

SENATE BILL NO. 450

INTRODUCED BY CHRISTIAENS, NORMAN, STEPHENS, THAYER, FULLER

IN THE SENATE

February 20, 1985	Introduced and referred to Committee on Business and Industry.
February 22, 1985	Committee recommend bill do pass as amended. Report adopted.
February 23, 1985	Bill printed and placed on members' desks.
February 26, 1985	Second reading, do pass. Considered correctly engrossed.
February 27, 1985	Third reading, passed. Ayes, 47; Noes, 3. Transmitted to House.

IN THE HOUSE

March 7, 1985	Introduced and referred to Committee on Business and Labor.
March 22, 1985	Committee recommend bill be concurred in. Report adopted.
March 23, 1985	Second reading, concurred in.
March 26, 1985	Third reading, concurred in. Returned to Senate.

IN THE SENATE

March 26, 1985	Received from House.
March 27, 1985	Sent to enrolling. Reported correctly enrolled.

1 *Senate* BILL NO. *450*  
 2 INTRODUCED BY *Christiana Norman STEPHENS*  
 3 *Blaylock, Fuller*

4 A BILL FOR AN ACT ENTITLED: "AN ACT INCLUDING CONSUMER LOAN  
 5 LICENSEES IN THE DEFINITION OF "REGULATED LENDER"; EXEMPTING  
 6 CONSUMER LOAN LICENSEES FROM USURY LIMITS; AMENDING SECTIONS  
 7 31-1-111, 32-5-103, 32-5-301, 32-5-303, 32-5-322, 32-5-501,  
 8 AND 32-5-506, MCA."

9  
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 31-1-111, MCA, is amended to read:

12 "31-1-111. Definition of regulated lender. The term  
 13 "regulated lenders" as used in 31-1-112 means:

14 (1) a bank, building and loan association, savings and  
 15 loan association, trust company, credit union, credit  
 16 association, consumer loan licensee, development  
 17 corporation, or bank holding company organized pursuant to  
 18 state or federal statutory authority and subject to  
 19 supervision, control, or regulation by:

- 20 (a) an agency of the state of Montana; or
- 21 (b) an agency of the federal government;
- 22 (2) a subsidiary of an entity described in subsection
- 23 (1);
- 24 (3) a Montana state agency or a federal agency that is
- 25 authorized to lend money;

1 (4) a corporation or other entity established by  
 2 congress or the state of Montana that is owned, in whole or  
 3 in part, by the United States or the state of Montana and  
 4 that is authorized to lend money."

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

6 "32-5-103. Engaging in business of making loans  
 7 restricted. (1) No person shall engage in the business of  
 8 making loans or advances of money on credit in any amount  
 9 and contract for, charge, or receive directly or indirectly  
 10 on or in connection with any such loan or advance any  
 11 charges, whether for interest, compensation, consideration,  
 12 or expense, ~~which in the aggregate are greater than those~~  
 13 ~~provided by 31-1-107(i);~~ except as provided in and  
 14 authorized by this chapter. Except as provided in subsection  
 15 (2), a person doing business under the authority of this  
 16 state or the United States relating to banks, trust  
 17 companies, savings or building and loan associations, credit  
 18 unions, or a person engaged in business as a licensed  
 19 pawnbroker or any person who shall extend credit in  
 20 connection with the sale of a commodity shall not become a  
 21 licensee under this chapter nor shall any of the provisions  
 22 of this chapter apply to any such exempted person.

23 (2) A licensee may sell its business and assets to a  
 24 bank, building and loan association, savings and loan  
 25 association, trust company, credit union, credit



-2- INTRODUCED BILL  
 SB 450

1 association, development credit corporation, or bank holding  
 2 company organized pursuant to state or federal statutory  
 3 authority and subject to supervision, control, or regulation  
 4 by an agency of the state of Montana or an agency of the  
 5 federal government. All contracts for loans and all other  
 6 contracts entered into by the licensee pursuant to the  
 7 provisions of this chapter that are sold and transferred to  
 8 an acquiring organization continue to be governed by the  
 9 provisions of this chapter.

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

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

18 Section 3. Section 32-5-301, MCA, is amended to read:

19 "32-5-301. Charges, refunds, penalties, filing fees.

20 (1) Every licensee or holder of a supplementary license  
 21 hereunder may contract for and receive on any loan of money  
 22 ~~not exceeding \$17,000 in principal amount:~~

23 ~~(a) charges at rates not in excess of \$20 per year per~~  
 24 ~~\$100 on that part of the principal amount of the loan not~~  
 25 ~~exceeding \$500;~~

1 ~~(b) \$16 per year per \$100 on that part of the~~  
 2 ~~principal amount of the loan exceeding \$500 but not~~  
 3 ~~exceeding \$17,000 interest charges as provided under~~  
 4 ~~31-1-112.~~

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

12 ~~(3)(2) Charges in (1) and (2) shall be computed at the~~  
 13 ~~applicable rates on the full, original principal amount of~~  
 14 ~~the loan from the date of the loan to the due date of the~~  
 15 ~~final scheduled installment irrespective of the fact that~~  
 16 ~~the loan is payable in installments. Said charges shall be~~  
 17 ~~added to the principal of the loan and shall not be~~  
 18 ~~discounted or deducted therefrom or paid or received at the~~  
 19 ~~time the loan is made. For the purpose of computing charges~~  
 20 ~~for a fraction of a month, a day shall be considered~~  
 21 ~~one-thirtieth of a month.~~

