

HOUSE BILL 652

Introduced by Brooke, et al.

2/11	Introduced
2/13	Referred to Business & Economic Development
2/13	Fiscal Note Requested
2/17	Hearing
2/18	Committee Report--Bill Passed as Amended
2/18	Fiscal Note Received
2/21	2nd Reading Passed as Amended
2/22	3rd Reading Passed

Transmitted to Senate

2/28	Referred to Business & Industry
3/16	Hearing
3/21	Committee Report--Bill Concurred as Amended
3/22	Rereferred to Business & Industry
3/27	Hearing
3/28	Committee Report--Bill Concurred as Amended
3/28	2nd Reading Concur Motion Failed
3/28	2nd Reading Indefinitely Postponed

1 *House* BILL NO. *652*  
 2 INTRODUCED BY *Timian Shadle* *Nollyn Goodwin*  
 3 *Chase Brown* *Walt O'Leary* *J. Brown*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE A LENDER TO  
 5 PAY INTEREST ON A MORTGAGE RESERVE ACCOUNT; REQUIRING THE  
 6 DEPARTMENT OF COMMERCE TO SUPERVISE AND EXAMINE THE ACCOUNTS  
 7 TO ASSURE INTEREST IS PAID; AND PROVIDING AN APPLICABILITY  
 8 PROVISION."  
 9

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

11 NEW SECTION. Section 1. Definitions. Unless the  
 12 context requires otherwise, in [this act] the following  
 13 definitions apply:

14 (1) "Borrower" means a person who becomes obligated on  
 15 a real estate loan at the time of origination of the loan  
 16 and includes a mortgagor, a trustor under a trust deed or  
 17 trust indenture, and a vendee under a conditional land sale  
 18 contract or contract for deed.

19 (2) "Department" means the department of commerce  
 20 provided for in Title 2, chapter 15, part 18.

21 (3) "Lender" means a person who regularly:

22 (a) makes, extends, or holds real estate loans and  
 23 includes but is not limited to a mortgagee, a beneficiary  
 24 under a trust deed or trust indenture, and a vendor under a  
 25 conditional land sale contract or contract for deed; and

1 (b) requires or maintains reserve accounts.

2 (4) "Person" includes an individual, a commercial bank  
 3 as defined in 32-1-105, a savings bank as defined in  
 4 32-1-106, a building and loan association as defined in  
 5 32-2-101, a credit union as defined in 32-3-102, an  
 6 investment company as defined in 32-1-108, an insurance  
 7 company, a pension fund, a mortgage company, a trust company  
 8 as defined in 32-1-107, or any other organization regularly  
 9 making real estate loans.

10 (5) "Real estate loan" means an agreement providing for  
 11 a loan secured by an interest in real estate in this state  
 12 containing a residential structure of not more than four  
 13 housing units, at least one of which is the primary  
 14 residence of the borrower. Real estate loan includes, but  
 15 is not limited to, an agreement secured by a mortgage, trust  
 16 deed, or trust indenture or conditional land sales contract  
 17 or contract for deed.

18 (6) "Reserve account" means an account, whether  
 19 denominated escrow, impound, trust, pledge, reserve, or  
 20 otherwise, that is established in connection with a loan  
 21 secured by an interest in real estate located in the state,  
 22 whereby the borrower agrees to make periodic prepayments to  
 23 the lender or its designee of taxes, insurance premiums, or  
 24 other charges pertaining to the property securing the loan  
 25 and the lender or its designee agrees to pay the taxes,

1 insurance premiums, or other charges out of the account on  
2 or before the due date of the taxes, insurance premiums, or  
3 other charges.

4 (7) "Service charge" means a direct fee imposed in  
5 connection with the administration of a reserve account.

6 NEW SECTION. **Section 2.** Lender to pay interest --  
7 exceptions -- time for payment -- service charge prohibited.

8 (1) A lender requiring the establishment or continuance of a  
9 reserve account in connection with an existing or future  
10 real estate loan shall pay interest on funds deposited in  
11 the account of at least 5 1/4% simple interest per year,  
12 unless the payment of interest or other compensation for the  
13 use of funds deposited in the reserve account is prohibited  
14 by federal law or regulations.

