

HOUSE BILL NO. 118

INTRODUCED BY J. ECK

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT REPEALING THE MONTANA TITLE LOAN ACT; AMENDING SECTIONS 31-1-106, 31-1-111, 31-1-112, 31-1-401, AND 32-5-103, MCA; REPEALING SECTIONS 31-1-801, 31-1-802, 31-1-803, 31-1-804, 31-1-805, 31-1-810, 31-1-811, 31-1-812, 31-1-813, 31-1-815, 31-1-816, 31-1-817, 31-1-818, 31-1-819, 31-1-820, 31-1-821, 31-1-822, 31-1-825, 31-1-826, 31-1-827, 31-1-828, 31-1-829, 31-1-841, 31-1-842, AND 32-5-102, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

**Section 1.** Section 31-1-106, MCA, is amended to read:

**"31-1-106. Legal interest.** (1) Except as otherwise provided by the Uniform Commercial Code, 31-1-111, and 31-1-112, ~~or 31-1-817~~; unless there is an express contract in writing fixing a different rate or a law or ordinance or resolution of a public body fixing a different rate on its obligations, interest is payable on all money at the rate of 10% a year after it becomes due on:

- (a) any instrument of writing, except a judgment;
  - (b) an account stated;
  - (c) money lent or due on any settlement of accounts from the date on which the balance is ascertained;
- and
- (d) money received for the use of another person and detained from that person.

(2) In the computation of interest for a period of less than 1 year, 365 days constitute a year."

**Section 2.** Section 31-1-111, MCA, is amended to read:

**"31-1-111. Definition of regulated lender.** The term "regulated lender", as used in 31-1-112 and 31-1-116, means:

- (1) a bank, building and loan association, savings and loan association, trust company, credit union, credit association, consumer loan licensee, deferred deposit loan licensee, ~~title loan licensee~~, residential mortgage lender licensee, development corporation, bank holding company, or mutual or stock insurance

1 company organized pursuant to state or federal statutory authority and subject to supervision, control, or  
2 regulation by:

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

4 (b) an agency of the federal government;

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

6 (3) a Montana state agency or a federal agency that is authorized to lend money;

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

9

10 **Section 3.** Section 31-1-112, MCA, is amended to read:

11 **"31-1-112. Interest rate limitation exemption -- regulated lenders -- merchant finance.** (1) A  
12 regulated lender, except for a deferred deposit loan licensee, ~~title loan licensee,~~ or consumer loan licensee, is  
13 exempt from all limitations on the rate of interest that it may charge and is exempt from the operation and effect  
14 of all usury statutes.

15 (2) A finance operation that finances transactions between merchants, as defined in 30-2-104, is also  
16 exempt from usury limits."

17

18 **Section 4.** Section 31-1-401, MCA, is amended to read:

19 **"31-1-401. Interest pawnbrokers may receive -- civil enforcement -- prohibited activities.** (1) A  
20 person may not carry on the business of pawnbroker or junk dealer by receiving goods pawned or in pledge for  
21 loans at any rate of interest above 10% a year without first obtaining a license. A pawnbroker or junk dealer or  
22 the pawnbroker's or junk dealer's employees or agents may not charge a fee of more than 25% of the amount  
23 of the loan for a 30-day period. The fee for extending a pawn agreement for 30 days may not exceed 25% of the  
24 amount of the loan. For purposes of this section, a fee includes all costs or fees charged, including but not limited  
25 to interest, commission, discount, storage, care of property, and purchase option.

26 (2) The taking, receiving, reserving, or charging of a fee greater than that allowed under subsection (1)  
27 is considered a forfeiture of a sum double the amount of the fee for storage or caring that was agreed to be paid.

28 (3) (a) When a rate or charge greater than that provided for in subsection (1) has been paid, the person  
29 by whom it has been paid may recover from the pawnbroker or junk dealer reasonable attorney fees and an  
30 amount double the amount of the fee paid.

1 (b) An action under this subsection (3) must be brought within 2 years after the payment of the fee.  
 2 Before a suit may be brought, the party bringing suit shall make written demand for return of the fee paid.

3 (4) Unless licensed as a consumer loan licensee; or a deferred deposit loan licensee, ~~or title loan~~  
 4 ~~licensee~~, a pawnbroker or junk dealer may not:

5 (a) cash or advance money for a postdated or deferred presentment check in exchange for a fee or  
 6 finance charge;

7 (b) use a check, authorization for electronic access, or other method of access to a deposit account,  
 8 savings account, or other financial or asset account as a condition of or security for an extension of credit;

9 (c) receive the title to a motor vehicle for the purpose of a pawn transaction or in pledge for a loan; or

10 (d) engage in any device or subterfuge intended to evade the requirements of this chapter, including  
 11 assisting a borrower to obtain a loan at a rate of interest prohibited by Montana law, making loans disguised as  
 12 personal property sales and leaseback transactions, or disguising loan proceeds as cash rebates for the  
 13 pretextual installment sale of goods or services.