22 ~~(4) On loans of \$90 or less a licensee may charge, in~~  
 23 ~~lieu of charges specified in (1) of this section, not in~~  
 24 ~~excess of \$1 for each \$5 of cash or credit advanced to the~~  
 25 ~~borrower up to the amount of \$90. A period of at least 15~~

~~1 days--must--be--allowed--for--the--repayment--of--each--\$5--cash--or  
2 credit--advanced--Such--charges--cannot--be--assessed--by--any  
3 subterfuge--or--device--on--any--loan--over--\$90--or--on--any--balance  
4 of--\$90--or--less--when--the--original--loan--was--greater--than--\$90-~~

5       ~~{5}{3}~~ (a) When any loan contract, new loan, renewal,  
6 or otherwise for a period of not more than 61 months is paid  
7 in full by cash 1 month or more before the final installment  
8 date, the licensee shall refund or credit the borrower with  
9 that portion of the total charges which shall be due the  
10 borrower as determined by schedules prepared under the rule  
11 of 78ths or sum of the digits principle as follows: the  
12 amount of the refund or credit shall be as great a  
13 proportion of the total charges originally contracted for as  
14 the sum of the consecutive monthly balances of the contract  
15 scheduled to follow the date of prepayment bears to the sum  
16 of all the consecutive monthly balances of the contract,  
17 both sums to be determined according to the payment schedule  
18 originally contracted for.

19       (b) When any loan contract, new loan, renewal, or  
20 otherwise for a period of more than 61 months is paid in  
21 full by cash 1 month or more before the final installment  
22 date, the licensee shall refund or credit the borrower with  
23 that portion of the total charges that is due the borrower  
24 that is applicable to all fully unexpired months in the  
25 contract as originally scheduled or, if deferred, as

1 deferred, following the date of prepayment. For this purpose  
2 the applicable charge is the charge which would have been  
3 earned for that contract if charges had not been  
4 precomputed, by applying to the unpaid principal balance, by  
5 the actuarial method, the annual percentage rate disclosed  
6 pursuant to federal law, based on the assumption that all  
7 payments were made as originally scheduled. For all loans  
8 that may be subject to this section, charges are computed  
9 initially in the same manner used to determine the annual  
10 percentage rate.

11       ~~{6}{4}~~ If the contract so provides, the additional  
12 charge for any amount past due according to the original  
13 terms of the contract, whether by reason of default or  
14 extension agreement, may be 5% of the amount past due, and  
15 said amount may be charged once and no more.

16       ~~{7}{5}~~ (a) The licensee may include in the principal  
17 amount of any loan the actual fees paid a public official or  
18 agency of the state for filing, recording, or releasing any  
19 instrument securing the loan.

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

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

25       (ii) fees for preparation of a deed, settlement

1 statement, or other documents;  
 2 (iii) fees for notarizing deeds and other documents;  
 3 (iv) appraisal fees;  
 4 (v) fees for credit reports; and  
 5 (vi) fees paid to a trustee for release of a trust  
 6 deed.

7 ~~(8)~~(6) No further or other charges shall be directly  
 8 or indirectly contracted for or received by any licensee  
 9 except those specifically authorized by this chapter. No  
 10 licensee shall divide into separate parts any contract made  
 11 for the purpose of or with the effect of obtaining charges  
 12 in excess of those authorized by this chapter. All balances  
 13 due to a licensee from any person as a borrower or as an  
 14 endorser, guarantor, or surety for any borrower or otherwise  
 15 or due from any husband or wife, jointly or severally, shall  
 16 be considered a part of any loan being made by a licensee to  
 17 such person for the purpose of computing interest or  
 18 charges. If any amount in excess of the charges permitted by  
 19 this chapter is charged, contracted for, and received,  
 20 except as the result of an accidental and bona fide error of  
 21 computation, the licensee shall have no right to collect or  
 22 receive any charges.

23 ~~(9)~~ On any loan of money exceeding \$7,500 in principal  
 24 amount, a licensee may not make charges as provided in  
 25 subsections (1) and (2) but shall make charges in accordance

1 with the provisions of this subsection through subsection  
 2 ~~(12)~~;

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

7 (a) Charges shall be computed on unpaid balances of  
 8 the principal amount outstanding from time to time for the  
 9 actual time outstanding. Each payment shall be applied  
 10 first to accumulated charges and the remainder of the  
 11 payment applied to the unpaid principal balance, except that  
 12 if the amount of the payment is insufficient to pay the  
 13 accumulated charges, unpaid charges continue to accumulate  
 14 to be paid from the proceeds of subsequent payments and are  
 15 not added to the principal balance.

16 (b) Charges made under this subsection may not be  
 17 payable in advance or compounded. However, if part or all of  
 18 the consideration for a new loan contract is the unpaid  
 19 principal balance of a prior loan, the principal amount  
 20 payable under such new loan contract may include any unpaid  
 21 charges which have accrued. The resulting loan contract is a  
 22 new and separate loan transaction for all purposes. The  
 23 principal balance of a prior loan on which charges have been  
 24 made pursuant to subsections (1) and (2) is the balance due  
 25 after refund or credit is given to the borrower pursuant to

1 subsection-(5)-

2 (11)-For--purposes--of-computing-charges-for-a-fraction  
3 of-a-month,-a-day-is-considered-one-thirtieth-of-a-month-

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

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

10 Section 4. Section 32-5-303, MCA, is amended to read:

11 "32-5-303. Borrower to receive copy of contract or  
12 statement of contents. At the time the loan is made, there  
13 will be delivered to the borrower, or if there be two or  
14 more borrowers to one of them, the disclosures required by  
15 the Federal Consumer Credit Protection Act, a copy of the  
16 loan contract, or a written statement in the English  
17 language showing in clear and distinct terms:

