

SENATE BILL NO. 421

INTRODUCED BY GOODOVER, PETERSON, LOWE, HAFFERMAN,
THOMAS, HEALY, ROSKIE, RYAN, MEHRENS

IN THE SENATE

February 9, 1979	Introduced and referred to Committee on Business and Industry.
February 13, 1979	Fiscal note requested.
February 15, 1979	Committee recommend bill do pass. Report adopted.
February 16, 1979	Printed and placed on members' desks.
February 17, 1979	Second reading, do pass.
February 19, 1979	Fiscal note returned. Considered correctly engrossed.
February 20, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 21, 1979	Introduced and referred to Committee on Business and Industry.
March 6, 1979	Committee recommend bill be concurred in. Report adopted.
March 7, 1979	Second reading, concurred in.
March 9, 1979	Third reading, concurred in.

IN THE SENATE

March 10, 1979

Returned from second house.
Concurred in. Sent to enrolling.

Reported correctly enrolled.

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INTRODUCED BY *Senate* BILL NO. *421*
James Healy *Kevin Kuehio* *Dylan Mulholland*
Brandon Peterson *Lowell Hafferman*

A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT LICENSEES UNDER THE MONTANA CONSUMER LOAN ACT TO MAKE LOANS NOT EXCEEDING \$25,000 AND REVISING ALLOWABLE CHARGES; AMENDING SECTIONS 32-5-102, 32-5-103, 32-5-201, 32-5-306, AND 32-5-402, MCA."

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

Section 1. Section 32-5-102, MCA, is amended to read:

"32-5-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

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

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

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

(4) "Department" means the department of business regulation provided for in Title 2, chapter 15, part 18.

(5) "Consumer type loan business" means the business of making loans of ~~\$7,500~~ \$25,000 or less, generally repayable in substantially equal installments."

Section 2. Section 32-5-103, MCA, is amended to read:

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"32-5-103. Engaging in business of making loans restricted. (1) No person shall engage in the business of making loans or advances of money on credit in amounts of ~~\$7,500~~ \$25,000 or less and contract for, charge, or receive directly or indirectly on or in connection with any such loan or advance any charges, whether for interest, compensation, consideration, or expense, which in the aggregate are greater than ~~18%~~ per annum those provided by ~~31-1-107(1)~~, except as provided in and authorized by this chapter. A person doing business under the authority of this state or the United States relating to banks, trust companies, savings or building and loan associations, credit unions, or a person engaged in business as a licensed pawnbroker or any person who shall extend credit in connection with the sale of a commodity shall not become a licensee under this chapter nor shall any of the provisions of this chapter apply to any such exempted person.

(2) The provisions of subsection (1) shall apply to any person who seeks to evade its applications by any device, subterfuge, or pretense whatsoever.

(3) Any contract of loan in the making or collection of which any act shall have been done which violates subsection (1) of this section shall be void, and the lender shall have no right to collect, receive, or retain any principal, interest, or charges whatsoever."

1 Section 3. Section 32-5-201, MCA, is amended to read:

2 "32-5-201. License application and fees --
3 supplementary license. (1) (a) A place of business operated
4 under this chapter shall properly display on the premises a
5 nontransferable and nonassignable license. The same person
6 may obtain additional licenses upon compliance with this
7 chapter as to each license.

8 (b) Application for a license shall be on a form
9 prescribed and furnished by the department.

10 (c) A licensee may move his place of business from one
11 place to another within a county without obtaining a new
12 license, provided he obtains written permission from the
13 department.

14 (d) With each application the applicant shall submit
15 \$50 as an investigation fee and \$125 as a license fee. The
16 license fee shall be returned to the applicant if the
17 application is denied. The license year is the calendar
18 year, and the license fee for any period less than 6 months
19 is \$62.50. A license remains in force until surrendered,
20 suspended, or revoked.

21 (2) No licensee under the provisions of this chapter
22 shall lend money in a total sum greater than \$1,000 to any
23 borrower or to any borrower and spouse except under the
24 following circumstances:

25 (a) When any person holding a license provided for in

1 subsection (1) desires to make loans for any amount in
2 excess of \$1,000 but not exceeding ~~\$7,500~~ \$25,000, the
3 holder of such license may apply to the department for a
4 supplementary license and pay therefor an additional license
5 fee of \$75 per calendar year or one-half of said sum for any
6 period less than 6 months.

7 (b) The department shall grant, on application, a
8 supplementary license to a holder of a license provided for
9 in subsection (1).

10 (c) Section 32-5-204 shall be applicable as to time of
11 payment of supplementary license fee and penalty for failure
12 to pay the same.

