

HOUSE BILL NO. 321

INTRODUCED BY FABREGA, GOODOVER, MEYER, MENAHAN

IN THE HOUSE

January 19, 1981	Introduced and referred to Committee on Business and Industry.
February 6, 1981	Committee recommend bill do pass as amended. Report adopted.
February 9, 1981	Bill printed and placed on members' desks.
February 10, 1981	Second reading, do pass.
February 11, 1981	Correctly engrossed.
February 12, 1981	Third reading, passed. Ayes, 88; Noes, 10. Transmitted to Senate.

IN THE SENATE

February 13, 1981	Introduced and referred to Committee on Business and Industry.
March 16, 1981	Committee recommend bill be concurred in with statement of intent. Report adopted.
March 17, 1981	Motion pass consideration.
March 18, 1981	Second reading, concurred in.
March 20, 1981	Third reading, concurred in. Ayes, 37; Noes, 11.

IN THE HOUSE

March 21, 1981

Returned from Senate with
statement of intent attached.

April 8, 1981

Second reading, amendments
concurrent in.

April 9, 1981

Third reading, amendments
concurrent in. Ayes, 94; Noes, 0.
Sent to enrolling.

Reported correctly enrolled.

HOUSE BILL NO. **321**

INTRODUCED BY *Tommy Goolsby Meyer Menaker*

1 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA
 2 CONSUMER LOAN ACT BY PROVIDING FOR THE ADJUSTMENT OF CERTAIN
 3 DOLLAR AMOUNTS IN THE ACT IN ACCORDANCE WITH CHANGES IN THE
 4 CONSUMER PRICE INDEX; INCREASING CERTAIN CHARGES, INCLUDING
 5 CERTAIN FEES TO BE PAID TO THIRD PARTIES IN THE PRINCIPAL
 6 AMOUNT OF THE LOAN; PROVIDING FOR THE UTILIZATION OF THE
 7 DISCLOSURES REQUIRED BY THE FEDERAL CONSUMER CREDIT
 8 PROTECTION ACT; AND PROVIDING FOR ATTORNEY FEES IN LEGAL
 9 ACTIONS; AMENDING SECTIONS 32-5-102, 32-5-103, 32-5-201,
 10 32-5-301 THROUGH 32-5-303, 32-5-306, AND 32-5-402, MCA."

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

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

13 **"32-5-102. Definitions. Unless the context requires
 14 otherwise, in this chapter the following definitions apply:**

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

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

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

21 **(4) "Department" means the department of business**

1 regulation provided for in Title 2, chapter 15, part 18.

2 **(5) "Consumer type loan business" means the business
 3 of making loans of \$25,000 or less, which amount is subject
 4 to change pursuant to the provisions of [section 9],
 5 generally repayable in substantially equal installments."**

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

7 **"32-5-103. Engaging in business of making loans
 8 restricted. (1) No person shall engage in the business of
 9 making loans or advances of money on credit in amounts of
 10 \$25,000 or less and contract for, charge, or receive
 11 directly or indirectly on or in connection with any such
 12 loan or advance any charges, whether for interest,
 13 compensation, consideration, or expense, which in the
 14 aggregate are greater than those provided by 31-1-107(1),
 15 except as provided in and authorized by this chapter. A
 16 person doing business under the authority of this state or
 17 the United States relating to banks, trust companies,
 18 savings or building and loan associations, credit unions, or
 19 a person engaged in business as a licensed pawnbroker or any
 20 person who shall extend credit in connection with the sale
 21 of a commodity shall not become a licensee under this
 22 chapter nor shall any of the provisions of this chapter
 23 apply to any such exempted person.**

24 **(2) The provisions of subsection (1) shall apply to
 25 any person who seeks to evade its applications by any**

1 device, subterfuge, or pretense whatsoever.

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

7 (4) The amount of \$25,000 in subsection (1) is subject
8 to change pursuant to the provisions of [section 9] on
9 adjustment of dollar amounts."

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

11 *32-5-201. License application and fees --
12 supplementary license. (1) (a) A place of business operated
13 under this chapter shall properly display on the premises a
14 nontransferable and nonassignable license. The same person
15 may obtain additional licenses upon compliance with this
16 chapter as to each license.

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

19 (c) A licensee may move his place of business from one
20 place to another within a county without obtaining a new
21 license, provided he obtains written permission from the
22 department.

23 (d) With each application the applicant shall submit
24 \$50 as an investigation fee and \$125 as a license fee. The
25 license fee shall be returned to the applicant if the

1 application is denied. The license year is the calendar
2 year, and the license fee for any period less than 6 months
3 is \$62.50. A license remains in force until surrendered,
4 suspended, or revoked.

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

9 (a) When any person holding a license provided for in
10 subsection (1) desires to make loans for any amount in
11 excess of \$1,000 but not exceeding \$25,000, the holder of
12 such license may apply to the department for a supplementary
13 license and pay therefor an additional license fee of \$75
14 per calendar year or one-half of said sum for any period
15 less than 6 months.

16 (b) The department shall grant, on application, a
17 supplementary license to a holder of a license provided for
18 in subsection (1).

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

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

1 (3) All moneys collected under the authority of this
2 chapter shall be paid into the state treasury by the
3 department.

4 ~~(4) The amounts of \$1,000 and \$25,000 in subsection~~
5 ~~(2) are subject to change pursuant to the provisions of~~
6 ~~[section 9]."~~

7 Section 4. Section 32-5-301, MCA, is amended to read:

8 "32-5-301. Charges, refunds, penalties, filing fees.

9 (1) Every licensee hereunder may contract for and receive on
10 any loan of money not exceeding \$1,000 in principal amount:

11 (a) charges at rates not in excess of \$20 per year per
12 \$100 on that part of the principal amount of the loan not
13 exceeding ~~\$300~~ \$500;

14 (b) \$16 per year per \$100 on that part of the
15 principal amount of the loan exceeding ~~\$300~~ \$500 but not
16 exceeding ~~\$500~~ and \$1,000.

17 ~~(c) \$12 per year per \$100 on that part of the~~
18 ~~principal amount of the loan in excess of \$500 but not~~
19 ~~exceeding \$1,000.~~

20 (2) The holder of a supplementary license may contract
21 for and receive charges at rates authorized for licensees in
22 subsection (1) for the first \$1,000 of the principal amount
23 of any loan and may contract for and receive charges at
24 rates not in excess of ~~\$10~~ \$12 per year per \$100 on that
25 part of the principal amount of any loan exceeding \$1,000

1 but not exceeding \$7,500.

2 (3) Charges in (1) and (2) shall be computed at the
3 applicable rates on the full, original principal amount of
4 the loan from the date of the loan to the due date of the
5 final scheduled installment irrespective of the fact that
6 the loan is payable in installments. Said charges shall be
7 added to the principal of the loan and shall not be
8 discounted or deducted therefrom or paid or received at the
9 time the loan is made. For the purpose of computing charges
10 for a fraction of a month, a day shall be considered
11 one-thirtieth of a month.

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

20 (5) When any loan contract, new loan, renewal, or
21 otherwise, is paid in full by cash 1 month or more before
22 the final installment date, the licensee shall refund or
23 credit the borrower with that portion of the total charges
24 which shall be due the borrower as determined by schedules
25 prepared under the rule of 78ths or sum of the digits

1 principle as follows: the amount of the refund or credit
 2 shall be as great a proportion of the total charges
 3 originally contracted for as the sum of the consecutive
 4 monthly balances of the contract scheduled to follow the
 5 date of prepayment bears to the sum of all the consecutive
 6 monthly balances of the contract, both sums to be determined
 7 according to the payment schedule originally contracted for.

8 (6) (a) If the contract so provides, the additional
 9 charge for any amount past due according to the original
 10 terms of the contract, whether by reason of default or
 11 extension agreement, may be 5% of the amount past due, and
 12 said amount may be charged once and no more.

13 ~~(b) If two installments or parts thereof of a~~
 14 ~~precomputed loan are in default for 10 days or more, a~~
 15 ~~licensee may elect to convert the loan from a precomputed~~
 16 ~~one to one in which charges are based on unpaid balances.~~
 17 ~~In this event he shall make a rebate pursuant to the~~
 18 ~~provisions of subsection (5) as if the date of prepayment~~
 19 ~~were 1 day before the maturity date of the delinquent~~
 20 ~~installment nearest to the conversion date, and thereafter~~
 21 ~~may make charges at the single annual percentage rate that~~
 22 ~~would earn the same charges as the graduated charges~~
 23 ~~permitted by subsection (1) when the debt is paid according~~
 24 ~~to the actuarial method.~~

25 (7) (a) The licensee may collect--from--the--borrower

1 ~~include in the principal amount of any loan~~ the actual fees
 2 paid a public official or agency of the state for filing,
 3 recording, or releasing any instrument securing the loan.