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

20 (2) the date of the loan contract;

21 (3) the schedule of installments or description  
22 thereof;

23 (4) the principal amount of the loan excluding  
24 charges;

25 (5) the rate or amount of charges as the contract may

1 provide;

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

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

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

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

14 Section 5. Section 32-5-322, MCA, is amended to read:

15 "32-5-322. Deferral charge -- rate. The deferral  
16 charge for a 1-month period may not exceed an amount equal  
17 to the difference between the refund which would be required  
18 for prepayment in full under subsection (5)(3) of 32-5-301  
19 as of the scheduled due date of the first deferred  
20 installment and the refund which would be required for  
21 prepayment in full as of 1 month prior to such date. A  
22 proportionate charge may be made for deferrals for periods  
23 of more or less than 1 month. A deferral charge is earned  
24 pro rata on a daily basis during the deferral period and is  
25 fully earned on the last day of the deferral period. Should

1 a loan be prepaid during a deferral period the licensee  
 2 shall make or credit to the borrower a pro rata refund of  
 3 the unearned deferral charge in addition to any refund or  
 4 credit made pursuant to subsection ~~(5)~~(3) of 32-5-301."

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

6 "32-5-501. Open-end loans. (1) A holder of a  
 7 supplementary license may make open-end loans and may  
 8 contract for and receive charges ~~at a rate not in excess of~~  
 9 ~~the rate set forth in 32-5-301(10),~~ as allowed under  
 10 31-1-112, on unpaid balances outstanding from time to time  
 11 for the actual time outstanding.

12 (2) A holder of a supplementary license may not  
 13 compound charges by adding any unpaid charges authorized by  
 14 this section to the unpaid principal balance of the  
 15 borrower's account; however, the unpaid principal balance  
 16 may include the fees paid to third parties as authorized by  
 17 32-5-504 and by 32-5-301~~(7)~~(5)."

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

19 "32-5-506. Provisions not applicable. The provisions  
 20 of subsections ~~(5)~~(3) and ~~(6)~~(4) of 32-5-301 and the  
 21 provisions of 32-5-304 do not apply to open-end loans."

22 NEW SECTION. Section 8. Extension of authority. Any  
 23 existing authority of the department of commerce to make  
 24 rules on the subject of the provisions of this act is  
 25 extended to the provisions of this act.

1 NEW SECTION. Section 9. Saving clause. This act does  
 2 not affect rights and duties that matured, penalties that  
 3 were incurred, or proceedings that were begun before the  
 4 effective date of this act.

-End-

APPROVED BY COMM. ON  
BUSINESS & INDUSTRY

SENATE BILL NO. 450

INTRODUCED BY CHRISTIAENS, NORMAN,  
STEPHENS, THAYER, FULLER

A BILL FOR AN ACT ENTITLED: "AN ACT INCLUDING CONSUMER LOAN  
LICENSEES IN THE DEFINITION OF "REGULATED LENDER"; EXEMPTING  
CONSUMER LOAN LICENSEES FROM USURY LIMITS; AMENDING SECTIONS  
31-1-111, 32-5-103, 32-5-301, 32-5-303, 32-5-322, 32-5-501,  
AND 32-5-506, MCA."

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

Section 1. Section 31-1-111, MCA, is amended to read:

"31-1-111. Definition of regulated lender. The term  
"regulated lenders" as used in 31-1-112 means:

(1) a bank, building and loan association, savings and  
loan association, trust company, credit union, credit  
association, consumer loan licensee, development  
corporation, or bank holding company organized pursuant to  
state or federal statutory authority and subject to  
supervision, control, or regulation by:

- (a) an agency of the state of Montana; or
- (b) an agency of the federal government;
- (2) a subsidiary of an entity described in subsection  
(1);
- (3) a Montana state agency or a federal agency that is

authorized to lend money;

(4) a corporation or other entity established by  
congress or the state of Montana that is owned, in whole or  
in part, by the United States or the state of Montana and  
that is authorized to lend money."

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 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(i);~~ 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 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) A licensee may sell its business and assets to a  
bank, building and loan association, savings and loan

**SECOND READING**





1 association, trust company, credit union, credit  
 2 association, development credit corporation, or bank holding  
 3 company organized pursuant to state or federal statutory  
 4 authority and subject to supervision, control, or regulation  
 5 by an agency of the state of Montana or an agency of the  
 6 federal government. All contracts for loans and all other  
 7 contracts entered into by the licensee pursuant to the  
 8 provisions of this chapter that are sold and transferred to  
 9 an acquiring organization continue to be governed by the  
 10 provisions of this chapter.

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

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

19 Section 3. Section 32-5-301, MCA, is amended to read:

20 "32-5-301. Charges, refunds, penalties, filing fees.

