

SENATE BILL NO. 216

INTRODUCED BY BOYLAN, MCCALLUM, NEUMAN, ANDERSON

IN THE SENATE

January 23, 1985	Introduced and referred to Committee on Business and Industry.
January 31, 1985	Committee recommend bill do pass as amended. Report adopted.
February 1, 1985	Bill printed and placed on members' desks.
February 2, 1985	Second reading, do pass.
February 4, 1985	Considered correctly engrossed.
February 5, 1985	Third reading, passed. Ayes, 40; Noes, 7.
	Transmitted to House.

IN THE HOUSE

February 27, 1985	Introduced and referred to Committee on Business and Labor.
March 14, 1985	Committee recommend bill be concurred in. Report adopted.
March 16, 1985	Second reading, concurred in.
March 19, 1985	Third reading, concurred in. Returned to Senate.

IN THE SENATE

March 19, 1985

Received from House.

Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. *216*  
 2 INTRODUCED BY *Byrd* *McCallister* *Munson*  
 3 *Anderson*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 5 LAW CONCERNING CONSUMER LOAN LICENSEES; ALLOWING FINANCIAL  
 6 INSTITUTIONS TO BE LICENSED; REVISING PROVISIONS CONCERNING  
 7 INTEREST ON LOANS; REMOVING THE PROHIBITION ON SALE OF  
 8 INSURANCE; PROVIDING FOR A BAD CHECK CHARGE; AND AMENDING  
 9 SECTIONS 32-5-103, 32-5-301, 32-5-306, 32-5-322, 32-5-407,  
 10 32-5-501, AND 32-5-506, MCA."

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

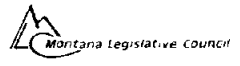
13 Section 1. Section 32-5-103, MCA, is amended to read:  
 14 "32-5-103. Engaging in business of making loans  
 15 restricted. (1) No person shall engage in the business of  
 16 making loans or advances of money on credit in any amount  
 17 and contract for, charge, or receive directly or indirectly  
 18 on or in connection with any such loan or advance any  
 19 charges, whether for interest, compensation, consideration,  
 20 or expense, which in the aggregate are greater than those  
 21 provided by 31-1-107(1), except as provided in and  
 22 authorized by this chapter. ~~Except as provided in subsection~~  
 23 ~~(2), a person doing business under the authority of this~~  
 24 ~~state or the United States relating to banks, trust~~  
 25 ~~companies, savings or building and loan associations, credit~~

1 unions; ~~or a~~ A person engaged in business as a licensed  
 2 pawnbroker ~~or any person who shall extend credit in~~  
 3 ~~connection with the sale of a commodity shall~~ may not become  
 4 a licensee under this chapter nor shall any of the  
 5 provisions of this chapter apply to any such exempted  
 6 person.

7 (2) A licensee may sell its business and assets to a  
 8 bank, building and loan association, savings and loan  
 9 association, trust company, credit union, credit  
 10 association, development credit corporation, or bank holding  
 11 company organized pursuant to state or federal statutory  
 12 authority and subject to supervision, control, or regulation  
 13 by an agency of the state of Montana or an agency of the  
 14 federal government. All contracts for loans and all other  
 15 contracts entered into by the licensee pursuant to the  
 16 provisions of this chapter that are sold and transferred to  
 17 an acquiring organization continue to be governed by the  
 18 provisions of this chapter.

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

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



-2- INTRODUCED BILL  
 SB 216

1 principal, interest, or charges whatsoever."

2 Section 2. 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}(4) (a) When any loan contract, new loan, renewal,  
13 or otherwise for a period of not more than 61 months is paid  
14 in full by cash 1 month or more before the final installment  
15 date, the licensee shall refund or credit the borrower with  
16 that portion of the total charges which shall be due the  
17 borrower as determined by schedules prepared under the rule  
18 of 78ths or sum of the digits principle as follows: the  
19 amount of the refund or credit shall be as great a  
20 proportion of the total charges originally contracted for as  
21 the sum of the consecutive monthly balances of the contract  
22 scheduled to follow the date of prepayment bears to the sum  
23 of all the consecutive monthly balances of the contract,  
24 both sums to be determined according to the payment schedule  
25 originally contracted for.

1 (b) When any loan contract, new loan, renewal, or  
 2 otherwise for a period of more than 61 months is paid in  
 3 full by cash 1 month or more before the final installment  
 4 date, the licensee shall refund or credit the borrower with  
 5 that portion of the total charges that is due the borrower  
 6 that is applicable to all fully unexpired months in the  
 7 contract as originally scheduled or, if deferred, as  
 8 deferred, following the date of prepayment. For this purpose  
 9 the applicable charge is the charge which would have been  
 10 earned for that contract if charges had not been  
 11 precomputed, by applying to the unpaid principal balance, by  
 12 the actuarial method, the annual percentage rate disclosed  
 13 pursuant to federal law, based on the assumption that all  
 14 payments were made as originally scheduled. For all loans  
 15 that may be subject to this section, charges are computed  
 16 initially in the same manner used to determine the annual  
 17 percentage rate.

18 ~~(6)(5)~~ If the contract so provides, the additional  
 19 charge for any amount past due according to the original  
 20 terms of the contract, whether by reason of default or  
 21 extension agreement, may be 5% of the amount past due, and  
 22 said amount may be charged once and no more.