4 ~~(b) The licensee may include in the principal amount~~
 5 ~~of any loan bona fide charges related to real estate~~
 6 ~~security and paid to third parties, including:~~

7 ~~(i) fees or premiums for title examination, title~~
 8 ~~insurance, or similar purposes including survey;~~

9 ~~(ii) fees for preparation of a deed, settlement~~
 10 ~~statement, or other documents;~~

11 ~~(iii) fees for notarizing deeds and other documents;~~

12 ~~(iv) appraisal fees;~~

13 ~~(v) fees for credit reports; and~~

14 ~~(vi) fees paid to a trustee for release of a trust~~
 15 ~~deed.~~

16 (8) No further or other charges shall be directly or
 17 indirectly contracted for or received by any licensee except
 18 those specifically authorized by this chapter. No licensee
 19 shall divide into separate parts any contract made for the
 20 purpose of or with the effect of obtaining charges in excess
 21 of those authorized by this chapter. All balances due to a
 22 licensee from any person as a borrower or as an endorser,
 23 guarantor, or surety for any borrower or otherwise or due
 24 from any husband or wife, jointly or severally, shall be
 25 considered a part of any loan being made by a licensee to

1 such person for the purpose of computing interest or
 2 charges. If any amount in excess of the charges permitted by
 3 this chapter is charged, contracted for, or and received,
 4 except as the result of an accidental and bona fide error of
 5 computation, ~~the contract of loan shall be void and~~ the
 6 licensee shall have no right to collect or receive any
 7 ~~principal charges or recompense whatsoever.~~

8 (9) On any loan of money exceeding \$7,500 in principal
 9 amount, a licensee may not make charges as provided in
 10 subsections (1) and (2) but shall make charges in accordance
 11 with the provisions of this subsection through subsection
 12 (12).

13 (10) 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%~~ 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
 20 first to accumulated charges and the remainder of the
 21 payment applied to the unpaid principal balance, except that
 22 if the amount of the payment is insufficient to pay the
 23 accumulated charges, unpaid charges continue to accumulate
 24 to be paid from the proceeds of subsequent payments and are
 25 not added to the principal balance.

1 (b) Charges made under this subsection may not be
 2 payable in advance or compounded. However, if part or all of
 3 the 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 a
 7 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) is the balance due
 10 after refund or credit is given to the borrower pursuant to
 11 subsection (5).

12 (11) For purposes of computing charges for a fraction
 13 of a month, a day is considered one-thirtieth of a month.

14 (12) The provisions of subsections (5) and (6) do not
 15 apply to loans made under subsections (9) through (11).

16 ~~(13) The amounts of \$90, \$500, \$1,000, \$7,500, and~~
 17 ~~\$25,000 in subsections (1), (2), (4), (9), and (10) are~~
 18 ~~subject to change pursuant to the provisions of [section 9]~~
 19 ~~on adjustment of dollar amounts."~~

20 Section 5. Section 32-5-302, MCA, is amended to read:
 21 "32-5-302. Installment payment -- contract period. (1)
 22 No licensee may enter into any contract of loan:

23 (a) of \$300 or less, exclusive of charges, under which
 24 the borrower agrees to make any scheduled repayment of
 25 principal more than 21 calendar months from the date of

1 making such contract;

2 (b) for more than \$300 to and including \$1,000,
3 exclusive of charges, under which the borrower agrees to
4 make any scheduled repayment of principal more than 25
5 calendar months from the date of making; or

6 (c) for more than \$1,000 to and including ~~\$2,000~~
7 ~~\$2,500~~, exclusive of charges, under which the borrower
8 agrees to make any scheduled repayment of principal more
9 than 37 calendar months from the date of making; or

10 ~~(d) for more than \$2,000 to and including \$2,500~~
11 ~~exclusive of charges under which the borrower agrees to~~
12 ~~make any scheduled repayment of principal more than 37~~
13 ~~calendar months from the date of making.~~

14 (2) Every loan contract shall require payment of
15 principal and charges in installments which shall be payable
16 at approximately equal periodic intervals, except that
17 payment dates may be omitted to accommodate borrowers with
18 seasonal incomes. No installment contracted for may be
19 substantially larger than any preceding installment. When a
20 loan contract provides for monthly installments, the first
21 installment may be payable at any time within 45 days of the
22 date of the loan and the charges for the number of days in
23 excess of 30 from the date of making may be added to the
24 scheduled amount of the installments.

25 (3) The amounts of \$300, \$1,000, and \$2,500 in

1 subsection (1) are subject to change pursuant to the
2 provisions of [section 9] on adjustment of dollar amounts."

3 Section 6. Section 32-5-303, MCA, is amended to read:
4 *32-5-303. Borrower to receive copy of contract or
5 statement of contents. At the time the loan is made, there
6 will be delivered to the borrower, or if there be two or
7 more borrowers to one of them, either the disclosures
8 required by the Federal Consumer Credit Protection Act, a
9 copy of the loan contract, or a written statement in the
10 English language showing in clear and distinct terms:

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

13 (2) the date of the loan contract;

14 (3) the schedule of installments or description
15 thereof;

16 (4) the principal amount of the loan excluding
17 charges;

18 (5) the rate or amount of charges as the contract may
19 provide;

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

22 (7) the amount collected or paid out for filing and
23 other fees as allowed in 32-5-301(7);

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

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

7 Section 7. Section 32-5-306, HCA, is amended to read:

8 "32-5-306. Insurance. (1) No insurance of any kind
 9 shall be written by a licensee or employee, affiliate, or
 10 associate of the licensee, in connection with any loan
 11 except as hereinafter provided.

12 (2) Insurance permitted under the provisions of this
 13 section shall be obtained through an insurance company
 14 authorized to conduct such business in Montana by a duly
 15 licensed agent or agency of this state. Premiums shall not
 16 exceed those fixed by law or current applicable manual
 17 rates. Insurance written as authorized by this section may
 18 contain a mortgagee clause or other appropriate provisions
 19 to protect the insurable interest of the licensee.

20 (3) When the principal amount of the loan exceeds \$300
 21 exclusive of the portion thereof attributable to insurance
 22 premiums and charges, the licensee may require a borrower to
 23 insure property offered as security against any substantial
 24 risk of loss, damage, or destruction for an amount not to
 25 exceed the reasonable value of the property insured or the

1 amount of the loan, whichever is smaller, and for the
 2 customary term approximating the term of the loan contract.
 3 It shall be optional with the borrower to obtain such
 4 insurance in an amount greater than the amount of the loan
 5 or for a longer term.

6 (4) Subject to the laws of this state, credit life
 7 insurance and credit disability insurance may be provided at
 8 the expense of the borrower and may be provided by a
 9 licensee upon the request of the borrower when the principal
 10 amount of the loan exceeds \$300, exclusive of the portion
 11 thereof attributable to insurance premiums and charges. If
 12 any loan shall include amounts advanced for insurance
 13 premiums and charges, such loan shall not in any event
 14 exceed \$25,000.

15 (5) The insurance authorized by this section may be
 16 sold, obtained, or provided by or through a licensee, and
 17 the premium or identifiable charge for the insurance may be
 18 included in the principal amount of the loan; provided,
 19 however, that no licensee shall require a borrower to
 20 purchase such insurance from such licensee or from any
 21 particular agent, broker, or insurance company as a
 22 condition precedent for the obtaining of a loan. Any gain or
 23 advantage to the licensee or any employee, affiliate, or
 24 associate of the licensee from the sale, provision, or
 25 obtaining of insurance as authorized by this section shall

1 not be deemed to be additional charges or a violation of
2 this chapter.

3 (6) A licensee shall not require insurance under this
4 section until any existing insurance of the same type has
5 expired or has been canceled and the unearned portion of the
6 premium for the canceled insurance has been rebated to the
7 borrower.

8 ~~(7) The amounts of \$300 and \$25,000 in subsection (3)~~
9 ~~and (4) are subject to change pursuant to [section 9] on~~
10 ~~adjustment of dollar amounts."~~

11 Section 8. Section 32-5-402, MCA, is amended to read:
12 "32-5-402. Investigations. (1) The department may at
13 any time investigate any transaction with borrowers and may
14 examine the books, accounts, and records in this state to
15 discover violations of this chapter by:

16 (1)(a) a licensee;

17 (2)(b) a person who advertises for, solicits, or holds
18 himself out as willing to make loans in amounts of \$25,000
19 or less; or

20 (3)(c) a person whom the department has reason to
21 believe is violating or is about to violate this chapter.

22 ~~(2) The amount of \$25,000 in subsection (1) is subject~~
23 ~~to change pursuant to the provisions of [section 9] on~~
24 ~~adjustment of dollar amounts."~~

25 NEW SECTION. Section 9. Adjustment of dollar amounts.

1 (1) From time to time the dollar amounts in [this act]
2 designated as subject to change shall change, as provided in
3 this section, according to and to the extent of changes in
4 the Consumer Price Index for Urban Wage Earners and Clerical
5 Workers: U.S. City Average, All Items, 1967 = 100, compiled
6 by the bureau of labor statistics, department of labor, and
7 hereafter referred to as the index. The index for December,
8 1980, shall be the reference base index.

9 (2) The designated dollar amounts shall change on July
10 1 of each even-numbered year if the percentage of change,
11 calculated to the nearest whole percentage point, between
12 the index at the end of the preceding year and the reference
13 base index is 10% or more, but:

14 (a) the portion of the percentage change in the index
15 in excess of a multiple of 10% shall be disregarded and the
16 dollar amounts shall change only in multiples of 10% of the
17 amounts appearing in [this act] on [the effective date of
18 this act];

19 (b) the dollar amounts shall not change if the amounts
20 required by this section are those currently in effect
21 pursuant to [this act] as a result of earlier application of
22 this section; and

23 (c) the dollar amounts may not be reduced below the
24 amounts appearing in [this act] on [the effective date of
25 this act].