21 (1) Every licensee or holder of a supplementary license  
 22 hereunder may contract for and receive on any loan of money  
 23 not exceeding \$17,000 in principal amount:

24 ~~(a) -- charges at rates not in excess of \$20 per year per~~  
 25 ~~\$100 on that part of the principal amount of the loan not~~

1 ~~exceeding \$500;~~

2 ~~(b) -- \$16 per year per \$100 on that part of the~~  
 3 ~~principal amount of the loan exceeding \$500 but not~~  
 4 ~~exceeding \$17,000 interest charges as provided under~~  
 5 ~~31-1-112.~~

6 ~~(2) -- The holder of a supplementary license may contract~~  
 7 ~~for and receive charges at rates authorized for licensees in~~  
 8 ~~subsection (1) for the first \$17,000 of the principal amount~~  
 9 ~~of any loan and may contract for and receive charges at~~  
 10 ~~rates not in excess of \$12 per year per \$100 on that part of~~  
 11 ~~the principal amount of any loan exceeding \$17,000 but not~~  
 12 ~~exceeding \$7,500.~~

13 ~~(3)(2) Charges in (1) and (2) shall be computed at the~~  
 14 ~~applicable rates on the full, original principal amount of~~  
 15 ~~the loan from the date of the loan to the due date of the~~  
 16 ~~final scheduled installment irrespective of the fact that~~  
 17 ~~the loan is payable in installments. Said charges shall be~~  
 18 ~~added to the principal of the loan and shall not be~~  
 19 ~~discounted or deducted therefrom or paid or received at the~~  
 20 ~~time the loan is made. For the purpose of computing charges~~  
 21 ~~for a fraction of a month, a day shall be considered~~  
 22 ~~one-thirtieth of a month.~~

23 ~~(4) -- On loans of \$90 or less a licensee may charge, in~~  
 24 ~~lieu of charges specified in (1) of this section, not in~~  
 25 ~~excess of \$1 for each \$5 of cash or credit advanced to the~~

~~borrower up to the amount of \$90. A period of at least 15 days must be allowed for the repayment of each \$5 cash or credit advanced. Such charges cannot be assessed by any subterfuge or device on any loan over \$90 or on any balance of \$90 or less when the original loan was greater than \$90.~~

~~(5)(3)~~ (a) When any loan contract, new loan, renewal, or otherwise for a period of not more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges which shall be due the borrower as determined by schedules prepared under the rule of 78ths or sum of the digits principle as follows: the amount of the refund or credit shall be as great a proportion of the total charges originally contracted for as the sum of the consecutive monthly balances of the contract scheduled to follow the date of prepayment bears to the sum of all the consecutive monthly balances of the contract, both sums to be determined according to the payment schedule originally contracted for.

(b) When any loan contract, new loan, renewal, or otherwise for a period of more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges that is due the borrower that is applicable to all fully unexpired months in the

contract as originally scheduled or, if deferred, as deferred, following the date of prepayment. For this purpose the applicable charge is the charge which would have been earned for that contract if charges had not been precomputed, by applying to the unpaid principal balance, by the actuarial method, the annual percentage rate disclosed pursuant to federal law, based on the assumption that all payments were made as originally scheduled. For all loans that may be subject to this section, charges are computed initially in the same manner used to determine the annual percentage rate.

~~(6)(4)~~ If the contract so provides, the additional charge for any amount past due according to the original terms of the contract, whether by reason of default or extension agreement, may be 5% of the amount past due, and said amount may be charged once and no more.

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

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

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

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

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

4 (iv) appraisal fees;

5 (v) fees for credit reports; and

6 (vi) fees paid to a trustee for release of a trust  
7 deed.

8 ~~(8)~~(6) No further or other charges shall be directly  
9 or indirectly contracted for or received by any licensee  
10 except those specifically authorized by this chapter. No  
11 licensee shall divide into separate parts any contract made  
12 for the purpose of or with the effect of obtaining charges  
13 in excess of those authorized by this chapter. All balances  
14 due to a licensee from any person as a borrower or as an  
15 endorser, guarantor, or surety for any borrower or otherwise  
16 or due from any husband or wife, jointly or severally, shall  
17 be considered a part of any loan being made by a licensee to  
18 such person for the purpose of computing interest or  
19 charges. If any amount in excess of the charges permitted by  
20 this chapter is charged, contracted for, and received,  
21 except as the result of an accidental and bona fide error of  
22 computation, the licensee shall have no right to collect or  
23 receive any charges.

24 (7) SUBSECTIONS (2), (3), AND (6) OF THIS SECTION  
25 APPLY ONLY TO LOANS ON WHICH CHARGES ARE MADE ON AN ADD-ON

1 BASIS AND DO NOT APPLY TO LOANS ON WHICH CHARGES ARE MADE ON  
2 AN INTEREST-BEARING BASIS.

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

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

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

21 (b)--Charges made under this subsection may not be  
22 payable in advance or compounded. However, if part or all of  
23 the consideration for a new loan contract is the unpaid  
24 principal balance of a prior loan, the principal amount  
25 payable under such new loan contract may include any unpaid

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

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

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

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

15 Section 4. Section 32-5-303, MCA, is amended to read:

16 "32-5-303. Borrower to receive copy of contract or  
 17 statement of contents. At the time the loan is made, there  
 18 will be delivered to the borrower, or if there be two or  
 19 more borrowers to one of them, the disclosures required by  
 20 the Federal Consumer Credit Protection Act, a copy of the  
 21 loan contract, or a written statement in the English  
 22 language showing in clear and distinct terms:

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

25 (2) the date of the loan contract;

1 (3) the schedule of installments or description  
 2 thereof;

3 (4) the principal amount of the loan excluding  
 4 charges;

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

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

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

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

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

19 Section 5. Section 32-5-322, MCA, is amended to read:

20 "32-5-322. Deferral charge -- rate. The deferral  
 21 charge for a 1-month period may not exceed an amount equal  
 22 to the difference between the refund which would be required  
 23 for prepayment in full under subsection (5)(3) of 32-5-301  
 24 as of the scheduled due date of the first deferred  
 25 installment and the refund which would be required for

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

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

11 "32-5-501. Open-end loans. (1) A holder of a  
 12 supplementary license may make open-end loans and may  
 13 contract for and receive charges ~~at a rate not in excess of~~  
 14 ~~the rate set forth in 32-5-301(i)~~, as allowed under  
 15 31-1-112, on unpaid balances outstanding from time to time  
 16 for the actual time outstanding.