15 (2) The interest must be computed as of the end of the  
16 calendar year on the average of the month-end balances in  
17 the account for that calendar year or partial calendar year.  
18 However, if the real estate loan is paid off, interest must  
19 be computed on the average month-end balances in the account  
20 for the partial year ending at the end of the month  
21 preceding payoff. Within 60 days after the end of each  
22 calendar year, the interest must be credited, at the  
23 election of the lender, to the remaining principal balance  
24 on the loan, paid to the borrower, or credited to the  
25 reserve account. However, if the real estate loan is paid

1 off, the interest must be paid or credited to the borrower  
2 within 30 days after the date of payoff.

3 (3) A lender may not require or impose a service charge  
4 for the administration of a reserve account.

5 NEW SECTION. **Section 3.** Examination and supervision by  
6 department. The department shall examine and supervise  
7 reserve accounts as part of its examination and supervision  
8 duties under 32-1-211 to assure that a lender complies with  
9 [section 2].

10 NEW SECTION. **Section 4.** Extension of authority. Any  
11 existing authority to make rules on the subject of the  
12 provisions of [this act] is extended to the provisions of  
13 [this act].

14 NEW SECTION. **Section 5.** Codification instruction.  
15 [Sections 1 through 3] are intended to be codified as an  
16 integral part of Title 71, chapter 1, part 1, and the  
17 provisions of Title 71, chapter 1, part 1, apply to  
18 [sections 1 through 3].

19 NEW SECTION. **Section 6.** Applicability -- nonimpairment  
20 of contracts. [This act] does not apply to a reserve account  
21 established prior to [the effective date of this act] if the  
22 lender and borrower entered into a written agreement that  
23 authorized the lender to retain the interest on the reserve  
24 account.

-End-

APPROVED BY COMM. ON BUSINESS  
AND ECONOMIC DEVELOPMENT

## HOUSE BILL NO. 652

INTRODUCED BY BROOKE, HALLIGAN, COCCHIARELLA, COHEN,  
STRIZICH, D. BROWN, WYATT, O'CONNELL, J. BROWN,  
MCCORMICK, REAM, CONNELLY, MCLANE, DRISCOLL, WHALEN,  
KIMBERLEY, JOHNSON, BRADLEY, GRADY

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE A LENDER TO  
PAY INTEREST ON A MORTGAGE RESERVE ACCOUNT; ~~REQUIRING THE~~  
~~DEPARTMENT OF COMMERCE TO SUPERVISE AND EXAMINE THE ACCOUNTS~~  
~~TO ASSURE INTEREST IS PAID;~~ AND PROVIDING AN APPLICABILITY  
PROVISION."

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

NEW SECTION. **Section 1. Definitions.** Unless the  
context requires otherwise, in [this act] the following  
definitions apply:

(1) "Borrower" means a person who becomes obligated on  
a real estate loan at the time of origination of the loan  
and includes a mortgagor, a trustor under a trust deed or  
trust indenture, and a vendee under a conditional land sale  
contract or contract for deed.

~~{2}--"Department"--means--the--department--of--commerce~~  
~~provided-for-in-Title-27-chapter-157-part-18-~~

~~{3}{2}~~ "Lender" means a person who regularly:

(a) makes, extends, or holds real estate loans and

includes but is not limited to a mortgagee, a beneficiary  
under a trust deed or trust indenture, and a vendor under a  
conditional land sale contract or contract for deed; and

(b) requires or maintains reserve accounts.

~~{4}{3}~~ "Person" includes an individual, a commercial  
bank as defined in 32-1-105, a savings bank as defined in  
32-1-106, a building and loan association as defined in  
32-2-101, a credit union as defined in 32-3-102, an  
investment company as defined in 32-1-108, an insurance  
company, a pension fund, a mortgage company, a trust company  
as defined in 32-1-107, or any other organization regularly  
making real estate loans.

