



# STATE OF MONTANA

Department of Administration

Division of Banking and Financial Institutions

PO Box 200546, Helena, Montana 59620-0546

Phone: (406) 841-2920 Fax: (406) 841-2930

## APPLICATION FOR CONSUMER LOAN OR SALES FINANCE COMPANY LICENSE

DATE: \_\_\_\_\_

### THIS IS AN APPLICATION FOR:

LICENSE TYPE

FEE

Consumer Loan License \$500.00 (\$250.00 if applying after June 30<sup>th</sup>)

Sales Finance Company License \$100.00

**TOTAL REMITTED:** \$\_\_\_\_\_

## GENERAL INFORMATION & INSTRUCTIONS

This form is provided to applicants for Sales Finance Company licenses (Title 31, Chapter 1, Part 2, MCA) and Consumer Loan licenses (Title 32, Chapter 5, MCA).

A **Sales Finance Company** is defined as “...a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes but is not limited to a bank, trust company, investment company, or savings and loan association, if engaged in purchasing retail installment contracts. The term does not include a person who makes only isolated purchases of retail installment contracts, that are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.” (31-1-202 (1)(q), MCA, 2009). Under the “isolated purchases” language of this Section, the Division does not require licensure for any person making three or fewer purchases of retail installment contracts per year. Banks, trust companies and savings and loan associations authorized to do business in Montana are exempted from licensure in 31-1-221 (1), MCA.

A **Consumer Loan** is defined as “...credit offered or extended to an individual primarily for personal, family, or household purposes, including loans for personal, family, or household purposes that are not primarily secured by a mortgage, deed of trust, trust indenture, or other security interest in real estate.” (32-5-102 (2)(a), MCA) It does not include first lien real estate loans governed by 12 USC 1735f-7a. It does not include commercial lending.

- ✓ An application for license must be completed in its entirety, with all applicable information and exhibits provided. If a particular item does not apply to the applicant's situation, enter "NA" or "None". Applications which are incomplete may be returned to the applicant.
- ✓ **Exceptions:** Applicants submitting multiple applications at one time are required to provide only one copy of information that is common to all the applications. Applicants that have other locations licensed by the Division may omit required information or exhibits if the information or exhibits on file with the Division have not changed materially and are less than two years old. Indicate that such information is on file with the Division.
- ✓ All information is to be typed or printed legibly in ink.
- ✓ Required exhibits as well as any additional information applicant considers appropriate are to be provided on letter size paper, except for official loan documents, which are to be provided in their original format.
- ✓ The application must be signed before a notary public.
- ✓ Application fees must be included with the application and are non-refundable.
- ✓ Each location conducting a consumer loan or sales finance company business must be licensed. A Consumer Loan license is not required for locations engaged only in loan support functions such as loan servicing or payment processing.
- ✓ If a licensee changes location the division must be promptly notified. The original license must be surrendered and a new license with the proper address will be issued, except when a consumer loan licensee relocates to another county. In those instances, a new Consumer Loan license application must be completed.
- ✓ Consumer loan applications submitted between July 1 through October 31 are required to pay half of the licensing fee for each proposed location. The Division of Banking and Financial Institutions does not accept consumer loan or sales finance applications during November and December due to the processing of licensing renewals.
- ✓ The original copy of the license is to be displayed at the licensed location in Montana or, if a Montana location is not maintained, at the office of the licensee's Montana registered agent.
- ✓ Licenses expire at the end of the calendar year in which they were issued.
- ✓ Licenses are non-transferable and non-assignable.
- ✓ Statutory and operational benefits conferred by a license apply only to business activity after the date of licensure. Business conducted prior to the date of licensure is not ratified or validated by obtaining a license.
- ✓ The Division has up to 30 days to consider a completed application for Consumer Loan License.
- ✓ Because of the time required to process applications, and the need to issue license renewals at the end of each year, no license for the current year will be issued for an application received after November 1.

## I. APPLICANT INFORMATION

Name to Appear on License (Include any Assumed Business Name): \_\_\_\_\_

Physical Address of Licensed Office: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Mailing Address of Licensee's Home Office: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

### PERSON(S) TO CONTACT REGARDING:

	THIS APPLICATION	LICENSE RENEWALS	MONTANA COMPLAINTS
<b>NAME &amp; TITLE</b>			
<b>ADDRESS</b>			
<b>CITY, STATE, ZIP</b>			
<b>PHONE NUMBER</b>			
<b>FAX NUMBER</b>			
<b>E-MAIL</b>			

## II. BUSINESS INFORMATION

1. Provide the name, and resume, employment history or business record of the person(s) to be in charge of the licensed location.
2. Describe the type of loans to be made under the license.
3. Describe any other business conducted in the same office as the licensee.
4. The Montana Consumer Loan Act requires each Consumer Loan licensee to file an annual report which provides information about the licensee's Montana business. Do you agree to keep a separate set of books and records to be used for the consumer loan business only?     **Yes**     **No**     **N/A**
5. Has any court or regulatory authority ever cancelled, suspended or revoked the authority of the applicant, or any entity with which the applicant is or was associated?     **Yes**     **No**    (If yes, please attach a sheet giving details.)

### III. BUSINESS STRUCTURE

**APPLICANT IS A:**

- Corporation                      Date of Incorporation: \_\_\_\_\_ Publicly Traded? \_\_\_\_\_  
**Go to "A" below**
- Limited Liability Company      Date of Formation: \_\_\_\_\_  
**Go to "B" below**
- Partnership                      Date of Formation: \_\_\_\_\_ Limited partnership? \_\_\_\_\_  
**Go to "C" below**
- Proprietorship  
**Go to "D" below**

**A. ALL CORPORATION APPLICANTS MUST PROVIDE THE FOLLOWING INFORMATION:**

1. A list of the principal officers, their titles, and their business addresses. If applying for a Sales Finance License, residential addresses for these individuals are also required by law.
2. A list of directors or trustees, their titles, if any, and their business addresses. If applying for a Sales Finance License, residential addresses for these individuals are also required by law.
3. If not a publicly traded corporation, a list of the principal shareholders (those owning more than 20% of the outstanding shares) of the corporation, and their percentages of ownership.
4. A copy of the articles of incorporation showing the date of filing with the Secretary of State, and any amendments to those articles.
5. If using an assumed business name, a copy of the acknowledgement of registration of that name with the Montana Secretary of State.
6. A copy of the minutes of the director's or stockholder's meeting at which business operations in Montana were authorized.
7. A certificate of good standing from the corporation's home state.
8. If the applicant is not a Montana corporation:
  - a. The name and address of the corporation's Montana registered agent
  - b. A certificate issued by the Montana Secretary of State authorizing applicant to do business in Montana.

**B. ALL LIMITED LIABILITY COMPANY APPLICANTS MUST PROVIDE THE FOLLOWING INFORMATION:**

1. A list of the manager(s) and other operating officers, their titles, and their business addresses. If applying for a Sales Finance License, residential addresses for these individuals are also required by law.
2. If not managed by a manager, a list of the principal members, their titles, if any, and their business addresses. If applying for a Sales Finance License, residential addresses for these individuals are also required by law.
3. A copy of the articles of organization showing the date of filing with the Secretary of State, and any amendments to those articles.

4. A copy of the operating agreement, if any, and any amendments to the agreement.
5. If using an assumed business name, a copy of the acknowledgement of registration of that name with the Montana Secretary of State.
6. A certificate of good standing or similar document from the company's home state.
7. If the applicant is not a Montana limited liability company:
  - a. The name and address of the company's Montana registered agent.
  - b. A certificate issued by the Montana Secretary of State authorizing applicant to do business in Montana.

**C. ALL PARTNERSHIP APPLICANTS MUST PROVIDE THE FOLLOWING INFORMATION:**

1. A list of the partners, their titles, if any, their ownership interest, and their business addresses. If the partnership is a limited partnership, indicate the general partner(s). If applying for a Sales Finance License, residential addresses for these individuals are also required by law.
2. A copy of the partnership agreement showing the date of filing with the Secretary of State, and any amendments to the agreement.
3. If operating under a fictitious name, a certificate from the county clerk showing compliance with Montana laws pertaining to conducting business under a fictitious name.
4. If the applicant is a limited partnership, or a foreign partnership, the name and address of the applicant's Montana registered agent. Montana general partnerships that have designated an agent shall provide the agent's name and address.

**D. ALL PROPRIETORSHIP APPLICANTS MUST PROVIDE THE FOLLOWING INFORMATION:**

1. A list of the owners of the applicant and their business addresses. If applying for a Sales Finance License, residential addresses for these individuals are also required by law.

<b>IV. GENERAL</b>
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**ALL APPLICANTS MUST PROVIDE THE FOLLOWING INFORMATION, AS SEPARATE EXHIBITS:**

1. An itemized statement of applicant's current financial condition. If a publicly traded corporation, the corporation's latest form 10-K filing may be provided. If a partnership, financial statements for the general partner(s) are required. If a proprietorship, financial statements for the proprietor(s) are required. Financial statements other than those provided by a public accountant or contained in a corporation's annual report or form 10-K must be originals and be signed by the preparer.
2. If any persons other than those named in this application and other than stockholders, partners or members of the applicant are to provide capital, please provide details, including names, amounts to be provided, and the nature of the arrangements.
3. List of other states in which licenses to conduct the same type of business are held.
4. A statement listing fictitious names under which applicant has conducted business.
5. A copy of all loan documents proposed to be used by applicant.
6. A current schedule of loan fees.
7. A statement summarizing applicant's business plan, including the reasons why applicant believes the business will be successful in Montana, and the annual volume of business projected for Montana.

8. A Personal Questionnaire (form is attached) completed by each principal in a proprietorship, each general partner in a partnership, the principal officers and all active directors in a corporation or each manager of a limited liability company, as well as the person to be in charge of the proposed licensed location.
9. Title 39, Chapter 71, Montana Code Annotated, generally requires every employer to provide workers' compensation insurance for its employees. Provide the name of applicant's workers' compensation insurance carrier, or the reasons why applicant is exempt from providing such coverage.

## **V. CHANGE OF OFFICERS, DIRECTORS OR MANAGERS**

Applicant agrees, if a license is issued, to notify the Department of Administration of any change of officers, directors or managers associated with its Montana business, within 10 days of the effective date of such change. Notification will set forth the changes made, the names of the persons involved, a completed Personal Questionnaire (form is attached), and a statement of the qualifications of each person not formerly in an official position.