17 (2) A holder of a supplementary license may not  
 18 compound charges by adding any unpaid charges authorized by  
 19 this section to the unpaid principal balance of the  
 20 borrower's account; however, the unpaid principal balance  
 21 may include the fees paid to third parties as authorized by  
 22 32-5-504 and by 32-5-301~~(7)~~(5)."

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

24 "32-5-506. Provisions not applicable. The provisions  
 25 of subsections ~~(5)~~(3) and ~~(6)~~(4) of 32-5-301 and the

1 provisions of 32-5-304 do not apply to open-end loans."

2 NEW SECTION. Section 8. Extension of authority. Any  
 3 existing authority of the department of commerce to make  
 4 rules on the subject of the provisions of this act is  
 5 extended to the provisions of this act.

6 NEW SECTION. Section 9. Saving clause. This act does  
 7 not affect rights and duties that matured, penalties that  
 8 were incurred, or proceedings that were begun before the  
 9 effective date of this act.

-End-

## 1 SENATE BILL NO. 450

2 INTRODUCED BY CHRISTIAENS, NORMAN,  
3 STEPHENS, THAYER, FULLER  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT INCLUDING CONSUMER LOAN  
6 LICENSEES IN THE DEFINITION OF "REGULATED LENDER"; EXEMPTING  
7 CONSUMER LOAN LICENSEES FROM USURY LIMITS; AMENDING SECTIONS  
8 31-1-111, 32-5-103, 32-5-301, 32-5-303, 32-5-322, 32-5-501,  
9 AND 32-5-506, MCA."  
10

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

12 Section 1. Section 31-1-111, MCA, is amended to read:

13 "31-1-111. Definition of regulated lender. The term  
14 "regulated lenders" as used in 31-1-112 means:

15 (1) a bank, building and loan association, savings and  
16 loan association, trust company, credit union, credit  
17 association, consumer loan licensee, development  
18 corporation, or bank holding company organized pursuant to  
19 state or federal statutory authority and subject to  
20 supervision, control, or regulation by:

21 (a) an agency of the state of Montana; or

22 (b) an agency of the federal government;

23 (2) a subsidiary of an entity described in subsection  
24 (1);

25 (3) a Montana state agency or a federal agency that is

1 authorized to lend money;

2 (4) a corporation or other entity established by  
3 congress or the state of Montana that is owned, in whole or  
4 in part, by the United States or the state of Montana and  
5 that is authorized to lend money."

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 any amount  
10 and contract for, charge, or receive directly or indirectly  
11 on or in connection with any such loan or advance any  
12 charges, whether for interest, compensation, consideration,  
13 or expense, ~~which in the aggregate are greater than those~~  
14 ~~provided by 31-1-107(1);~~ except as provided in and  
15 authorized by this chapter. Except as provided in subsection  
16 (2), a person doing business under the authority of this  
17 state or the United States relating to banks, trust  
18 companies, savings or building and loan associations, credit  
19 unions, or a person engaged in business as a licensed  
20 pawnbroker or any person who shall extend credit in  
21 connection with the sale of a commodity shall not become a  
22 licensee under this chapter nor shall any of the provisions  
23 of this chapter apply to any such exempted person.

24 (2) A licensee may sell its business and assets to a  
25 bank, building and loan association, savings and loan

THIRD READING

1 association, trust company, credit union, credit  
 2 association, development credit corporation, or bank holding  
 3 company organized pursuant to state or federal statutory  
 4 authority and subject to supervision, control, or regulation  
 5 by an agency of the state of Montana or an agency of the  
 6 federal government. All contracts for loans and all other  
 7 contracts entered into by the licensee pursuant to the  
 8 provisions of this chapter that are sold and transferred to  
 9 an acquiring organization continue to be governed by the  
 10 provisions of this chapter.

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

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

19 Section 3. Section 32-5-301, MCA, is amended to read:

20 "32-5-301. Charges, refunds, penalties, filing fees.

21 (1) Every licensee or holder of a supplementary license  
 22 hereunder may contract for and receive on any loan of money  
 23 not exceeding \$1,000 in principal amount:

24 ~~(a) charges at rates not in excess of \$20 per year per~~  
 25 ~~\$100 on that part of the principal amount of the loan not~~

1 exceeding \$500;

2 ~~(b) \$16 per year per \$100 on that part of the~~  
 3 ~~principal amount of the loan exceeding \$500 but not~~  
 4 ~~exceeding \$1,000 interest charges as provided under~~  
 5 ~~31-1-112.~~

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

13 ~~(3)(2) Charges in (1) and (2) shall be computed at the~~  
 14 ~~applicable rates on the full, original principal amount of~~  
 15 ~~the loan from the date of the loan to the due date of the~~  
 16 ~~final scheduled installment irrespective of the fact that~~  
 17 ~~the loan is payable in installments. Said charges shall be~~  
 18 ~~added to the principal of the loan and shall not be~~  
 19 ~~discounted or deducted therefrom or paid or received at the~~  
 20 ~~time the loan is made. For the purpose of computing charges~~  
 21 ~~for a fraction of a month, a day shall be considered~~  
 22 ~~one-thirtieth of a month.~~

