

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