dollars--(\$500)~~ or by imprisonment for not more than ~~six--(6)~~  
14      ~~months~~ or both.

15      ~~(b)(2)~~ Any person violating sections 74-607 ~~to~~ through  
16      74-610, except as the result of an accidental and bona fide  
17      error of computation, shall be barred from recovery of any  
18      finance ~~charge~~ delinquency or collection charge on the  
19      contract."

20      Section 17. Repealer. Section 29-207, R.C.M. 1947, is  
21      repealed.

-End-



## SENATE BILL NO. 5

INTRODUCED BY HAZELBAKER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO CREDIT TRANSACTIONS AND RELATIONSHIPS; AMENDING 18-318, 18-403, 18-510, 18-515, 29-208, 30-106, 30-208, 30-407, 30-504, 30-505, 47-124, 66-1601, 66-1607, 74-604, 74-606, AND 74-611, R.C.M. 1947; AND REPEALING 29-207, R.C.M. 1947."

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

Section 1. Section 18-318, R.C.M. 1947, is amended to read as follows:

"18-318. Assignment of real property. ~~Where~~ When an assignment for the benefit of creditors embraces real property, it is subject to the provisions of ~~sections 73-201 to through 73-205~~, as well as to those of this chapter."

Section 2. Section 18-403, R.C.M. 1947, is amended to read as follows:

"18-403. Exemptions. ~~This act Section 18-402~~ shall not apply to:

(1) ~~Those~~ those situations involving debt adjusting incurred incidentally in the lawful practice of law in this state;

(2) ~~Banks~~ banks and fiduciaries, as duly authorized

and admitted to transact business in this state and performing credit and financial adjusting service in the regular course of their principal business;

(3) ~~Title~~ title insurers and abstract companies, while doing an escrow business;

(4) ~~Judicial~~ judicial officers or others acting under court orders;

(5) ~~Nonprofit~~ nonprofit or charitable corporations or associations engaged in debt adjusting;

(6) ~~Those~~ those situations involving debt adjusting incurred incidentally in connection with the lawful practice ~~of~~ a certified public accountant;

(7) ~~Bona fide~~ bona fide trade or mercantile associations in the course of arranging adjustment of debts with business establishments;

(8) ~~Employers~~ employers for their employees;

(9) ~~Any~~ any person (other than a collection agency) whose maximum fees or charges for all services in adjusting the debtor's debts are ~~ten-per-cent-(10%)~~ of the amounts as paid by the debtor;

(10) ~~Any~~ any person who, at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan without compensation for the services rendered in

1 adjusting the debts."

2 Section 3. Section 18-510, R.C.M. 1947, is amended to  
3 read as follows:

4 "18-510. Disclosures to consumers. (1) Every consumer  
5 reporting agency shall, upon request and proper  
6 identification of any consumer, clearly and accurately  
7 disclose to the consumer:

8 (a) the nature and substance of all information  
9 (except medical information) in its files on the consumer at  
10 the time of the request; and

11 (b) the sources of the information.

12 (2) The requirements of subsection (1) respecting the  
13 disclosure of sources of information and the recipients of  
14 consumer reports furnished prior to ~~the effective date of~~  
15 ~~the act July 1, 1975, do not apply to existing consumer~~  
16 ~~reporting agencies~~ except to the extent that the matter  
17 involved is contained in the files of the consumer reporting  
18 agency on that date."

19 Section 4. Section 18-515, R.C.M. 1947, is amended to  
20 read as follows:

21 "18-515. Requirements on users of consumer reports.

22 (1) Whenever credit or insurance for personal, family, or  
23 household purposes, or employment involving a consumer is  
24 denied or the charge for such credit or insurance is  
25 increased either wholly or partly because of information

1 contained in a consumer report from a consumer reporting  
2 agency, the user of the consumer report shall so advise the  
3 consumer against whom such adverse action has been taken and  
4 supply the name and address of the consumer reporting agency  
5 making the report.