1 (3) If the index is revised, the percentage of change
 2 pursuant to this section shall be calculated on the basis of
 3 the revised index. If a revision of the index changes the
 4 reference base index, a revised reference base index shall
 5 be determined by multiplying the reference base index then
 6 applicable by the rebasing factor furnished by the United
 7 States bureau of labor statistics. If the index is
 8 superseded, the index referred to in this section shall be
 9 the one represented by the bureau of labor statistics as
 10 reflecting most accurately changes in the purchasing power
 11 of the dollar for consumers.

12 (4) The department shall adopt a rule announcing:

13 (a) on or before April 30 of each year in which dollar
 14 amounts are to change, the changes in dollar amounts
 15 required by subsection (2); and

16 (b) promptly after the changes occur, changes in the
 17 index required by subsection (3) including, if applicable,
 18 the numerical equivalent of the reference base index under a
 19 revised reference base index and the designation or title of
 20 any index superseding the index.

21 (5) A person does not violate [this act] with respect
 22 to a transaction otherwise complying with [this act] if he
 23 relies on dollar amounts either determined according to
 24 subsection (2) or appearing in the last rule of the
 25 department announcing the then current dollar amounts.

1 ~~NEW SECTION.~~ Section 10. Attorney fees. If the
 2 contract so provides, reasonable attorney fees may be
 3 awarded to the party in whose favor final judgment is
 4 rendered in any action on a contract entered into pursuant
 5 to the provisions of this chapter.

6 Section 11. Codification instruction. Sections 9 and
 7 10 are intended to be codified as an integral part of Title
 8 32, chapter 5, and the provisions of Title 32, chapter 5,
 9 apply to sections 9 and 10.

-End-

Approved by Committee
on Business and Industry

HOUSE BILL NO. 321

INTRODUCED BY FABREGA, GOODOVER, MEYER, MENAHAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA CONSUMER LOAN ACT BY PROVIDING FOR THE ADJUSTMENT OF CERTAIN DOLLAR AMOUNTS IN THE ACT IN ACCORDANCE WITH CHANGES IN THE CONSUMER PRICE INDEX; INCREASING CERTAIN CHARGES, INCLUDING CERTAIN FEES TO BE PAID TO THIRD PARTIES IN THE PRINCIPAL AMOUNT OF THE LOAN; PROVIDING FOR THE UTILIZATION OF THE DISCLOSURES REQUIRED BY THE FEDERAL CONSUMER CREDIT PROTECTION ACT; AND PROVIDING FOR ATTORNEY FEES IN LEGAL ACTIONS; AMENDING SECTIONS 32-5-102, 32-5-103, 32-5-201, 32-5-301 THROUGH 32-5-303, 32-5-306, AND 32-5-402, MCA."

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"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 \$25,000 or less, which amount is subject to change pursuant to the provisions of [section 9], generally repayable in substantially equal installments."

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

"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 \$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 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

1 device, subterfuge, or pretense whatsoever.

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

7 (4) The amount of \$25,000 in subsection (1) is subject
8 to change pursuant to the provisions of [section 9] on
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14 nontransferable and nonassignable license. The same person
15 may obtain additional licenses upon compliance with this
16 chapter as to each license.

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18 prescribed and furnished by the department.

19 (c) A licensee may move his place of business from one
20 place to another within a county without obtaining a new
21 license, provided he obtains written permission from the
22 department.

23 (d) With each application the applicant shall submit
24 \$50 as an investigation fee and \$125 as a license fee. The
25 license fee shall be returned to the applicant if the

1 application is denied. The license year is the calendar
2 year, and the license fee for any period less than 6 months
3 is \$62.50. A license remains in force until surrendered,
4 suspended, or revoked.

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

9 (a) When any person holding a license provided for in
10 subsection (1) desires to make loans for any amount in
11 excess of \$1,000 but not exceeding \$25,000, the holder of
12 such license may apply to the department for a supplementary
13 license and pay therefor an additional license fee of \$75
14 per calendar year or one-half of said sum for any period
15 less than 6 months.

16 (b) The department shall grant, on application, a
17 supplementary license to a holder of a license provided for
18 in subsection (1).

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

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

1 (3) All moneys collected under the authority of this
 2 chapter shall be paid into the state treasury by the
 3 department.

4 ~~(4) The amounts of \$1,000 and \$25,000 in subsection~~
 5 ~~(2) are subject to change pursuant to the provisions of~~
 6 ~~[section 9]."~~

7 Section 4. Section 32-5-301, MCA, is amended to read:

8 "32-5-301. Charges, refunds, penalties, filing fees.

9 (1) Every licensee hereunder may contract for and receive on
 10 any loan of money not exceeding \$1,000 in principal amount:

11 (a) charges at rates not in excess of \$20 per year per
 12 \$100 on that part of the principal amount of the loan not
 13 exceeding ~~\$300~~ \$500;

14 (b) \$16 per year per \$100 on that part of the
 15 principal amount of the loan exceeding ~~\$300~~ \$500 but not
 16 exceeding ~~\$500~~ and \$1,000.

17 ~~(c) \$12 per year per \$100 on that part of the~~
 18 ~~principal amount of the loan in excess of \$500 but not~~
 19 ~~exceeding \$1,000.~~

20 (2) The holder of a supplementary license may contract
 21 for and receive charges at rates authorized for licensees in
 22 subsection (1) for the first \$1,000 of the principal amount
 23 of any loan and may contract for and receive charges at
 24 rates not in excess of ~~\$18~~ \$12 per year per \$100 on that
 25 part of the principal amount of any loan exceeding \$1,000

1 but not exceeding \$7,500.

2 (3) Charges in (1) and (2) shall be computed at the
 3 applicable rates on the full, original principal amount of
 4 the loan from the date of the loan to the due date of the
 5 final scheduled installment irrespective of the fact that
 6 the loan is payable in installments. Said charges shall be
 7 added to the principal of the loan and shall not be
 8 discounted or deducted therefrom or paid or received at the
 9 time the loan is made. For the purpose of computing charges
 10 for a fraction of a month, a day shall be considered
 11 one-thirtieth of a month.

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

20 (5) When any loan contract, new loan, renewal, or
 21 otherwise, is paid in full by cash 1 month or more before
 22 the final installment date, the licensee shall refund or
 23 credit the borrower with that portion of the total charges
 24 which shall be due the borrower as determined by schedules
 25 prepared under the rule of 78ths or sum of the digits

1 principle as follows: the amount of the refund or credit
 2 shall be as great a proportion of the total charges
 3 originally contracted for as the sum of the consecutive
 4 monthly balances of the contract scheduled to follow the
 5 date of prepayment bears to the sum of all the consecutive
 6 monthly balances of the contract, both sums to be determined
 7 according to the payment schedule originally contracted for.

8 (b) ~~for~~ if the contract so provides, the additional
 9 charge for any amount past due according to the original
 10 terms of the contract, whether by reason of default or
 11 extension agreement, may be 5% of the amount past due, and
 12 said amount may be charged once and no more.

13 ~~(b) if two installments or parts thereof of a~~
 14 ~~precomputed loan are in default for 10 days or more, a~~
 15 ~~licensee may elect to convert the loan from a precomputed~~
 16 ~~one-to-one in which charges are based on unpaid balances,~~
 17 ~~in this event he shall make a rebate pursuant to the~~
 18 ~~provisions of subsection (5) as if the date of prepayment~~
 19 ~~were 1 day before the maturity date of the delinquent~~
 20 ~~installment nearest to the conversion date, and thereafter~~
 21 ~~may make charges at the single annual percentage rate that~~
 22 ~~would earn the same charges as the graduated charges~~
 23 ~~permitted by subsection (f) when the debt is paid according~~
 24 ~~to the actuarial method.~~

25 (7) (a) The licensee may collect from the borrower

1 include in the principal amount of any loan the actual fees
 2 paid a public official or agency of the state for filing,
 3 recording, or releasing any instrument securing the loan.

4 (b) The licensee may include in the principal amount
 5 of any loan bona fide charges related to real estate
 6 security and paid to third parties, including:

7 (i) fees or premiums for title examination, title
 8 insurance, or similar purposes including survey;

9 (ii) fees for preparation of a deed, settlement
 10 statement, or other documents;

11 (iii) fees for notarizing deeds and other documents;

12 (iv) appraisal fees;

13 (v) fees for credit reports; and

14 (vi) fees paid to a trustee for release of a trust
 15 deed.

16 (8) No further or other charges shall be directly or
 17 indirectly contracted for or received by any licensee except
 18 those specifically authorized by this chapter. No licensee
 19 shall divide into separate parts any contract made for the
 20 purpose of or with the effect of outaining charges in excess
 21 of those authorized by this chapter. All balances due to a
 22 licensee from any person as a borrower or as an endorser,
 23 guarantor, or surety for any borrower or otherwise or due
 24 from any husband or wife, jointly or severally, shall be
 25 considered a part of any loan being made by a licensee to

1 such person for the purpose of computing interest or
 2 charges. If any amount in excess of the charges permitted by
 3 this chapter is charged, contracted for, or and received,
 4 except as the result of an accidental and bona fide error of
 5 computation, ~~the contract of loan shall be void and~~ the
 6 licensee shall have no right to collect or receive any
 7 ~~principal charges or recompense whatsoever.~~

8 (9) On any loan of money exceeding \$7,500 in principal
 9 amount, a licensee may not make charges as provided in
 10 subsections (1) and (2) but shall make charges in accordance
 11 with the provisions of this subsection through subsection
 12 (12).