23 ~~(7)(6)~~ (a) The licensee may include in the principal  
 24 amount of any loan the actual fees paid a public official or  
 25 agency of the state for filing, recording, or releasing any

1 instrument securing the loan.

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

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

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

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

10 (iv) appraisal fees;

11 (v) fees for credit reports; and

12 (vi) fees paid to a trustee for release of a trust  
 13 deed.

14 ~~(8)(7)~~ No further or other charges shall be directly  
 15 or indirectly contracted for or received by any licensee  
 16 except those specifically authorized by this chapter. No  
 17 licensee shall divide into separate parts any contract made  
 18 for the purpose of or with the effect of obtaining charges  
 19 in excess of those authorized by this chapter. ~~All balances~~  
 20 ~~due-to-a-licensee-from-any-person-as-a-borrower-or-as-an~~  
 21 ~~endorser, guarantor, or surety for any borrower or otherwise~~  
 22 ~~or due from any husband or wife, jointly or severally, shall~~  
 23 ~~be considered a part of any loan being made by a licensee to~~  
 24 ~~such person for the purpose of computing interest or~~  
 25 ~~charges.~~ If any amount in excess of the charges permitted by

1 this chapter is charged, contracted for, and received,  
2 except as the result of an accidental and bona fide error of  
3 computation, the licensee shall have no right to collect or  
4 receive any charges.

5 ~~f9~~(8) On any loan of money exceeding \$7,500 in  
6 principal amount, a licensee may not make charges as  
7 provided in subsections (1) and (2) but shall make charges  
8 in accordance with the provisions of this subsection through  
9 subsection ~~f12~~ (11).

10 ~~f10~~(9) On any loan of money exceeding \$7,500 in  
11 principal amount, a licensee may contract and receive  
12 charges at a rate not in excess of 2% per month on the  
13 principal amount as follows:

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

23 (b) Charges made under this subsection may not be  
24 payable in advance or compounded. However, if part or all  
25 the consideration for a new loan contract is the unpaid

1 principal balance of a prior loan, the principal amount  
2 payable under such new loan contract may include any unpaid  
3 charges which have accrued. The resulting loan contract is a  
4 new and separate loan transaction for all purposes. The  
5 principal balance of a prior loan on which charges have been  
6 made pursuant to subsections (1) and (2) is the balance due  
7 after refund or credit is given to the borrower pursuant to  
8 subsection ~~f5~~ (4).

9 ~~f11~~(10) For purposes of computing charges for a  
10 fraction of a month, a day is considered one-thirtieth of a  
11 month.

12 ~~f12~~(11) The provisions of subsections ~~f5~~ (4) and ~~f6~~  
13 (5) do not apply to loans made under subsections ~~f9~~ (8)  
14 through ~~f11~~ (10).

15 ~~f13~~(12) The amounts of \$90, \$500, \$1,000, and \$7,500  
16 in subsections (1), (2), ~~f4~~7--~~f9~~ (8), and ~~f10~~ (9) are  
17 subject to change pursuant to the provisions of 32-5-104 on  
18 adjustment of dollar amounts."

19 Section 3. Section 32-5-306, MCA, is amended to read:  
20 "32-5-306. Insurance ~~(1)~~ No--insurance Insurance of  
21 any kind ~~shall~~ may be written by a licensee or employee  
22 affiliate, or associate of the licensee, ~~in-connection-with~~  
23 ~~any--loan--except--as~~ subject to the limitations hereinafter  
24 provided.

25 (2) Insurance permitted under the provisions of this

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

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

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

25 (5) The insurance authorized by this section may be

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

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

18 (7) The amount of \$300 in subsections (3) and (4) is  
 19 subject to change pursuant to 32-5-104 on adjustment of  
 20 dollar amounts."

21 Section 4. Section 32-5-322, MCA, is amended to read:  
 22 "32-5-322. Deferral charge -- rate. The deferral  
 23 charge for a 1-month period may not exceed an amount equal  
 24 to the difference between the refund which would be required  
 25 for prepayment in full under ~~subsection (5) of 32-5-301(4)~~

1 as of the scheduled due date of the first deferred  
 2 installment and the refund which would be required for  
 3 prepayment in full as of 1 month prior to such date. A  
 4 proportionate charge may be made for deferrals for periods  
 5 of more or less than 1 month. A deferral charge is earned  
 6 pro rata on a daily basis during the deferral period and is  
 7 fully earned on the last day of the deferral period. Should  
 8 a loan be prepaid during a deferral period the licensee  
 9 shall make or credit to the borrower a pro rata refund of  
 10 the unearned deferral charge in addition to any refund or  
 11 credit made pursuant to ~~subsection-(5)-of~~ 32-5-301(4)."

12 Section 5. Section 32-5-407, MCA, is amended to read:  
 13 "32-5-407. Attorney fees -- bad check charge. (1) If  
 14 the contract so provides, reasonable attorney fees may be  
 15 awarded to the party in whose favor final judgment is  
 16 rendered in any action on a contract entered into pursuant  
 17 to the provisions of this chapter.

18 (2) In addition to any other charges authorized by  
 19 this chapter, a licensee may charge a borrower the greater  
 20 of \$10 or the licensee's actual expense for each check,  
 21 received in payment of a loan, that is dishonored for any  
 22 reason."

