

1
2 INTRODUCED BY *Sylvia Spence* *Spence* BILL NO. 379
3 *Spence*

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CONSUMER LOAN LAWS; SPECIFYING
5 THAT, WITH RESPECT TO LOANS ON WHICH CHARGES ARE MADE ON AN ADD-ON BASIS, THE
6 INSTALLMENT CONTRACTED FOR MAY NOT BE SUBSTANTIALLY LARGER THAN ANY PRECEDING
7 INSTALLMENT; SPECIFYING THAT, WITH RESPECT TO LOANS ON WHICH CHARGES ARE MADE ON AN
8 ADD-ON BASIS, THE MINIMUM MONTHLY PAYMENTS MUST BE MADE IN AN AMOUNT THAT WOULD
9 RESULT IN THE FULL REPAYMENT OF THE INITIAL LOAN ADVANCE, EXCLUSIVE OF ANY CHARGES,
10 WITHIN A STATUTORILY-SPECIFIED MAXIMUM TERM; SETTING A 30-DAY LIMIT FOR CERTAIN
11 CONSUMER LOAN LICENSEES TO RETURN TO CERTAIN BORROWERS A RELEASE OF THE MORTGAGE
12 OR A REQUEST FOR RECONVEYANCE OF THE DEED OF TRUST OR TRUST INDENTURE ON REAL
13 PROPERTY TAKEN AS SECURITY FOR A LOAN; AND AMENDING SECTIONS 32-5-102, 32-5-103,
14 32-5-203, 32-5-302, 32-5-307, 32-5-503, AND 32-5-505, MCA."

15

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

17

18 **Section 1.** Section 32-5-102, MCA, is amended to read:

19 **"32-5-102. Definitions.** Unless the context requires otherwise, in this chapter, the following
20 definitions apply:

21 (1) (a) "Consumer loan" means credit offered or extended to an individual primarily for personal,
22 family, or household purposes, including loans for purposes that are secured by a mortgage, deed of trust,
23 trust indenture, or other security interest in real estate.

24 (b) Consumer loans do not include real estate-secured loan transactions that are governed by 12
25 U.S.C. 1735f-7a, but a consumer loan business may engage in transactions that are governed by 12 U.S.C.
26 1735f-7a.

27 ~~(1)(2)~~ "Consumer type loan business" means the business of making consumer loans generally
28 repayable in substantially equal installments as a licensee under this chapter.

29 ~~(2)(3)~~ "Department" means the department of commerce provided for in Title 2, chapter 15, part
30 18.

1 ~~(3)~~(4) "License" means one or both of the licenses provided for by this chapter.

2 ~~(4)~~(5) "Licensee" means the person holding a license.

3 ~~(5)~~(6) "Person" means individuals, partnerships, associations, corporations, and all legal entities
4 in the loaning business."

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

7 **"32-5-103. Engaging in business of making consumer loans restricted.** (1) Except as provided in
8 subsection (5), a person may not engage in the business of making consumer loans or advances of money
9 on credit in any amount and contract for, charge, or receive directly or indirectly on or in connection with
10 any loan or advance any charges, whether for interest, compensation, consideration, or expense, except
11 as provided in and authorized by this chapter. A person engaged in business as a licensed pawnbroker may
12 not become a licensee under this chapter, ~~nor do any of the.~~ The provisions of this chapter do not apply
13 to any exempted person.

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

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

23 (4) Any act by a licensee in the making of a contract or in the collection of a loan made under the
24 contract that violates the provisions of this chapter is void. The licensee has no right to collect, receive,
25 or retain any principal, interest, or charges.

26 (5) A consumer loan licensee or a person who seeks a regulated lender exemption under 31-1-112
27 as a consumer loan licensee shall fully comply with this chapter. A regulated lender as defined in 31-1-111,
28 other than a consumer loan licensee, or a lender who complies with the provisions of Title 31, chapter 1,
29 part 1, is not required to comply with this chapter."
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1 **Section 3.** Section 32-5-203, MCA, is amended to read:

2 "**32-5-203. Conduct of other business in same office.** A licensee may conduct the business of
3 making consumer loans under this chapter within any office, room, or place of business in which any other
4 business for which a license under this chapter is not required is solicited or engaged in or in association
5 or conjunction ~~therewith~~ with the business unless the department ~~shall find~~ finds, after a hearing, that the
6 other business is of ~~such~~ a nature that ~~such~~ the conduct tends to conceal evasion of this chapter or of the
7 rules made ~~hereunder and shall~~ under this chapter. If the department finds concealment or evasion, it shall
8 order ~~such~~ the licensee in writing to desist from ~~such~~ the conduct."
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10 **Section 4.** Section 32-5-302, MCA, is amended to read:

