

HOUSE BILL 822

IN THE HOUSE

February 15, 1979

Introduced and referred to  
Committee on Business and  
Industry.

February 20, 1979

Committee recommend bill, do  
not pass.

February 21, 1979

Report adopted.

1 *House* BILL NO. *822*  
 2 INTRODUCED BY *Pat Menahan Daily*  
 3 *Meyer Eugene Foster O'Connell*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT CONSUMER LOAN  
 5 LICENSEES TO MAKE OPEN-END LOANS AND TO REGULATE OPEN-END  
 6 LOANS; AMENDING SECTIONS 32-5-102 AND 32-5-301 THROUGH  
 7 32-5-305, MCA."  
 8  
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 10 Section 1. Section 32-5-102, MCA, is amended to read:  
 11 "32-5-102. Definitions. Unless the context requires  
 12 otherwise, in this chapter the following definitions apply:  
 13 (1) "Person" means individuals, partnerships,  
 14 associations, corporations, and all legal entities in the  
 15 loaning business.  
 16 (2) "License" means one or both of the licenses  
 17 provided for by this chapter.  
 18 (3) "Licensee" means the person holding a license.  
 19 (4) "Department" means the department of business  
 20 regulation provided for in Title 2, chapter 15, part 18.  
 21 (5) "Consumer type loan business" means the business  
 22 of making loans of \$7,500 or less, generally repayable in  
 23 substantially equal installments.  
 24 (6) "Open-end loan" means a loan made by a licensee as  
 25 provided for by this chapter pursuant to a contract

1 described in [section 2].  
 2 (7) "Billing cycle" means the time interval between  
 3 periodic billing dates."  
 4 **NEW SECTION.** Section 2. Nature of an open-end loan  
 5 contract. An open-end loan contract is a contract between a  
 6 licensee and borrower whereby:  
 7 (1) the licensee may permit the borrower to obtain  
 8 advances of money from the licensee from time to time or the  
 9 licensee may advance money on behalf of the borrower from  
 10 time to time as directed by the borrower;  
 11 (2) the amount of each advance and permitted charges  
 12 and costs are debited to the borrower's account and payments  
 13 and other credits are credited to the same account;  
 14 (3) the charges are computed on the unpaid principal  
 15 balance or balances of the account from time to time;  
 16 (4) the borrower has the privilege of paying the  
 17 account in full at any time or, if the account is not in  
 18 default, in monthly installments of fixed or determinable  
 19 amounts as provided in the agreement; and  
 20 (5) the contract expressly states that it covers  
 21 open-end loans pursuant to [sections 2 through 9].  
 22 **NEW SECTION.** Section 3. Billing cycle -- when  
 23 considered monthly. A billing cycle shall be considered  
 24 monthly when the closing date of the cycle is the same date  
 25 each month or does not vary by more than 4 days from such

1 date.

2 NEW SECTION. Section 4. Open-end loans -- charges.

3 (1) A licensee may make open-end loans and may contract for  
4 and receive thereon charges not exceeding the equivalent of  
5 the greater of either of the following:

6 (a) 2.917% a month on that part of the unpaid balances  
7 of the principal amount of the open-end loan not exceeding  
8 \$300; 1.854% a month on that part of the unpaid balances of  
9 the principal amount of the open-end loan exceeding \$300 but  
10 not exceeding \$500; 1.583% a month on that part of the  
11 unpaid balances of the principal amount of the open-end loan  
12 exceeding \$500 but not exceeding \$1,000; and 1.467% a month  
13 of the open-end loan in excess of \$1,000 but not exceeding  
14 \$7,500; or

15 (b) 1.5% a month on the total unpaid balances of the  
16 principal amount of the open-end loan.

17 (2) A licensee may not compound charges by adding any  
18 unpaid charges authorized by this section to the unpaid  
19 principal balance of the borrower's account; provided,  
20 however, the unpaid principal balance may include the  
21 additional charges authorized by [section 6].