23 ~~(4) On loans of \$90 or less a licensee may charge, in~~  
 24 ~~lieu of charges specified in (1) of this section, not in~~  
 25 ~~excess of \$1 for each \$5 of cash or credit advanced to the~~

~~borrower up to the amount of \$90. A period of at least 15 days must be allowed for the repayment of each \$5 cash or credit advanced. Such charges cannot be assessed by any subterfuge or device on any loan over \$90 or on any balance of \$90 or less when the original loan was greater than \$90.~~

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

(b) When any loan contract, new loan, renewal, or otherwise for a period of more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges that is due the borrower that is applicable to all fully unexpired months in the

contract as originally scheduled or, if deferred, as deferred, following the date of prepayment. For this purpose the applicable charge is the charge which would have been earned for that contract if charges had not been precomputed, by applying to the unpaid principal balance, by the actuarial method, the annual percentage rate disclosed pursuant to federal law, based on the assumption that all payments were made as originally scheduled. For all loans that may be subject to this section, charges are computed initially in the same manner used to determine the annual percentage rate.

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

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

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

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



- 1 (ii) fees for preparation of a deed, settlement
- 2 statement, or other documents;
- 3 (iii) fees for notarizing deeds and other documents;
- 4 (iv) appraisal fees;
- 5 (v) fees for credit reports; and
- 6 (vi) fees paid to a trustee for release of a trust
- 7 deed.

8 ~~(8)~~(6) No further or other charges shall be directly  
 9 or indirectly contracted for or received by any licensee  
 10 except those specifically authorized by this chapter. No  
 11 licensee shall divide into separate parts any contract made  
 12 for the purpose of or with the effect of obtaining charges  
 13 in excess of those authorized by this chapter. All balances  
 14 due to a licensee from any person as a borrower or as an  
 15 endorser, guarantor, or surety for any borrower or otherwise  
 16 or due from any husband or wife, jointly or severally, shall  
 17 be considered a part of any loan being made by a licensee to  
 18 such person for the purpose of computing interest or  
 19 charges. If any amount in excess of the charges permitted by  
 20 this chapter is charged, contracted for, and received,  
 21 except as the result of an accidental and bona fide error of  
 22 computation, the licensee shall have no right to collect or  
 23 receive any charges.

24 (7) SUBSECTIONS (2), (3), AND (6) OF THIS SECTION  
 25 APPLY ONLY TO LOANS ON WHICH CHARGES ARE MADE ON AN ADD-ON

1 BASIS AND DO NOT APPLY TO LOANS ON WHICH CHARGES ARE MADE ON  
 2 AN INTEREST-BEARING BASIS.

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

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

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

21 ~~(b)~~ Charges made under this subsection may not be  
 22 payable in advance or compounded. However, if part or all of  
 23 the consideration for a new loan contract is the unpaid  
 24 principal balance of a prior loan, the principal amount  
 25 payable under such new loan contract may include any unpaid

1 charges which have accrued. The resulting loan contract is a  
 2 new and separate loan transaction for all purposes. The  
 3 principal balance of a prior loan on which charges have been  
 4 made pursuant to subsections (1) and (2) is the balance due  
 5 after refund or credit is given to the borrower pursuant to  
 6 subsection (5):

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

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

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

15 Section 4. Section 32-5-303, MCA, is amended to read:

16 "32-5-303. Borrower to receive copy of contract or  
 17 statement of contents. At the time the loan is made, there  
 18 will be delivered to the borrower, or if there be two or  
 19 more borrowers to one of them, the disclosures required by  
 20 the Federal Consumer Credit Protection Act, a copy of the  
 21 loan contract, or a written statement in the English  
 22 language showing in clear and distinct terms:

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

25 (2) the date of the loan contract;

1 (3) the schedule of installments or description  
 2 thereof;

3 (4) the principal amount of the loan excluding  
 4 charges;

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

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

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

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

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

19 Section 5. Section 32-5-322, MCA, is amended to read:

20 "32-5-322. Deferral charge -- rate. The deferral  
 21 charge for a 1-month period may not exceed an amount equal  
 22 to the difference between the refund which would be required  
 23 for prepayment in full under subsection (5)(3) of 32-5-301  
 24 as of the scheduled due date of the first deferred  
 25 installment and the refund which would be required for

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

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

11 "32-5-501. Open-end loans. (1) A holder of a  
 12 supplementary license may make open-end loans and may  
 13 contract for and receive charges ~~at a rate not in excess of~~  
 14 ~~the rate set forth in 32-5-301(10)~~, as allowed under  
 15 31-1-112, on unpaid balances outstanding from time to time  
 16 for the actual time outstanding.

17 (2) A holder of a supplementary license may not  
 18 compound charges by adding any unpaid charges authorized by  
 19 this section to the unpaid principal balance of the  
 20 borrower's account; however, the unpaid principal balance  
 21 may include the fees paid to third parties as authorized by  
 22 32-5-504 and by 32-5-301~~(7)~~(5)."

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

24 "32-5-506. Provisions not applicable. The provisions  
 25 of subsections ~~(5)~~(3) and ~~(6)~~(4) of 32-5-301 and the

1 provisions of 32-5-304 do not apply to open-end loans."

2 NEW SECTION. Section 8. Extension of authority. Any  
 3 existing authority of the department of commerce to make  
 4 rules on the subject of the provisions of this act is  
 5 extended to the provisions of this act.