11 "**32-5-302. Installment payment -- contract period.** (1) A licensee may not enter into any contract
12 of loan:

13 (a) of \$300 or less, exclusive of charges, under which the borrower agrees to make any scheduled
14 repayment of principal more than 21 calendar months from the date of making the contract;

15 (b) for more than \$300 to and including \$1,000, exclusive of charges, under which the borrower
16 agrees to make any scheduled repayment of principal more than 25 calendar months from the date of
17 making; or

18 (c) for more than \$1,000 to and including \$2,500, exclusive of charges, under which the borrower
19 agrees to make any scheduled repayment of principal more than 48 calendar months from the date of
20 making.

21 (2) Each loan contract requires payment of principal and charges in installments that are payable
22 at approximately equal periodic intervals, except that payment dates may be omitted to accommodate
23 borrowers with seasonal incomes. ~~An~~ With respect to a loan on which charges are made on an add-on
24 basis, an installment contracted for may not be substantially larger than any preceding installment. When
25 a loan contract provides for monthly installments, the first installment may be payable at any time within
26 45 days of the date of the loan and the charges for the number of days in excess of 30 from the date of
27 making may be added to the scheduled amount of the installments."
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29 **Section 5.** Section 32-5-307, MCA, is amended to read:

30 "**32-5-307. Records to be kept.** Each licensee shall keep or make available in each licensed office

1 ~~such the~~ books, accounts, and records ~~as that~~ the department ~~shall require~~ requires and ~~as that~~ are
 2 necessary to enable the department to determine whether the licensee is complying with this chapter and
 3 with the rules promulgated ~~thereunder~~ under this chapter. The licensee shall preserve ~~such the~~ records for
 4 at least 2 years after making the final entry on any loan recorded ~~thereon~~ in the records."

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6 **Section 6.** Section 32-5-503, MCA, is amended to read:

7 **"32-5-503. Early payment.** The borrower may at any time pay all or any part of the unpaid balance
 8 in ~~his the borrower's~~ account, or if the account is not in default, the borrower may pay the unpaid principal
 9 balance in monthly installments, subject to minimum payment requirements as determined by the licensee
 10 and set forth in the open-end loan agreement. ~~Minimum~~ With respect to a loan on which charges are made
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 13 forth for other loans of the same amount in 32-5-302(1)."

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15 **Section 7.** Section 32-5-505, MCA, is amended to read:

16 **"32-5-505. Security.** A holder of a supplementary license may take a security interest in personal
 17 property to secure an open-end loan and may retain ~~any such the~~ security interest until the open-end
 18 account is terminated. A holder of a supplementary license may take a security interest in real property to
 19 secure an open-end loan and may retain ~~any such the~~ security interest until the open-end account is
 20 terminated; ~~however.~~ However, if there is no outstanding balance in the account and there is no
 21 commitment by the licensee to make additional advances, the licensee shall, within ~~40~~ 30 days following
 22 written request by the borrower, deliver to the borrower a release of the mortgage or a request for
 23 reconveyance of the deed of trust or trust indenture on any real property taken as security for a loan."

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25 NEW SECTION. **Section 8. Saving clause.** [This act] does not affect rights and duties that
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21 (3) The provisions of subsection (1) apply to any person who seeks to evade its applications by
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24 (b) Consumer loans do not include ~~real estate-secured~~ loan transactions that are governed by 12

25 U.S.C. 1735f-7a, but a consumer loan business may engage in transactions that are governed by 12 U.S.C.

26 1735f-7a.

27 ~~(1)(2)~~ "Consumer ~~type~~ loan business" means the business of making consumer loans generally

28 ~~repayable in substantially equal installments~~ as a licensee under this chapter.

29 ~~(2)(3)~~ "Department" means the department of commerce provided for in Title 2, chapter 15, part

30 18.

1 ~~(3)~~(4) "License" means one or both of the licenses provided for by this chapter.

2 ~~(4)~~(5) "Licensee" means the person holding a license.

3 ~~(5)~~(6) "Person" means individuals, partnerships, associations, corporations, and all legal entities
4 in the loaning business."