**VI. SIGNATURES**

I certify that the aforementioned information is true and correct to the best of my knowledge and belief.

\_\_\_\_\_  
Signature of Authorized Individual

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Authorized Individual

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Authorized Individual

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

**TO BE COMPLETED BY NOTARY:**

State of \_\_\_\_\_ )

) ss

County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me personally appeared \_\_\_\_\_, known to me to be the individual described in and who executed the foregoing instrument and acknowledged to me that he/she executed the same.

\_\_\_\_\_  
Signature of Notarial Officer

\_\_\_\_\_  
Name - typed, stamped, or printed

\_\_\_\_\_  
Title and Rank

\_\_\_\_\_  
Residing at

My commission expires: \_\_\_\_\_

*AFFIX  
SEAL  
HERE*

# PERSONAL QUESTIONNAIRE

To be completed by each principal in a proprietorship, each general partner in a partnership, the principal officers and all active directors in a corporation or each manager of a limited liability company, as well as the person to be in charge of the proposed licensed location.

Name: \_\_\_\_\_

Title or Position: \_\_\_\_\_

	Yes	No
Have you violated the laws of this or any other state relating to interest or charges on any type of credit transaction?		
Have you ever entered a plea of guilty or nolo contendere to, or been convicted of, a felony or a misdemeanor other than a misdemeanor traffic violation?		
Have you ever been confined in a city, county, state or federal penal institution for any reason other than to serve a sentence for a misdemeanor traffic violation?		
Have you ever been held liable in any civil or criminal fraud action or have ever been found, in a proceeding before any federal, state, or local court or agency, to have committed fraud?		
Is there pending, at any governmental level, any proceeding charging you with having committed a felony or misdemeanor other than a misdemeanor traffic violation?		
Is there pending, at any governmental level, any proceeding charging you with actual or constructive fraud?		
Have you, or any business with which you are or were associated, ever been refused a license to operate the type of business proposed or had a license to operate such a business revoked or suspended in any other state?		
Have you ever changed or been known by any name other than that provided in the application?		

*Any affirmative answer to any of the above questions shall be explained in detail on separate pages.*

I certify that the above answers are true and correct to the best of my knowledge and belief. I understand that inaccuracies or omissions may cause denial of this application for license.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me personally appeared \_\_\_\_\_, known to me to be the individual described in \_\_\_\_\_ and who executed the foregoing instrument and acknowledged to me that he/she executed the same.

*AFFIX  
SEAL  
HERE*

\_\_\_\_\_  
Signature of Notarial Officer

\_\_\_\_\_  
Name - typed, stamped, or printed

Residing at: \_\_\_\_\_

My commission expires: \_\_\_\_\_

# MONTANA CONSUMER LOAN ACT

**32-5-101. Short title.** This chapter may be cited as the "Montana Consumer Loan Act".

**History:** En. Sec. 1, Ch. 283, L. 1959; R.C.M. 1947, 47-201.

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

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

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

(b) Consumer loans do not include:

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

(ii) title loans provided for in Title 31, chapter 1, part 8.

(3) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(4) "Interest" means the compensation allowed by law or fixed by the parties for the use or forbearance or detention of money and includes loan origination fees, points, and prepaid finance charges, as defined in 12 CFR 226.2.

(5) "License" means a license provided for by this chapter.

(6) "Licensee" means the person holding a license

(7) "Person" means individuals, partnerships, associations, corporations, and all legal entities.

**History:** En. Sec. 2, Ch. 283, L. 1959; amd. Sec. 1, Ch. 233, L. 1971; amd. Sec. 1, Ch. 172, L. 1975; amd. Sec. 110, Ch. 431, L. 1975; R.C.M. 1947, 47-202; amd. Sec. 1, Ch. 216, L. 1979; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 1, Ch. 424, L. 1981; amd. Sec. 1, Ch. 140, L. 1983; amd. Sec. 1, Ch. 374, L. 1997; amd. Sec. 100, Ch. 483, L. 2001; amd. Sec. 7, Ch. 178, L. 2003; amd. Sec. 6, Ch. 221, L. 2003; amd. Sec. 1, Ch. 372, L. 2007.

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

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

and transferred to an acquiring organization continue to be governed by the provisions of this chapter.

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

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

(5) A consumer loan licensee or a person who seeks a regulated lender exemption under 31-1-112 as a consumer loan licensee shall fully comply with this chapter. A regulated lender as defined in 31-1-111, other than a consumer loan licensee or a person who makes fewer than four consumer loans a year with the person's own funds and does not represent that the person is a licensee, who complies with the provisions of Title 31, chapter 1, part 1, is not required to comply with this chapter. A deferred deposit lender, as defined in 31-1-703, who complies with the provisions of Title 31, chapter 1, part 7, is not required to comply with this chapter. A title lender, as defined in 31-1-803, who complies with the provisions of Title 31, chapter 1, part 8, is not required to comply with this chapter.

**History:** En. Sec. 4, Ch. 283, L. 1959; amd. Sec. 2, Ch. 233, L. 1971; amd. Sec. 2, Ch. 172, L. 1975; R.C.M. 1947, 47-204; amd. Sec. 2, Ch. 216, L. 1979; amd. Sec. 2, Ch. 424, L. 1981; amd. Sec. 1, Ch. 103, L. 1983; amd. Sec. 2, Ch. 140, L. 1983; amd. Sec. 1, Ch. 168, L. 1985; amd. Sec. 2, Ch. 406, L. 1985; amd. Sec. 1, Ch. 18, L. 1993; amd. Sec. 2, Ch. 374, L. 1997; amd. Sec. 1, Ch. 270, L. 1999; amd. Sec. 16, Ch. 404, L. 1999; amd. Sec. 21, Ch. 455, L. 2001; amd. Sec. 2, Ch. 125, L. 2005; amd. Sec. 2, Ch. 372, L. 2007.

**32-5-104. Repealed.** Secs. 22, 24(1), Ch. 372, L. 2007.

**History:** En. Sec. 9, Ch. 424, L. 1981

**32-5-201. License application and fees.** (1) (a) Each place of business operated under this chapter shall properly display on the premises a nontransferable and nonassignable license. The same person may obtain an additional license for each business location upon compliance with this chapter.

(b) Applications for a license or renewal must be on a form prescribed and furnished by the department.

(c) A licensee may move the licensee's place of business from one place to another upon providing written notice to and receiving approval from the department prior to the move.

(d) With each application, the applicant shall submit \$500 as a license application fee. The license application fee is nonrefundable. The license year is the calendar year, and the license fee for any period less than 6 months is \$250.

(2) All licensing and examination fees collected pursuant to this chapter must be paid by the department into the state special revenue fund for the use of the department in its supervision function.

**History:** Ap. p. Sec. 6, Ch. 283, L. 1959; amd. Sec. 112, Ch. 431, L. 1975; Sec. 47-206, R.C.M. 1947; Ap. p. Sec. 5, Ch. 283, L. 1959; amd. Sec. 3, Ch. 233, L. 1971; amd. Sec. 3, Ch. 172, L. 1975; amd. Sec. 172, Ch. 431, L. 1975; Sec. 47-205, R.C.M. 1947; R.C.M. 1947, 47-205(part), 47-206; amd. Sec. 3, Ch. 216, L. 1979; amd. Sec. 3, Ch. 424, L. 1981; amd. Sec. 3, Ch. 140, L. 1983; amd. Sec. 6, Ch. 600, L. 1985; amd. Sec. 3, Ch. 372, L. 2007.

**32-5-202. Issuance or denial of license or license renewal.** Within 30 days after a complete application for a license or a license renewal is filed with the department together with all required fees, the department shall issue the license or license renewal if the department determines that the character and general fitness of the applicant warrants the belief that the business will be operated lawfully and fairly within the provisions of this chapter. The department may enter an order denying the license or license renewal application subject to notifying the applicant and providing the applicant an opportunity for a hearing. All notices and orders must be served as provided in 32-5-207(2).

**History:** En. Sec. 7, Ch. 283, L. 1959; amd. Sec. 113, Ch. 431, L. 1975; R.C.M. 1947, 47-207; amd. Sec. 4, Ch. 372, L. 2007.

**32-5-203. Conduct of other business in same office.** A licensee may conduct the business of making consumer loans under this chapter within any office, room, or place of business in which any other business for which a license under this chapter is not required is solicited or engaged in or in association or conjunction with the business. "Other business" may include making loans not primarily for personal, family, or household purposes, unless the department finds, after a hearing, that the other business is of a nature that the conduct tends to conceal evasion of this chapter or of the rules made under this chapter. If the department finds concealment or evasion, it shall order the licensee in writing to desist from the conduct.

**History:** En. Sec. 8, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-208; amd. Sec. 3, Ch. 374, L. 1997.

**32-5-204. License renewal fee.** Every licensee shall pay to the department, on or before December 1, a nonrefundable license fee of \$500 for each license held for the succeeding calendar year. Failure to pay the license fee within the time prescribed results in an automatic revocation of the license.

**History:** En. Sec. 9, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; amd. Sec. 35, Ch. 71, L. 1977; R.C.M. 1947, 47-209; amd. Sec. 5, Ch. 372, L. 2007.

**32-5-205. Surrender of license.** Any licensee may surrender any license by delivering it to the department with written notice thereon, but such surrender shall not affect such licensee's civil or criminal liability for acts committed prior to such surrender.

**History:** En. Sec. 21, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-221.

**32-5-206. Termination of license not to affect preexisting contract.** No revocation, surrender, or expiration of any license shall impair or affect the obligation of any preexisting lawful contract.

**History:** En. Sec. 22, Ch. 283, L. 1959; R.C.M. 1947, 47-222.

**32-5-207. Revocation and suspension of license -- penalty -- restitution.** (1) (a) The department, after providing a 10-day written notice to the licensee that includes a statement of the grounds for the proposed suspension or revocation and informing the licensee that the licensee has the right to an administrative hearing, may issue an order suspending or revoking a license if it finds that the licensee has violated any provision of this chapter, has failed to

comply with any department rule, written instruction, or order, has failed or refused to make required reports, has furnished false information, or has operated without a license.