14 (5) In addition to other penalties provided by law, a violation of subsection (4) is a violation of Title 30,  
 15 chapter 14, part I."

16

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

18 **"32-5-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions  
 19 apply:

20 (1) "Balloon payment" means any repayment option in which the borrower is required to repay the entire  
 21 amount of any outstanding balance as of a specific date or at the end of a specified term and the aggregate  
 22 amount of the required minimum periodic payments would not fully amortize the outstanding balance by the  
 23 specific date or at the end of the loan term.

24 (2) (a) "Consumer loan" means credit offered or extended to an individual primarily for personal, family,  
 25 or household purposes, including loans for personal, family, or household purposes that are not primarily secured  
 26 by a mortgage, deed of trust, trust indenture, or other security interest in real estate.

27 (b) Consumer loans do not include:

28 (i) deferred deposit loans provided for in Title 31, chapter 1, part 7;

29 ~~(ii) title loans provided for in Title 31, chapter 1, part 8; or~~

30 ~~(iii)~~(ii) residential mortgage loans as defined in 32-9-103.

- 1 (3) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.
- 2 (4) "Interest" means the compensation allowed by law or fixed by the parties for the use or forbearance  
3 or detention of money and includes loan origination fees, points, and prepaid finance charges, as defined in 12  
4 CFR 226.2.
- 5 (5) "License" means a license provided for by this chapter.
- 6 (6) "Licensee" means the person holding a license.
- 7 (7) "Person" means individuals, partnerships, associations, corporations, and all legal entities."  
8

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

10 **"32-5-103. Engaging in business of making consumer loans restricted.** (1) Except as provided in  
11 subsection (5), a person may not engage in the business of making consumer loans in any amount and contract  
12 for, charge, or receive directly or indirectly on or in connection with any loan any compensation, whether for  
13 interest, fees, other consideration, or expense, except as provided in and authorized by this chapter. The  
14 provisions of this chapter do not apply to any exempted person.

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

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

23 (4) Any loan made or collected in violation of subsection (1) by a person other than a licensee or a  
24 person exempt under subsection (5) is void, and the person does not have the right to collect, receive, or retain  
25 any principal, interest, fees, or other charges.

26 (5) A consumer loan licensee or a person who seeks a regulated lender exemption under 31-1-112 as  
27 a consumer loan licensee shall fully comply with this chapter. A regulated lender as defined in 31-1-111, other  
28 than a consumer loan licensee or a person who makes fewer than four consumer loans a year with the person's  
29 own funds and does not represent that the person is a licensee, who complies with the provisions of Title 31,  
30 chapter 1, part 1, is not required to comply with this chapter. A deferred deposit lender, as defined in 31-1-703,

1 who complies with the provisions of Title 31, chapter 1, part 7, is not required to comply with this chapter. A title  
2 lender, as defined in 31-1-803, who complies with the provisions of Title 31, chapter 1, part 8, is not required to  
3 comply with this chapter."

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5 **NEW SECTION. Section 7. Repealer.** The following sections of the Montana Code Annotated are  
6 repealed:

- 7 31-1-801. Short title.
- 8 31-1-802. Purpose -- rules -- fees.
- 9 31-1-803. Definitions.
- 10 31-1-804. Licensure of title lenders
- 11 31-1-805. Qualifications for licensure.
- 12 31-1-810. Examinations -- fees.
- 13 31-1-811. License revocation or suspension -- unlicensed activity -- restitution -- penalty.
- 14 31-1-812. Complaint procedure.
- 15 31-1-813. Investigations by department -- subpoenas -- oaths -- examination of witnesses and evidence.
- 16 31-1-815. Information and annual reports.
- 17 31-1-816. Title loan requirements -- liability of borrower -- right of rescission -- arbitration.
- 18 31-1-817. Interest rates -- fees charged.
- 19 31-1-818. Title loan agreements -- required disclosures.
- 20 31-1-819. Required disclosure pamphlet.
- 21 31-1-820. Redemption of certificate of title -- failure to take possession.
- 22 31-1-821. Records of title loan agreements.
- 23 31-1-822. Safekeeping of certificates of title -- liability insurance -- liability.
- 24 31-1-825. Prohibited acts.
- 25 31-1-826. Civil remedies.
- 26 31-1-827. Criminal penalties.
- 27 31-1-828. Denial of license and license renewal.
- 28 31-1-829. Violation of specified federal laws -- rulemaking authority.
- 29 31-1-841. Cease and desist orders.
- 30 31-1-842. Injunctions -- receivers.

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2           NEW SECTION. **Section 8. Effective date.** [This act] is effective December 31, 2013.

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