22 (3) Charges authorized by this section shall be  
23 considered not to exceed the maximum charges permitted by  
24 this section if such charges are computed in each billing  
25 cycle by either of the following methods:

1 (a) by converting each graduated monthly rate to a  
2 daily rate and multiplying such daily rate by the applicable  
3 portion of the daily unpaid principal balance of the  
4 account, in which case each daily rate is determined by  
5 multiplying the authorized monthly rate by 12 and dividing  
6 by 365; or

7 (b) by multiplying each graduated monthly rate by the  
8 applicable portion of the average daily unpaid principal  
9 balance of the account in the billing cycle, in which case  
10 the average daily unpaid principal balance is the sum of the  
11 amount unpaid each day during the cycle divided by the  
12 number of days in the cycle.

13 (4) For either of the above methods of computation,  
14 the billing cycle shall be monthly and the unpaid principal  
15 balance on any day is determined by adding to any balance  
16 unpaid as of the beginning of that day all advances and  
17 other permissible amounts charged to the borrower and  
18 deducting all payments and other credits made or received  
19 that day.

20 NEW SECTION. Section 5. Open-end loans -- minimum  
21 payments. (1) The borrower may at any time pay all or any  
22 part of the unpaid balance of an open-end loan in his  
23 account, or if the account is not in default, the borrower  
24 may pay the unpaid principal balance of an open-end loan in  
25 monthly installments, subject to minimum payment

1 requirements as set forth below.

2 (2) Minimum monthly payments shall be in such amount  
3 as would result in the full repayment of the initial loan  
4 advance, exclusive of any charges, within the maximum term  
5 set forth for other loans of the same amount in 32-5-302.  
6 This minimum payment shall continue at that amount until  
7 such time as an additional advance to the borrower is made,  
8 at which time the minimum monthly payment shall be  
9 redetermined and shall be in such amount as would result in  
10 the full repayment of the unpaid principal balance of the  
11 loan, including the advance, within the maximum terms set  
12 forth for other loans of the same amount. Minimum payments  
13 after such subsequent advance shall be determined in the  
14 same manner. No minimum payment may exceed the amount  
15 required to pay the balance in full, including unpaid  
16 charges to date.

17 NEW SECTION. Section 6. Open-end loans -- additional  
18 charges. In addition to the charges permitted under [section  
19 4], a licensee may contract for and receive the fees, costs,  
20 and expenses permitted by 32-5-301(7), subject<sup>4</sup> to all the  
21 conditions and restrictions set forth in 32-5-301(8) with  
22 the following variations:

23 (1) If credit life or disability insurance is provided  
24 and if the insured dies or becomes disabled when there is an  
25 outstanding open-end loan indebtedness, the insurance shall

1 be sufficient to pay the total balance of the loan due on  
2 the date of the borrower's death in the case of credit life  
3 insurance or all minimum payments that become due on the  
4 loan during the covered period of disability in the case of  
5 credit disability insurance. The additional charge for  
6 credit life insurance or credit disability insurance shall  
7 be calculated in each billing cycle by applying the current  
8 monthly premium rate for such insurance, as such rate may be  
9 determined by the department, to the unpaid balances in the  
10 borrower's account, using either of the methods specified in  
11 [section 4] for the calculation of loan charges.

12 (2) No credit life or disability insurance written in  
13 connection with an open-end loan may be canceled by the  
14 lender because of delinquency of the borrower in the making  
15 of the required minimum payments on the loan unless one or  
16 more of such payments is past due for a period of 90 days or  
17 more. The lender shall advance to the insurer the amounts  
18 required to keep the insurance in force during such period,  
19 which amounts may be debited to the borrower's account.

20 (3) The amount, terms, and conditions of any insurance  
21 against loss or damage to property must be reasonable in  
22 relation to the character and value of the property insured.