13 (10) 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%~~ 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
 20 first to accumulated charges and the remainder of the
 21 payment applied to the unpaid principal balance, except that
 22 if the amount of the payment is insufficient to pay the
 23 accumulated charges, unpaid charges continue to accumulate
 24 to be paid from the proceeds of subsequent payments and are
 25 not added to the principal balance.

1 (b) Charges made under this subsection may not be
 2 payable in advance or compounded. However, if part or all of
 3 the 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 a
 7 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) is the balance due
 10 after refund or credit is given to the borrower pursuant to
 11 subsection (5).

12 (11) For purposes of computing charges for a fraction
 13 of a month, a day is considered one-thirtieth of a month.

14 (12) The provisions of subsections (5) and (6) do not
 15 apply to loans made under subsections (9) through (11).

16 (13) The amounts of \$90, \$500, \$1,000, \$7,500, and
 17 \$25,000 in subsections (1), (2), (4), (9), and (10) are
 18 subject to change pursuant to the provisions of [section 9]
 19 on adjustment of dollar amounts."

20 Section 5. Section 32-5-302, MCA, is amended to read:

21 "32-5-302. Installment payment -- contract period. (1)
 22 No licensee may enter into any contract of loan:

23 (a) of \$300 or less, exclusive of charges, under which
 24 the borrower agrees to make any scheduled repayment of
 25 principal more than 21 calendar months from the date of

1 making such contract;

2 (b) for more than \$300 to and including \$1,000,
3 exclusive of charges, under which the borrower agrees to
4 make any scheduled repayment of principal more than 25
5 calendar months from the date of making; or

6 (c) for more than \$1,000 to and including ~~\$2,000~~
7 \$2,500, exclusive of charges, under which the borrower
8 agrees to make any scheduled repayment of principal more
9 than 37 calendar months from the date of making; ~~or~~

10 ~~{d}--for--more--than--\$2,000--to--and--including--\$2,500,~~
11 ~~exclusive-of-charges,--under--which--the--borrower--agrees--to~~
12 ~~make--any--scheduled--repayment--of--principal--more--than--37~~
13 ~~calendar--months--from--the--date--of--making.~~

14 (2) Every loan contract shall require payment of
15 principal and charges in installments which shall be payable
16 at approximately equal periodic intervals, except that
17 payment dates may be omitted to accommodate borrowers with
18 seasonal incomes. No installment contracted for may be
19 substantially larger than any preceding installment. When a
20 loan contract provides for monthly installments, the first
21 installment may be payable at any time within 45 days of the
22 date of the loan and the charges for the number of days in
23 excess of 30 from the date of making may be added to the
24 scheduled amount of the installments.

25 (3) The amounts of \$300, \$1,000, and \$2,500 in

1 subsection (1) are subject to change pursuant to the
2 provisions of [section 9] on adjustment of dollar amounts."

3 Section 6. Section 32-5-303, MCA, is amended to read:
4 "32-5-303. Borrower to receive copy of contract or
5 statement of contents. At the time the loan is made, there
6 will be delivered to the borrower, or if there be two or
7 more borrowers to one of them, either the disclosures
8 required by the Federal Consumer Credit Protection Act, a
9 copy of the loan contract, or a written statement in the
10 English language showing in clear and distinct terms:

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

13 (2) the date of the loan contract;

14 (3) the schedule of installments or description
15 thereof;

16 (4) the principal amount of the loan excluding
17 charges;

18 (5) the rate or amount of charges as the contract may
19 provide;

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

22 (7) the amount collected or paid out for filing and
23 other fees as allowed in 32-5-301(7);

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

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

7 Section 7. Section 32-5-306, MCA, is amended to read:
 8 "32-5-306. Insurance. (1) No insurance of any kind
 9 shall be written by a licensee or employee, affiliate, or
 10 associate of the licensee, in connection with any loan
 11 except as hereinafter provided.

12 (2) Insurance permitted under the provisions of this
 13 section shall be obtained through an insurance company
 14 authorized to conduct such business in Montana by a duly
 15 licensed agent or agency of this state. Premiums shall not
 16 exceed those fixed by law or current applicable manual
 17 rates. Insurance written as authorized by this section may
 18 contain a mortgagee clause or other appropriate provisions
 19 to protect the insurable interest of the licensee.

20 (3) When the principal amount of the loan exceeds \$300
 21 exclusive of the portion thereof attributable to insurance
 22 premiums and charges, the licensee may require a borrower to
 23 insure property offered as security against any substantial
 24 risk of loss, damage, or destruction for an amount not to
 25 exceed the reasonable value of the property insured or the

1 amount of the loan, whichever is smaller, and for the
 2 customary term approximating the term of the loan contract.
 3 It shall be optional with the borrower to obtain such
 4 insurance in an amount greater than the amount of the loan
 5 or for a longer term.

6 (4) Subject to the laws of this state, credit life
 7 insurance and credit disability insurance may be provided at
 8 the expense of the borrower and may be provided by a
 9 licensee upon the request of the borrower when the principal
 10 amount of the loan exceeds \$300, exclusive of the portion
 11 thereof attributable to insurance premiums and charges. If
 12 any loan shall include amounts advanced for insurance
 13 premiums and charges, such loan shall not in any event
 14 exceed \$25,000.

15 (5) The insurance authorized by this section may be
 16 sold, obtained, or provided by or through a licensee, and
 17 the premium or identifiable charge for the insurance may be
 18 included in the principal amount of the loan; provided,
 19 however, that no licensee shall require a borrower to
 20 purchase such insurance from such licensee or from any
 21 particular agent, broker, or insurance company as a
 22 condition precedent for the obtaining of a loan. Any gain or
 23 advantage to the licensee or any employee, affiliate, or
 24 associate of the licensee from the sale, provision, or
 25 obtaining of insurance as authorized by this section shall

1 not be deemed to be additional charges or a violation of
2 this chapter.

3 (6) A licensee shall not require insurance under this
4 section until any existing insurance of the same type has
5 expired or has been canceled and the unearned portion of the
6 premium for the canceled insurance has been rebated to the
7 borrower.

8 (7) The amounts of \$300 and \$25,000 in subsection (3)
9 and (4) are subject to change pursuant to [section 9] on
10 adjustment of dollar amounts."

11 Section 8. Section 32-5-402, MCA, is amended to read:
12 "32-5-402. Investigations. (1) The department may at
13 any time investigate any transaction with borrowers and may
14 examine the books, accounts, and records in this state to
15 discover violations of this chapter by:

- 16 (1)(a) a licensee;
- 17 (2)(b) a person who advertises for, solicits, or holds
18 himself out as willing to make loans in amounts of \$25,000
19 or less; or
- 20 (3)(c) a person whom the department has reason to
21 believe is violating or is about to violate this chapter.

22 (2) The amount of \$25,000 in subsection (1) is subject
23 to change pursuant to the provisions of [section 9] on
24 adjustment of dollar amounts."

25 NEW SECTION. Section 9. Adjustment of dollar amounts.

1 (1) From time to time the dollar amounts in [this act]
2 designated as subject to change shall change, as provided in
3 this section, according to and to the extent of changes in
4 the Consumer Price Index for Urban Wage Earners and Clerical
5 Workers: U.S. City Average, All Items, 1967 = 100, compiled
6 by the bureau of labor statistics, department of labor, and
7 hereafter referred to as the index. The index for December,
8 1980, shall be the reference base index.

9 (2) The designated dollar amounts shall change on July
10 1 of each even-numbered year if the percentage of change,
11 calculated to the nearest whole percentage point, between
12 the index at the end of the preceding year and the reference
13 base index is 10% or more, but:

14 (a) the portion of the percentage change in the index
15 in excess of a multiple of 10% shall be disregarded and the
16 dollar amounts shall change only in multiples of 10% of the
17 amounts appearing in [this act] on [the effective date of
18 this act];

19 (b) the dollar amounts shall not change if the amounts
20 required by this section are those currently in effect
21 pursuant to [this act] as a result of earlier application of
22 this section; and

23 (c) the dollar amounts may not be reduced below the
24 amounts appearing in [this act] on [the effective date of
25 this act].

1 (3) If the index is revised, the percentage of change
 2 pursuant to this section shall be calculated on the basis of
 3 the revised index. If a revision of the index changes the
 4 reference base index, a revised reference base index shall
 5 be determined by multiplying the reference base index then
 6 applicable by the rebasing factor furnished by the United
 7 States bureau of labor statistics. If the index is
 8 superseded, the index referred to in this section shall be
 9 the one represented by the bureau of labor statistics as
 10 reflecting most accurately changes in the purchasing power
 11 of the dollar for consumers.

