

SENATE BILL NO. 338

Introduced: 02/02/83

Referred to Committee on State Administration: 02/02/83

Hearing: 2/7/83

Report: 02/10/83, Do Pass

On Motion, 2/12/83, Pass Consideration For The Day. Motion
Passed Unanimously.

2nd Reading: 02/14/83

3rd Reading: 2/16/83

Transmitted to House: 2/16/83

Referred to Committee on State Administration: 03/01/83

Hearing: 3/11/83

Report: 03/11/83, Be Not Concurred In. Report Adopted.

Bill Killed: 03/14/83

1 House BILL NO. 338
2 INTRODUCED BY Stephen Dyer Taylor Minor
3 Coleman E. Smith Edward Hawley
4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAWS
5 RELATED TO ELECTIONEERING TO PROVIDE A PRESUMPTIVE VALUE FOR
6 THE PURPOSE OF DEFINING TRIVIAL BENEFITS AND TO PROHIBIT
7 CERTAIN ELECTION DAY ACTIVITIES; AMENDING SECTIONS 13-35-102
8 AND 13-35-211, MCA."

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

11 Section 1. Section 13-35-102, MCA, is amended to read:
12 "13-35-102. Trivial benefits not covered by criminal
13 provisions. It is not the intent of the election laws of
14 this state to criminalize activities involving trivial
15 benefits incidental to the campaign process which involve no
16 substantial risk of undermining the election process.
17 ~~Benefits in excess of \$1 in value are presumed not to be~~
18 ~~trivial."~~

19 Section 2. Section 13-35-211, MCA, is amended to read:

20 "13-35-211. Electioneering. (1) No person may do any
21 electioneering on election day within any polling place or
22 any building in which an election is being held or within
23 200 feet thereof, which aids or promotes the success or
24 defeat of any candidate or ballot issue to be voted upon at
25 the election.

1 (2) No person may buy, sell, give, wear, or display at
2 or about the polls on an election day any badge, button, or
3 other insignia which is designed or tends to aid or promote
4 the success or defeat of any candidate or ballot issue to be
5 voted upon at the election.

6 ~~[3] No person may give or offer to give any food or~~
7 ~~beverage on election day, in connection with any campaign,~~
8 ~~before the polls are closed with the purpose of inducing any~~
9 ~~person to vote or not vote at the election or to vote for or~~
10 ~~against any candidate or ballot issue."~~

-End-

INTRODUCED BILL

-2-

SE 338

Approved by Committee
on State Administration

1 *Senate BILL NO. 338*
2 INTRODUCED BY *Stephen McGowan, E. Smith, Etchant, Hadden*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAWS
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-End-

1 *Senate* BILL NO. *338*
 2 INTRODUCED BY *Stephen R. Hays, E. Smith, Robert H. Hall*
 3
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-End-

HOUSE BILL NO. 338

INTRODUCED BY FABREGA,

METCALF, O'CONNELL, HARRINGTON

A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT SUPPLEMENTARY
LICENSEES UNDER THE CONSUMER LOAN ACT TO MAKE LOANS IN ANY
AMOUNT; AMENDING SECTIONS 32-5-102, 32-5-103, 32-5-201,
32-5-301, 32-5-306, 32-5-402, AND 32-5-501, 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 commerce
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 32-5-104~~ 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~~ any amount 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
device, subterfuge, or pretense whatsoever.

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

principal, interest, or charges whatsoever.

~~{4}--The amount of \$25,000 in subsection {1} is subject to change pursuant to the provisions of 32-5-204--on adjustment of dollar amounts--~~

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

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

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

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

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

(2) No licensee under the provisions of this chapter

shall lend money in a total sum greater than \$1,000 to any borrower or to any borrower and spouse except under the following circumstances:

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

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

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

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

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

(4) The amounts amount of \$1,000 and \$25,000 in subsection (2) are is subject to change pursuant to the

1 provisions of 32-5-104."

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

3 "32-5-301. Charges, refunds, penalties, filing fees.

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

6 (a) charges at rates not in excess of \$20 per year per
7 \$100 on that part of the principal amount of the loan not
8 exceeding \$500;

9 (b) \$16 per year per \$100 on that part of the
10 principal amount of the loan exceeding \$500 but not
11 exceeding \$1,000.

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

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

1 time the loan is made. For the purpose of computing charges
2 for a fraction of a month, a day shall be considered
3 one-thirtieth of a month.

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

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

25 (6) If the contract so provides, the additional charge

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

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

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

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

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

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

17 (iv) appraisal fees;

18 (v) fees for credit reports; and

19 (vi) fees paid to a trustee for release of a trust
20 deed.