23 NEW SECTION. Section 7. Open-end loans -- security  
24 interests permitted. (1) In order to secure an open-end  
25 loan, a licensee may take a security interest in real

1 property at the time an advance is made. At such time as  
 2 there is no outstanding balance in the account, the licensee  
 3 shall within 10 days deliver to the borrower a release of  
 4 the mortgage or a request for reconveyance of the deed of  
 5 trust on any real property taken as security for a loan  
 6 unless the borrower has requested the licensee, in writing,  
 7 to retain the security interest to secure future advances.

8 (2) A licensee may take a security interest in  
 9 personal property to secure an open-end loan. Any such  
 10 security interest may be retained until the open-end account  
 11 is terminated. Whenever there is no outstanding balance in  
 12 the account and no commitment by the licensee to make  
 13 advances, the licensee shall within 10 days release any such  
 14 security interest unless the borrower has requested the  
 15 licensee in writing to retain the security interest to  
 16 secure future advances.

17 NEW SECTION. Section 8. Open-end loan contracts --  
 18 periodic statements. (1) A copy of the open-end loan  
 19 agreement shall be delivered by the licensee to the borrower  
 20 at the time the open-end account is opened. Such agreement  
 21 shall contain the name and address of the licensee and the  
 22 principal borrower and shall contain such specific  
 23 disclosures as may be required by regulation Z promulgated  
 24 by the board of governors of the federal reserve system  
 25 under the federal Consumer Credit Protection Act, as such

1 regulation may be amended from time to time.

2 (2) Except for an account which the licensee considers  
 3 to be uncollectible or with respect to which collection  
 4 procedures have been instituted, at the end of each billing  
 5 cycle in which there is an outstanding balance in the  
 6 account or with respect to which a finance charge is  
 7 imposed, the licensee shall deliver to the borrower a  
 8 periodic statement as required by regulation Z promulgated  
 9 by the board of governors of the federal reserve system  
 10 under the federal Consumer Credit Protection Act, as such  
 11 regulation may be amended from time to time.

12 NEW SECTION. Section 9. Open-end loans -- exemptions.  
 13 The rate provisions in subsections (1) through (4) of  
 14 32-5-301 do not apply to open-end loans, but a licensee may  
 15 obtain a supplementary license under 32-5-301(2) and make  
 16 open-end loans in excess of \$1,000. Subsections (5) and (6)  
 17 of 32-5-301, 32-5-303, and 32-5-304 do not apply to open-end  
 18 loans. The disclosure requirements in 32-5-305, except the  
 19 prohibition on blank spaces in 32-5-305(3), do not apply to  
 20 open-end loans.

21 Section 10. Section 32-5-301, MCA, is amended to read:

22 \*32-5-301. Charges, refunds, penalties, filing fees.  
 23 (1) Every Except as provided in [sections 4, 6, and 9],  
 24 every licensee hereunder may contract for and receive on any  
 25 loan of money not exceeding \$1,000 in principal amount:

1 (a) charges at rates not in excess of \$20 per year per  
2 \$100 on that part of the principal amount of the loan not  
3 exceeding \$300;

4 (b) \$16 per year per \$100 on that part of the  
5 principal amount of the loan exceeding \$300 but not  
6 exceeding \$500; and

7 (c) \$12 per year per \$100 on that part of the  
8 principal amount of the loan in excess of \$500 but not  
9 exceeding \$1,000.

10 (2) The holder of a supplementary license may contract  
11 for and receive charges at rates authorized for licensees in  
12 subsection (1) for the first \$1,000 of the principal amount  
13 of any loan and may contract for and receive charges at  
14 rates not in excess of \$10 per year per \$100 on that part of  
15 the principal amount of any loan exceeding \$1,000 but not  
16 exceeding \$7,500.