12 (4) The department shall adopt a rule announcing:

13 (a) on or before April 30 of each year in which dollar
 14 amounts are to change, the changes in dollar amounts
 15 required by subsection (2); and

16 (b) promptly after the changes occur, changes in the
 17 index required by subsection (3) including, if applicable,
 18 the numerical equivalent of the reference base index under a
 19 revised reference base index and the designation or title of
 20 any index superseding the index.

21 (5) A person does not violate [this act] with respect
 22 to a transaction otherwise complying with [this act] if he
 23 relies on dollar amounts either determined according to
 24 subsection (2) or appearing in the last rule of the
 25 department announcing the then current dollar amounts.

1 NEW_SECTION. Section 10. Attorney fees. If the
 2 contract so provides, reasonable attorney fees may be
 3 awarded to the party in whose favor final judgment is
 4 rendered in any action on a contract entered into pursuant
 5 to the provisions of this chapter.

6 Section 11. Codification instruction. Sections 9 and
 7 10 are intended to be codified as an integral part of Title
 8 32, chapter 5, and the provisions of Title 32, chapter 5,
 9 apply to sections 9 and 10.

-End-

HOUSE BILL NO. 321

INTRODUCED BY FABREGA, GOODOVER, MEYER, MENAHAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA CONSUMER LOAN ACT BY PROVIDING FOR THE ADJUSTMENT OF CERTAIN DOLLAR AMOUNTS IN THE ACT IN ACCORDANCE WITH CHANGES IN THE CONSUMER PRICE INDEX; INCREASING CERTAIN CHARGES, INCLUDING CERTAIN FEES TO BE PAID TO THIRD PARTIES IN THE PRINCIPAL AMOUNT OF THE LOAN; PROVIDING FOR THE UTILIZATION OF THE DISCLOSURES REQUIRED BY THE FEDERAL CONSUMER CREDIT PROTECTION ACT; AND PROVIDING FOR ATTORNEY FEES IN LEGAL ACTIONS; AMENDING SECTIONS 32-5-102, 32-5-103, 32-5-201, 32-5-301 THROUGH 32-5-303, 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 \$25,000 or less, which amount is subject to change pursuant to the provisions of [section 9], generally repayable in substantially equal installments."

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

"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 \$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 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

1 device, subterfuge, or pretense whatsoever.

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

7 (4) The amount of \$25,000 in subsection (1) is subject
8 to change pursuant to the provisions of [section 9] on
9 adjustment of dollar amounts."

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

11 "32-5-201. License application and fees --
12 supplementary license. (1) (a) A place of business operated
13 under this chapter shall properly display on the premises a
14 nontransferable and nonassignable license. The same person
15 may obtain additional licenses upon compliance with this
16 chapter as to each license.

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

19 (c) A licensee may move his place of business from one
20 place to another within a county without obtaining a new
21 license, provided he obtains written permission from the
22 department.

23 (d) With each application the applicant shall submit
24 \$50 as an investigation fee and \$125 as a license fee. The
25 license fee shall be returned to the applicant if the

1 application is denied. The license year is the calendar
2 year, and the license fee for any period less than 6 months
3 is \$62.50. A license remains in force until surrendered,
4 suspended, or revoked.

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

9 (a) When any person holding a license provided for in
10 subsection (1) desires to make loans for any amount in
11 excess of \$1,000 but not exceeding \$25,000, the holder of
12 such license may apply to the department for a supplementary
13 license and pay therefor an additional license fee of \$75
14 per calendar year or one-half of said sum for any period
15 less than 6 months.

16 (b) The department shall grant, on application, a
17 supplementary license to a holder of a license provided for
18 in subsection (1).

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

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

1 (3) All moneys collected under the authority of this
 2 chapter shall be paid into the state treasury by the
 3 department.

4 (4) The amounts of \$1,000 and \$25,000 in subsection
 5 (2) are subject to change pursuant to the provisions of
 6 section 9)."

7 Section 4. Section 32-5-301, MCA, is amended to read:

8 "32-5-301. Charges, refunds, penalties, filing fees.

9 (1) Every licensee hereunder may contract for and receive on
 10 any loan of money not exceeding \$1,000 in principal amount:

11 (a) charges at rates not in excess of \$20 per year per
 12 \$100 on that part of the principal amount of the loan not
 13 exceeding ~~\$300~~ \$500;

14 (b) \$16 per year per \$100 on that part of the
 15 principal amount of the loan exceeding ~~\$300~~ \$500 but not
 16 exceeding ~~\$500~~ and \$1,000.

17 ~~(c) \$12 per year per \$100 on that part of the~~
 18 ~~principal amount of the loan in excess of \$500 but not~~
 19 ~~exceeding \$1,000.~~

20 (2) The holder of a supplementary license may contract
 21 for and receive charges at rates authorized for licensees in
 22 subsection (1) for the first \$1,000 of the principal amount
 23 of any loan and may contract for and receive charges at
 24 rates not in excess of ~~5%~~ \$12 per year per \$100 on that
 25 part of the principal amount of any loan exceeding \$1,000

1 but not exceeding \$7,500.

2 (3) Charges in (1) and (2) shall be computed at the
 3 applicable rates on the full, original principal amount of
 4 the loan from the date of the loan to the due date of the
 5 final scheduled installment irrespective of the fact that
 6 the loan is payable in installments. Said charges shall be
 7 added to the principal of the loan and shall not be
 8 discounted or deducted therefrom or paid or received at the
 9 time the loan is made. For the purpose of computing charges
 10 for a fraction of a month, a day shall be considered
 11 one-thirtieth of a month.

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

20 (5) When any loan contract, new loan, renewal, or
 21 otherwise, is paid in full by cash 1 month or more before
 22 the final installment date, the licensee shall refund or
 23 credit the borrower with that portion of the total charges
 24 which shall be due the borrower as determined by schedules
 25 prepared under the rule of 78ths or sum of the digits

1 principle as follows: the amount of the refund or credit
 2 shall be as great a proportion of the total charges
 3 originally contracted for as the sum of the consecutive
 4 monthly balances of the contract scheduled to follow the
 5 date of prepayment bears to the sum of all the consecutive
 6 monthly balances of the contract, both sums to be determined
 7 according to the payment schedule originally contracted for.

8 (6) ~~for~~ If the contract so provides, the additional
 9 charge for any amount past due according to the original
 10 terms of the contract, whether by reason of default or
 11 extension agreement, may be 5% of the amount past due, and
 12 said amount may be charged once and no more.

13 ~~fb) if two installments or parts thereof of a~~
 14 ~~precomputed loan are in default for 10 days or more, a~~
 15 ~~licensee may elect to convert the loan from a precomputed~~
 16 ~~one-to-one in which charges are based on unpaid balances~~
 17 ~~in this event he shall make a rebate pursuant to the~~
 18 ~~provisions of subsection (5) as if the date of prepayment~~
 19 ~~were 1 day before the maturity date of the delinquent~~
 20 ~~installment nearest to the conversion date, and thereafter~~
 21 ~~may make charges at the same annual percentage rate that~~
 22 ~~would earn the same charges as the graduated charges~~
 23 ~~permitted by subsection (f) when the debt is paid according~~
 24 ~~to the actuarial method.~~

25 (7) d) The licensee may collect from the borrower

1 include in the principal amount of any loan the actual fees
 2 paid a public official or agency of the state for filing,
 3 recording, or releasing any instrument securing the loan.

4 (b) The licensee may include in the principal amount
 5 of any loan bona fide charges related to real estate
 6 security and paid to third parties, including:

7 (i) fees or premiums for title examination, title
 8 insurance, or similar purposes including survey;

9 (ii) fees for preparation of a deed, settlement
 10 statements, or other documents;

11 (iii) fees for notarizing deeds and other documents;

12 (iv) appraisal fees;

13 (v) fees for credit reports; and

14 (vi) fees paid to a trustee for release of a trust
 15 deed.

16 (8) No further or other charges shall be directly or
 17 indirectly contracted for or received by any licensee except
 18 those specifically authorized by this chapter. No licensee
 19 shall divide into separate parts any contract made for the
 20 purpose of or with the effect of obtaining charges in excess
 21 of those authorized by this chapter. All balances due to a
 22 licensee from any person as a borrower or as an endorser,
 23 guarantor, or surety for any borrower or otherwise or due
 24 from any husband or wife, jointly or severally, shall be
 25 considered a part of any loan being made by a licensee to

1 such person for the purpose of computing interest or
 2 charges. If any amount in excess of the charges permitted by
 3 this chapter is charged, contracted for, or and received,
 4 except as the result of an accidental and bona fide error of
 5 computation, ~~the contract of loan shall be void and~~ the
 6 licensee shall have no right to collect or receive any
 7 ~~principal charges or recompense whatsoever.~~

8 (9) On any loan of money exceeding \$7,500 in principal
 9 amount, a licensee may not make charges as provided in
 10 subsections (1) and (2) but shall make charges in accordance
 11 with the provisions of this subsection through subsection
 12 (12).

13 (10) 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%~~ 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
 20 first to accumulated charges and the remainder of the
 21 payment applied to the unpaid principal balance, except that
 22 if the amount of the payment is insufficient to pay the
 23 accumulated charges, unpaid charges continue to accumulate
 24 to be paid from the proceeds of subsequent payments and are
 25 not added to the principal balance.