13 (d) Provisions of 32-5-301 relating to refunds, fees,
14 and charges and the other provisions of this chapter not
15 inconsistent with this section shall be applicable to loans
16 made under authority of a supplementary license.

17 (3) All moneys collected under the authority of this
18 chapter shall be paid into the state treasury by the
19 department."

20 Section 4. Section 32-5-306, MCA, is amended to read:

21 "32-5-306. Insurance. (1) No insurance of any kind
22 shall be written by a licensee or employee, affiliate, or
23 associate of the licensee, in connection with any loan
24 except as hereinafter provided.

25 (2) Insurance permitted under the provisions of this

1 section shall be obtained through an insurance company
 2 authorized to conduct such business in Montana by a duly
 3 licensed agent or agency of this state. Premiums shall not
 4 exceed those fixed by law or current applicable manual
 5 rates. Insurance written as authorized by this section may
 6 contain a mortgagee clause or other appropriate provisions
 7 to protect the insurable interest of the licensee.

8 (3) When the principal amount of the loan exceeds \$300
 9 exclusive of the portion thereof attributable to insurance
 10 premiums and charges, the licensee may require a borrower to
 11 insure property offered as security against any substantial
 12 risk of loss, damage, or destruction for an amount not to
 13 exceed the reasonable value of the property insured or the
 14 amount of the loan, whichever is smaller, and for the
 15 customary term approximating the term of the loan contract.
 16 It shall be optional with the borrower to obtain such
 17 insurance in an amount greater than the amount of the loan
 18 or for a longer term.

19 (4) Subject to the laws of this state, credit life
 20 insurance and credit disability insurance may be provided at
 21 the expense of the borrower and may be provided by a
 22 licensee upon the request of the borrower when the principal
 23 amount of the loan exceeds \$300, exclusive of the portion
 24 thereof attributable to insurance premiums and charges. If
 25 any loan shall include amounts advanced for insurance

1 premiums and charges, such loan shall not in any event
 2 exceed ~~\$7,500~~ \$25,000.

3 (5) The insurance authorized by this section may be
 4 sold, obtained, or provided by or through a licensee, and
 5 the premium or identifiable charge for the insurance may be
 6 included in the principal amount of the loan; provided,
 7 however, that no licensee shall require a borrower to
 8 purchase such insurance from such licensee or from any
 9 particular agent, broker, or insurance company as a
 10 condition precedent for the obtaining of a loan. Any gain or
 11 advantage to the licensee or any employee, affiliate, or
 12 associate of the licensee from the sale, provision, or
 13 obtaining of insurance as authorized by this section shall
 14 not be deemed to be additional charges or a violation of
 15 this chapter.

16 (6) A licensee shall not require insurance under this
 17 section until any existing insurance of the same type has
 18 expired or has been canceled and the unearned portion of the
 19 premium for the canceled insurance has been rebated to the
 20 borrower."

21 Section 5. Section 32-5-402, MCA, is amended to read:
 22 "32-5-402. Investigations. The department may at any
 23 time investigate any transaction with borrowers and may
 24 examine the books, accounts, and records in this state to
 25 discover violations of this chapter by:

- 1 (1) a licensee;
- 2 (2) a person who advertises for, solicits, or holds
- 3 himself out as willing to make loans in amounts of ~~\$7,500~~
- 4 ~~\$25,000~~ or less; or
- 5 (3) a person whom the department has reason to believe
- 6 is violating or is about to violate this chapter.*

7 NEW SECTION. Section 6. Charges on loans in excess of

8 \$7,500. (1) On any loan of money exceeding \$7,500 in

9 principal amount, a licensee may not make charges as

10 provided in subsections (1) and (2) of 32-5-301 but shall

11 make charges in accordance with the provisions of this

12 section.

13 (2) On any loan of money exceeding \$7,500 but not

14 exceeding \$25,000 in principal amount, a licensee may

15 contract and receive charges at a rate not in excess of

16 1 1/2% per month on the principal amount as follows:

17 (a) Charges shall be computed on unpaid balances of

18 the principal amount outstanding from time to time for the

19 actual time outstanding. Each payment shall be applied first

20 to accumulated charges and the remainder of the payment

21 applied to the unpaid principal balance, except that if the

22 amount of the payment is insufficient to pay the accumulated

23 charges, unpaid charges continue to accumulate to be paid

24 from the proceeds of subsequent payments and are not added

25 to the principal balance.