17 (3) Charges in (1) and (2) shall be computed at the  
18 applicable rates on the full, original principal amount of  
19 the loan from the date of the loan to the due date of the  
20 final scheduled installment irrespective of the fact that  
21 the loan is payable in installments. Said charges shall be  
22 added to the principal of the loan and shall not be  
23 discounted or deducted therefrom or paid or received at the  
24 time the loan is made. For the purpose of computing charges  
25 for a fraction of a month, a day shall be considered

1 one-thirtieth of a month.

2 (4) On loans of \$90 or less a licensee may charge, in  
3 lieu of charges specified in (1) of this section, not in  
4 excess of \$1 for each \$5 of cash or credit advanced to the  
5 borrower up to the amount of \$90. A period of at least 15  
6 days must be allowed for the repayment of each \$5 cash or  
7 credit advanced. Such charges cannot be assessed by any  
8 subterfuge or device on any loan over \$90 or on any balance  
9 of \$90 or less when the original loan was greater than \$90.

10 (5) When Except as provided in [section 9], when any  
11 loan contract, new loan, renewal, or otherwise, is paid in  
12 full by cash 1 month or more before the final installment  
13 date, the licensee shall refund or credit the borrower with  
14 that portion of the total charges which shall be due the  
15 borrower as determined by schedules prepared under the rule  
16 of 78ths or sum of the digits principle as follows: the  
17 amount of the refund or credit shall be as great a  
18 proportion of the total charges originally contracted for as  
19 the sum of the consecutive monthly balances of the contract  
20 scheduled to follow the date of prepayment bears to the sum  
21 of all the consecutive monthly balances of the contract,  
22 both sums to be determined according to the payment schedule  
23 originally contracted for.

24 (6) If Except as provided in [section 9], if the  
25 contract so provides, the additional charge for any amount

1 past due according to the original terms of the contract,  
2 whether by reason of default or extension agreement, may be  
3 5% of the amount past due, and said amount may be charged  
4 once and no more.

5 (7) The licensee may collect from the borrower the  
6 actual fees paid a public official or agency of the state  
7 for filing, recording, or releasing any instrument securing  
8 the loan.

9 (8) No further or other charges shall be directly or  
10 indirectly contracted for or received by any licensee except  
11 those specifically authorized by this chapter. No licensee  
12 shall divide into separate parts any contract made for the  
13 purpose of or with the effect of obtaining charges in excess  
14 of those authorized by this chapter. All balances due to a  
15 licensee from any person as a borrower or as an endorser,  
16 guarantor, or surety for any borrower or otherwise or due  
17 from any husband or wife, jointly or severally, shall be  
18 considered a part of any loan being made by a licensee to  
19 such person for the purpose of computing interest or  
20 charges. If any amount in excess of the charges permitted by  
21 this chapter is charged, contracted for, or received, except  
22 as the result of an accidental and bona fide error of  
23 computation, the contract of loan shall be void and the  
24 licensee shall have no right to collect or receive any  
25 principal, charges, or recompense whatsoever."

1 Section 11. Section 32-5-302, MCA, is amended to read:  
2 "32-5-302. Installment payment -- contract period. (1)  
3 ~~No Except as provided in [section 5], no~~ licensee may enter  
4 into any contract of loan:

5 (a) of \$300 or less, exclusive of charges, under which  
6 the borrower agrees to make any scheduled repayment of  
7 principal more than 21 calendar months from the date of  
8 making such contract;

9 (b) for more than \$300 to and including \$1,000,  
10 exclusive of charges, under which the borrower agrees to  
11 make any scheduled repayment of principal more than 25  
12 calendar months from the date of making;

13 (c) for more than \$1,000 to and including \$2,000,  
14 exclusive of charges, under which the borrower agrees to  
15 make any scheduled repayment of principal more than 37  
16 calendar months from the date of making; or

17 (d) for more than \$2,000 to and including \$2,500,  
18 exclusive of charges, under which the borrower agrees to  
19 make any scheduled repayment of principal more than 37  
20 calendar months from the date of making.