(b) The department may impose a civil penalty of not more than \$1,000 for each violation of this chapter, not to exceed \$5,000 for each administrative action, and may order restitution to borrowers and reimbursement of the department's costs in bringing an administrative action. The department may suspend or revoke the right of a person or licensee, directly or through an officer, agent, employee, or representative, to operate as a licensee or to engage in the business of making consumer loans.

(2) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or in the case of an unlicensed business to the last-known address of record.

(3) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

(4) All civil penalties collected pursuant to this section must be deposited in the state general fund.

**History:** En. Sec. 23, Ch. 283, L. 1959; amd. Sec. 116, Ch. 431, L. 1975; R.C.M. 1947, 47-223; amd. Sec. 6, Ch. 372, L. 2007.

**32-5-208. Reinstatement.** The department may reinstate any revoked license if there is not a fact or condition existing at the time of reinstatement that would have justified the department in refusing originally to issue the license. In any case in which the license has been revoked for cause, an application may not be made for issuance of a new license or the reinstatement of a revoked license for a period of 6 months from the date of revocation.

**History:** En. Sec. 24, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-224; amd. Sec. 7, Ch. 372, L. 2007.

**32-5-301. Fees charged to consumers.** (1) A licensee may contract for and receive interest on any loan of money. Such interest, including fees and charges incurred in the making of the loan but excluding the fees authorized in subsections (2) and (3), may not exceed 36% per annum.

(2) If provided for in the contract, an additional fee may be charged for any amount past due according to the original terms of the contract, whether by reason of default or extension agreement. The fee charged may be the greater of \$15 or 5% of the amount past due, not to exceed \$50. The fee charged for any past-due amount may be charged only once. Except as provided in subsection (3), other fees may not be charged for default or extension of the contract by the borrower.

(3) (a) If provided for in the contract, a licensee may grant a deferral at any time. A deferral postpones the scheduled due date of the earliest unpaid installment and all subsequent installments as originally scheduled or as previously deferred for a period equal to the agreed-upon deferral period. The deferral period is that period during which an installment is not scheduled to be paid by reason of the deferral.

(b) A licensee may charge an additional fee for each deferral. The fee charged may be the greater of \$15 or 5% of the amount currently due, not to exceed \$50.

- (c) Other fees may not be charged by the lender for any deferrals granted by the lender.
- (4) The licensee may include in the principal amount of any loan:
  - (a) the actual fees paid a public official or agency of the state for filing, recording, or releasing any instrument securing the loan;
  - (b) the premium for insurance in lieu of filing or recording any instrument securing the loan to the extent that the premium does not exceed the fees that would otherwise be payable for filing, recording, or releasing any instrument securing the loan;
  - (c) bona fide fees or charges related to real estate security paid to third parties;
  - (d) fees or premiums for title examination, title insurance, or similar purposes, including survey;
  - (e) fees for preparation of a deed, settlement statement, or other documents;
  - (f) fees for notarizing deeds and other documents;
  - (g) appraisal fees;
  - (h) fees for credit reports; and
  - (i) fees paid to a trustee for release of a trust deed.
- (5) (a) Other fees may not be directly or indirectly contracted for or received by any licensee except those specifically authorized by this chapter. A licensee may not divide into separate parts any contract made for the purpose of or with the effect of obtaining fees in excess of those authorized by this chapter. If any amount in excess of the fees permitted by this chapter is charged, contracted for, or received, the licensee shall forfeit to the borrower a sum that is double the amount that is in excess of the fees authorized by this chapter.
- (b) This section does not apply to fees for services rendered in connection with a loan after the loan has been consummated and if the borrower's participation in the services is strictly voluntary.

**History:** Ap. p. Sec. 10, Ch. 283, L. 1959; amd. Sec. 1, Ch. 15, L. 1965; Sec. 47-210, R.C.M. 1947; Ap. p. Sec. 5, Ch. 283, L. 1959; amd. Sec. 3, Ch. 233, L. 1971; amd. Sec. 3, Ch. 172, L. 1975; amd. Sec. 172, Ch. 431, L. 1975; Sec. 47-205, R.C.M. 1947; R.C.M. 1947, 47-205(part), 47-210; amd. Sec. 6, Ch. 216, L. 1979; amd. Sec. 4, Ch. 424, L. 1981; amd. Sec. 2, Ch. 135, L. 1983; amd. Sec. 4, Ch. 140, L. 1983; amd. Sec. 2, Ch. 168, L. 1985; amd. Sec. 3, Ch. 406, L. 1985; amd. Sec. 3, Ch. 198, L. 1993; amd. Sec. 2, Ch. 270, L. 1999; amd. Sec. 1, Ch. 308, L. 2003; amd. Sec. 3, Ch. 125, L. 2005; amd. Sec. 8, Ch. 372, L. 2007.

**32-5-302. Installment and balloon payments.** (1) Except as provided in subsection (4), if the loan contract requires installment payments, the contract must provide that principal and interest be payable at approximately equal periodic intervals, except that payment dates may be omitted to accommodate borrowers with seasonal incomes.

(2) An installment contracted for may not be substantially larger than any preceding installment. If a loan contract provides for monthly installment payments, the first installment must be payable at any time within 45 days of the date of the loan and interest may be charged for the number of days in excess of 30 from the date of the making of the loan and may be added to the scheduled amount of the installments.

(3) A licensee may not enter into any loan contract in which a borrower agrees to pay principal or interest in one lump sum unless the payment is due not less than 45 days from the date of the making of the loan and not more than 1 year from the date of the making of the loan.

(4) Loans with a balloon payment are permissible so long as all installment payments cover at least the interest that has accrued since the previous installment payment.

**History:** En. Sec. 11, Ch. 283, L. 1959; amd. Sec. 4, Ch. 233, L. 1971; amd. Sec. 36, Ch. 71, L. 1977; R.C.M. 1947, 47-211; amd. Sec. 5, Ch. 424, L. 1981; amd. Sec. 1, Ch. 150, L. 1991; amd. Sec. 4, Ch. 198, L. 1993; amd. Sec. 4, Ch. 374, L. 1997; amd. Sec. 9, Ch. 372, L. 2007.

**32-5-303. Borrower to receive copy of contract or statement of contents.** At the time a loan is made, there must be delivered to the borrower or borrowers the disclosures required by the federal Consumer Credit Protection Act and the federal Truth in Lending Act, 15 U.S.C. 1601, et seq., and a copy of the loan contract or a written statement showing in clear and distinct terms:

- (1) the name and address of the lender and of one of the borrowers or a maker of the loan;
- (2) the date of the loan contract;
- (3) the description or schedule of payments;
- (4) the principal amount of the loan excluding interest;
- (5) the rate and amount of interest as provided in the contract;
- (6) the amount collected or paid out for each kind of insurance, if any;
- (7) the amount collected or paid out for filing and other fees as allowed in this chapter;
- (8) the collateral or security for the loan including all other accommodation or other joint makers or comakers; and
- (9) that the borrower may prepay the loan in whole or in part without penalty at any time during a licensee's regular business hours.

**History:** En. Sec. 12, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-212(part); amd. Sec. 6, Ch. 424, L. 1981; amd. Sec. 4, Ch. 406, L. 1985; amd. Sec. 10, Ch. 372, L. 2007.

**32-5-304. Receipts -- return of note.** Every licensee shall:

- (1) give to the borrower a plain and complete receipt in a form approved by the department for every payment made in cash on account of any loan at the time the payment is made;
- (2) endorse indelibly on a loan ledger or card, which must be kept by the licensee, the amount and date of each payment made by the borrower. Subject to the prior written approval of the department, mechanical data processing methods may be used. The department may approve any system containing information that is equivalent to that required on a loan ledger or card.
- (3) upon repayment of the loan in full, mark indelibly every obligation and security signed by the borrower with the word "paid" or "canceled" and release any mortgage, restore any pledge, and cancel and return to the borrower any note and any assignment given to the licensee within 10 days after the repayment. The canceled notes and canceled assignments must be mailed to the borrower at the borrower's last-known address unless returned to the borrower in person.

**History:** En. Sec. 12, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-212(part); amd. Sec. 1, Ch. 84, L. 1981; amd. Sec. 1053, Ch. 56, L. 2009.

**32-5-305. Confessions of judgment -- incomplete instruments forbidden.** A licensee may not:

(1) take any confession of judgment from the borrower or any power of attorney running to the licensee or to any third person to confess judgment for the borrower or to appear for the borrower in a judicial proceeding;

(2) take any note or promise to pay that does not disclose the amount of the loan, a schedule of payments or a description of the schedule of payments, and the agreed interest and fees to be charged. The note or promise may not contain blanks that are left to be filled in after execution. The disclosures required by this subsection are not required on a certificate of title to a motor vehicle, on a policy or certificate of insurance, or on customary powers in connection with bonds or stocks that may be pledged as collateral.

(3) take any instrument in which blanks are left to be filled in after the loan is made.

**History:** En. Sec. 13, Ch. 283, L. 1959; R.C.M. 1947, 47-213; amd. Sec. 11, Ch. 372, L. 2007.

**32-5-306. Insurance -- real property security -- definitions.** (1) Except as provided in this section, insurance may not be written by a licensee or employee, affiliate, or associate of the licensee in connection with any loan.

(2) Insurance permitted under the provisions of this section must be obtained through an insurance company authorized to conduct business in Montana by a licensed insurance producer or agency of this state. Premiums may not exceed those fixed by law or current applicable manual rates. Insurance written as authorized by this section may contain a mortgagee clause or other appropriate provisions to protect the insurable interest of the licensee.

(3) (a) When the principal amount of the loan exceeds \$300 exclusive of the portion of the loan attributable to insurance premiums and fees, the licensee may require a borrower to insure property offered as security against any substantial risk of loss, damage, or destruction for an amount not to exceed the reasonable value of the property insured or the amount of the loan, whichever is smaller, and for the customary term approximating the term of the loan contract. It is optional with the borrower to obtain insurance in an amount greater than the amount of the loan or for a longer term.

(b) A lender may not require a borrower, as a condition of obtaining or maintaining a loan secured by real property, to provide insurance on improvements to real property in an amount that exceeds the reasonable replacement value of the improvements.

(4) Subject to the laws of this state, credit life insurance, credit disability insurance, and loss of income insurance may be provided at the expense of the borrower and may be provided by a licensee upon the request of the borrower when the principal amount of the loan exceeds \$300, exclusive of the portion of the loan attributable to insurance premiums and fees.