1 (b) Charges made under this section may not be payable

2 in advance or compounded. However, if part or all of the

3 consideration for a new loan contract is the unpaid

4 principal balance of a prior loan, the principal amount

5 payable under such new loan contract may include any unpaid

6 charges which have accrued. The resulting loan contract is

7 a new and separate loan transaction for all purposes. The

8 principal balance of a prior loan on which charges have been

9 made pursuant to subsections (1) and (2) of 32-5-301 is the

10 balance due after refund or credit is given to the borrower

11 pursuant to subsection (5) of 32-5-301.

12 (3) For purposes of computing charges for a fraction

13 of a month, a day is considered one-thirtieth of a month.

14 (4) The provisions of subsections (5) and (6) of

15 32-5-301 do not apply to loans made under this section.

16 Section 7. Codification. Section 6 is intended to be

17 codified as an integral part of Title 32, chapter 5. The

18 provisions in Title 32, chapter 5, apply to section 6, and

19 section 6 applies to the provisions of Title 32, chapter 5.

20 All references in the MCA to Title 32, chapter 5, include

21 section 6.

-End-

STATE OF MONTANA

REQUEST NO. 336-79

FISCAL NOTE

Form BD-15

In compliance with a written request received February 15, 19 79, there is hereby submitted a Fiscal Note for SB 421 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to permit licensees under the Montana Consumer Loan Act to make loans not exceeding \$25,000 and revising allowable charges.

FISCAL IMPACT:

None.

Richard L. Franzen

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2/19/79

1 *Acts* BILL NO. *421*
 2 INTRODUCED BY *Brandon Pelletier Louis Hafferman*
 3 *Thomas Hooley Lashico Ryan Melton*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT LICENSEES
 5 UNDER THE MONTANA CONSUMER LOAN ACT TO MAKE LOANS NOT
 6 EXCEEDING \$25,000 AND REVISING ALLOWABLE CHARGES; AMENDING
 7 SECTIONS 32-5-102, 32-5-103, 32-5-201, 32-5-306, AND
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 13 otherwise, in this chapter the following definitions apply:
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 15 associations, corporations, and all legal entities in the
 16 loaning business.
 17 (2) "License" means one or both of the licenses
 18 provided for by this chapter.
 19 (3) "Licensee" means the person holding a license.
 20 (4) "Department" means the department of business
 21 regulation provided for in Title 2, chapter 15, part 18.
 22 (5) "Consumer type loan business" means the business
 23 of making loans of ~~\$7,500~~ \$25,000 or less, generally
 24 repayable in substantially equal installments."
 25 Section 2. Section 32-5-103, MCA, is amended to read:

1 "32-5-103. Engaging in business of making loans
 2 restricted. (1) No person shall engage in the business of
 3 making loans or advances of money on credit in amounts of
 4 ~~\$7,500~~ \$25,000 or less and contract for, charge, or receive
 5 directly or indirectly on or in connection with any such
 6 loan or advance any charges, whether for interest,
 7 compensation, consideration, or expense, which in the
 8 aggregate are greater than ~~10% per annum~~ those provided by
 9 31-1-107(1), except as provided in and authorized by this
 10 chapter. A person doing business under the authority of this
 11 state or the United States relating to banks, trust
 12 companies, savings or building and loan associations, credit
 13 unions, or a person engaged in business as a licensed
 14 pawnbroker or any person who shall extend credit in
 15 connection with the sale of a commodity shall not become a
 16 licensee under this chapter nor shall any of the provisions
 17 of this chapter apply to any such exempted person.
 18 (2) The provisions of subsection (1) shall apply to
 19 any person who seeks to evade its applications by any
 20 device, subterfuge, or pretense whatsoever.
 21 (3) Any contract of loan in the making or collection
 22 of which any act shall have been done which violates
 23 subsection (1) of this section shall be void, and the lender
 24 shall have no right to collect, receive, or retain any
 25 principal, interest, or charges whatsoever."

1 Section 3. Section 32-5-201, MCA, is amended to read:

2 "32-5-201. License application and fees --
3 supplementary license. (1) (a) A place of business operated
4 under this chapter shall properly display on the premises a
5 nontransferable and nonassignable license. The same person
6 may obtain additional licenses upon compliance with this
7 chapter as to each license.

8 (b) Application for a license shall be on a form
9 prescribed and furnished by the department.

10 (c) A licensee may move his place of business from one
11 place to another within a county without obtaining a new
12 license, provided he obtains written permission from the
13 department.

14 (d) With each application the applicant shall submit
15 \$50 as an investigation fee and \$125 as a license fee. The
16 license fee shall be returned to the applicant if the
17 application is denied. The license year is the calendar
18 year, and the license fee for any period less than 6 months
19 is \$62.50. A license remains in force until surrendered,
20 suspended, or revoked.