1 (b) Charges made under this subsection may not be
 2 payable in advance or compounded. However, if part or all of
 3 the 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 a
 7 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) is the balance due
 10 after refund or credit is given to the borrower pursuant to
 11 subsection (5).

12 (11) For purposes of computing charges for a fraction
 13 of a month, a day is considered one-thirtieth of a month.

14 (12) The provisions of subsections (5) and (6) do not
 15 apply to loans made under subsections (9) through (11).

16 (13) The amounts of \$90, \$500, \$1,000, \$7,500, and
 17 \$25,000 in subsections (1), (2), (4), (9), and (10) are
 18 subject to change pursuant to the provisions of [section 9]
 19 on adjustment of dollar amounts."

20 Section 5. Section 32-5-302, MCA, is amended to read:

21 "32-5-302. Installment payment -- contract period. (1)
 22 No licensee may enter into any contract of loan:

23 (a) of \$300 or less, exclusive of charges, under which
 24 the borrower agrees to make any scheduled repayment of
 25 principal more than 21 calendar months from the date of

1 making such contract;

2 (b) for more than \$300 to and including \$1,000,
3 exclusive of charges, under which the borrower agrees to
4 make any scheduled repayment of principal more than 25
5 calendar months from the date of making; or

6 (c) for more than \$1,000 to and including ~~\$2,000~~
7 \$2,500, exclusive of charges, under which the borrower
8 agrees to make any scheduled repayment of principal more
9 than 37 calendar months from the date of making; ~~or~~

10 ~~(d) for more than \$2,000 to and including \$2,500~~
11 ~~exclusive of charges, under which the borrower agrees to~~
12 ~~make any scheduled repayment of principal more than 37~~
13 ~~calendar months from the date of making.~~

14 (2) Every loan contract shall require payment of
15 principal and charges in installments which shall be payable
16 at approximately equal periodic intervals, except that
17 payment dates may be omitted to accommodate borrowers with
18 seasonal incomes. No installment contracted for may be
19 substantially larger than any preceding installment. When a
20 loan contract provides for monthly installments, the first
21 installment may be payable at any time within 45 days of the
22 date of the loan and the charges for the number of days in
23 excess of 30 from the date of making may be added to the
24 scheduled amount of the installments.

25 (3) The amounts of \$300, \$1,000, and \$2,500 in

1 subsection (1) are subject to change pursuant to the
2 provisions of [section 9] on adjustment of dollar amounts."

3 Section 6. Section 32-5-303, MCA, is amended to read:

4 "32-5-303. Borrower to receive copy of contract or
5 statement of contents. At the time the loan is made, there
6 will be delivered to the borrower, or if there be two or
7 more borrowers to one of them, either the disclosures
8 required by the Federal Consumer Credit Protection Act, a
9 copy of the loan contract, or a written statement in the
10 English language showing in clear and distinct terms:

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

13 (2) the date of the loan contract;

14 (3) the schedule of installments or description
15 thereof;

16 (4) the principal amount of the loan excluding
17 charges;

18 (5) the rate or amount of charges as the contract may
19 provide;

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

22 (7) the amount collected or paid out for filing and
23 other fees as allowed in 32-5-301(7);

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

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

7 Section 7. Section 32-5-306, MCA, is amended to read:
 8 "32-5-306. Insurance. (1) No insurance of any kind
 9 shall be written by a licensee or employee, affiliate, or
 10 associate of the licensee, in connection with any loan
 11 except as hereinafter provided.

12 (2) Insurance permitted under the provisions of this
 13 section shall be obtained through an insurance company
 14 authorized to conduct such business in Montana by a duly
 15 licensed agent or agency of this state. Premiums shall not
 16 exceed those fixed by law or current applicable manual
 17 rates. Insurance written as authorized by this section may
 18 contain a mortgagee clause or other appropriate provisions
 19 to protect the insurable interest of the licensee.

20 (3) when the principal amount of the loan exceeds \$300
 21 exclusive of the portion thereof attributable to insurance
 22 premiums and charges, the licensee may require a borrower to
 23 insure property offered as security against any substantial
 24 risk of loss, damage, or destruction for an amount not to
 25 exceed the reasonable value of the property insured or the

1 amount of the loan, whichever is smaller, and for the
 2 customary term approximating the term of the loan contract.
 3 It shall be optional with the borrower to obtain such
 4 insurance in an amount greater than the amount of the loan
 5 or for a longer term.

6 (4) Subject to the laws of this state, credit life
 7 insurance and credit disability insurance may be provided at
 8 the expense of the borrower and may be provided by a
 9 licensee upon the request of the borrower when the principal
 10 amount of the loan exceeds \$300, exclusive of the portion
 11 thereof attributable to insurance premiums and charges. If
 12 any loan shall include amounts advanced for insurance
 13 premiums and charges, such loan shall not in any event
 14 exceed \$25,000.

15 (5) The insurance authorized by this section may be
 16 sold, obtained, or provided by or through a licensee, and
 17 the premium or identifiable charge for the insurance may be
 18 included in the principal amount of the loan; provided,
 19 however, that no licensee shall require a borrower to
 20 purchase such insurance from such licensee or from any
 21 particular agent, broker, or insurance company as a
 22 condition precedent for the obtaining of a loan. Any gain or
 23 advantage to the licensee or any employee, affiliate, or
 24 associate of the licensee from the sale, provision, or
 25 obtaining of insurance as authorized by this section shall

1 not be deemed to be additional charges or a violation of
2 this chapter.

3 (6) A licensee shall not require insurance under this
4 section until any existing insurance of the same type has
5 expired or has been canceled and the unearned portion of the
6 premium for the canceled insurance has been rebated to the
7 borrower.

8 (7) The amounts of \$300 and \$25,000 in subsection (3)
9 and (4) are subject to change pursuant to [section 9] on
10 adjustment of dollar amounts."

11 Section 8. Section 32-5-402, MCA, is amended to read:
12 "32-5-402. Investigations. (1) The department may at
13 any time investigate any transaction with borrowers and may
14 examine the books, accounts, and records in this state to
15 discover violations of this chapter by:

- 16 (1) (a) a licensee;
- 17 (2) (b) a person who advertises for, solicits, or holds
18 himself out as willing to make loans in amounts of \$25,000
19 or less; or
- 20 (3) (c) a person whom the department has reason to
21 believe is violating or is about to violate this chapter.

22 (2) The amount of \$25,000 in subsection (1) is subject
23 to change pursuant to the provisions of [section 9] on
24 adjustment of dollar amounts."

25 NEW SECTION. Section 9. Adjustment of dollar amounts.

1 (1) From time to time the dollar amounts in [this act]
2 designated as subject to change shall change, as provided in
3 this section, according to and to the extent of changes in
4 the Consumer Price Index for Urban Wage Earners and Clerical
5 Workers: U.S. City Average, All Items, 1967 = 100, compiled
6 by the bureau of labor statistics, department of labor, and
7 hereafter referred to as the index. The index for December,
8 1980, shall be the reference base index.

9 (2) The designated dollar amounts shall change on July
10 1 of each even-numbered year if the percentage of change,
11 calculated to the nearest whole percentage point, between
12 the index at the end of the preceding year and the reference
13 base index is 10% or more, but:

14 (a) the portion of the percentage change in the index
15 in excess of a multiple of 10% shall be disregarded and the
16 dollar amounts shall change only in multiples of 10% of the
17 amounts appearing in [this act] on [the effective date of
18 this act];

19 (b) the dollar amounts shall not change if the amounts
20 required by this section are those currently in effect
21 pursuant to [this act] as a result of earlier application of
22 this section; and

23 (c) the dollar amounts may not be reduced below the
24 amounts appearing in [this act] on [the effective date of
25 this act].

1 (3) If the index is revised, the percentage of change
 2 pursuant to this section shall be calculated on the basis of
 3 the revised index. If a revision of the index changes the
 4 reference base index, a revised reference base index shall
 5 be determined by multiplying the reference base index then
 6 applicable by the rebasing factor furnished by the United
 7 States bureau of labor statistics. If the index is
 8 superseded, the index referred to in this section shall be
 9 the one represented by the bureau of labor statistics as
 10 reflecting most accurately changes in the purchasing power
 11 of the dollar for consumers.

12 (4) The department shall adopt a rule announcing:

13 (a) on or before April 30 of each year in which dollar
 14 amounts are to change, the changes in dollar amounts
 15 required by subsection (2); and

16 (b) promptly after the changes occur, changes in the
 17 index required by subsection (3) including, if applicable,
 18 the numerical equivalent of the reference base index under a
 19 revised reference base index and the designation or title of
 20 any index superseding the index.

21 (5) A person does not violate [this act] with respect
 22 to a transaction otherwise complying with [this act] if he
 23 relies on dollar amounts either determined according to
 24 subsection (2) or appearing in the last rule of the
 25 department announcing the then current dollar amounts.

1 NEW SECTION. Section 10. Attorney fees. If the
 2 contract so provides, reasonable attorney fees may be
 3 awarded to the party in whose favor final judgment is
 4 rendered in any action on a contract entered into pursuant
 5 to the provisions of this chapter.