23 Section 6. Section 32-5-501, MCA, is amended to read:

24 "32-5-501. Open-end loans. (1) A holder of a  
 25 supplementary license may make open-end loans and may

1 contract for and receive charges at a rate not in excess of  
 2 the rate set forth in 32-5-301(~~10~~)(9) on unpaid balances  
 3 outstanding from time to time for the actual time  
 4 outstanding.

5 (2) A holder of a supplementary license may not  
 6 compound charges by adding any unpaid charges authorized by  
 7 this section to the unpaid principal balance of the  
 8 borrower's account; however, the unpaid principal balance  
 9 may include the fees paid to third parties as authorized by  
 10 32-5-504 and by 32-5-301(~~7~~)(6)."

11 Section 7. Section 32-5-506, MCA, is amended to read:

12 "32-5-506. Provisions not applicable. The provisions  
 13 of subsections ~~(5)~~ (4) and ~~(6)~~ (5) of 32-5-301 and the  
 14 provisions of 32-5-304 do not apply to open-end loans."

15 NEW SECTION. Section 8. Extension of authority. Any  
 16 existing authority of the department of commerce to make  
 17 rules on the subject of the provisions of this act is  
 18 extended to the provisions of this act.

-End-



APPROVED BY COMM. ON  
BUSINESS & INDUSTRY

SENATE BILL NO. 216

INTRODUCED BY BOYLAN, MCCALLUM, NEUMAN, ANDERSON

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAW CONCERNING CONSUMER LOAN LICENSEES; ALLOWING FINANCIAL INSTITUTIONS TO BE LICENSED; REVISING PROVISIONS CONCERNING INTEREST ON LOANS; REMOVING--THE--PROHIBITION--ON--SALE--OF INSURANCE; PROVIDING FOR A BAD CHECK CHARGE; AND AMENDING SECTIONS 32-5-103, 32-5-301, 32-5-306, 32-5-322, 32-5-407, 32-5-501, AND 32-5-506, MCA."

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

Section 1. 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 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. ~~Except as provided in subsection (2) 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~~ 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~~ may not become a licensee under this chapter nor shall any of the provisions of this chapter apply to any such exempted person.

(2) A licensee may sell its business and assets to a bank, building and loan association, savings and loan association, trust company, credit union, credit association, development credit corporation, or bank holding company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by an agency of the state of Montana or an agency of the federal government. All contracts for loans and all other contracts entered into by the licensee pursuant to the provisions of this chapter that are sold and transferred to an acquiring organization continue to be governed by the provisions of this chapter.

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

(4) 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



1 principal, interest, or charges whatsoever."

2 Section 2. 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}{4} (a) When any loan contract, new loan, renewal,  
13 or otherwise for a period of not more than 61 months is paid  
14 in full by cash 1 month or more before the final installment  
15 date, the licensee shall refund or credit the borrower with  
16 that portion of the total charges which shall be due the  
17 borrower as determined by schedules prepared under the rule  
18 of 78ths or sum of the digits principle as follows: the  
19 amount of the refund or credit shall be as great a  
20 proportion of the total charges originally contracted for as  
21 the sum of the consecutive monthly balances of the contract  
22 scheduled to follow the date of prepayment bears to the sum  
23 of all the consecutive monthly balances of the contract,  
24 both sums to be determined according to the payment schedule  
25 originally contracted for.

1 (b) When any loan contract, new loan, renewal, or  
 2 otherwise for a period of more than 61 months is paid in  
 3 full by cash 1 month or more before the final installment  
 4 date, the licensee shall refund or credit the borrower with  
 5 that portion of the total charges that is due the borrower  
 6 that is applicable to all fully unexpired months in the  
 7 contract as originally scheduled or, if deferred, as  
 8 deferred, following the date of prepayment. For this purpose  
 9 the applicable charge is the charge which would have been  
 10 earned for that contract if charges had not been  
 11 precomputed, by applying to the unpaid principal balance, by  
 12 the actuarial method, the annual percentage rate disclosed  
 13 pursuant to federal law, based on the assumption that all  
 14 payments were made as originally scheduled. For all loans  
 15 that may be subject to this section, charges are computed  
 16 initially in the same manner used to determine the annual  
 17 percentage rate.

18 ~~†6†~~(5) If the contract so provides, the additional  
 19 charge for any amount past due according to the original  
 20 terms of the contract, whether by reason of default or  
 21 extension agreement, may be 5% of the amount past due, and  
 22 said amount may be charged once and no more.

23 ~~†7†~~(6) (a) The licensee may include in the principal  
 24 amount of any loan the actual fees paid a public official or  
 25 agency of the state for filing, recording, or releasing any

1 instrument securing the loan.

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

- 5 (i) fees or premiums for title examination, title
- 6 insurance, or similar purposes, including survey;
- 7 (ii) fees for preparation of a deed, settlement
- 8 statement, or other documents;
- 9 (iii) fees for notarizing deeds and other documents;
- 10 (iv) appraisal fees;
- 11 (v) fees for credit reports; and
- 12 (vi) fees paid to a trustee for release of a trust
- 13 deed.