5

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

7 **"32-5-103. Engaging in business of making consumer loans restricted.** (1) Except as provided in
8 subsection (5), a person may not engage in the business of making consumer loans or advances of money
9 on credit in any amount and contract for, charge, or receive directly or indirectly on or in connection with
10 any loan or advance any charges, whether for interest, compensation, consideration, or expense, except
11 as provided in and authorized by this chapter. A person engaged in business as a licensed pawnbroker may
12 not become a licensee under this chapter, ~~nor do any of the.~~ The provisions of this chapter do not apply
13 to any exempted person.

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

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

23 (4) Any act by a licensee in the making of a contract or in the collection of a loan made under the
24 contract that violates the provisions of this chapter is void. The licensee has no right to collect, receive,
25 or retain any principal, interest, or charges.

26 (5) A consumer loan licensee or a person who seeks a regulated lender exemption under 31-1-112
27 as a consumer loan licensee shall fully comply with this chapter. A regulated lender as defined in 31-1-111,
28 other than a consumer loan licensee, or a lender who complies with the provisions of Title 31, chapter 1,
29 part 1, is not required to comply with this chapter."

30

1 **Section 3.** Section 32-5-203, MCA, is amended to read:

2 **"32-5-203. Conduct of other business in same office.** A licensee may conduct the business of
 3 making consumer loans under this chapter within any office, room, or place of business in which any other
 4 business for which a license under this chapter is not required is solicited or engaged in or in association
 5 or conjunction ~~therewith~~ with the business. **"OTHER BUSINESS" MAY INCLUDE MAKING LOANS NOT**
 6 **PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES,** unless the department ~~shall find~~ finds,
 7 after a hearing, that the other business is of ~~such~~ a nature that ~~such~~ the conduct tends to conceal evasion
 8 of this chapter or of the rules made ~~hereunder and shall~~ under this chapter. If the department finds
 9 concealment or evasion, it shall order ~~such~~ the licensee in writing to desist from ~~such~~ the conduct."

10

11 **Section 4.** Section 32-5-302, MCA, is amended to read:

12 **"32-5-302. Installment payment -- contract period.** (1) A licensee may not enter into any contract
 13 of loan:

14 (a) of \$300 or less, exclusive of charges, under which the borrower agrees to make any scheduled
 15 repayment of principal more than 21 calendar months from the date of making the contract;

16 (b) for more than \$300 to and including \$1,000, exclusive of charges, under which the borrower
 17 agrees to make any scheduled repayment of principal more than 25 calendar months from the date of
 18 making; or

19 (c) for more than \$1,000 to and including \$2,500, exclusive of charges, under which the borrower
 20 agrees to make any scheduled repayment of principal more than 48 calendar months from the date of
 21 making.

22 (2) Each loan contract requires payment of principal and charges in installments that are payable
 23 at approximately equal periodic intervals, except that payment dates may be omitted to accommodate
 24 borrowers with seasonal incomes. ~~As~~ With respect to a loan on which charges are made on an add-on
 25 basis, an installment contracted for may not be substantially larger than any preceding installment. When
 26 a loan contract provides for monthly installments, the first installment may be payable at any time within
 27 45 days of the date of the loan and the charges for the number of days in excess of 30 from the date of
 28 making may be added to the scheduled amount of the installments."

29

30 **Section 5.** Section 32-5-307, MCA, is amended to read:

1 **"32-5-307. Records to be kept.** Each licensee shall keep or make available in each licensed office
 2 ~~such~~ the books, accounts, and records ~~as that~~ the department ~~shall require~~ requires and ~~as that~~ are
 3 necessary to enable the department to determine whether the licensee is complying with this chapter and
 4 with the rules promulgated ~~thereunder~~ under this chapter. The licensee shall preserve ~~such~~ the records for
 5 at least 2 years after making the final entry on any loan recorded ~~thereon~~ in the records."

6

7 **Section 6.** Section 32-5-503, MCA, is amended to read:

8 **"32-5-503. Early payment.** The borrower may at any time pay all or any part of the unpaid balance
 9 in ~~his~~ the borrower's account, or if the account is not in default, the borrower may pay the unpaid principal
 10 balance in monthly installments, subject to minimum payment requirements as determined by the licensee
 11 and set forth in the open-end loan agreement. ~~Minimum~~ With respect to a loan on which charges are made
 12 on an add-on basis, minimum monthly payments ~~shall~~ must be made in such an amount as that would result
 13 in the full repayment of the initial loan advance, exclusive of any charges, within the maximum term set
 14 forth for other loans of the same amount in 32-5-302(1)."