(5) The insurance authorized by this section may be sold, obtained, or provided by or through a licensee, and the premium or identifiable fee for the insurance may be included in the principal amount of the loan. However, a licensee may not require a borrower to purchase insurance from the licensee or from any particular insurance producer, broker, or insurance company as a condition precedent for obtaining a loan. Any gain or advantage to the licensee or any employee, affiliate, or associate of the licensee from the sale, provision, or obtaining of insurance as authorized by this section may not be considered to be a violation of this chapter.

(6) A licensee may not require insurance under this section until any existing insurance of the same type has expired or has been canceled.

(7) As used in this section:

(a) "borrower" means a mortgagor, grantor of a deed of trust, or other debtor;

(b) "improvement to real property" means a fixture, building, or other structure attached to real property and intended as a permanent addition to the real property; and

(c) "lender" means a mortgagee, beneficiary of a deed of trust, or other creditor who holds a mortgage, deed of trust, or other instrument that encumbers real property as security for the repayment of a debt.

**History:** En. Sec. 14, Ch. 283, L. 1959; amd. Sec. 2, Ch. 15, L. 1965; amd. Sec. 5, Ch. 233, L. 1971; amd. Sec. 4, Ch. 172, L. 1975; R.C.M. 1947, 47-214; amd. Sec. 4, Ch. 216, L. 1979; amd. Sec. 7, Ch. 424, L. 1981; amd. Sec. 5, Ch. 140, L. 1983; amd. Sec. 1, Ch. 193, L. 1989; amd. Sec. 1, Ch. 97, L. 2005; amd. Sec. 12, Ch. 372, L. 2007.

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

**History:** En. Sec. 17, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-217; amd. Sec. 5, Ch. 374, L. 1997.

**32-5-308. Annual report.** (1) A licensee shall file an annual report before April 15 for the preceding calendar year with the department.

(2) The report must be made under oath and be in a form and contain the information prescribed by the department. The department shall publish annually an analysis and summary of the reports.

**History:** En. Sec. 18, Ch. 283, L. 1959; amd. Sec. 115, Ch. 431, L. 1975; R.C.M. 1947, 47-218; amd. Sec. 1, Ch. 64, L. 2005; amd. Sec. 13, Ch. 372, L. 2007.

**32-5-309. Advertising -- limitations.** No person shall advertise, display, distribute, broadcast, or televise or permit to be displayed, advertised, distributed, broadcasted, or televised, in any manner whatsoever, any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions of loans.

**History:** En. Sec. 19, Ch. 283, L. 1959; R.C.M. 1947, 47-219.

**32-5-310. Wage assignments -- limitations.** (1) Subject to the limitations in subsection (2), wage assignments, which include salary, wages, commissions, and other compensation for services, are permitted and any loan made subject to a wage assignment must be considered a loan secured by the wage assignment. The amount by which the assignment exceeds the amount of the consideration actually paid, for the purposes of regulation under this chapter, may not be considered interest on the loan and must be credited to the borrower. Transactions subject to the provisions of this section are governed by and are subject to the provisions of this chapter.

(2) Any assignment to a licensee or for the benefit of a licensee of salary, wages, commissions, or other compensation for services may not exceed 10% of the salary, wages, commissions, or other compensation owing at the time of the notice to the debtor's employer or that is subsequently owed. An assignment is not valid unless it is in writing and is signed in person by the borrower or if the borrower is married is signed in person by both husband and wife, provided that written assent of a spouse is not required when husband and wife have been and are living separate and apart when the assignment is made. Notice of the assignment must be given to the debtor's employer only if the debtor defaults in payment of the whole or some part of the loan for which the assignment is security. The notice must be served on the employer or a managing agent of the employer, must be verified by the oath of the licensee or the licensee's agent, and must include:

(a) a correct copy of the assignment;

(b) a statement of the amount of the loan and the amount due and unpaid; and

(c) a copy of this section.

(3) The acceptance and honoring of any assignment must be at the option of the employer.

**History:** En. Sec. 20, Ch. 283, L. 1959; amd. Sec. 37, Ch. 71, L. 1977; R.C.M. 1947, 47-220; amd. Sec. 14, Ch. 372, L. 2007.

**32-5-311 through 32-5-320 reserved.**

**32-5-321. Repealed.** Secs. 22, 24(1), Ch. 372, L. 2007.

**History:** En. Sec. 1, Ch. 341, L. 1979.

**32-5-322. Repealed.** Secs. 22, 24(1), Ch. 372, L. 2007.

**History:** En. Sec. 2, Ch. 341, L. 1979; amd. Sec. 3, Ch. 168, L. 1985; amd. Sec. 5, Ch. 406, L. 1985.

**32-5-323. Repealed.** Secs. 22, 24(1), Ch. 372, L. 2007.

**History:** En. Sec. 3, Ch. 341, L. 1979.

**32-5-324. Repealed.** Secs. 22, 24(1), Ch. 372, L. 2007.

**History:** En. Sec. 4, Ch. 341, L. 1979.

**32-5-401. Department -- powers and duties -- adoption of rules.** (1) All powers and duties of regulation and supervision conferred by this chapter are vested in the department. The department shall adopt rules necessary to carry out the intent and purposes of this chapter.

(2) All rules adopted under this chapter are binding on all persons and enforceable by the department as provided in this chapter.

**History:** En. Sec. 3, Ch. 283, L. 1959; amd. Sec. 111, Ch. 431, L. 1975; R.C.M. 1947, 47-203; amd. Sec. 15, Ch. 372, L. 2007.

**32-5-402. Investigations by department -- subpoenas -- oaths -- examination of witnesses and evidence.** (1) The department may at any time investigate any transaction with borrowers and may examine the books, accounts, and records in this state to discover violations of this chapter by:

(a) a licensee; or  
(b) a person who the department has reason to believe is violating or is about to violate this chapter.

(2) The department or the department's authorized representatives must be given free access to the offices and places of business and files of all licensees. The department may investigate any matter, upon complaint or otherwise, if it appears that a person has engaged in or offered to engage in any act or practice that is in violation of any provision of this chapter or any rule adopted or order issued by the department pursuant to this chapter.

(3) The department may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or supervision pertaining to this chapter. The department may administer oaths and affirmations to a person whose testimony is required.

(4) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by the subpoena, a judge of the district court of Lewis and Clark County or the county in which the licensed premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department to give testimony and produce evidence as may be required. The clerk of court shall then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it is directed to appear at the time and place designated in the subpoena.

(5) If a person served with a subpoena refuses to obey the subpoena or to give testimony or produce evidence as required by the subpoena, the department may proceed under the contempt provisions of Title 3, chapter 1, part 5.

(6) Failure to comply with the requirements of a court-ordered subpoena is punishable pursuant to 45-7-309.

**History:** En. Sec. 15, Ch. 283, L. 1959; amd. Sec. 6, Ch. 233, L. 1971; amd. Sec. 5, Ch. 172, L. 1975; amd. Sec. 114, Ch. 431, L. 1975; R.C.M. 1947, 47-215; amd. Sec. 5, Ch. 216, L. 1979; amd. Sec. 8, Ch. 424, L. 1981; amd. Sec. 6, Ch. 140, L. 1983; amd. Sec. 16, Ch. 372, L. 2007.

**32-5-403. Examinations -- cost.** (1) The department may examine the books, accounts, and records of every licensee insofar as they relate to transactions with borrowers under this chapter.

(2) The expenses of the department incurred in the examination of the books, accounts, and records of the licensees must be charged at a rate established by the department by rule. The amount charged must be established to recover all of the costs of the department's supervision program. Each licensee must be billed by the department for the amount charged to the licensee pursuant to this section. If the charge is not paid within 30 days after the mailing of the bill, the license of the licensee may be suspended or revoked.

**History:** En. Sec. 16, Ch. 283, L. 1959; amd. Sec. 7, Ch. 233, L. 1971; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-216; amd. Sec. 1, Ch. 368, L. 1983; amd. Sec. 7, Ch. 600, L. 1985; amd. Sec. 17, Ch. 372, L. 2007.

**32-5-404. Repealed.** Secs. 22, 24(1), Ch. 372, L. 2007.

**History:** En. Sec. 26, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; amd. Sec. 38, Ch. 71, L. 1977; R.C.M. 1947, 47-226.

**32-5-405. Injunctions -- receivers.** (1) Whenever the department has reasonable cause to believe that a person is violating or is threatening to violate any provision of this chapter, the department may, in addition to all actions provided for in this chapter and without prejudice to those actions, bring an action in the name of the state against the person to restrain by temporary or permanent injunction or temporary restraining order the use of the unlawful method, act, or practice.

(2) The notice for an action pursuant to subsection (1) must state generally the relief sought and must be served at least 20 days before the hearing of the action in which the relief sought is a temporary or permanent injunction. The notice for a temporary restraining order is governed by 27-19-315.

(3) An action under this section may be brought in the district court in the county in which a person resides or has the person's principal place of business or in the district court of Lewis and Clark County if the person is not a resident of this state or does not maintain a place of business in this state.

(4) A district court may issue temporary or permanent injunctions or temporary restraining orders to restrain and prevent violations of this chapter, and an injunction must be issued without bond to the department.

(5) In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which the action is brought may impound and appoint a receiver for the property and business of the defendant, including books, papers, documents, and records pertaining to the property or business or as much of the property or business as the court considers reasonably necessary to prevent violations of this chapter. The receiver, when appointed and qualified, has the powers and duties as to custody, collection, administration, winding up, and liquidation of the property and business that are conferred upon the receiver by the court.

**History:** En. Sec. 27, Ch. 283, L. 1959; amd. Sec. 172, Ch. 431, L. 1975; R.C.M. 1947, 47-227; amd. Sec. 19, Ch. 372, L. 2007.

**32-5-406. Repealed.** Secs. 22, 24(1), Ch. 372, L. 2007.

**History:** En. Sec. 28, Ch. 283, L. 1959; R.C.M. 1947, 47-228.

**32-5-407. Attorney fees -- bad check fee.** (1) If provided in the contract, reasonable attorney fees may be awarded to the party in whose favor final judgment is rendered in any action on a contract entered into pursuant to the provisions of this chapter.

(2) In addition to any other fees authorized by this chapter, a licensee may charge a borrower the greater of \$25 or the licensee's actual expense for each check, received in payment of a loan, that is dishonored for any reason.