14 ~~†8†~~(7) No further or other charges shall be directly  
 15 or indirectly contracted for or received by any licensee  
 16 except those specifically authorized by this chapter. No  
 17 licensee shall divide into separate parts any contract made  
 18 for the purpose of or with the effect of obtaining charges  
 19 in excess of those authorized by this chapter. ~~All-balances~~  
 20 ~~due-to-a-licensee-from-any-person-as-a-borrower-or-as-an~~  
 21 ~~endorser, guarantor, or surety for any borrower or otherwise~~  
 22 ~~or due from any husband or wife, jointly or severally, shall~~  
 23 ~~be considered a part of any loan being made by a licensee to~~  
 24 ~~such person for the purpose of computing interest or~~  
 25 ~~charges.~~ If any amount in excess of the charges permitted by

1 this chapter is charged, contracted for, and received,  
 2 except as the result of an accidental and bona fide error of  
 3 computation, the licensee shall have no right to collect or  
 4 receive any charges.

5 ~~(9)~~(8) On any loan of money exceeding \$7,500 in  
 6 principal amount, a licensee may not make charges as  
 7 provided in subsections (1) and (2) but shall make charges  
 8 in accordance with the provisions of this subsection through  
 9 subsection ~~(12)~~ (11).

10 ~~(10)~~(9) On any loan of money exceeding \$7,500 in  
 11 principal amount, a licensee may contract and receive  
 12 charges at a rate not in excess of 2% per month on the  
 13 principal amount as follows:

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

23 (b) Charges made under this subsection may not be  
 24 payable in advance or compounded. However, if part or all of  
 25 the consideration for a new loan contract is the unpaid

1 principal balance of a prior loan, the principal amount  
 2 payable under such new loan contract may include any unpaid  
 3 charges which have accrued. The resulting loan contract is a  
 4 new and separate loan transaction for all purposes. The  
 5 principal balance of a prior loan on which charges have been  
 6 made pursuant to subsections (1) and (2) is the balance due  
 7 after refund or credit is given to the borrower pursuant to  
 8 subsection ~~(5)~~ (4).

9 ~~(11)~~(10) For purposes of computing charges for a  
 10 fraction of a month, a day is considered one-thirtieth of a  
 11 month.

12 ~~(12)~~(11) The provisions of subsections ~~(5)~~ (4) and ~~(6)~~  
 13 (5) do not apply to loans made under subsections ~~(9)~~ (8)  
 14 through ~~(11)~~ (10).

15 ~~(13)~~(12) The amounts of \$907, \$500, \$1,000, and \$7,500  
 16 in subsections (1), (2), ~~(4)~~ ~~(9)~~ (8), and ~~(10)~~ (9) are  
 17 subject to change pursuant to the provisions of 32-5-104 on  
 18 adjustment of dollar amounts."

19 ~~Section 32-5-306, MCA, is amended to read:~~  
 20 ~~"32-5-306. Insurance. (1) No insurance insurance of~~  
 21 ~~any kind shall may be written by a licensee or employee~~  
 22 ~~affiliate, or associate of the licensee, in connection with~~  
 23 ~~any loan except as subject to the limitations hereinafter~~  
 24 ~~provided:~~

25 ~~(2) Insurance permitted under the provisions of this~~

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

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

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

25 (5) The insurance authorized by this section may be

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

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

18 (7) The amount of \$300 in subsections (3) and (4) is  
 19 subject to change pursuant to 32-5-104 on adjustment of  
 20 dollar amounts."

21 Section 3. Section 32-5-322, MCA, is amended to read:  
 22 "32-5-322. Deferral charge -- rate. The deferral  
 23 charge for a 1-month period may not exceed an amount equal  
 24 to the difference between the refund which would be required  
 25 for prepayment in full under subsection (5) of 32-5-301(4)

1 as of the scheduled due date of the first deferred  
 2 installment and the refund which would be required for  
 3 prepayment in full as of 1 month prior to such date. A  
 4 proportionate charge may be made for deferrals for periods  
 5 of more or less than 1 month. A deferral charge is earned  
 6 pro rata on a daily basis during the deferral period and is  
 7 fully earned on the last day of the deferral period. Should  
 8 a loan be prepaid during a deferral period the licensee  
 9 shall make or credit to the borrower a pro rata refund of  
 10 the unearned deferral charge in addition to any refund or  
 11 credit made pursuant to ~~subsection (5) of~~ 32-5-301(4)."

12 Section 4. Section 32-5-407, MCA, is amended to read:

13 "32-5-407. Attorney fees -- bad check charge. (1) If  
 14 the contract so provides, reasonable attorney fees may be  
 15 awarded to the party in whose favor final judgment is  
 16 rendered in any action on a contract entered into pursuant  
 17 to the provisions of this chapter.

18 (2) In addition to any other charges authorized by  
 19 this chapter, a licensee may charge a borrower the greater  
 20 of \$10 or the licensee's actual expense for each check,  
 21 received in payment of a loan, that is dishonored for any  
 22 reason."

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

24 "32-5-501. Open-end loans. (1) A holder of a  
 25 supplementary license may make open-end loans and may

1 contract for and receive charges at a rate not in excess of  
 2 the rate set forth in 32-5-301~~(10)~~(9) on unpaid balances  
 3 outstanding from time to time for the actual time  
 4 outstanding.

5 (2) A holder of a supplementary license may not  
 6 compound charges by adding any unpaid charges authorized by  
 7 this section to the unpaid principal balance of the  
 8 borrower's account; however, the unpaid principal balance  
 9 may include the fees paid to third parties as authorized by  
 10 32-5-504 and by 32-5-301~~(7)~~(6)."

11 Section 6. Section 32-5-506, MCA, is amended to read:

12 "32-5-506. Provisions not applicable. The provisions  
 13 of subsections ~~(5)~~ (4) and ~~(6)~~ (5) of 32-5-301 and the  
 14 provisions of 32-5-304 do not apply to open-end loans."