6 NEW SECTION. Section 9. Saving clause. This act does  
 7 not affect rights and duties that matured, penalties that  
 8 were incurred, or proceedings that were begun before the  
 9 effective date of this act.

-End-

1                   SENATE BILL NO. 450  
 2                   INTRODUCED BY CHRISTIAENS, NORMAN,  
 3                   STEPHENS, THAYER, FULLER  
 4  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT INCLUDING CONSUMER LOAN  
 6 LICENSEES IN THE DEFINITION OF "REGULATED LENDER"; EXEMPTING  
 7 CONSUMER LOAN LICENSEES FROM USURY LIMITS; AMENDING SECTIONS  
 8 31-1-111, 32-5-103, 32-5-301, 32-5-303, 32-5-322, 32-5-501,  
 9 AND 32-5-506, MCA."

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

12       Section 1. Section 31-1-111, MCA, is amended to read:

13       "31-1-111. Definition of regulated lender. The term  
14 "regulated lenders" as used in 31-1-112 means:

15       (1) a bank, building and loan association, savings and  
16 loan association, trust company, credit union, credit  
17 association, consumer loan licensee, development  
18 corporation, or bank holding company organized pursuant to  
19 state or federal statutory authority and subject to  
20 supervision, control, or regulation by:

- 21       (a) an agency of the state of Montana; or
- 22       (b) an agency of the federal government;
- 23       (2) a subsidiary of an entity described in subsection
- 24 (1);
- 25       (3) a Montana state agency or a federal agency that is

1 authorized to lend money;  
 2       (4) a corporation or other entity established by  
 3 congress or the state of Montana that is owned, in whole or  
 4 in part, by the United States or the state of Montana and  
 5 that is authorized to lend money."

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 any amount  
 10 and contract for, charge, or receive directly or indirectly  
 11 on or in connection with any such loan or advance any  
 12 charges, whether for interest, compensation, consideration,  
 13 or expense, ~~which-in-the-aggregate-are-greater-than-those~~  
 14 ~~provided---by---31-1-107(1)~~, except as provided in and  
 15 authorized by this chapter. Except as provided in subsection  
 16 (2), a person doing business under the authority of this  
 17 state or the United States relating to banks, trust  
 18 companies, savings or building and loan associations, credit  
 19 unions, or a person engaged in business as a licensed  
 20 pawnbroker or any person who shall extend credit in  
 21 connection with the sale of a commodity shall not become a  
 22 licensee under this chapter nor shall any of the provisions  
 23 of this chapter apply to any such exempted person.

24       (2) A licensee may sell its business and assets to a  
25 bank, building and loan association, savings and loan



1 association, trust company, credit union, credit  
2 association, development credit corporation, or bank holding  
3 company organized pursuant to state or federal statutory  
4 authority and subject to supervision, control, or regulation  
5 by an agency of the state of Montana or an agency of the  
6 federal government. All contracts for loans and all other  
7 contracts entered into by the licensee pursuant to the  
8 provisions of this chapter that are sold and transferred to  
9 an acquiring organization continue to be governed by the  
10 provisions of this chapter.

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

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

19 Section 3. Section 32-5-301, MCA, is amended to read:

20 "32-5-301. Charges, refunds, penalties, filing fees.

21 (1) Every licensee or holder of a supplementary license  
22 hereunder may contract for and receive on any loan of money  
23 not exceeding \$1,000 in principal amount:

24 (a) charges at rates not in excess of \$20 per year per  
25 \$100 on that part of the principal amount of the loan not

1 exceeding \$500;

2 (b) \$16 per year per \$100 on that part of the  
3 principal amount of the loan exceeding \$500 but not  
4 exceeding \$1,000 interest charges as provided under  
5 31-1-112.

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

13 (3)(2) Charges in (1) and (2) shall be computed at the  
14 applicable rates on the full, original principal amount of  
15 the loan from the date of the loan to the due date of the  
16 final scheduled installment irrespective of the fact that  
17 the loan is payable in installments. Said charges shall be  
18 added to the principal of the loan and shall not be  
19 discounted or deducted therefrom or paid or received at the  
20 time the loan is made. For the purpose of computing charges  
21 for a fraction of a month, a day shall be considered  
22 one-thirtieth of a month.

23 (4) On loans of 990 or less a licensee may charge in  
24 lieu of charges specified in (1) of this section, not in  
25 excess of \$1 for each \$5 of cash or credit advanced to the

1 borrower-up-to-the-amount-of-990--A-period-of--at--least--15  
 2 days--must--be--allowed-for-the-repayment-of-each-95-cash-or  
 3 credit-advanced--Such-charges--cannot--be--assessed--by--any  
 4 subterfuge--or-device-on-any-loan-over-990-or-on-any-balance  
 5 of-990-or-less-when-the-original-loan-was-greater-than--990-

6 ~~(5)~~(3) (a) When any loan contract, new loan, renewal,  
 7 or otherwise for a period of not more than 61 months is paid  
 8 in full by cash 1 month or more before the final installment  
 9 date, the licensee shall refund or credit the borrower with  
 10 that portion of the total charges which shall be due the  
 11 borrower as determined by schedules prepared under the rule  
 12 of 78ths or sum of the digits principle as follows: the  
 13 amount of the refund or credit shall be as great a  
 14 proportion of the total charges originally contracted for as  
 15 the sum of the consecutive monthly balances of the contract  
 16 scheduled to follow the date of prepayment bears to the sum  
 17 of all the consecutive monthly balances of the contract,  
 18 both sums to be determined according to the payment schedule  
 19 originally contracted for.