**History:** En. Sec. 10, Ch. 424, L. 1981; amd. Sec. 4, Ch. 168, L. 1985; amd. Sec. 3, Ch. 270, L. 1999; amd. Sec. 20, Ch. 372, L. 2007.

**32-5-408. Cease and desist orders.** (1) If it appears to the department that a person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule adopted or order issued by the department pursuant to this chapter, the department may issue an order directing the person to cease and desist from continuing

the act or practice after reasonable notice and opportunity for a hearing. The order may apply only to the alleged act or practice constituting a violation of this chapter. The department may issue a temporary order pending the hearing that:

(a) remains in effect until 10 days after the hearings examiner issues proposed findings of fact and conclusions of law and a proposed order; or

(b) becomes final if the person to whom notice is addressed does not request a hearing within 10 days after receipt of the notice.

(2) A violation of an order issued pursuant to this section is subject to the penalty provisions of this chapter.

**History:** En. Sec. 18, Ch. 372, L. 2007.

**32-5-409. Complaint procedure.** (1) The department shall maintain a list of licensees that is available to interested persons and to the general public. The department shall also establish by rule a procedure under which an aggrieved consumer or any member of the public may file a complaint against a licensee or an unlicensed person who violates any provision of this chapter.

(2) The department, after giving reasonable notice, may hold hearings, subject to the contested case provisions of Title 2, chapter 4, part 6, upon the request of a party to the complaint, make findings of fact or conclusions of law, issue cease and desist orders, refer the matter to the appropriate law enforcement agency for prosecution for a violation of this chapter, seek injunctive or other relief in district court, or suspend or revoke a license granted under this chapter.

**History:** En. Sec. 21, Ch. 372, L. 2007.

**32-5-501. Repealed.** Secs. 22, 24(1), Ch. 372, L. 2007.

**History:** En. Sec. 1, Ch. 218, L. 1981; amd. Sec. 7, Ch. 140, L. 1983; amd. Sec. 5, Ch. 168, L. 1985; amd. Sec. 6, Ch. 406, L. 1985.

**32-5-502. Repealed.** Secs. 22, 24(1), Ch. 372, L. 2007.

**History:** En. Sec. 2, Ch. 218, L. 1981.

**32-5-503. Repealed.** Secs. 22, 24(1), Ch. 372, L. 2007.

**History:** En. Sec. 3, Ch. 218, L. 1981; amd. Sec. 6, Ch. 374, L. 1997.

**32-5-504. Repealed.** Secs. 22, 24(1), Ch. 372, L. 2007.

**History:** En. Sec. 4, Ch. 218, L. 1981.

**32-5-505. Repealed.** Secs. 22, 24(1), Ch. 372, L. 2007.

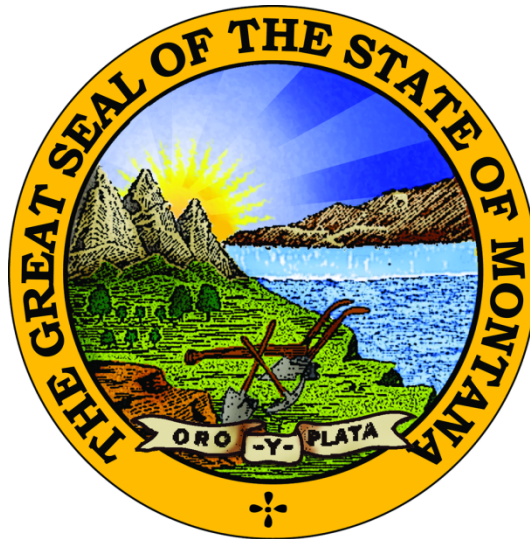
**History:** En. Sec. 5, Ch. 218, L. 1981; amd. Sec. 7, Ch. 374, L. 1997.

**32-5-506. Repealed.** Secs. 22, 24(1), Ch. 372, L. 2007.

**History:** En. Sec. 6, Ch. 218, L. 1981; amd. Sec. 6, Ch. 168, L. 1985; amd. Sec. 7, Ch. 406, L. 1985; amd. Sec. 4, Ch. 270, L. 1999.

STATE OF MONTANA  
DEPARTMENT OF ADMINISTRATION  
DIVISION OF BANKING AND FINANCIAL INSTITUTIONS

ADMINISTRATIVE RULES RELATING TO  
CONSUMER LOAN LICENSEES



ISSUED BY:

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UPDATED MARCH 2011

### **2.59.301 ADVERTISING**

(1) Licensees shall maintain a file of all advertising, (written, printed, radio, television, etc.) for a period of at least 12 months after the last date of its use or until an examination of the licensee has been accomplished by the Montana Consumer Loan Commissioner.

(a) All advertising copy shall have noted thereon the name or names of all advertising media used and the dates when such advertising appeared.

(b) The full text of radio or television advertising shall be retained.

(2) Licensees shall not use any advertising which is false, misleading or deceptive.

(3) Licensees shall not use so-called blind advertisements as, for example, an advertisement giving only a telephone number, post office or newspaper box number or a name other than that of the licensee.

(4) Licensees shall not use any advertising which is inconsistent with the Federal or Montana Consumer Protection Acts or the regulations promulgated thereunder governing advertising.

**History: 32-5-401, MCA; IMP, 32-5- 401, MCA; AMD, 1986 MAR p. 793, Eff. 5/16/86; AMD, 1992 MAR p. 137, Eff. 1/31/92; TRANS, from Commerce, 2001 MAR p. 1178.**

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### **2.59.302 SCHEDULE OF CHARGES**

(1) Every applicant for license under the Montana Consumer Loan Act shall file with the commissioner in duplicate, at the time of filing application for such license, a full and accurate schedule of all charges, fees and costs to be exacted in connection with any and all loans to be made by such applicant and the method of computing the same.

(2) Licensees shall thereafter maintain on file with the commissioner in duplicate a current schedule of all charges, fees and costs to be exacted in connection with all loans to be made by such licensee and shall not exact charges, fees or costs in excess of those contained in the schedule.

(3) Licensees shall display such schedule, which shall include examples of principal, add-on charges, monthly payments, and the contract period covered, prominently in each licensed place of business where loans are made or negotiated so as to be easily readable by borrowers and prospective borrowers.

(4) Licensees shall not make loans without such schedule being displayed.

(5) Licensees operating more than one licensed location in Montana shall advise the commissioner at which location or locations each such schedule is to be used, if there be more than one schedule.

(6) Licensees shall observe the following definitions and procedures in computing charges:

(a) a calendar month is that period of time from one date in the month to the corresponding date in the next month. If there is no corresponding date, then the last date of the next month will be used.

(b) the term "month" as used in the Act and in this regulation shall mean calendar month;

(c) charges shall be computed at the applicable rate on the amount of the loan from the date of the loan to the due date of the final installment irrespective of the fact that the loan is payable in installments;

(d) licensees shall compute monthly charges for a period of less than one year at 1/12th of the annual rate for each month;

(e) licensees shall compute daily charges for a period of less than one month at 1/30th of 1/12th of the annual rate for each day;

(7) Licensees shall not fix the due date of the first installment on any loan contract providing for monthly installments, for a term exceeding 45 actual days from the date of loan.

(a) When the first payment on any such contract may be due on a date beyond a calendar month as defined above, licensees will be permitted to make an additional charge for the number of days in excess of 30 or of one calendar month from the date of loan, whichever is less.

(b) The number of days in excess will be at the daily rate for actual number of days.

(8) Licensees shall compute prepayment refunds under the rule of 78ths:

(a) Licensees may disregard any earned charge made for an extended first payment. (e.g. if a 10-day first payment extension charge was made, the charge becomes earned with the elapse of the 10 days.)

(b) When any loan contract is prepaid after the first scheduled installment date by cash, a new loan, renewal, or otherwise, on other than scheduled dates, licensees shall elect to use either the 15-day rule or a daily basis to compute the refund due.

(i) The daily basis, if elected, shall be at the rate of 1/30th of the total earned charges determined under the rule of 78ths for that month in which prepayment occurs times the number of days which follow the prepayment date to the next scheduled payment date;

(ii) Licensees electing the 15-day rule are entitled to earned charges under the rule of 78ths for the month in which prepayment occurs provided the prepayment date is 16 days or more after the preceding regularly scheduled payment date;

(iii) Licensees are prohibited from using both methods.

(c) Licensees who elect to use the 15-day rule in determining the refund due a borrower under the provisions of (8)(b)(ii) above may use the following formula in determining the service charge due from borrowers who repay any loan contract within 15 days or less from the date the loan is made:

(i) lenders are authorized to divide the original add-on charge by the number of months in the contract period of the original term of loan. If a first payment extension was made, that charge is to be entirely refunded if it has not been earned by elapse of time; if earned, the 15 days or less is determined from the date which is one month prior to the first scheduled payment;

(ii) whenever the resulting quotient is less than \$2, the lender may collect \$2 as a minimum service charge.

(d) a borrower who prepays one whole installment or more in advance shall be entitled to a refund credit of unearned charges for such prepayment, if the loan contract is repaid within the time allowed in its original terms. Such refund shall be computed by subtracting from the original add-on charge as great a proportion of such charge as the sum of all monthly balances as originally contracted for. Monthly balances are those on the date of origination and on the consecutive scheduled monthly payment dates of the original loan contract;

(9) Licensees shall interpret 32-5-301(2), MCA, of the Act "only once" to mean on the same default; i.e., a borrower who defaults in one or more payments may be subject to a penalty of 5% of each payment in default;

(10) Licensees shall not add to the amount of any balance, which remains after the terminal date of a loan contract, including extensions or charges for payments in default, interest or charges which in the aggregate exceed the legal rate authorized by 31-1-106, MCA.

**History: 32-5-401, MCA; IMP, 31-1-106, 32-5-301, MCA; Eff. 12/31/72; TRANS, from Commerce, 2001 MAR p. 1178; AMD, 2010 MAR p. 213, Eff. 1/29/10.**

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### **2.59.303 CREDIT LIFE INSURANCE**

(1) Licensee shall not place credit life insurance nor credit disability insurance for its borrowers unless all applicable requirements of the Montana Insurance Code (Title 33, MCA) concerning licensing of agents are complied with. Any license acquired from the Commissioner of Insurance of the state of Montana must be conspicuously displayed in the office of licensee.