15 NEW SECTION. Section 7. Extension of authority. Any  
 16 existing authority of the department of commerce to make  
 17 rules on the subject of the provisions of this act is  
 18 extended to the provisions of this act.

-End-

## 1 SENATE BILL NO. 216

2 INTRODUCED BY BOYLAN, MCCALLUM, NEUMAN, ANDERSON

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
5 LAW CONCERNING CONSUMER LOAN LICENSEES; ALLOWING FINANCIAL  
6 INSTITUTIONS TO BE LICENSED; REVISING PROVISIONS CONCERNING  
7 INTEREST ON LOANS; ~~REMOVING--THE--PROHIBITION--ON--SALE--OF~~  
8 ~~INSURANCE;~~ PROVIDING FOR A BAD CHECK CHARGE; AND AMENDING  
9 SECTIONS 32-5-103, 32-5-301, ~~32-5-306,~~ 32-5-322, 32-5-407,  
10 32-5-501, AND 32-5-506, MCA."

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

13 Section 1. Section 32-5-103, MCA, is amended to read:

14 "32-5-103. Engaging in business of making loans  
15 restricted. (1) No person shall engage in the business of  
16 making loans or advances of money on credit in any amount  
17 and contract for, charge, or receive directly or indirectly  
18 on or in connection with any such loan or advance any  
19 charges, whether for interest, compensation, consideration,  
20 or expense, which in the aggregate are greater than those  
21 provided by 31-1-107(1), except as provided in and  
22 authorized by this chapter. ~~Except as provided in subsection~~  
23 ~~(2) a person doing business under the authority of this~~  
24 ~~state or the United States relating to banks, trust~~  
25 ~~companies, savings or building and loan associations, credit~~

1 ~~unions, or a~~ A person engaged in business as a licensed  
2 pawnbroker ~~or any person who shall extend credit in~~  
3 ~~connection with the sale of a commodity shall~~ may not become  
4 a licensee under this chapter nor shall any of the  
5 provisions of this chapter apply to any such exempted  
6 person.

7 (2) A licensee may sell its business and assets to a  
8 bank, building and loan association, savings and loan  
9 association, trust company, credit union, credit  
10 association, development credit corporation, or bank holding  
11 company organized pursuant to state or federal statutory  
12 authority and subject to supervision, control, or regulation  
13 by an agency of the state of Montana or an agency of the  
14 federal government. All contracts for loans and all other  
15 contracts entered into by the licensee pursuant to the  
16 provisions of this chapter that are sold and transferred to  
17 an acquiring organization continue to be governed by the  
18 provisions of this chapter.

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

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

1 principal, interest, or charges whatsoever."

2 Section 2. 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}{4} (a) When any loan contract, new loan, renewal,  
13 or otherwise for a period of not more than 61 months is paid  
14 in full by cash 1 month or more before the final installment  
15 date, the licensee shall refund or credit the borrower with  
16 that portion of the total charges which shall be due the  
17 borrower as determined by schedules prepared under the rule  
18 of 78ths or sum of the digits principle as follows: the  
19 amount of the refund or credit shall be as great a  
20 proportion of the total charges originally contracted for as  
21 the sum of the consecutive monthly balances of the contract  
22 scheduled to follow the date of prepayment bears to the sum  
23 of all the consecutive monthly balances of the contract,  
24 both sums to be determined according to the payment schedule  
25 originally contracted for.



1 (b) When any loan contract, new loan, renewal, or  
 2 otherwise for a period of more than 61 months is paid in  
 3 full by cash 1 month or more before the final installment  
 4 date, the licensee shall refund or credit the borrower with  
 5 that portion of the total charges that is due the borrower  
 6 that is applicable to all fully unexpired months in the  
 7 contract as originally scheduled or, if deferred, as  
 8 deferred, following the date of prepayment. For this purpose  
 9 the applicable charge is the charge which would have been  
 10 earned for that contract if charges had not been  
 11 precomputed, by applying to the unpaid principal balance, by  
 12 the actuarial method, the annual percentage rate disclosed  
 13 pursuant to federal law, based on the assumption that all  
 14 payments were made as originally scheduled. For all loans  
 15 that may be subject to this section, charges are computed  
 16 initially in the same manner used to determine the annual  
 17 percentage rate.

18 ~~†6†~~(5) If the contract so provides, the additional  
 19 charge for any amount past due according to the original  
 20 terms of the contract, whether by reason of default or  
 21 extension agreement, may be 5% of the amount past due, and  
 22 said amount may be charged once and no more.

23 ~~†7†~~(6) (a) The licensee may include in the principal  
 24 amount of any loan the actual fees paid a public official or  
 25 agency of the state for filing, recording, or releasing any

1 instrument securing the loan.

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

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

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

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

10 (iv) appraisal fees;

11 (v) fees for credit reports; and

12 (vi) fees paid to a trustee for release of a trust  
 13 deed.