21 (2) No licensee under the provisions of this chapter
22 shall lend money in a total sum greater than \$1,000 to any
23 borrower or to any borrower and spouse except under the
24 following circumstances:

25 (a) When any person holding a license provided for in

1 subsection (1) desires to make loans for any amount in
2 excess of \$1,000 but not exceeding ~~\$7,500~~ \$25,000, the
3 holder of such license may apply to the department for a
4 supplementary license and pay therefor an additional license
5 fee of \$75 per calendar year or one-half of said sum for any
6 period less than 6 months.

7 (b) The department shall grant, on application, a
8 supplementary license to a holder of a license provided for
9 in subsection (1).

10 (c) Section 32-5-204 shall be applicable as to time of
11 payment of supplementary license fee and penalty for failure
12 to pay the same.

13 (d) Provisions of 32-5-301 relating to refunds, fees,
14 and charges and the other provisions of this chapter not
15 inconsistent with this section shall be applicable to loans
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17 (3) All moneys collected under the authority of this
18 chapter shall be paid into the state treasury by the
19 department."

20 Section 4. Section 32-5-306, MCA, is amended to read:

21 "32-5-306. Insurance. (1) No insurance of any kind
22 shall be written by a licensee or employee, affiliate, or
23 associate of the licensee, in connection with any loan
24 except as hereinafter provided.

25 (2) Insurance permitted under the provisions of this

1 section shall be obtained through an insurance company
 2 authorized to conduct such business in Montana by a duly
 3 licensed agent or agency of this state. Premiums shall not
 4 exceed those fixed by law or current applicable manual
 5 rates. Insurance written as authorized by this section may
 6 contain a mortgagee clause or other appropriate provisions
 7 to protect the insurable interest of the licensee.

8 (3) When the principal amount of the loan exceeds \$300
 9 exclusive of the portion thereof attributable to insurance
 10 premiums and charges, the licensee may require a borrower to
 11 insure property offered as security against any substantial
 12 risk of loss, damage, or destruction for an amount not to
 13 exceed the reasonable value of the property insured or the
 14 amount of the loan, whichever is smaller, and for the
 15 customary term approximating the term of the loan contract.
 16 It shall be optional with the borrower to obtain such
 17 insurance in an amount greater than the amount of the loan
 18 or for a longer term.

19 (4) Subject to the laws of this state, credit life
 20 insurance and credit disability insurance may be provided at
 21 the expense of the borrower and may be provided by a
 22 licensee upon the request of the borrower when the principal
 23 amount of the loan exceeds \$300, exclusive of the portion
 24 thereof attributable to insurance premiums and charges. If
 25 any loan shall include amounts advanced for insurance

1 premiums and charges, such loan shall not in any event
 2 exceed ~~\$7,500~~ ~~\$25,000~~.

3 (5) The insurance authorized by this section may be
 4 sold, obtained, or provided by or through a licensee, and
 5 the premium or identifiable charge for the insurance may be
 6 included in the principal amount of the loan; provided,
 7 however, that no licensee shall require a borrower to
 8 purchase such insurance from such licensee or from any
 9 particular agent, broker, or insurance company as a
 10 condition precedent for the obtaining of a loan. Any gain or
 11 advantage to the licensee or any employee, affiliate, or
 12 associate of the licensee from the sale, provision, or
 13 obtaining of insurance as authorized by this section shall
 14 not be deemed to be additional charges or a violation of
 15 this chapter.

16 (6) A licensee shall not require insurance under this
 17 section until any existing insurance of the same type has
 18 expired or has been canceled and the unearned portion of the
 19 premium for the canceled insurance has been rebated to the
 20 borrower."

21 Section 5. Section 32-5-402, MCA, is amended to read:
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 23 time investigate any transaction with borrowers and may
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3 himself out as willing to make loans in amounts of \$7,500
4 ~~\$25,000~~ or less; or

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6 is violating or is about to violate this chapter."

7 NEW SECTION. Section 6. Charges on loans in excess of
8 \$7,500. (1) On any loan of money exceeding \$7,500 in
9 principal amount, a licensee may not make charges as
10 provided in subsections (1) and (2) of 32-5-301 but shall
11 make charges in accordance with the provisions of this
12 section.