~~{5}{4}~~ "Real estate loan" means an agreement providing  
for a loan secured by an interest in real estate in this  
state containing a residential structure of not more than  
four housing units, at least one of which is the primary  
residence of the borrower. Real estate loan includes, but  
is not limited to, an agreement secured by a mortgage, trust  
deed, or trust indenture or conditional land sales contract  
or contract for deed.

~~{6}{5}~~ "Reserve account" means an account, whether  
denominated escrow, impound, trust, pledge, reserve, or  
otherwise, that is established in connection with a loan  
secured by an interest in real estate located in the state,  
whereby the borrower agrees to make periodic prepayments to

the lender or its designee of taxes, insurance premiums, or other charges pertaining to the property securing the loan and the lender or its designee agrees to pay the taxes, insurance premiums, or other charges out of the account on or before the due date of the taxes, insurance premiums, or other charges.

~~{7}~~(6) "Service charge" means a direct fee imposed in connection with the administration of a reserve account.

NEW SECTION. Section 2. Lender to pay interest -- exceptions -- time for payment -- service charge prohibited.

(1) A lender requiring the establishment or continuance of a reserve account in connection with an existing or future real estate loan shall pay interest on funds deposited in the account of at least 5 1/4% simple interest per year, unless the payment of interest or other compensation for the use of funds deposited in the reserve account is prohibited by federal law or regulations.

(2) The interest must be computed as of the end of the calendar year on the average of the month-end balances in the account for that calendar year or partial calendar year. However, if the real estate loan is paid off, interest must be computed on the average month-end balances in the account for the partial year ending at the end of the month preceding payoff. Within 60 days after the end of each calendar year, the interest must be credited, at the

election of the lender, to the remaining principal balance on the loan, paid to the borrower, or credited to the reserve account. However, if the real estate loan is paid off, the interest must be paid or credited to the borrower within 30 days after the date of payoff.

(3) A lender may not require or impose a service charge for the administration of a reserve account.

NEW SECTION. Section 3. ~~Examination and supervision by department.~~ The department shall examine and supervise reserve accounts as part of its examination and supervision duties under 32-1-211 to assure that a lender complies with {section 2}.

NEW SECTION. Section 4. ~~Extension of authority.~~ Any existing authority to make rules on the subject of the provisions of {this act} is extended to the provisions of {this act}.

NEW SECTION. Section 3. Codification instruction. [Sections 1 through 3 AND 2] are intended to be codified as an integral part of Title 71, chapter 1, part 1, and the provisions of Title 71, chapter 1, part 1, apply to [sections 1 through 3 AND 2].

NEW SECTION. Section 4. Applicability -- nonimpairment of contracts. [This act] does not apply to a reserve account established prior to [the effective date of this act] if the lender and borrower entered into a written

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- 1 agreement that authorized the lender to retain the interest
- 2 on the reserve account.

-End-

## HOUSE BILL NO. 652

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STRIZICH, D. BROWN, WYATT, O'CONNELL, J. BROWN,  
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trust indenture, and a vendee under a conditional land sale  
contract or contract for deed.

~~(2) "Department" means the department of commerce  
provided for in Title 27, chapter 15, part 18.~~

(2) "Lender" means a person who regularly:

(a) makes, extends, or holds real estate loans and

includes but is not limited to a mortgagee, a beneficiary  
under a trust deed or trust indenture, and a vendor under a  
conditional land sale contract or contract for deed; and

(b) requires or maintains reserve accounts.

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as defined in 32-1-107, or any other organization regularly  
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(4) "Real estate loan" means an agreement providing  
for a loan secured by an interest in real estate in this  
state containing a residential structure of not more than  
four housing units, at least one of which is the primary  
residence of the borrower. Real estate loan includes, but  
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denominated escrow, impound, trust, pledge, reserve, or  
otherwise, that is established in connection with a loan  
secured by an interest in real estate located in the state,  
whereby the borrower agrees to make periodic prepayments to

1 the lender or its designee of taxes, insurance premiums, or  
 2 other charges pertaining to the property securing the loan  
 3 and the lender or its designee agrees to pay the taxes,  
 4 insurance premiums, or other charges out of the account on  
 5 or before the due date of the taxes, insurance premiums, or  
 6 other charges.