14 ~~†8†~~(7) No further or other charges shall be directly  
 15 or indirectly contracted for or received by any licensee  
 16 except those specifically authorized by this chapter. No  
 17 licensee shall divide into separate parts any contract made  
 18 for the purpose of or with the effect of obtaining charges  
 19 in excess of those authorized by this chapter. ~~All balances~~  
 20 ~~due-to-a-licensee-from-any-person-as-a-borrower-or-as-an~~  
 21 ~~endorser, guarantor, or surety for any borrower or otherwise~~  
 22 ~~or due from any husband or wife, jointly or severally, shall~~  
 23 ~~be considered a part of any loan being made by a licensee to~~  
 24 ~~such person for the purpose of computing interest or~~  
 25 ~~charges.~~ If any amount in excess of the charges permitted by

1 this chapter is charged, contracted for, and received,  
2 except as the result of an accidental and bona fide error of  
3 computation, the licensee shall have no right to collect or  
4 receive any charges.

5 ~~(9)~~(8) On any loan of money exceeding \$7,500 in  
6 principal amount, a licensee may not make charges as  
7 provided in subsections (1) and (2) but shall make charges  
8 in accordance with the provisions of this subsection through  
9 subsection ~~(12)~~ (11).

10 ~~(10)~~(9) On any loan of money exceeding \$7,500 in  
11 principal amount, a licensee may contract and receive  
12 charges at a rate not in excess of 2% per month on the  
13 principal amount as follows:

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

23 (b) Charges made under this subsection may not be  
24 payable in advance or compounded. However, if part or all of  
25 the consideration for a new loan contract is the unpaid

1 principal balance of a prior loan, the principal amount  
2 payable under such new loan contract may include any unpaid  
3 charges which have accrued. The resulting loan contract is a  
4 new and separate loan transaction for all purposes. The  
5 principal balance of a prior loan on which charges have been  
6 made pursuant to subsections (1) and (2) is the balance due  
7 after refund or credit is given to the borrower pursuant to  
8 subsection ~~(5)~~ (4).

9 ~~(11)~~(10) For purposes of computing charges for a  
10 fraction of a month, a day is considered one-thirtieth of a  
11 month.

12 ~~(12)~~(11) The provisions of subsections ~~(5)~~ (4) and ~~(6)~~  
13 (5) do not apply to loans made under subsections ~~(9)~~ (8)  
14 through ~~(11)~~ (10).

15 ~~(13)~~(12) The amounts of \$90, \$500, \$1,000, and \$7,500  
16 in subsections (1), (2), ~~(4)~~,--~~(9)~~ (8), and ~~(10)~~ (9) are  
17 subject to change pursuant to the provisions of 32-5-104 on  
18 adjustment of dollar amounts."

19 ~~Section 3--Section--32-5-306--MCA--is amended to read:~~  
20 ~~"32-5-306--Insurance--(1)--No insurance insurance--of~~  
21 ~~any--kind--shall may--be written by a licensee or employee,~~  
22 ~~affiliate, or associate of the licensee, in connection with~~  
23 ~~any--loan--except--as subject to the limitations hereinafter~~  
24 ~~provided:~~

25 ~~(2)--Insurance permitted under the provisions of--this~~

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

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

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

25 (5) The insurance authorized by this section may be

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

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

18 (7) The amount of \$300 in subsections (3) and (4) is  
 19 subject to change pursuant to 32-5-104 on adjustment of  
 20 dollar amounts."

21 Section 3. Section 32-5-322, MCA, is amended to read:  
 22 "32-5-322. Deferral charge -- rate. The deferral  
 23 charge for a 1-month period may not exceed an amount equal  
 24 to the difference between the refund which would be required  
 25 for prepayment in full under subsection (5) of 32-5-301(4)

1 as of the scheduled due date of the first deferred  
 2 installment and the refund which would be required for  
 3 prepayment in full as of 1 month prior to such date. A  
 4 proportionate charge may be made for deferrals for periods  
 5 of more or less than 1 month. A deferral charge is earned  
 6 pro rata on a daily basis during the deferral period and is  
 7 fully earned on the last day of the deferral period. Should  
 8 a loan be prepaid during a deferral period the licensee  
 9 shall make or credit to the borrower a pro rata refund of  
 10 the unearned deferral charge in addition to any refund or  
 11 credit made pursuant to ~~subsection (5) of~~ 32-5-301(4)."

12 Section 4. Section 32-5-407, MCA, is amended to read:

13 "32-5-407. Attorney fees -- bad check charge. (1) If  
 14 the contract so provides, reasonable attorney fees may be  
 15 awarded to the party in whose favor final judgment is  
 16 rendered in any action on a contract entered into pursuant  
 17 to the provisions of this chapter.

18 (2) In addition to any other charges authorized by  
 19 this chapter, a licensee may charge a borrower the greater  
 20 of \$10 or the licensee's actual expense for each check,  
 21 received in payment of a loan, that is dishonored for any  
 22 reason."

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

24 "32-5-501. Open-end loans. (1) A holder of a  
 25 supplementary license may make open-end loans and may

1 contract for and receive charges at a rate not in excess of  
 2 the rate set forth in 32-5-301(~~10~~)(9) on unpaid balances  
 3 outstanding from time to time for the actual time  
 4 outstanding.

5 (2) A holder of a supplementary license may not  
 6 compound charges by adding any unpaid charges authorized by  
 7 this section to the unpaid principal balance of the  
 8 borrower's account; however, the unpaid principal balance  
 9 may include the fees paid to third parties as authorized by  
 10 32-5-504 and by 32-5-301(~~7~~)(6)."