6 Section 11. Codification instruction. Sections 9 and
 7 10 are intended to be codified as an integral part of Title
 8 32, chapter 5, and the provisions of Title 32, chapter 5,
 9 apply to sections 9 and 10.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 321

3 Senate Business and Industry Committee

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A statement of intent is required for this bill because it requires the Department of Business Regulation to adopt a rule by April 30 of each even-numbered year, reflecting adjustment of designated dollar amounts according to fluctuations in the consumer price index.

The legislature intends that the amounts be computed as required in [section 9]. The department may adopt a rule for revision of the reference base index in the event that the consumer price index is revised as provided in subsection (3) of [section 9].

HOUSE BILL NO. 321

INTRODUCED BY FABREGA, GOODOVER, MEYER, MENAHAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA CONSUMER LOAN ACT BY PROVIDING FOR THE ADJUSTMENT OF CERTAIN DOLLAR AMOUNTS IN THE ACT IN ACCORDANCE WITH CHANGES IN THE CONSUMER PRICE INDEX; INCREASING CERTAIN CHARGES, INCLUDING CERTAIN FEES TO BE PAID TO THIRD PARTIES IN THE PRINCIPAL AMOUNT OF THE LOAN; PROVIDING FOR THE UTILIZATION OF THE DISCLOSURES REQUIRED BY THE FEDERAL CONSUMER CREDIT PROTECTION ACT; AND PROVIDING FOR ATTORNEY FEES IN LEGAL ACTIONS; AMENDING SECTIONS 32-5-102, 32-5-103, 32-5-201, 32-5-301 THROUGH 32-5-303, 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 \$25,000 or less, which amount is subject to change pursuant to the provisions of [section 9], generally repayable in substantially equal installments."

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

"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 \$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 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

1 device, subterfuge, or pretense whatsoever.

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

7 (4) The amount of \$25,000 in subsection (1) is subject
8 to change pursuant to the provisions of [section 9] on
9 adjustment of dollar amounts."

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

11 "32-5-201. License application and fees --
12 supplementary license. (1) (a) A place of business operated
13 under this chapter shall properly display on the premises a
14 nontransferable and nonassignable license. The same person
15 may obtain additional licenses upon compliance with this
16 chapter as to each license.

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

19 (c) A licensee may move his place of business from one
20 place to another within a county without obtaining a new
21 license, provided he obtains written permission from the
22 department.

23 (d) With each application the applicant shall submit
24 \$50 as an investigation fee and \$125 as a license fee. The
25 license fee shall be returned to the applicant if the

1 application is denied. The license year is the calendar
2 year, and the license fee for any period less than 6 months
3 is \$62.50. A license remains in force until surrendered,
4 suspended, or revoked.

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

9 (a) When any person holding a license provided for in
10 subsection (1) desires to make loans for any amount in
11 excess of \$1,000 but not exceeding \$25,000, the holder of
12 such license may apply to the department for a supplementary
13 license and pay therefor an additional license fee of \$75
14 per calendar year or one-half of said sum for any period
15 less than 6 months.

16 (b) The department shall grant, on application, a
17 supplementary license to a holder of a license provided for
18 in subsection (1).

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

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

1 (3) All moneys collected under the authority of this
 2 chapter shall be paid into the state treasury by the
 3 department.

4 (4) The amounts of \$1,000 and \$25,000 in subsection
 5 (2) are subject to change pursuant to the provisions of
 6 [section 9]."

7 Section 4. Section 32-5-301, MCA, is amended to read:

8 "32-5-301. Charges, refunds, penalties, filing fees.

9 (1) Every licensee hereunder may contract for and receive on
 10 any loan of money not exceeding \$1,000 in principal amount:

11 (a) charges at rates not in excess of \$20 per year per
 12 \$100 on that part of the principal amount of the loan not
 13 exceeding ~~\$300~~ \$500;

14 (b) \$16 per year per \$100 on that part of the
 15 principal amount of the loan exceeding ~~\$300~~ \$500 but not
 16 exceeding ~~\$500~~ and \$1,000.

17 ~~(c) \$12 per year per \$100 on that part of the~~
 18 ~~principal amount of the loan in excess of \$500 but not~~
 19 ~~exceeding \$1,000.~~

20 (2) The holder of a supplementary license may contract
 21 for and receive charges at rates authorized for licensees in
 22 subsection (1) for the first \$1,000 of the principal amount
 23 of any loan and may contract for and receive charges at
 24 rates not in excess of ~~\$10~~ \$12 per year per \$100 on that
 25 part of the principal amount of any loan exceeding \$1,000

1 but not exceeding \$7,500.

2 (3) Charges in (1) and (2) shall be computed at the
 3 applicable rates on the full, original principal amount of
 4 the loan from the date of the loan to the due date of the
 5 final scheduled installment irrespective of the fact that
 6 the loan is payable in installments. Said charges shall be
 7 added to the principal of the loan and shall not be
 8 discounted or deducted therefrom or paid or received at the
 9 time the loan is made. For the purpose of computing charges
 10 for a fraction of a month, a day shall be considered
 11 one-thirtieth of a month.

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

20 (5) When any loan contract, new loan, renewal, or
 21 otherwise, is paid in full by cash 1 month or more before
 22 the final installment date, the licensee shall refund or
 23 credit the borrower with that portion of the total charges
 24 which shall be due the borrower as determined by schedules
 25 prepared under the rule of 78ths or sum of the digits

1 principle as follows: the amount of the refund or credit
 2 shall be as great a proportion of the total charges
 3 originally contracted for as the sum of the consecutive
 4 monthly balances of the contract scheduled to follow the
 5 date of prepayment bears to the sum of all the consecutive
 6 monthly balances of the contract, both sums to be determined
 7 according to the payment schedule originally contracted for.

8 (6) ~~(a)~~ If the contract so provides, the additional
 9 charge for any amount past due according to the original
 10 terms of the contract, whether by reason of default or
 11 extension agreement, may be 5% of the amount past due, and
 12 said amount may be charged once and no more.

13 ~~(b) if two installments or parts thereof of a~~
 14 ~~precomputed loan are in default for 10 days or more, a~~
 15 ~~licensee may elect to convert the loan from a precomputed~~
 16 ~~one to one in which charges are based on unpaid balances~~
 17 ~~in this event he shall make a rebate pursuant to the~~
 18 ~~provisions of subsection (5) as if the date of prepayment~~
 19 ~~were 1 day before the maturity date of the delinquent~~
 20 ~~installment nearest to the conversion date, and thereafter~~
 21 ~~may make charges at the single annual percentage rate that~~
 22 ~~would earn the same charges as the graduated charges~~
 23 ~~permitted by subsection (1) when the debt is paid according~~
 24 ~~to the actuarial methods~~

25 (7) (a) The licensee may collect from the borrower

1 include in the principal amount of any loan the actual fees
 2 paid a public official or agency of the state for filing,
 3 recording, or releasing any instrument securing the loan.

4 (b) The licensee may include in the principal amount
 5 of any loan bona fide charges related to real estate
 6 security and paid to third parties, including:

7 (i) fees or premiums for title examination, title
 8 insurance, or similar purposes including survey;

9 (ii) fees for preparation of a deed, settlement
 10 statement, or other documents;

11 (iii) fees for notarizing deeds and other documents;

12 (iv) appraisal fees;

13 (v) fees for credit reports; and

14 (vi) fees paid to a trustee for release of a trust
 15 deed.

16 (8) No further or other charges shall be directly or
 17 indirectly contracted for or received by any licensee except
 18 those specifically authorized by this chapter. No licensee
 19 shall divide into separate parts any contract made for the
 20 purpose of or with the effect of obtaining charges in excess
 21 of those authorized by this chapter. All balances due to a
 22 licensee from any person as a borrower or as an endorser,
 23 guarantor, or surety for any borrower or otherwise or due
 24 from any husband or wife, jointly or severally, shall be
 25 considered a part of any loan being made by a licensee to

1 such person for the purpose of computing interest or
 2 charges. If any amount in excess of the charges permitted by
 3 this chapter is charged, contracted for, or and received,
 4 except as the result of an accidental and bona fide error of
 5 computation, ~~the contract of loan shall be void and~~ the
 6 licensee shall have no right to collect or receive any
 7 ~~principal charges or recompense whatsoever.~~

8 (9) On any loan of money exceeding \$7,500 in principal
 9 amount, a licensee may not make charges as provided in
 10 subsections (1) and (2) but shall make charges in accordance
 11 with the provisions of this subsection through subsection
 12 (12).

13 (10) 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%~~ 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
 20 first to accumulated charges and the remainder of the
 21 payment applied to the unpaid principal balance, except that
 22 if the amount of the payment is insufficient to pay the
 23 accumulated charges, unpaid charges continue to accumulate
 24 to be paid from the proceeds of subsequent payments and are
 25 not added to the principal balance.

1 (b) Charges made under this subsection may not be
 2 payable in advance or compounded. However, if part or all of
 3 the 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 a
 7 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) is the balance due
 10 after refund or credit is given to the borrower pursuant to
 11 subsection (5).

12 (11) For purposes of computing charges for a fraction
 13 of a month, a day is considered one-thirtieth of a month.

14 (12) The provisions of subsections (5) and (6) do not
 15 apply to loans made under subsections (9) through (11).

16 (13) The amounts of \$90, \$500, \$1,000, \$7,500, and
 17 \$25,000 in subsections (1), (2), (4), (9), and (10) are
 18 subject to change pursuant to the provisions of [section 9]
 19 on adjustment of dollar amounts."