(2) Licensee shall not place any credit life or disability insurance with an insurer who has not been authorized to transact such insurance in this state under the provision of the Montana Insurance Code.

(3) Licensee shall not require any borrower or prospective borrower to purchase or contract for credit life or disability insurance as a condition precedent to granting any loan.

(4) Licensee may advise borrowers or prospective borrowers that such insurance is available at additional cost to the borrower.

(5) Licensee may advertise generally and publicly that credit life insurance and/or credit disability insurance is available to borrowers on loans of more than \$300 in principal amount exclusive of charges for insurance premiums.

(6) Licensee shall not place credit life and/or credit disability insurance on any loan of \$300 or less in principal amount exclusive of charges for insurance premiums.

(7) Licensee shall not make any loan including amounts advanced for insurance premiums that exceeds \$1,000 in total amount advanced. A licensee who has been issued a supplementary license shall not make any loan including amounts advanced for insurance premiums that exceeds \$2,500 in total amount advanced.

(8) The amount and term of credit life and/or credit disability insurance placed by a licensee must conform to the provisions of 33-21-202 and 33-21-203 , MCA.

(9) The individual insurance policy, the certificate of group insurance, the copy of the application for insurance, or the notice of proposed insurance, must be delivered to the borrower at the time the indebtedness is incurred, in accordance with the provisions of 33-21-204 , MCA, and all the provisions of this law relative to statements concerning the coverage provided must be strictly complied with.

(10) Licensee must have on file for each credit life and disability insurance transaction a signed statement from the borrower that procurement of such insurance was not made a condition precedent to the granting of the loan. Such statement may be a part of the loan statement, certificate of group insurance, or application for insurance, if such document is to be retained in borrower's file for the two years required by 32-5-307 , MCA. If a separate signed statement is used, such statement must be retained in borrower's file for the same period.

(11) Refunds of unearned premiums for credit life and disability insurance shall be computed in accordance with the Montana Insurance Code ( 32-21-206 , MCA) and regulations issued by the Commissioner of Insurance of the state of Montana.

(12) Licensee shall enter on each borrower's loan account record the amount of credit life insurance premium and credit disability insurance premium charged in connection with the loan.

(13) Before any credit life insurance or credit disability insurance premium is placed by licensee on any loan contract, licensee must file with the Consumer Loan Commissioner a statement containing the following information:

(a) the name and home address of the insurer or insurers with whom licensee intends to place such insurance;

(b) the rate of charge for premiums on such insurance to be collected from the borrower, expressed in terms of dollars and cents per month (or per year) per one hundred dollars of original balance of the loan;

(c) those borrowers who do not qualify for credit life or disability insurance because of advanced age or other stipulated reasons;

(d) the basis or schedule upon which refunds to borrowers of unearned premiums are to be computed.

(14) For the purpose of providing adequate information for the annual report of licensee required by 32-5-308 , MCA, licensee must keep accurate accounts to reflect the following:

(a) total net charges to borrowers for credit life insurance and credit disability insurance placed by licensee;

(b) total premiums remitted to insurers for such coverage;

(c) total commissions or dividends received by licensee from insurers;

(d) total of loans paid by insurers upon death of borrowers;

(e) total of payments on loans received from insurers under credit disability policies.

**History: 32-5-308, MCA; IMP, 32-5-401, MCA; Eff. 12/31/72; TRANS, from Commerce, 2001 MAR p. 1178.**

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### **2.59.304 FEES PAID TO PUBLIC OFFICIALS**

(1) Licensees who collect fees of any kind to be paid to a public official for filing or recording any instrument used to secure a loan, assume responsibility for releasing such instrument from the public record when the obligation has been satisfied.

(2) Licensees shall record on the borrower's ledger card each amount collected as a fee for recording, filing, or releasing any instrument executed by a borrower to secure a loan.

(3) Licensees shall not collect any notary fee required in connection with any instrument tendered by a borrower as security for any loan.

**History: 32-5-401, MCA; IMP, 32-5-401, MCA; Eff. 12/31/72; TRANS, from Commerce, 2001 MAR p. 1178.**

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### **2.59.305 RECEIPT FORM**

(1) Licensees shall give to the borrower or mail to him at his address of record a plain and complete receipt for each payment made.

(2) Licensees receipt forms shall contain the following minimum information:

- (a) name of borrower;
- (b) account number;
- (c) amount of installment payment;
- (d) penalty collection, if any;
- (e) balance remaining on loan; and
- (f) amount of refund.

(3) Licensees shall indelibly record on borrower's loan card as separate items the amount of each installment payment, refund or collection.

**History: 32-5-401, MCA; IMP, 32-5-401, MCA; Eff. 12/31/72; TRANS, from Commerce, 2001 MAR p. 1178.**

### **2.59.306 RECORDS OF LICENSEE**

(1) On and after January 1, 1960, each licensee shall establish and maintain in current condition a general ledger, located in the place of business maintained in this state for contracting consumer loans.

(2) Each general ledger shall contain as a minimum the following accounts appropriate to the licensed organization:

Assets	Liabilities and Capital
Cash on Hand	Capital
Cash in Bank	Surplus
Notes Receivable	Net Worth
Real Estate	Notes Payable
Furniture and Fixtures	Due Parent Company
Expenses	Income
Other Assets	Other Liabilities

(3) Please bear in mind that the foregoing list is intended as a minimum guide only. Any reasonable change in title or additional breakdown of information will be satisfactory.

(4) The general ledger of each licensee shall be sufficiently complete to show all assets, liabilities, income and expense. Every ledger entry shall be supported by original source documents, which must be available for examination.

**History: 32-5-401, MCA; IMP, 32-5-401, MCA; Eff. 12/31/72; TRANS, from Commerce, 2001 MAR p. 1178.**

### **2.59.307 DOLLAR AMOUNTS TO WHICH CONSUMER LOAN RATES ARE TO BE APPLIED**

This rule has been repealed.

History: 32-5-104, MCA; IMP, 32-5-104, 32-5-201, 32-5-301, 32-5-302, 32-5-306, MCA; NEW, 1984 MAR p. 922, Eff. 6/15/84; AMD, 1988 MAR p. 2034, Eff. 9/23/88; AMD, 1991 MAR p. 1274, Eff. 7/26/91; AMD, 1992 MAR p. 1353, Eff. 6/26/92; AMD, 1994 MAR p. 953, Eff. 4/15/94; AMD, 1996 MAR p. 2165, Eff. 8/9/96; AMD, 1998 MAR p. 2479, Eff. 9/11/98; TRANS, from Commerce, 2001 MAR p. 1178; AMD, 2006 MAR p. 1138, Eff. 5/5/06; REP, 2010 MAR p. 63, Eff. 1/15/10.

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### **2.59.308 EXAMINATION FEES**

(1) A consumer loan business shall pay the Division of Banking and Financial Institutions a fee in the amount of \$37.50 per hour for each examiner required to conduct an investigation or examination under 32-5-402 or 32-5-403, MCA.

History: 32-5-401, 32-5-403, MCA; IMP, 32-5-402, 32-5-403, MCA; NEW, 2003 MAR p. 1802, Eff. 8/15/03; AMD, 2010 MAR p. 63, Eff. 1/15/10.

# MONTANA RETAIL INSTALLMENT SALES ACT

**31-1-201. Short title.** This part may be cited as the "Montana Retail Installment Sales Act".

**History:** En. Sec. 1, Ch. 282, L. 1959; R.C.M. 1947, 74-601.

**31-1-202. Definitions.** (1) Unless the context requires otherwise, in this part the following definitions apply:

(a) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge account agreement for which the seller would have sold or furnished to the buyer and the buyer would have bought or obtained from the seller the goods or services that are the subject matter of the retail installment transaction, if the sale had been a sale for cash. The cash sale price may include any taxes, registration, certificate of title, license, and official fees and cash sale prices for services, if any, and for accessories and their installation and for delivering, servicing, repairing, or improving the goods.

(b) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(c) "Finance charge" means the amount, as limited by 31-1-241, in addition to the principal balance, agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or services to be paid for by the buyer in one or more deferred installments.

(d) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or coupons exchangeable for chattels personal but not including money or things in action. The term includes goods that, at the time of the sale or subsequently, are to be so affixed to realty as to become a part of the realty, whether or not severable from it.

(e) "Holder" means:

(i) the retail seller of the goods or services under the retail installment contract or retail charge account agreement or a person who establishes and administers retail charge account agreements with retail buyers;

(ii) the assignee, if the retail installment contract or the retail charge account agreement or the balance in the account under either has been sold or otherwise transferred; or

(iii) any other person entitled to the rights of the retail seller under any retail installment contract or any retail charge account agreement.

(f) "Manufactured structure" means any structure, transportable in one or more sections, designed to be used as a single-family dwelling or commercial building with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure.

(g) (i) "Motor vehicle" means any new or used automobile, motorcycle, quadricycle, truck, trailer, semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used to transport persons or property on a public highway.

(ii) The term does not include any vehicle that runs only on rails or tracks or in the air.

(h) "Official fees" means:

(i) the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction; or

(ii) the premium for insurance in lieu of filing, recording, or otherwise perfecting any title or lien retained or taken by a seller in connection with a retail installment transaction to the extent that the premium does not exceed the fees that would otherwise be payable for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

(i) "Person" means an individual, partnership, corporation, association, and any other group, however organized.

(j) "Principal balance" means the cash sale price of the goods or services that are the subject matter of a retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is made and stated in the contract, for insurance and other benefits and official fees, minus the amount of the buyer's downpayment in money or goods.

(k) "Recreational vehicle" means a vehicular type unit that either has its own motor power or is mounted on or drawn by another vehicle, primarily designed as temporary living quarters for recreational, camping, or travel use.

(l) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction and not for the purpose of resale.

(m) "Retail charge account agreement" means an instrument in writing prescribing the terms of retail installment transactions that may be made under it from time to time under which a retail seller gives to a retail buyer the privilege of using a credit card issued by the retail seller or any other person or other credit confirmation or identification for the purpose of purchasing goods or services from the retail seller, from the retail seller and any other person, or from a person licensed or franchised by the retail seller and under the terms of which a finance charge may be computed in relation to the buyer's average daily balance in the account during the billing cycle or the buyer's balance from time to time.