11 Section 6. Section 32-5-506, MCA, is amended to read:

12 "32-5-506. Provisions not applicable. The provisions  
 13 of subsections (~~5~~) (4) and (~~6~~) (5) of 32-5-301 and the  
 14 provisions of 32-5-304 do not apply to open-end loans."

15 NEW SECTION. Section 7. Extension of authority. Any  
 16 existing authority of the department of commerce to make  
 17 rules on the subject of the provisions of this act is  
 18 extended to the provisions of this act.

-End-

SENATE BILL NO. 216

INTRODUCED BY BOYLAN, MCCALLUM, NEUMAN, ANDERSON

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAW CONCERNING CONSUMER LOAN LICENSEES; ALLOWING FINANCIAL INSTITUTIONS TO BE LICENSED; REVISING PROVISIONS CONCERNING INTEREST ON LOANS; REMOVING--THE--PROHIBITION--ON--SALE--OF INSURANCE; PROVIDING FOR A BAD CHECK CHARGE; AND AMENDING SECTIONS 32-5-103, 32-5-301, 32-5-306, 32-5-322, 32-5-407, 32-5-501, AND 32-5-506, MCA."

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

Section 1. 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 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. Except-as-provided-in-subsection (2), 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~~ 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~~ may not become a licensee under this chapter nor shall any of the provisions of this chapter apply to any such exempted person.

(2) A licensee may sell its business and assets to a bank, building and loan association, savings and loan association, trust company, credit union, credit association, development credit corporation, or bank holding company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by an agency of the state of Montana or an agency of the federal government. All contracts for loans and all other contracts entered into by the licensee pursuant to the provisions of this chapter that are sold and transferred to an acquiring organization continue to be governed by the provisions of this chapter.

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

(4) 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



1 principal, interest, or charges whatsoever."

2 Section 2. 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}(4) (a) When any loan contract, new loan, renewal,  
13 or otherwise for a period of not more than 61 months is paid  
14 in full by cash 1 month or more before the final installment  
15 date, the licensee shall refund or credit the borrower with  
16 that portion of the total charges which shall be due the  
17 borrower as determined by schedules prepared under the rule  
18 of 78ths or sum of the digits principle as follows: the  
19 amount of the refund or credit shall be as great a  
20 proportion of the total charges originally contracted for as  
21 the sum of the consecutive monthly balances of the contract  
22 scheduled to follow the date of prepayment bears to the sum  
23 of all the consecutive monthly balances of the contract,  
24 both sums to be determined according to the payment schedule  
25 originally contracted for.

1 (b) When any loan contract, new loan, renewal, or  
 2 otherwise for a period of more than 61 months is paid in  
 3 full by cash 1 month or more before the final installment  
 4 date, the licensee shall refund or credit the borrower with  
 5 that portion of the total charges that is due the borrower  
 6 that is applicable to all fully unexpired months in the  
 7 contract as originally scheduled or, if deferred, as  
 8 deferred, following the date of prepayment. For this purpose  
 9 the applicable charge is the charge which would have been  
 10 earned for that contract if charges had not been  
 11 precomputed, by applying to the unpaid principal balance, by  
 12 the actuarial method, the annual percentage rate disclosed  
 13 pursuant to federal law, based on the assumption that all  
 14 payments were made as originally scheduled. For all loans  
 15 that may be subject to this section, charges are computed  
 16 initially in the same manner used to determine the annual  
 17 percentage rate.

18 ~~6~~5 If the contract so provides, the additional  
 19 charge for any amount past due according to the original  
 20 terms of the contract, whether by reason of default or  
 21 extension agreement, may be 5% of the amount past due, and  
 22 said amount may be charged once and no more.

23 ~~7~~6 (a) The licensee may include in the principal  
 24 amount of any loan the actual fees paid a public official or  
 25 agency of the state for filing, recording, or releasing any

1 instrument securing the loan.

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

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

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

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

10 (iv) appraisal fees;

11 (v) fees for credit reports; and

12 (vi) fees paid to a trustee for release of a trust  
 13 deed.

14 ~~8~~7 No further or other charges shall be directly  
 15 or indirectly contracted for or received by any licensee  
 16 except those specifically authorized by this chapter. No  
 17 licensee shall divide into separate parts any contract made  
 18 for the purpose of or with the effect of obtaining charges  
 19 in excess of those authorized by this chapter. ~~All balances~~  
 20 ~~due to a licensee from any person as a borrower or as an~~  
 21 ~~endorser, guarantor, or surety for any borrower or otherwise~~  
 22 ~~or due from any husband or wife, jointly or severally, shall~~  
 23 ~~be considered a part of any loan being made by a licensee to~~  
 24 ~~such person for the purpose of computing interest or~~  
 25 ~~charges.~~ If any amount in excess of the charges permitted by

1 this chapter is charged, contracted for, and received,  
 2 except as the result of an accidental and bona fide error of  
 3 computation, the licensee shall have no right to collect or  
 4 receive any charges.

5 ~~(9)~~(8) On any loan of money exceeding \$7,500 in  
 6 principal amount, a licensee may not make charges as  
 7 provided in subsections (1) and (2) but shall make charges  
 8 in accordance with the provisions of this subsection through  
 9 subsection ~~(12)~~ (11).