21 (8) No further or other charges shall be directly or
22 indirectly contracted for or received by any licensee except
23 those specifically authorized by this chapter. No licensee
24 shall divide into separate parts any contract made for the
25 purpose of or with the effect of obtaining charges in excess

1 of those authorized by this chapter. All balances due to a
2 licensee from any person as a borrower or as an endorser,
3 guarantor, or surety for any borrower or otherwise or due
4 from any husband or wife, jointly or severally, shall be
5 considered a part of any loan being made by a licensee to
6 such person for the purpose of computing interest or
7 charges. If any amount in excess of the charges permitted by
8 this chapter is charged, contracted for, and received,
9 except as the result of an accidental and bona fide error of
10 computation, the licensee shall have no right to collect or
11 receive any charges.

12 (9) On any loan of money exceeding \$7,500 in principal
13 amount, a licensee may not make charges as provided in
14 subsections (1) and (2) but shall make charges in accordance
15 with the provisions of this subsection through subsection
16 (12).

17 (10) On any loan of money exceeding \$7,500 but--not
18 exceeding--\$25,000 in principal amount, a licensee may
19 contract and receive charges at a rate not in excess of 2%
20 per month on the principal amount as follows:

21 (a) Charges shall be computed on unpaid balances of
22 the principal amount outstanding from time to time for the
23 actual time outstanding. Each payment shall be applied
24 first to accumulated charges and the remainder of the
25 payment applied to the unpaid principal balance, except that

1 if the amount of the payment is insufficient to pay the
2 accumulated charges, unpaid charges continue to accumulate
3 to be paid from the proceeds of subsequent payments and are
4 not added to the principal balance.

5 (b) Charges made under this subsection may not be
6 payable in advance or compounded. However, if part or all of
7 the consideration for a new loan contract is the unpaid
8 principal balance of a prior loan, the principal amount
9 payable under such new loan contract may include any unpaid
10 charges which have accrued. The resulting loan contract is a
11 new and separate loan transaction for all purposes. The
12 principal balance of a prior loan on which charges have been
13 made pursuant to subsections (1) and (2) is the balance due
14 after refund or credit is given to the borrower pursuant to
15 subsection (5).

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

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

20 (13) The amounts of \$90, \$500, \$1,000, and \$7,500--and
21 \$25,000 in subsections (1), (2), (4), (9), and (10) are
22 subject to change pursuant to the provisions of 32-5-104 on
23 adjustment of dollar amounts."

24 Section 5. Section 32-5-306, MCA, is amended to read:
25 "32-5-306. Insurance. (1) No insurance of any kind

1 shall be written by a licensee or employee, affiliate, or
2 associate of the licensee, in connection with any loan
3 except as hereinafter provided.

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

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

23 (4) Subject to the laws of this state, credit life
24 insurance and credit disability insurance may be provided at
25 the expense of the borrower and may be provided by a

licensee upon the request of the borrower when the principal amount of the loan exceeds \$300, exclusive of the portion thereof attributable to insurance premiums and charges. If ~~any loan shall include amounts advanced for insurance premiums and charges; such loan shall not in any event exceed \$25,000.~~

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

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

(7) The amounts ~~amount~~ of \$300 and ~~\$25,000~~ in

subsections (3) and (4) ~~are~~ is subject to change pursuant to 32-5-104 on adjustment of dollar amounts."

Section 6. Section 32-5-402, MCA, is amended to read: "32-5-402. Investigations. ~~(1)~~ The department may at any time investigate any transaction with borrowers and may examine the books, accounts, and records in this state to discover violations of this chapter by:

~~(a)~~ (1) a licensee; or

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

~~(c)~~ (2) a person whom the department has reason to believe is violating or is about to violate this chapter.

~~(2)~~ --The amount of \$25,000 in subsection (1) is subject to change pursuant to the provisions of 32-5-104 on adjustment of dollar amounts."

Section 7. Section 32-5-501, MCA, is amended to read:

"32-5-501. Open-end loans. (1) A holder of a supplementary license may make open-end loans up to the maximum amount permitted for other loans under this chapter and may contract for and receive charges at a rate not in excess of the rate set forth in 32-5-301(10) on unpaid balances outstanding from time to time for the actual time outstanding.

(2) A holder of a supplementary license may not

1 compound charges by adding any unpaid charges authorized by
2 this section to the unpaid principal balance of the
3 borrower's account; however, the unpaid principal balance
4 may include the fees paid to third parties as authorized by
5 32-5-504 and by 32-5-301(7)."

-End-