(n) "Retail installment contract" or "contract" means an agreement evidencing a retail installment transaction entered into in this state under which a buyer promises to pay in one or more deferred installments the time sale price of goods or services, or both. The term includes a chattel mortgage, a conditional sales contract, and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract.

(o) "Retail installment transaction" means a written contract to sell or furnish, or the sale or furnishing of, goods or services by a retail seller to a retail buyer pursuant to a retail charge account agreement or under a retail installment contract.

(p) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer in a written retail installment contract or written retail installment transaction.

(q) (i) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes but is not limited to a bank, trust company, investment company, or savings and loan association, if engaged in purchasing retail installment contracts.

(ii) The term does not include a person who makes only isolated purchases of retail installment contracts that are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.

(r) "Services" means work, labor, and services furnished in the delivery, installation, servicing, repair, or improvement of goods.

(s) "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits, if a separate identified charge is made for insurance and benefits, and the amounts of the official fees and the finance charge.

(2) (a) This part does not apply to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by those banks or other lending institutions.

(b) This part applies to the extension of credit by those banks or other lending institutions under retail installment contracts or credit cards issued by those banks or other lending institutions.

**History:** En. Sec. 2, Ch. 282, L. 1959; amd. Sec. 1, Ch. 416, L. 1971; amd. Sec. 137, Ch. 431, L. 1975; R.C.M. 1947, 74-602; amd. Sec. 1, Ch. 160, L. 1979; amd. Sec. 2, Ch. 274, L. 1981; amd. Sec. 13, Ch. 516, L. 1985; amd. Sec. 1, Ch. 297, L. 1987; amd. Sec. 1, Ch. 198, L. 1993; amd. Sec. 70, Ch. 483, L. 2001.

**31-1-203. Penalties -- prohibited activities.** (1) Any person who knowingly violates a provision of this part or engages in the business of a sales finance company in this state without a license as provided in this part is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months, or both.

(2) Any person violating 31-1-231 through 31-1-243, except as the result of an accidental and bona fide error of computation, shall be barred from recovery of any finance, delinquency, or collection charge on the contract. In addition to other penalties provided by law, a violation of subsection (3) and a contract made in violation of the finance charge limitations imposed by 31-1-241 is a violation of Title 30, chapter 14, part 1.

(3) A person may not engage in any device or subterfuge intended to evade the requirements of this chapter including assisting a borrower to obtain a loan at a rate of interest prohibited by Montana law, making loans disguised as personal property sales and leaseback transactions, or disguising loan proceeds as cash rebates for the pretextual installment sale of goods or services.

**History:** En. Sec. 11, Ch. 282, L. 1959; amd. Sec. 16, Ch. 185, L. 1977; amd. Sec. 3, Ch. 284, L. 1977; R.C.M. 1947, 74-611; amd. Sec. 3, I.M. No 164, approved Nov. 2, 2010.

**31-1-204. Waiver.** Any waiver of the provisions of this part shall be unenforceable and void.

**History:** En. Sec. 12, Ch. 282, L. 1959; R.C.M. 1947, 74-612.

**31-1-205 through 31-1-210 reserved.**

**31-1-211. Powers of department.** (1) The department may adopt rules necessary to carry out the intent and purposes of this part. All rules of general application must be filed in the

office of the department. A copy of every rule must be mailed to each licensee, postage prepaid, at least 15 days in advance of its effective date. However, the failure of a licensee to receive a copy of the rules does not exempt the licensee from the duty of compliance with those rules lawfully adopted under the provisions of this section.

(2) The department may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or supervision pertaining to this part. The department may administer oaths and affirmations to a person whose testimony is required.

(3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by it, a judge of the district court of the county in which the licensed premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department to give testimony and produce evidence as may be required. The clerk of court shall then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it is directed to appear at the time and place designated in it.

(4) If a person served with a subpoena refuses to obey it or to give testimony or produce evidence as required by the subpoena, the department may apply to the judge of the court issuing the subpoena for an arrest warrant for that person, as for a contempt. The judge, upon satisfactory proof of the refusal, shall issue an arrest warrant, directed to any sheriff, constable, or police officer, for the arrest of that person and, upon that person being brought before the judge, proceed to a hearing of the case. The judge may compel:

- (a) obedience to the subpoena;
- (b) the answering of any question;
- (c) the production of any evidence that may be proper; or
- (d) the witness to pay the costs of the proceeding.

(5) Failure to comply with the requirements of subsection (4)(a), (4)(b), or (4)(c) is punishable by a fine not exceeding \$100 or by imprisonment in the county jail, or both.

**History:** En. Sec. 6, Ch. 282, L. 1959; amd. Sec. 140, Ch. 431, L. 1975; amd. Sec. 15, Ch. 185, L. 1977; R.C.M. 1947, 74-606; amd. Sec. 1, Ch. 265, L. 1995.

**31-1-212. Investigations and complaints.** (1) The department may make those investigations it considers necessary, and to the extent necessary for this purpose, it may examine a licensee or any other person and may compel the production of relevant books, records, accounts, and documents.

(2) A retail buyer having reason to believe that this part relating to the buyer's retail installment contract has been violated may file with the department a written complaint setting forth the details of the alleged violation, and the department, upon receipt of the complaint, may inspect the pertinent books, records, letters, and contracts of the licensee and retail seller involved.

**History:** En. Sec. 5, Ch. 282, L. 1959; amd. Sec. 139, Ch. 431, L. 1975; R.C.M. 1947, 74-605; amd. Sec. 970, Ch. 56, L. 2009.

**31-1-213 through 31-1-220 reserved.**

**31-1-221. Licensing of sales finance companies required.** (1) A person may not engage in the business of a sales finance company, including the purchase of retail installment contracts that are entered into in this state, without a license as provided in this part, except that a bank, trust company, or savings and loan association authorized to do business in this state is not required to obtain a license under this part but shall comply with all of the other provisions of this part.

(2) The application for a license must be in writing, under oath, and in the form prescribed by the department. The application must contain:

(a) the name of the applicant;

(b) the date of incorporation, if incorporated;

(c) the address where the business is or is to be conducted and similar information with regard to any branch office of the applicant;

(d) the name and resident address of the owner or partners or, if a corporation or association, of the directors, trustees, and principal officers; and

(e) other pertinent information as the department may require.

(3) The license fee for each calendar year or part of a year is \$100 for each place of business of the licensee in this state.

(4) Each license must specify the location of the office or branch and must be conspicuously displayed there. If the location is changed, the department shall endorse the change of location of the license without charge.

(5) Upon the filing of a license application and the payment of the license fee, the department shall issue a license to the applicant to engage in the business of a sales finance company in accordance with the provisions of this part for a period that expires December 31 following the date of the license's issuance. The license is not transferable or assignable. A licensee may not transact any business provided for by this part under any other name.

(6) Fees collected under this chapter must be deposited in the state special revenue fund for the use of the department in its supervision function.

**History:** En. Sec. 3, Ch. 282, L. 1959; amd. Sec. 170, Ch. 431, L. 1975; R.C.M. 1947, 74-603; amd. Sec. 8, Ch. 600, L. 1985; amd. Sec. 1, Ch. 9, L. 2003.

**31-1-222. Denial, suspension, or revocation of licenses.** (1) Renewal of a license originally granted under 31-1-221 may be denied or a license may be suspended or revoked by the department on the following grounds:

(a) material misstatement of fact in the application for license;

(b) willful failure to comply with any provision of this part relating to retail installment contracts;

(c) defrauding any retail buyer to the buyer's damage;

(d) fraudulent misrepresentation, circumvention, or concealment by the licensee through subterfuge or device of any of the material particulars or the nature of those particulars required to be stated or furnished to the retail buyer under this part.

(2) If a licensee is a partnership, association, or corporation, it is sufficient cause for the suspension or revocation of a license that any officer, director, or trustee of a licensed association or corporation or any member of a licensed partnership has acted or failed to act so as to provide cause for suspending or revoking a license to that party as an individual. Each

licensee is responsible for the acts of the licensee's employees while acting as the licensee's agent if the licensee after actual knowledge of the acts retained the benefits, proceeds, profits, or advantage accruing from the acts or otherwise ratified the acts.

(3) (a) A license may not be denied, suspended, or revoked except after hearing. The department shall give the licensee at least 10 days' written notice, in the form of an order to show cause, of the time and place of the hearing by certified mail addressed to the licensee's principal place of business in this state. The notice must contain the grounds of complaint against the licensee.

(b) An order suspending or revoking a license must recite the grounds upon which it is based. The order must be entered upon the records of the department and is not effective until 30 days after written notice has been forwarded by certified mail to the licensee at the licensee's principal place of business.

(c) A revocation, suspension, or surrender of a license does not impair or affect the obligation of a lawful retail installment contract acquired previously by the licensee.

**History:** En. Sec. 4, Ch. 282, L. 1959; amd. Sec. 138, Ch. 431, L. 1975; amd. Sec. 14, Ch. 185, L. 1977; R.C.M. 1947, 74-604; amd. Sec. 971, Ch. 56, L. 2009.

### **31-1-223 through 31-1-230 reserved.**

**31-1-231. Requirements of retail installment contracts.** (1) Each retail installment contract must be in writing, signed by both the buyer and the seller, and completed as to all essential provisions prior to the signing of the contract by the buyer. However, if a retail installment transaction is a sale of goods other than a motor vehicle where title, lien, or other security interest is not retained or taken by the seller, then the retail installment contract is not required to be contained in a single document. In that case, if the contract is contained in more than one document, then one document may be an original document executed by the retail buyer applicable to purchases of goods or services to be made by the retail buyer from time to time, and in that case the document, together with the sales slip, account book, or other written statement relating to each purchase, must set forth all of the information required by this section and constitutes the retail installment contract for each purchase.

(2) The printed portion of the contract, other than instructions for completion, must be in at least 8-point type. The contract must contain the following notice in a size equal to at least 10-point bold type:

1. Notice to the buyer. Do not sign this contract before you read it or if it contains any blank spaces.
2. You are entitled to an exact copy of the contract you sign.
3. Under the law, you have the right to pay off in advance the full amount due and to obtain a partial refund of the finance charge."

(3) If the contract covers the sale of a motor vehicle, it must also contain, in a size equal to at least 10-point bold type, a specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included if that is the case.

(4) The contract must contain the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer, and a

description of the goods sold or services furnished or to be furnished and must clearly state and describe any collateral security taken for the buyer's obligation.

