

DEPARTMENT OF ADMINISTRATION
DIVISION OF BANKING AND FINANCIAL INSTITUTIONS



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April 10, 2012



Re: Mont. Code Ann. 31-1-235; Delinquency Charge

Dear [REDACTED]:

Thank you for your inquiry concerning Mont. Code Ann. 31-1-235. Specifically, you asked whether the \$10 delinquency charge under that statute may be charged in addition to the finance charge regularly accruing at the contract origination rate. Mont. Code Ann. 31-1-235 states:

The holder of a retail installment contract or a retail charge account agreement may collect a delinquency charge on each installment in default for a period not less than 10 days in an amount not to exceed \$10 *or, in lieu of the charge, interest after maturity on each installment not exceeding the highest lawful contract rate.* In addition to a delinquency charge, the contract may provide for the payment of attorney fees not exceeding 15% of the amount due and payable under the contract when the contract is referred for collection to an attorney not a salaried employee of the holder of the contract and for court costs and actual and reasonable out-of-pocket expenses incurred in connection with the delinquency.

History: En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part); amd. Sec. 2, Ch. 198, L. 1993; amd. Sec. 1, Ch. 266, L. 1997.

It is the opinion of the Division that the "highest lawful contract rate" referred to in the above statute is set by Mont. Code Ann. 31-1-107. Under either delinquency charge option provided in Mont. Code Ann. 31-1-235 (i.e., the \$10 flat fee or the alternative that I italicized above) the amount of the delinquency charge represents, essentially, a penalty or a fee for late payment. Under the italicized option, the penalty or fee is *expressed as a simple interest rate* but it is not an interest charge; it is a method of calculating a fixed delinquency charge. See, *Cessna Finance Corporation v. Chambers et al* (1992) 252 Mont. 315, 828 P.2d 1373, 1992 Mont. LEXIS 84.

Therefore, if the finance charge on an account/installment contract is **not** a pre-computed finance charge and an installment payment is late by at least 10 days, the holder may collect a delinquency charge under either option contained in Mont. Code Ann. 31-1-235 in addition to the regularly accruing finance charge at the contract origination rate.

If, on the other hand, an account/installment contract is pre-computed and an installment payment is late by at least 10 days, the holder may collect a delinquency charge under either option contained in Mont. Code Ann. 31-1-235 but may not charge or collect any finance charge over and above the finance charge that was computed in advance when the contract was made. The limitation is based upon the nature of a pre-computed contract and not upon any language contained in Mont. Code Ann. 31-1-235.

Further, it is the opinion of the Division that a statutory delinquency charge collected pursuant to either option contained in Mont. Code Ann 31-1-235 would not violate Mont. Code Ann. 31-1-241(1) whether the account/installment contract provided for a pre-computed finance charge or not, even if the rate of the finance charge under the terms of the account/installment contract was 36% per annum.

The Division may seek authorization to bring a bill to the Legislature in 2013 to clarify Mont. Code Ann 31-1-235 among other statutes in the Retail Installment Sales Act. If approval for the Division to bring the legislation forward is secured but the clarification of Mont. Code Ann. 31-1-235 does not pass, the Division may have to revisit the issues discussed in this letter opinion and rescind it as needed. A redacted copy of this letter is being posted on the Division's website and may be relied upon unless or until rescinded.

Thank you for your inquiry. If you have any questions, please do not hesitate to contact the Division at (406) 841-2920.

Sincerely,

A handwritten signature in cursive script, appearing to read 'M. Griggs Hall'.

Melanie Griggs Hall, Commissioner
Division of Banking and Financial Institutions