6 (2) Whenever credit for personal, family, or household  
7 purposes involving a consumer is denied or the charge for  
8 such credit is increased either wholly or partly because of  
9 information obtained from a person other than a consumer  
10 reporting agency bearing upon the consumer's credit  
11 worthiness, credit standing, credit capacity, character,  
12 general reputation, personal characteristics, or mode of  
13 living, the user of such information shall, within a  
14 reasonable period of time, upon the consumer's written  
15 request for the reasons for such adverse action received  
16 within ~~sixty~~ (60) days after ~~learning the consumer learned~~  
17 of such adverse action, disclose the nature of the  
18 information to the consumer. The user of such information  
19 shall clearly and accurately disclose to the consumer his  
20 right to make such written request at the time such adverse  
21 action is communicated to the consumer.

22 (3) No person may be held liable for any violation of  
23 this section if he shows by a preponderance of the evidence  
24 that at the time of the alleged violation he maintained  
25 reasonable procedures to assure compliance with the

1 provisions of subsections (1) and (2)."

2 Section 5. Section 29-208, R.C.M. 1947, is amended to  
3 read as follows:

4 "29-208. Certain transfers presumed fraudulent. Every  
5 transfer of personal property, other than a thing in action,  
6 ~~or a ship or cargo at sea or in a foreign port~~ and every  
7 lien thereon, other than a mortgage, when allowed by law,  
8 ~~and a contract of bottomry or respondentia is conclusively~~  
9 ~~presumed~~, if made by a person having at the time the  
10 possession or control of the property, and not accompanied  
11 by an immediate delivery, and followed by an actual and  
12 continued change of possession of the things transferred, is  
13 conclusively presumed to be fraudulent, and therefore void,  
14 against:

15 (1) those who are his creditors while he remains in  
16 possession; and

17 (2) the successors in interest of such creditors; and  
18 against

19 (3) any persons on whom his estate devolves in trust  
20 for the benefit of others than himself; and against

21 (4) purchasers or encumbrancers in good faith  
22 subsequent to the transfer."

23 Section 6. Section 30-106, R.C.M. 1947, is amended to  
24 read as follows:

25 "30-106. Acceptance of guaranty. A mere offer to of

1 guaranty is not binding until notice of its acceptance is  
2 communicated by the guarantee to the guarantor; but an  
3 absolute guaranty is binding upon the guarantor without  
4 notice of acceptance."

5 Section 7. Section 30-208, R.C.M. 1947, is amended to  
6 read as follows:

7 "30-208. What dealings with debtor exonerate  
8 guarantor. A guarantor is exonerated, except so far as he  
9 may be indemnified by the principal, if by any act of the  
10 creditor without the consent of the guarantor, the original  
11 obligation of the principal is altered in any respect, or  
12 the remedies or rights of the creditor against the  
13 principal, in respect thereto, are in anywise any way  
14 impaired or suspended."

15 Section 8. Section 30-407, R.C.M. 1947, is amended to  
16 read as follows:

17 "30-407. Surety discharged by certain acts of the  
18 creditor. A surety is exonerated:

19 (1) in in like manner with a guarantor;

20 (2) to to the extent to which he is prejudiced by  
21 any act of the creditor which would naturally prove  
22 injurious to the remedies of the surety or inconsistent with  
23 his rights, or which lessens his security; or

24 (3) to to the extent to which he is prejudiced by an  
25 omission of the creditor, when required by the surety, to do

1 anything--when--required--by--the--surety, which it is his the  
2 creditor's duty to do."

3 Section 9. Section 30-504, R.C.M. 1947, is amended to  
4 read as follows:

5 "30-504. ~~A--principal~~ Principal bound to reimburse his  
6 surety. If a surety satisfies the principal obligation or  
7 any part thereof, whether with or without legal proceedings,  
8 the principal is bound to reimburse what ~~he~~ the surety has  
9 disbursed, including necessary costs and expenses; but the  
10 surety has no claim for reimbursement against other persons,  
11 though they may have been benefited by his act, except as  
12 prescribed by the next section."

13 Section 10. Section 30-505, R.C.M. 1947, is amended to  
14 read as follows:

15 "30-505. Surety's right of subrogation -- contribution  
16 from cosureties. A surety, upon satisfying the obligation of  
17 the principal, is entitled to enforce every remedy which the  
18 creditor then has against the principal to the extent of  
19 reimbursing what ~~he~~ the surety has expended, and also to  
20 require all his cosureties to contribute thereto, without  
21 regard to the order of time in which they became such."