20 Section 5. Section 32-5-302, MCA, is amended to read:
 21 "32-5-302. Installment payment -- contract period. (1)
 22 No licensee may enter into any contract of loan:

23 (a) of \$300 or less, exclusive of charges, under which
 24 the borrower agrees to make any scheduled repayment of
 25 principal more than 21 calendar months from the date of

1 making such contract;

2 (b) for more than \$300 to and including \$1,000,
3 exclusive of charges, under which the borrower agrees to
4 make any scheduled repayment of principal more than 25
5 calendar months from the date of making; or

6 (c) for more than \$1,000 to and including ~~\$2,000~~
7 \$2,500, exclusive of charges, under which the borrower
8 agrees to make any scheduled repayment of principal more
9 than 37 calendar months from the date of making; ~~or~~

10 ~~{d}--for--more--than--\$2,000--to--and--including--\$2,500--
11 exclusive--of--charges--under--which--the--borrower--agrees--to
12 make--any--scheduled--repayment--of--principal--more--than--37
13 calendar--months--from--the--date--of--making.~~

14 (2) Every loan contract shall require payment of
15 principal and charges in installments which shall be payable
16 at approximately equal periodic intervals, except that
17 payment dates may be omitted to accommodate borrowers with
18 seasonal incomes. No installment contracted for may be
19 substantially larger than any preceding installment. When a
20 loan contract provides for monthly installments, the first
21 installment may be payable at any time within 45 days of the
22 date of the loan and the charges for the number of days in
23 excess of 30 from the date of making may be added to the
24 scheduled amount of the installments.

25 (3) The amounts of \$300, \$1,000, and \$2,500 in

1 subsection (1) are subject to change pursuant to the
2 provisions of [section 9] on adjustment of dollar amounts."

3 Section 6. Section 32-5-303, MCA, is amended to read:

4 "32-5-303. Borrower to receive copy of contract or
5 statement of contents. At the time the loan is made, there
6 will be delivered to the borrower, or if there be two or
7 more borrowers to one of them, either the disclosures
8 required by the Federal Consumer Credit Protection Act, a
9 copy of the loan contract, or a written statement in the
10 English language showing in clear and distinct terms:

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

13 (2) the date of the loan contract;

14 (3) the schedule of installments or description
15 thereof;

16 (4) the principal amount of the loan excluding
17 charges;

18 (5) the rate or amount of charges as the contract may
19 provide;

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

22 (7) the amount collected or paid out for filing and
23 other fees as allowed in 32-5-301(7);

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

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

7 Section 7. Section 32-5-306, MCA, is amended to read:

8 "32-5-306. Insurance. (1) No insurance of any kind
 9 shall be written by a licensee or employee, affiliate, or
 10 associate of the licensee, in connection with any loan
 11 except as hereinafter provided.

12 (2) Insurance permitted under the provisions of this
 13 section shall be obtained through an insurance company
 14 authorized to conduct such business in Montana by a duly
 15 licensed agent or agency of this state. Premiums shall not
 16 exceed those fixed by law or current applicable manual
 17 rates. Insurance written as authorized by this section may
 18 contain a mortgagee clause or other appropriate provisions
 19 to protect the insurable interest of the licensee.

20 (3) When the principal amount of the loan exceeds \$300
 21 exclusive of the portion thereof attributable to insurance
 22 premiums and charges, the licensee may require a borrower to
 23 insure property offered as security against any substantial
 24 risk of loss, damage, or destruction for an amount not to
 25 exceed the reasonable value of the property insured or the

1 amount of the loan, whichever is smaller, and for the
 2 customary term approximating the term of the loan contract.
 3 It shall be optional with the borrower to obtain such
 4 insurance in an amount greater than the amount of the loan
 5 or for a longer term.

6 (4) Subject to the laws of this state, credit life
 7 insurance and credit disability insurance may be provided at
 8 the expense of the borrower and may be provided by a
 9 licensee upon the request of the borrower when the principal
 10 amount of the loan exceeds \$300, exclusive of the portion
 11 thereof attributable to insurance premiums and charges. If
 12 any loan shall include amounts advanced for insurance
 13 premiums and charges, such loan shall not in any event
 14 exceed \$25,000.

15 (5) The insurance authorized by this section may be
 16 sold, obtained, or provided by or through a licensee, and
 17 the premium or identifiable charge for the insurance may be
 18 included in the principal amount of the loan; provided,
 19 however, that no licensee shall require a borrower to
 20 purchase such insurance from such licensee or from any
 21 particular agent, broker, or insurance company as a
 22 condition precedent for the obtaining of a loan. Any gain or
 23 advantage to the licensee or any employee, affiliate, or
 24 associate of the licensee from the sale, provision, or
 25 obtaining of insurance as authorized by this section shall

1 not be deemed to be additional charges or a violation of
2 this chapter.

3 (6) A licensee shall not require insurance under this
4 section until any existing insurance of the same type has
5 expired or has been canceled and the unearned portion of the
6 premium for the canceled insurance has been rebated to the
7 borrower.

8 (7) The amounts of \$300 and \$25,000 in subsection (3)
9 and (4) are subject to change pursuant to [section 9] on
10 adjustment of dollar amounts."

11 Section 8. Section 32-5-402, MCA, is amended to read:
12 "32-5-402. Investigations. (1) The department may at
13 any time investigate any transaction with borrowers and may
14 examine the books, accounts, and records in this state to
15 discover violations of this chapter by:

16 (1)(a) a licensee;

17 (1)(b) a person who advertises for, solicits, or holds
18 himself out as willing to make loans in amounts of \$25,000
19 or less; or

20 (1)(c) a person whom the department has reason to
21 believe is violating or is about to violate this chapter.

22 (2) The amount of \$25,000 in subsection (1) is subject
23 to change pursuant to the provisions of [section 9] on
24 adjustment of dollar amounts."

25 NEW SECTION. Section 9. Adjustment of dollar amounts.

1 (1) From time to time the dollar amounts in [this act]
2 designated as subject to change shall change, as provided in
3 this section, according to and to the extent of changes in
4 the Consumer Price Index for Urban Wage Earners and Clerical
5 Workers: U.S. City Average, All Items, 1967 = 100, compiled
6 by the bureau of labor statistics, department of labor, and
7 hereafter referred to as the index. The index for December,
8 1980, shall be the reference base index.

9 (2) The designated dollar amounts shall change on July
10 1 of each even-numbered year if the percentage of change,
11 calculated to the nearest whole percentage point, between
12 the index at the end of the preceding year and the reference
13 base index is 10% or more, but:

14 (a) the portion of the percentage change in the index
15 in excess of a multiple of 10% shall be disregarded and the
16 dollar amounts shall change only in multiples of 10% of the
17 amounts appearing in [this act] on [the effective date of
18 this act];

19 (b) the dollar amounts shall not change if the amounts
20 required by this section are those currently in effect
21 pursuant to [this act] as a result of earlier application of
22 this section; and

23 (c) the dollar amounts may not be reduced below the
24 amounts appearing in [this act] on [the effective date of
25 this act].

1 (3) If the index is revised, the percentage of change
 2 pursuant to this section shall be calculated on the basis of
 3 the revised index. If a revision of the index changes the
 4 reference base index, a revised reference base index shall
 5 be determined by multiplying the reference base index then
 6 applicable by the rebasing factor furnished by the United
 7 States bureau of labor statistics. If the index is
 8 superseded, the index referred to in this section shall be
 9 the one represented by the bureau of labor statistics as
 10 reflecting most accurately changes in the purchasing power
 11 of the dollar for consumers.

12 (4) The department shall adopt a rule announcing:

13 (a) on or before April 30 of each year in which dollar
 14 amounts are to change, the changes in dollar amounts
 15 required by subsection (2); and

16 (b) promptly after the changes occur, changes in the
 17 index required by subsection (3) including, if applicable,
 18 the numerical equivalent of the reference base index under a
 19 revised reference base index and the designation or title of
 20 any index superseding the index.

21 (5) A person does not violate [this act] with respect
 22 to a transaction otherwise complying with [this act] if he
 23 relies on dollar amounts either determined according to
 24 subsection (2) or appearing in the last rule of the
 25 department announcing the then current dollar amounts.

1 NEW SECTION. Section 10. Attorney fees. If the
 2 contract so provides, reasonable attorney fees may be
 3 awarded to the party in whose favor final judgment is
 4 rendered in any action on a contract entered into pursuant
 5 to the provisions of this chapter.

6 Section 11. Codification instruction. Sections 9 and
 7 10 are intended to be codified as an integral part of Title
 8 32, chapter 5, and the provisions of Title 32, chapter 5,
 9 apply to sections 9 and 10.

-End-

March 16, 1981

SENATE STATEMENT OF INTENT ON HOUSE BILL NO. 321
(Business & Industry)

A statement of intent is required for this bill because it requires the department of business regulation to adopt a rule by April 30 of each even numbered year, reflecting adjustment of designated dollar amounts according to fluctuations in the consumer price index.

The legislature intends that the amounts be computed as required in [section 9]. The department may adopt a rule for revision of the reference base index in the event that the consumer price index is revised as provided in subsection (3) of [section 9].