(5) The contract must contain the following items:

- (a) the cash sale price of the goods or services;
- (b) the amount of the buyer's downpayment and whether made in money or goods or partly in money and partly in goods, including a brief description of the goods traded in;
- (c) the difference between items in subsections (5)(a) and (5)(b);
- (d) the amount, if any, included for insurance and other benefits if a separate charge is made for insurance and other benefits, specifying the types of coverage and benefits;
- (e) the amount of official fees;
- (f) the principal balance, which is the sum of items in subsections (5)(c) through (5)(e);
- (g) the amount of the finance charge;
- (h) the total amount of the time balance, stated as one sum in dollars and cents, which is the sum of items in subsections (5)(f) and (5)(g), payable in installments by the buyer to the seller;
- (i) the number of installments;
- (j) the amount of each installment; and
- (k) the due date or period of installments.

(6) The items in subsection (5) need not be stated in the sequence or order set forth, and additional items may be included to explain the computations made in determining the amount to be paid by the buyer.

(7) A retail installment contract may not be signed by any party when it contains blank spaces to be filled in after it has been signed, except that if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted in the contract after its execution. The buyer's written acknowledgment, conforming to the requirements of 31-1-232, of delivery of a copy of a contract must, in any action or proceeding by or against a holder of the contract without knowledge to the contrary when the holder purchases the contract, be conclusive proof:

- (a) of the delivery;
- (b) that the contract when signed did not contain any blank spaces except as provided in this subsection (7); and
- (c) of compliance with 31-1-231 through 31-1-236.

(8) If a retail installment transaction is subject to the federal Truth in Lending Act, 15 U.S.C. 1601-1667e, the seller may, instead of complying with the requirements of subsections (2) through (7), comply with all requirements of the federal law. A seller who complies with the federal requirements is subject only to the provisions of subsection (1) of this section.

**History:** En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part); amd. Sec. 1, Ch. 88, L. 1979; amd. Sec. 1, Ch. 89, L. 1985; amd. Sec. 972, Ch. 56, L. 2009.

**31-1-232. Buyer's right of rescission.** The seller shall deliver to the buyer or mail to the buyer at the address shown in the contract a copy of the contract, signed by the seller. Until the seller delivers or mails the contract, a buyer who has not received delivery of the goods or been furnished the services has the right to rescind the agreement and to receive a refund of all

payments made and return of all goods traded in to the seller on account of or in contemplation of the contract or, if the goods cannot be returned, the value of the goods. Any acknowledgment by the buyer of delivery of a copy of the contract must be in a size equal to at least 10-point bold type and, if contained in the contract, must appear directly above the buyer's signature.

**History:** En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part); amd. Sec. 973, Ch. 56, L. 2009.

**31-1-233. Insurance.** (1) The amount, if any, included for insurance that may be purchased by the holder of the contract may not exceed the applicable premiums chargeable in accordance with the rates filed with the insurance department of this state when the rates are required by law to be approved by the insurance department.

(2) All insurance purchased by the holder of the contract must be written by an insurance company authorized to do business in this state.

(3) A buyer may be required to provide insurance on the goods at the buyer's own cost for the protection of the seller or holder as well as the buyer, but the insurance is limited to insurance against substantial risk of loss, damage, or destruction of the goods.

(4) Any other insurance may be included in a retail installment transaction at the buyer's expense only if contracted for voluntarily by the buyer.

(5) If insurance for which an identified charge is made insures the life, safety, or health of the buyer or the buyer's interest in goods and is purchased by the holder, the holder shall within 30 days after the execution of the retail installment contract send or cause to be sent to the buyer a policy or policies or certificate or certificates of insurance, written by an insurance company authorized to do business in this state, clearly setting forth:

(a) the amount of the premium;

(b) the kind or kinds of insurance;

(c) the coverages; and

(d) if a policy, all the terms, exceptions, limitations, restrictions, and conditions of the contract or contracts of insurance or, if a certificate, a summary of the terms, exceptions, limitations, restrictions, and conditions.

(6) The holder may not decline existing insurance written by an insurance company authorized to do business in this state, and the buyer has the privilege of purchasing insurance from an insurance producer or broker of the buyer's own selection and of selecting the buyer's insurance company if:

(a) the insurance company is acceptable to the holder, which acceptance may not be unreasonably or arbitrarily withheld; and

(b) the inclusion of the cost of the insurance premium in the retail installment contract when the buyer selects the buyer's insurance producer, broker, or company is optional with the holder.

(7) If any insurance is canceled or the premium adjusted, any refund of the insurance premium received by the holder must be credited to the final maturing installment of the contract except to the extent applied toward payment for a similar insurance protecting the interests of the buyer and the holder or either of them.

**History:** En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part); amd. Sec. 34, Ch. 16, L. 1991; amd. Sec. 9, Ch. 472, L. 1999.

**31-1-234. Transfer of equity -- fee.** A buyer may transfer the buyer's equity in the goods at any time to another person upon agreement by the holder, but the holder of the contract is entitled to a transfer of equity fee that may not exceed \$50.

**History:** En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part); amd. Sec. 1, Ch. 434, L. 1983; amd. Sec. 974, Ch. 56, L. 2009.

**31-1-236. Notice and receipt of payment.** (1) Upon written request from the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under the contract. A buyer must be given a written receipt for any payment when made in cash.

(2) After payment of all sums for which the buyer is obligated under a contract and upon written demand made by the buyer, the holder shall deliver or mail to the buyer, at the buyer's last-known address, one or more good and sufficient instruments to acknowledge payment in full and shall release all security in the goods or in any collateral security.

**History:** En. Sec. 7, Ch. 282, L. 1959; R.C.M. 1947, 74-607(part); amd. Sec. 975, Ch. 56, L. 2009.

**31-1-237 through 31-1-240 reserved.**

**31-1-241. Finance charge limitation.** (1) The finance charge included in a retail installment contract must be at a rate agreed upon by the retail seller and the buyer, but the finance charge may not exceed 36% per annum.

(2) The finance charge included in a retail charge account agreement must be at a rate agreed upon by the retail seller and the buyer, but the finance charge may not exceed 36% per annum.

(3) The finance charge must be computed from month to month (which need not be a calendar month) or over another regular billing cycle period by using either:

(a) the average daily balance in the account in the billing cycle period; or

(b) the ending balance of the account as of the last day of the billing cycle period less the amount of total purchases charged to the account during that billing cycle.

(4) A seller may change the terms of a revolving charge account whether or not the change is authorized by prior agreement. The seller shall give the buyer written notice of any change in the billing cycle prior to the effective date of the change.

(5) If the retail seller increases the finance charge on a retail charge account agreement, then the increased rate may only be applied to the balance consisting of purchases on other charges incurred on or after the effective date of the increase.

(6) For purposes of determining the balance to which the increased rate applies, all payments may be considered to be applied to the balance existing prior to the change in rate until that balance is paid in full.

(7) If the finance charge determined pursuant to subsection (3) for a monthly period is less than 50 cents, a maximum finance charge not in excess of 50 cents may be charged and collected for the period.

**History:** En. Sec. 8, Ch. 282, L. 1959; amd. Sec. 11-152, Ch. 264, L. 1963; amd. Sec. 2, Ch. 416, L. 1971; amd. Sec. 1, Ch. 252, L. 1975; amd. Sec. 1, Ch. 284, L. 1977; R.C.M. 1947, 74-608; amd. Sec. 2, Ch. 160, L. 1979; amd.

Secs. 1, 2, Ch. 276, L. 1981; amd. Secs. 1, 3, Ch. 22, L. 1983; amd. Sec. 2, Ch. 297, L. 1987; amd. Sec. 1, Ch. 267, L. 1997; amd. Sec. 4, I.M. No 164, approved Nov. 2, 2010.

**31-1-242. Refunds on prepayment.** (1) Notwithstanding the provisions of any retail installment contract to the contrary, any buyer may prepay in full, at any time before maturity, the debt of any retail installment contract and in so paying such debt shall receive a refund credit thereon for such anticipation of payments.

(2) In a contract where the period of the contract does not exceed 61 months, the amount of such refund shall represent at least as great a proportion of the finance charge as the sum of the monthly time balances beginning 1 month after prepayment is made bears to the sum of all the monthly time balances under the schedule of payment in the contract. Where the amount of credit is less than \$1, no refund need be made.

(3) In any contract where the period of the contract exceeds 61 months, the amount of such refund is the portion of the original finance charge that is applicable to all fully unexpired months in the contract as originally scheduled or, if deferred, as deferred, following the date of prepayment. For this purpose, the applicable charge is the charge that would have been earned for that period if the contract were not precomputed, by applying to the unpaid principal balance, according to the actuarial method, the annual percentage rate disclosed pursuant to federal law, based on the assumption that all payments were made as originally scheduled.

**History:** En. Sec. 9, Ch. 282, L. 1959; R.C.M. 1947, 74-609; amd. Sec. 1, Ch. 135, L. 1983.

**31-1-243. Refinancing retail installment contract.** The holder of a contract, upon request by the buyer, may extend the scheduled due date of all or any part of any installment or installments or defer payment or payments or renew or restate the unpaid time balance of the contract, the amount of the installments, and the time schedule for the installments and may collect for the extension, deferment, renewal, or restatement a refinance charge. The holder may compute the refinance charge on the unpaid time balance to be extended, deferred, renewed, or restated by adding to the unpaid time balance the cost for any insurance and other benefits incidental to the refinancing plus any accrued delinquency and collection charges, after deducting any refund that may be due the buyer as for a prepayment pursuant to 31-1-242 at the rate of the finance charge specified in 31-1-241. If all unpaid installments are deferred for not more than 2 months, the holder may charge and collect for the deferment an amount equal to the difference between the refund required for prepayment in full under 31-1-242 as of the scheduled due date of the first deferred installment and the refund required for prepayment in full as of 1 month prior to the date, times the number of months in which a scheduled payment is not made.

**History:** En. Sec. 10, Ch. 282, L. 1959; amd. Sec. 2, Ch. 284, L. 1977; R.C.M. 1947, 74-610; amd. Sec. 2, Ch. 88, L. 1979; amd. Sec. 3, Ch. 276, L. 1981; amd. Sec. 1, Ch. 22, L. 1983; amd. Sec. 976, Ch. 56, L. 2009.