22 Section 11. Section 47-124, R.C.M. 1947, is amended to  
23 read as follows:

24 "47-124. Legal interest. (1) Except as otherwise  
25 provided by the Uniform Commercial Code, ~~unless~~ unless

1 there is an express contract in writing, fixing a different  
2 rate, or a law or ordinance or resolution of a public body  
3 fixing a different rate on its obligations, interest is  
4 payable on all moneys at the rate of ~~six-per-cent--(6%)--per~~  
5 annum a year after they become due on:

6 (a) any instrument of writing, except a judgment;

7 (b) on an account stated;

8 (c) ~~and--on~~ moneys lent or due on any settlement of  
9 accounts from the date on which the balance is ascertained;

10 and

11 (d) on moneys received to for the use of another and  
12 detained from him.

13 (2) in the computation of interest for a period of  
14 less than ~~one--(1) year, three-hundred-and--sixty-five--(365)~~  
15 days are--deemed--to constitute a year."

16 Section 12. Section 66-1601, R.C.M. 1947, is amended  
17 to read as follows:

18 "66-1601. Interest pawnbrokers may receive. No person  
19 ~~must--(may)~~ carry on the business of pawnbroker or junk  
20 dealer by receiving goods pawned, or in pledge for loans, at  
21 any rate of interest above ~~ten-per-cent--per--annum~~ 10% a  
22 year without first obtaining a license. ~~There--must--be--no~~  
23 ~~other--or--greater--amount--received--by--any~~ A pawnbroker or junk  
24 ~~dealer~~ or his employees or agents, may not charge more than  
25 3% a month for interest, commission, discount, storage, or

1 and caring for property pledged, ~~then the rate of three per~~  
2 ~~cent per month."~~

3 Section 13. Section 66-1607, R.C.M. 1947, is amended  
4 to read as follows:

5 "66-1607. Penalties Violation as misdemeanor. The  
6 ~~penalties for a~~ violation of any of the provisions of this  
7 chapter ~~shall be~~ is a misdemeanor."

8 Section 14. Section 74-604, R.C.M. 1947, is amended to  
9 read as follows:

10 "74-604. Denial, suspension, or revocation of  
11 licenses. ~~(a)(1)~~ Renewal of a license originally granted  
12 under section 74-603 may be denied, or a license may be  
13 suspended or revoked by the department on the following  
14 grounds:

15 ~~(1)(a)~~ Material ~~material~~ misstatement of fact in the  
16 application for license;

17 ~~(2)(b)~~ willful failure to comply with any provision of  
18 this act relating to retail installment contracts;

19 ~~(3)(c)~~ defrauding any retail buyer to the buyer's  
20 damage;

21 ~~(4)(d)~~ fraudulent misrepresentation, circumvention, or  
22 concealment by the licensee through subterfuge or device of  
23 any of the material particulars or the nature thereof  
24 required to be stated or furnished to the retail buyer under  
25 this act.

1 ~~(b)(2)~~ If a licensee is a partnership, association, or  
2 corporation, it is sufficient cause for the suspension or  
3 revocation of a license that any officer, director, or  
4 trustee of a licensed association or corporation, or any  
5 member of a licensed partnership, has acted or failed to act  
6 so as to provide cause for suspending or revoking a license  
7 to that party as an individual. Each licensee is  
8 responsible for the acts of his employees while acting as  
9 his agent, if the licensee after actual knowledge of the  
10 acts retained the benefits, proceeds, profits, or advantage  
11 accruing from the acts or otherwise ratified the acts.

12 ~~(c)(3)~~ (a) A license may not be denied, suspended, or  
13 revoked, except after hearing. The department shall give the  
14 licensee at least ~~ten~~ (10) days' written notice, in the form  
15 of an order to show cause, of the time and place of the  
16 hearing by registered certified mail addressed to the  
17 licensee's principal place of business in this state ~~of the~~  
18 licensee. The notice shall contain the grounds of complaint  
19 against the licensee.

20 (b) An order suspending or revoking a license shall  
21 recite the grounds upon which it is based. The order shall  
22 be entered upon the records of the department and is not  
23 effective until ~~thirty~~ (30) days after written notice has  
24 been forwarded by registered certified mail to the licensee  
25 at the his principal place of business.

