

SENATE BILL 138

Introduced by Brown, Robert, et al.

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| 1/14 | Introduced |
| 1/14 | Referred to Business & Industry |
| 1/19 | Hearing |
| 1/20 | Committee Report--Bill Passed |
| 1/24 | Rereferred to Judiciary |
| 1/27 | Hearing |
| 2/08 | Hearing |
| 2/09 | Committee Report--Bill Passed as Amended |
| 2/11 | 2nd Reading Passed as Amended |
| 2/14 | 3rd Reading Passed |

Transmitted to House

| | |
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| 2/21 | Referred to Business & Economic Development |
| 2/13 | Hearing |
| 3/13 | Tabled in Committee |

1 Senate BILL NO. 138
2 INTRODUCED BY Bob Brown Lynch
3 Wilson
4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING LOAN AND
5 CREDIT AGREEMENTS TO BE IN WRITING IN ORDER TO BE
6 ENFORCEABLE; AMENDING SECTION 28-2-903, MCA; AND PROVIDING
7 AN APPLICABILITY DATE."

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

10 **Section 1.** Section 28-2-903, MCA, is amended to read:

11 "28-2-903. What contracts must be in writing. (1) The
12 following agreements are invalid unless the same or some
13 note or memorandum thereof is in writing and subscribed by
14 the party to be charged or his agent:

15 (a) an agreement that by its terms is not to be
16 performed within a year from the making thereof;

17 (b) a special promise to answer for the debt, default,
18 or miscarriage of another, except in the cases provided for
19 in 28-11-105;

20 (c) an agreement made upon consideration of marriage
21 other than a mutual promise to marry;

22 (d) an agreement for the leasing for a longer period
23 than 1 year or for the sale of real property or of an
24 interest therein. Such agreement, if made by an agent of the
25 party sought to be charged, is invalid unless the authority

1 of the agent is in writing and subscribed by the party
2 sought to be charged.

3 (e) an agreement authorizing or employing an agent or
4 broker to purchase or sell real estate for compensation or a
5 commission;

6 (f) an agreement, promise, undertaking, or commitment
7 to loan money or to grant or extend credit.

8 (2) Evidence of an agreement described in (a) through
9 (d) and (f) of subsection (1) is not admissible without the
10 writing or secondary evidence of its contents.

11 (3) No evidence is admissible to charge a person upon
12 a representation as to the credit of a third person unless
13 such representation or some memorandum thereof is in writing
14 and either subscribed by or in the handwriting of the party
15 to be charged.

16 (4) Subsections (1) and (2) do not apply to agreements
17 subject to the Uniform Commercial Code."

18 NEW SECTION. **Section 2.** Applicability. [This act]
19 applies to agreements made on or after October 1, 1989.

-End-

APPROVED BY COMM. ON
BUSINESS & INDUSTRY

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2 INTRODUCED BY *Bob Brown Lynch*
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AS AMENDED

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INTRODUCED BY B. BROWN, LYNCH, WEEDING, MCLANE

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of the agent is in writing and subscribed by the party sought to be charged.

(e) an agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission;

~~(f) an agreement, promise, undertaking, or commitment to loan money or to grant or extend credit,~~ PROVIDED, HOWEVER, THAT THIS SUBSECTION DOES NOT APPLY TO ANY AGREEMENT OR COMMITMENT TO GRANT OR EXTEND CREDIT BETWEEN A PUBLIC UTILITY REGULATED BY THE PUBLIC SERVICE COMMISSION AND A CUSTOMER OF THE UTILITY.

(2) Evidence of an agreement described in [SECTION 2] AND IN SUBSECTIONS (1)(a) through (1)(d) ~~and (f)~~ of subsection (1) OF THIS SECTION is not admissible without the writing or secondary evidence of its contents.

(3) No evidence is admissible to charge a person upon a representation as to the credit of a third person unless such representation or some memorandum thereof is in writing and either subscribed by or in the handwriting of the party to be charged.

(4) Subsections (1) and (2) do not apply to agreements subject to the Uniform Commercial Code."

NEW SECTION. SECTION 2. CREDIT AGREEMENTS TO BE IN WRITING. A DEBTOR OR CREDITOR MAY NOT MAINTAIN AN ACTION ON A CREDIT AGREEMENT UNLESS THE AGREEMENT IS IN WRITING,

EXPRESSES CONSIDERATION, SETS FORTH THE RELEVANT TERMS AND
CONDITIONS, AND IS SIGNED BY THE CREDITOR AND THE DEBTOR. AS
USED IN THIS SECTION, THE FOLLOWING DEFINITIONS APPLY:

(1) "CREDIT AGREEMENT" MEANS AN AGREEMENT TO LEND OR
FORBEAR REPAYMENT OF MONEY BUT DOES NOT INCLUDE PROMISSORY
NOTES NOT A PART OF A CREDIT AGREEMENT, SALES, OR CREDIT
CARD TRANSACTION.

(2) "CREDITOR" MEANS A PERSON WHO IS ENGAGED PRIMARILY
IN THE BUSINESS OF MAKING LOANS UNDER A CREDIT AGREEMENT
WITH A DEBTOR.

(3) "DEBTOR" MEANS A PERSON WHO OBTAINS CREDIT, SEEKS
A CREDIT AGREEMENT WITH A CREDITOR, OR OWES MONEY TO A
CREDITOR, IF SUCH CREDIT IS IN EXCESS OF \$10,000 AND NOT
PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES.

NEW SECTION. **SECTION 3.** CODIFICATION INSTRUCTION.
[SECTION 2] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART
OF TITLE 28, CHAPTER 2, PART 9, AND THE PROVISIONS OF TITLE
28, CHAPTER 2, PART 9, APPLY TO [SECTION 2].

NEW SECTION. **Section 4.** Applicability. [This act]
applies to agreements made on or after October 1, 1989.

-End-

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of the agent is in writing and subscribed by the party sought to be charged.

(e) an agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission;

~~{f}--an--agreement,--promise,--undertaking,--or--commitment to--loan--money--or--to--grant--or--extend--credit,--PROVIDED, HOWEVER,---THAT---THIS---SUBSECTION---DOES---NOT---APPLY---TO---ANY AGREEMENT--OR--COMMITMENT--TO--GRANT--OR--EXTEND--CREDIT--BETWEEN--A PUBLIC--UTILITY--REGULATED--BY--THE--PUBLIC--SERVICE--COMMISSION AND--A--CUSTOMER--OF--THE--UTILITY.~~

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