7 {7}{6} "Service charge" means a direct fee imposed in  
 8 connection with the administration of a reserve account.

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11 (1) A lender requiring the establishment or continuance of a  
 12 reserve account in connection with an existing or future  
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 14 the account of at least 5 1/4% simple interest per year,  
 15 unless the payment of interest or other compensation for the  
 16 use of funds deposited in the reserve account is prohibited  
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 19 calendar year on the average of the month-end balances in  
 20 the account for that calendar year or partial calendar year.  
 21 However, if the real estate loan is paid off, interest must  
 22 be computed on the average month-end balances in the account  
 23 for the partial year ending at the end of the month  
 24 preceding payoff. Within 60 days after the end of each  
 25 calendar year, the interest must be credited, at the

1 election of the lender, to the remaining principal balance  
 2 on the loan, paid to the borrower, or credited to the  
 3 reserve account. However, if the real estate loan is paid  
 4 off, the interest must be paid or credited to the borrower  
 5 within 30 days after the date of payoff.

6 (3) A lender may ~~not--require--or--impose--a--service~~  
 7 ~~charge for the administration of a reserve account~~ AN AMOUNT  
 8 NOT EXCEEDING 0.5% OF THE ANNUAL REMAINING BALANCE OF THE  
 9 ACCOUNT.

10 NEW-SECTION--Section 3. ~~Examination--and--supervision~~  
 11 ~~by--department--The department shall examine and supervise~~  
 12 ~~reserve accounts as part of its examination and supervision~~  
 13 ~~duties--under 32-1-211 to assure that a lender complies with~~  
 14 ~~{section 2}.~~

15 NEW-SECTION--Section 4. ~~Extension of authority.~~ ~~Any~~  
 16 ~~existing authority to make rules on the subject of the~~  
 17 ~~provisions of {this act} is extended to the provisions of~~  
 18 ~~{this act}.~~

19 NEW SECTION. Section 3. Codification instruction.  
 20 [Sections 1 through-3 AND 2] are intended to be codified as  
 21 an integral part of Title 71, chapter 1, part 1, and the  
 22 provisions of Title 71, chapter 1, part 1, apply to  
 23 [sections 1 through-3 AND 2].

24 NEW SECTION. Section 4. Applicability --  
 25 nonimpairment of contracts. [This act] does not apply to a



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1    reserve   account established prior to [the effective date of  
2    this act] if the lender and borrower entered into a   written  
3    agreement   that authorized the lender to retain the interest  
4    on the reserve account.

-End-

**SENATE STANDING COMMITTEE REPORT**

March 20, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration HB 652 (third reading copy -- blue), respectfully report that HB 652 be amended and as so amended be concurred in:

Sponsor: Brooke (Van Valkenburg)

1. Page 3, line 10.

Following: "charge"

Strike: "prohibited"

Insert: "allowed"

2. Page 3, line 14.

Following: "year"

Insert: "if the average of the monthend balances for the calendar year exceeds \$300"

3. Page 3, lines 19 and 22.

Strike: "month-end"

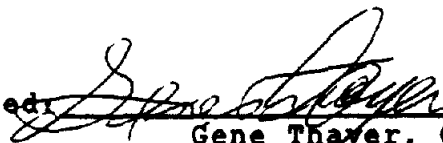
Insert: "monthend"

4. Page 5, lines 2 through 4.

Strike: "if" on line 2 through "account" on line 4

**AND AS AMENDED BE CONCURRED IN**

Signed:

  
Gene Thayer, Chairman

**SENATE  
HB 652**

SENATE STANDING COMMITTEE REPORT

March 27, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration HB 652 (third reading copy -- blue), respectfully report that HB 652 be amended and as so amended be concurred in:

Sponsor: Brooke (Van Valkenburg)

1. Amend the Senate Committee on Business and Industry amendments to HB 652 (third reading copy -- blue) dated March 20, 1989, as follows:

Amendment No. 2

Strike: the insert in its entirety

Insert: ", if the yearend balance exceeds \$300"

AND AS AMENDED BE CONCURRED IN

Signed, 

Gene Thayer, Chairman

SENATE  
HB 652