10 ~~(10)~~(9) On any loan of money exceeding \$7,500 in  
 11 principal amount, a licensee may contract and receive  
 12 charges at a rate not in excess of 2% per month on the  
 13 principal amount as follows:

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

23 (b) Charges made under this subsection may not be  
 24 payable in advance or compounded. However, if part or all of  
 25 the consideration for a new loan contract is the unpaid

1 principal balance of a prior loan, the principal amount  
 2 payable under such new loan contract may include any unpaid  
 3 charges which have accrued. The resulting loan contract is a  
 4 new and separate loan transaction for all purposes. The  
 5 principal balance of a prior loan on which charges have been  
 6 made pursuant to subsections (1) and (2) is the balance due  
 7 after refund or credit is given to the borrower pursuant to  
 8 subsection ~~(5)~~ (4).

9 ~~(11)~~(10) For purposes of computing charges for a  
 10 fraction of a month, a day is considered one-thirtieth of a  
 11 month.

12 ~~(12)~~(11) The provisions of subsections ~~(5)~~ (4) and ~~(6)~~  
 13 (5) do not apply to loans made under subsections ~~(9)~~ (8)  
 14 through ~~(11)~~ (10).

15 ~~(13)~~(12) The amounts of \$90, \$500, \$1,000, and \$7,500  
 16 in subsections (1), (2), ~~(4)~~,--~~(9)~~ (8), and ~~(10)~~ (9) are  
 17 subject to change pursuant to the provisions of 32-5-104 on  
 18 adjustment of dollar amounts."

19 ~~Section-3--Section--32-5-306,-MCA,-is-amended-to-read:~~  
 20 ~~"32-5-306--Insurance--(1)-No-insurance Insurance--of~~  
 21 ~~any--kind--shall may--be-written-by-a-licensee-or-employee,~~  
 22 ~~affiliate,-or-associate-of-the-licensee,-in-connection--with~~  
 23 ~~any--loan--except--as subject-to-the-limitations-hereinafter~~  
 24 ~~provided-~~

25 ~~(2)--Insurance-permitted-under-the-provisions--of--this~~



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

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

19 {4} Subject to the laws of this state, credit life  
 20 insurance and credit disability insurance may be provided at  
 21 the expense of the borrower and may be provided by a  
 22 licensee upon the request of the borrower when the principal  
 23 amount of the loan exceeds \$300, exclusive of the portion  
 24 thereof attributable to insurance premiums and charges.

25 {5} The insurance authorized by this section may be

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

13 {6} A licensee shall not require insurance under this  
 14 section until any existing insurance of the same type has  
 15 expired or has been canceled and the unearned portion of the  
 16 premium for the canceled insurance has been rebated to the  
 17 borrower.

18 {7} The amount of \$300 in subsections {3} and {4} is  
 19 subject to change pursuant to 32-5-104 on adjustment of  
 20 dollar amounts."

21 Section 3. Section 32-5-322, MCA, is amended to read:  
 22 "32-5-322. Deferral charge -- rate. The deferral  
 23 charge for a 1-month period may not exceed an amount equal  
 24 to the difference between the refund which would be required  
 25 for prepayment in full under subsection {5} of 32-5-301(4)

1 as of the scheduled due date of the first deferred  
 2 installment and the refund which would be required for  
 3 prepayment in full as of 1 month prior to such date. A  
 4 proportionate charge may be made for deferrals for periods  
 5 of more or less than 1 month. A deferral charge is earned  
 6 pro rata on a daily basis during the deferral period and is  
 7 fully earned on the last day of the deferral period. Should  
 8 a loan be prepaid during a deferral period the licensee  
 9 shall make or credit to the borrower a pro rata refund of  
 10 the unearned deferral charge in addition to any refund or  
 11 credit made pursuant to ~~subsection (5) of~~ 32-5-301(4)."

12 Section 4. Section 32-5-407, MCA, is amended to read:  
 13 "32-5-407. Attorney fees -- bad check charge. (1) If  
 14 the contract so provides, reasonable attorney fees may be  
 15 awarded to the party in whose favor final judgment is  
 16 rendered in any action on a contract entered into pursuant  
 17 to the provisions of this chapter.

18 (2) In addition to any other charges authorized by  
 19 this chapter, a licensee may charge a borrower the greater  
 20 of \$10 or the licensee's actual expense for each check,  
 21 received in payment of a loan, that is dishonored for any  
 22 reason."

23 Section 5. Section 32-5-501, MCA, is amended to read:  
 24 "32-5-501. Open-end loans. (1) A holder of a  
 25 supplementary license may make open-end loans and may

1 contract for and receive charges at a rate not in excess of  
 2 the rate set forth in 32-5-301~~(+0)~~(9) on unpaid balances  
 3 outstanding from time to time for the actual time  
 4 outstanding.

5 (2) A holder of a supplementary license may not  
 6 compound charges by adding any unpaid charges authorized by  
 7 this section to the unpaid principal balance of the  
 8 borrower's account; however, the unpaid principal balance  
 9 may include the fees paid to third parties as authorized by  
 10 32-5-504 and by 32-5-301~~(+7)~~(6)."

11 Section 6. Section 32-5-506, MCA, is amended to read:  
 12 "32-5-506. Provisions not applicable. The provisions  
 13 of subsections ~~(5)~~ (4) and ~~(6)~~ (5) of 32-5-301 and the  
 14 provisions of 32-5-304 do not apply to open-end loans."

15 NEW SECTION. Section 7. Extension of authority. Any  
 16 existing authority of the department of commerce to make  
 17 rules on the subject of the provisions of this act is  
 18 extended to the provisions of this act.

-End-