1 ~~(c)~~ No revocation, suspension, or surrender of a  
 2 license impairs or affects the obligation of a lawful retail  
 3 installment contract acquired previously by the licensee.\*

4 Section 15. Section 74-606, R.C.M. 1947, is amended to  
 5 read as follows:

6 \*74-606. Powers of department. ~~(a)(1)~~ The department  
 7 shall adopt rules necessary to carry out the intent and  
 8 purposes of this act. All rules of general application  
 9 shall be filed in the office of the department. A copy of  
 10 every rule shall be mailed to each licensee, postage  
 11 prepaid, at least ~~fifteen--(15)~~ days in advance of its  
 12 effective date. However, the failure of a licensee to  
 13 receive a copy of the rules does not exempt him from the  
 14 duty of compliance with those rules lawfully adopted under  
 15 the provisions of this section.

16 ~~(b)(2)~~ The department may issue subpoenas to compel  
 17 the attendance of witnesses and the production of documents,  
 18 papers, books, records, and other evidence before it in any  
 19 matter over which it has jurisdiction, control, or  
 20 supervision pertaining to this act. The department may  
 21 administer oaths and affirmations to a person whose  
 22 testimony is required.

23 ~~(c)(3)~~ If a person refuses to obey a subpoena, or to  
 24 give testimony, or to produce evidence as required by it, a  
 25 judge of the district court of the county in which the

1 licensed premises are located may, upon application and  
 2 proof of the refusal, issue a subpoena or subpoena duces  
 3 tecum for the witness to appear before the department and to  
 4 give testimony, and to produce evidence as may be required  
 5 ~~by--it~~. The clerk of court shall then issue the subpoena,  
 6 as directed, under the seal of the court, requiring the  
 7 person to whom it is directed to appear at the time and  
 8 place designated in it.

9 ~~(d)(4)~~ If a person served with a subpoena refuses to  
 10 obey it, or to give testimony, or to produce evidence as  
 11 required by it, the department may apply to the judge of the  
 12 court issuing the subpoena for an ~~attachment--against~~ arrest  
 13 ~~warrant for~~ that person, as for a contempt. The judge, upon  
 14 satisfactory proof of the refusal, shall issue an  
 15 ~~attachment, arrest warrant,~~ directed to any sheriff,  
 16 constable, or police officer, for the arrest of that person,  
 17 and, upon his being brought before the judge, proceed to a  
 18 hearing of the case. The judge may enforce compel:

19 (a) obedience to the subpoena; and

20 (b) the answering of any question; and

21 (c) the production of any evidence that may be proper;  
 22 ~~or by a fine, not exceeding one hundred dollars--(\$100)--or~~  
 23 ~~by--imprisonment--in--the--county--jail--or--by--both--fine--and~~  
 24 ~~imprisonment,--and--to--compel~~

25 (d) the witness to pay the costs of the proceeding.

1        ~~(2) Failure to comply with the requirements of~~  
2        ~~subsections (4)(a), (b), or (c) is punishable by a fine not~~  
3        ~~exceeding \$100 or by imprisonment in the county jail, or~~  
4        ~~both."~~

5        Section 16. Section 74-611, R.C.M. 1947, is amended to  
6        read as follows:

7        "74-611. Penalties. ~~(a)(1)~~ Any person who shall  
8        knowingly ~~violate any~~ violates a provision of this act or  
9        engage ~~engages~~ in the business of a sales finance company in  
10       this state without a license therefor as provided in this  
11       act shall be is guilty of a misdemeanor and upon conviction  
12       shall be punished by a fine of not more than five-hundred  
13       ~~dollars--(\$500)~~ or by imprisonment for not more than six--~~(6)~~  
14       months, or both.

15       ~~(b)(2)~~ Any person violating sections 74-607 to through  
16       74-610, except as the result of an accidental and bona fide  
17       error of computation, shall be barred from recovery of any  
18       finance ~~charge~~ delinquency, or collection charge on the  
19       contract."

20       Section 17. Repealer. Section 29-207, R.C.M. 1947, is  
21       repealed.

-End-