13 (2) On any loan of money exceeding \$7,500 but not
14 exceeding \$25,000 in principal amount, a licensee may
15 contract and receive charges at a rate not in excess of
16 1 1/2% per month on the principal amount as follows:

17 (a) Charges shall be computed on unpaid balances of
18 the principal amount outstanding from time to time for the
19 actual time outstanding. Each payment shall be applied first
20 to accumulated charges and the remainder of the payment
21 applied to the unpaid principal balance, except that if the
22 amount of the payment is insufficient to pay the accumulated
23 charges, unpaid charges continue to accumulate to be paid
24 from the proceeds of subsequent payments and are not added
25 to the principal balance.

1 (b) Charges made under this section may not be payable
2 in advance or compounded. However, if part or all of the
3 consideration for a new loan contract is the unpaid
4 principal balance of a prior loan, the principal amount
5 payable under such new loan contract may include any unpaid
6 charges which have accrued. The resulting loan contract is
7 a new and separate loan transaction for all purposes. The
8 principal balance of a prior loan on which charges have been
9 made pursuant to subsections (1) and (2) of 32-5-301 is the
10 balance due after refund or credit is given to the borrower
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12 (3) For purposes of computing charges for a fraction
13 of a month, a day is considered one-thirtieth of a month.

14 (4) The provisions of subsections (5) and (6) of
15 32-5-301 do not apply to loans made under this section.

16 Section 7. Codification. Section 6 is intended to be
17 codified as an integral part of Title 32, chapter 5. The
18 provisions in Title 32, chapter 5, apply to section 6, and
19 section 6 applies to the provisions of Title 32, chapter 5.
20 All references in the MCA to Title 32, chapter 5, include
21 section 6.

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7 period less than 6 months.

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 11 condition precedent for the obtaining of a loan. Any gain or
 12 advantage to the licensee or any employee, affiliate, or
 13 associate of the licensee from the sale, provision, or
 14 obtaining of insurance as authorized by this section shall
 15 not be deemed to be additional charges or a violation of
 16 this chapter.

17 (6) A licensee shall not require insurance under this
 18 section until any existing insurance of the same type has
 19 expired or has been canceled and the unearned portion of the
 20 premium for the canceled insurance has been rebated to the
 21 borrower."

22 Section 5. Section 32-5-402, MCA, is amended to read:
 23 "32-5-402. Investigations. The department may at any
 24 time investigate any transaction with borrowers and may
 25 examine the books, accounts, and records in this state to

1 discover violations of this chapter by:

- 2 (1) a licensee;
- 3 (2) a person who advertises for, solicits, or holds
- 4 himself out as willing to make loans in amounts of ~~\$7,500~~
- 5 ~~\$25,000~~ or less; or
- 6 (3) a person whom the department has reason to believe
- 7 is violating or is about to violate this chapter."

8 NEW SECTION. Section 6. Charges on loans in excess of

9 \$7,500. (1) On any loan of money exceeding \$7,500 in

10 principal amount, a licensee may not make charges as

11 provided in subsections (1) and (2) of 32-5-301 but shall

12 make charges in accordance with the provisions of this

13 section.

14 (2) On any loan of money exceeding \$7,500 but not

15 exceeding \$25,000 in principal amount, a licensee may

16 contract and receive charges at a rate not in excess of

17 1 1/2% per month on the principal amount as follows:

18 (a) Charges shall be computed on unpaid balances of

19 the principal amount outstanding from time to time for the

20 actual time outstanding. Each payment shall be applied first

21 to accumulated charges and the remainder of the payment

22 applied to the unpaid principal balance, except that if the

23 amount of the payment is insufficient to pay the accumulated

24 charges, unpaid charges continue to accumulate to be paid

25 from the proceeds of subsequent payments and are not added

1 to the principal balance.

2 (b) Charges made under this section may not be payable

3 in advance or compounded. However, if part or all of the

4 consideration for a new loan contract is the unpaid

5 principal balance of a prior loan, the principal amount

6 payable under such new loan contract may include any unpaid

7 charges which have accrued. The resulting loan contract is

8 a new and separate loan transaction for all purposes. The

9 principal balance of a prior loan on which charges have been

10 made pursuant to subsections (1) and (2) of 32-5-301 is the

11 balance due after refund or credit is given to the borrower

12 pursuant to subsection (5) of 32-5-301.

13 (3) For purposes of computing charges for a fraction

14 of a month, a day is considered one-thirtieth of a month.

15 (4) The provisions of subsections (5) and (6) of

16 32-5-301 do not apply to loans made under this section.

17 Section 7. Codification. Section 6 is intended to be

18 codified as an integral part of Title 32, chapter 5. The

19 provisions in Title 32, chapter 5, apply to section 6, and

20 section 6 applies to the provisions of Title 32, chapter 5.

21 All references in the MCA to Title 32, chapter 5, include

22 section 6.

-End-