20 (b) When any loan contract, new loan, renewal, or  
 21 otherwise for a period of more than 61 months is paid in  
 22 full by cash 1 month or more before the final installment  
 23 date, the licensee shall refund or credit the borrower with  
 24 that portion of the total charges that is due the borrower  
 25 that is applicable to all fully unexpired months in the

1 contract as originally scheduled or, if deferred, as  
 2 deferred, following the date of prepayment. For this purpose  
 3 the applicable charge is the charge which would have been  
 4 earned for that contract if charges had not been  
 5 precomputed, by applying to the unpaid principal balance, by  
 6 the actuarial method, the annual percentage rate disclosed  
 7 pursuant to federal law, based on the assumption that all  
 8 payments were made as originally scheduled. For all loans  
 9 that may be subject to this section, charges are computed  
 10 initially in the same manner used to determine the annual  
 11 percentage rate.

12 ~~(6)~~(4) If the contract so provides, the additional  
 13 charge for any amount past due according to the original  
 14 terms of the contract, whether by reason of default or  
 15 extension agreement, may be 5% of the amount past due, and  
 16 said amount may be charged once and no more.

17 ~~(7)~~(5) (a) The licensee may include in the principal  
 18 amount of any loan the actual fees paid a public official or  
 19 agency of the state for filing, recording, or releasing any  
 20 instrument securing the loan.

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

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

1 (ii) fees for preparation of a deed, settlement  
 2 statement, or other documents;  
 3 (iii) fees for notarizing deeds and other documents;  
 4 (iv) appraisal fees;  
 5 (v) fees for credit reports; and  
 6 (vi) fees paid to a trustee for release of a trust  
 7 deed.

8 ~~(8)~~(6) No further or other charges shall be directly  
 9 or indirectly contracted for or received by any licensee  
 10 except those specifically authorized by this chapter. No  
 11 licensee shall divide into separate parts any contract made  
 12 for the purpose of or with the effect of obtaining charges  
 13 in excess of those authorized by this chapter. All balances  
 14 due to a licensee from any person as a borrower or as an  
 15 endorser, guarantor, or surety for any borrower or otherwise  
 16 or due from any husband or wife, jointly or severally, shall  
 17 be considered a part of any loan being made by a licensee to  
 18 such person for the purpose of computing interest or  
 19 charges. If any amount in excess of the charges permitted by  
 20 this chapter is charged, contracted for, and received,  
 21 except as the result of an accidental and bona fide error of  
 22 computation, the licensee shall have no right to collect or  
 23 receive any charges.

24 (7) SUBSECTIONS (2), (3), AND (6) OF THIS SECTION  
 25 APPLY ONLY TO LOANS ON WHICH CHARGES ARE MADE ON AN ADD-ON

1 BASIS AND DO NOT APPLY TO LOANS ON WHICH CHARGES ARE MADE ON  
 2 AN INTEREST-BEARING BASIS.

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

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

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

21 ~~(b)~~--Charges made under this subsection may not be  
 22 payable in advance or compounded. However, if part or all of  
 23 the consideration for a new loan contract is the unpaid  
 24 principal balance of a prior loan, the principal amount  
 25 payable under such new loan contract may include any unpaid

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

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

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

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

15 Section 4. Section 32-5-303, MCA, is amended to read:

16 "32-5-303. Borrower to receive copy of contract or  
 17 statement of contents. At the time the loan is made, there  
 18 will be delivered to the borrower, or if there be two or  
 19 more borrowers to one of them, the disclosures required by  
 20 the Federal Consumer Credit Protection Act, a copy of the  
 21 loan contract, or a written statement in the English  
 22 language showing in clear and distinct terms:

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

25 (2) the date of the loan contract;

1 (3) the schedule of installments or description  
 2 thereof;

3 (4) the principal amount of the loan excluding  
 4 charges;

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

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

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

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

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

19 Section 5. Section 32-5-322, MCA, is amended to read:

20 "32-5-322. Deferral charge -- rate. The deferral  
 21 charge for a 1-month period may not exceed an amount equal  
 22 to the difference between the refund which would be required  
 23 for prepayment in full under subsection (5)(3) of 32-5-301  
 24 as of the scheduled due date of the first deferred  
 25 installment and the refund which would be required for



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

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

11 "32-5-501. Open-end loans. (1) A holder of a  
 12 supplementary license may make open-end loans and may  
 13 contract for and receive charges ~~at a rate not in excess of~~  
 14 ~~the rate set forth in 32-5-301(10),~~ as allowed under  
 15 31-1-112, on unpaid balances outstanding from time to time  
 16 for the actual time outstanding.

17 (2) A holder of a supplementary license may not  
 18 compound charges by adding any unpaid charges authorized by  
 19 this section to the unpaid principal balance of the  
 20 borrower's account; however, the unpaid principal balance  
 21 may include the fees paid to third parties as authorized by  
 22 32-5-504 and by 32-5-301~~(7)~~(5)."

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

24 "32-5-506. Provisions not applicable. The provisions  
 25 of subsections ~~(5)~~(3) and ~~(6)~~(4) of 32-5-301 and the

1 provisions of 32-5-304 do not apply to open-end loans."

2 NEW SECTION. Section 8. Extension of authority. Any  
 3 existing authority of the department of commerce to make  
 4 rules on the subject of the provisions of this act is  
 5 extended to the provisions of this act.

6 NEW SECTION. Section 9. Saving clause. This act does  
 7 not affect rights and duties that matured, penalties that  
 8 were incurred, or proceedings that were begun before the  
 9 effective date of this act.

-End-