15

16 **Section 7.** Section 32-5-505, MCA, is amended to read:

17 **"32-5-505. Security.** A holder of a supplementary license may take a security interest in personal
 18 property to secure an open-end loan and may retain ~~any such~~ the security interest until the open-end
 19 account is terminated. A holder of a supplementary license may take a security interest in real property to
 20 secure an open-end loan and may retain ~~any such~~ the security interest until the open-end account is
 21 terminated; ~~however,~~ However, if there is no outstanding balance in the account and there is no
 22 commitment by the licensee to make additional advances, the licensee shall, within ~~40~~ 30 days following
 23 written request by the borrower, deliver to the borrower a release of the mortgage or a request for
 24 reconveyance of the deed of trust or trust indenture on any real property taken as security for a loan."

25

26 **NEW SECTION. Section 8. Saving clause.** [This act] does not affect rights and duties that
 27 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
 28 act].

29

-END-

SENATE BILL NO. 379

INTRODUCED BY LYNCH, HERTEL

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CONSUMER LOAN LAWS; SPECIFYING
5 THAT, WITH RESPECT TO LOANS ON WHICH CHARGES ARE MADE ON AN ADD-ON BASIS, THE
6 INSTALLMENT CONTRACTED FOR MAY NOT BE SUBSTANTIALLY LARGER THAN ANY PRECEDING
7 INSTALLMENT; SPECIFYING THAT, WITH RESPECT TO LOANS ON WHICH CHARGES ARE MADE ON AN
8 ADD-ON BASIS, THE MINIMUM MONTHLY PAYMENTS MUST BE MADE IN AN AMOUNT THAT WOULD
9 RESULT IN THE FULL REPAYMENT OF THE INITIAL LOAN ADVANCE, EXCLUSIVE OF ANY CHARGES,
10 WITHIN A STATUTORILY-SPECIFIED MAXIMUM TERM; SETTING A 30-DAY LIMIT FOR CERTAIN
11 CONSUMER LOAN LICENSEES TO RETURN TO CERTAIN BORROWERS A RELEASE OF THE MORTGAGE
12 OR A REQUEST FOR RECONVEYANCE OF THE DEED OF TRUST OR TRUST INDENTURE ON REAL
13 PROPERTY TAKEN AS SECURITY FOR A LOAN; AND AMENDING SECTIONS 32-5-102, 32-5-103,
14 32-5-203, 32-5-302, 32-5-307, 32-5-503, AND 32-5-505, MCA."

15

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

17

18 Section 1. Section 32-5-102, MCA, is amended to read:

19 "32-5-102. **Definitions.** Unless the context requires otherwise, in this chapter, the following
20 definitions apply:

21 (1) (a) "Consumer loan" means credit offered or extended to an individual primarily for personal,
22 family, or household purposes, including loans for PERSONAL, FAMILY, OR HOUSEHOLD purposes that
23 are secured by a mortgage, deed of trust, trust indenture, or other security interest in real estate.

24 (b) Consumer loans do not include ~~real estate secured~~ loan transactions that are governed by 12
25 U.S.C. 1735f-7a, but a consumer loan business may engage in transactions that are governed by 12 U.S.C.
26 1735f-7a.

27 ~~(1)(2)~~ "Consumer ~~type~~ loan business" means the business of making consumer loans generally
28 ~~repayable in substantially equal installments~~ as a licensee under this chapter.

29 ~~(2)(3)~~ "Department" means the department of commerce provided for in Title 2, chapter 15, part

30 18.

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10 any loan or advance any charges, whether for interest, compensation, consideration, or expense, except
11 as provided in and authorized by this chapter. A person engaged in business as a licensed pawnbroker may
12 not become a licensee under this chapter, ~~nor do any of the~~. The provisions of this chapter do not apply
13 to any exempted person.

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

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

23 (4) Any act by a licensee in the making of a contract or in the collection of a loan made under the
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25 or retain any principal, interest, or charges.

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 8 of this chapter or of the rules made ~~hereunder and shall~~ under this chapter. If the department finds
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 20 secure an open-end loan and may retain ~~any such the~~ security interest until the open-end account is
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 24 reconveyance of the deed of trust or trust indenture on any real property taken as security for a loan."

25

26 **NEW SECTION. Section 8. Saving clause.** [This act] does not affect rights and duties that
 27 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
 28 act].

29

-END-