21 (2) Every loan contract shall require payment of  
22 principal and charges in installments which shall be payable  
23 at approximately equal periodic intervals, except that  
24 payment dates may be omitted to accommodate borrowers with  
25 seasonal incomes. No installment contracted for to, be

1 substantially larger than any preceding installment. When a  
 2 loan contract provides for monthly installments, the first  
 3 installment may be payable at any time within 45 days of the  
 4 date of the loan and the charges for the number of days in  
 5 excess of 30 from the date of making may be added to the  
 6 scheduled amount of the installments."

7 Section 12. Section 32-5-303, MCA, is amended to read:

8 "32-5-303. Borrower to receive copy of contract or  
 9 statement of contents. ~~At Except as provided in [section 9],~~  
 10 ~~at~~ the time the loan is made, there will be delivered to the  
 11 borrower, or if there be two or more borrowers to one of  
 12 them, a copy of the loan contract or a written statement in  
 13 the English language showing in clear and distinct terms:

14 (1) the name and address of the lender and of one of  
 15 the borrowers or a maker of the loan;

16 (2) the date of the loan contract;

17 (3) the schedule of installments or description  
 18 thereof;

19 (4) the principal amount of the loan excluding  
 20 charges;

21 (5) the rate or amount of charges as the contract may  
 22 provide;

23 (6) the amount collected or paid out for each kind of  
 24 insurance, if any;

25 (7) the amount collected or paid out for filing and

1 other fees as allowed in 32-5-301(7);

2 (8) the collateral or security for the loan including  
 3 all other accommodation or other joint makers (comakers);

4 (9) that the borrower may prepay the loan in whole or  
 5 in part at any time during a licensee's regular business  
 6 hours and, in case the charges have been added to the  
 7 principal of the loan, that such charges are subject to the  
 8 refund requirements of 32-5-301(5) if such loan is prepaid  
 9 in full."

10 Section 13. Section 32-5-304, MCA, is amended to read:

11 "32-5-304. Receipts -- return of note. ~~Every Except as~~  
 12 ~~provided in [section 9], every~~ licensee shall:

13 (1) give to the borrower a plain and complete receipt  
 14 in a form approved by the department for every payment made  
 15 on account of any loan at the time such payment is made;

16 (2) endorse indelibly on a loan ledger or card, which  
 17 shall be kept by the licensee, the amount and date of each  
 18 payment made by the borrower of the loan;

19 (3) upon repayment of the loan in full, mark indelibly  
 20 every obligation and security signed by the borrower with  
 21 the word "paid" or "canceled" and release any mortgage,  
 22 restore any pledge, and cancel and return to the borrower  
 23 any note and any assignment given to the licensee within 10  
 24 days after such repayment. Such canceled notes and canceled  
 25 assignments shall be mailed to the borrower at his last



1 known address unless returned to the borrower in person."

2 Section 14. Section 32-5-305, MCA, is amended to read:

3 "32-5-305. Confessions of judgment -- incomplete  
4 instruments forbidden. No Except as provided in [section 9],  
5 no licensee shall:

6 (1) take any confession of judgment or any power of  
7 attorney running to himself or to any third person to  
8 confess judgment or to appear for the borrower in a judicial  
9 proceeding;

10 (2) take any note or promise to pay that does not  
11 disclose the amount of the loan, a schedule of payments or a  
12 description thereof, and the agreed charges and in which  
13 blanks are left to be filled in after execution. However,  
14 such details need not appear on a certificate of title to a  
15 motor vehicle, a policy or certificate of insurance, a  
16 chattel mortgage or deed of trust covering future advances  
17 according to the law of the district or state where the  
18 property is located, or customary powers in connection with  
19 bonds or stocks which may be pledged as collateral; or

20 (3) take any instrument in which blanks are left to be  
21 filled in after the loan is made."

-End-