



**MONTANA  
DEPARTMENT OF  
ADMINISTRATION**

---

**Division of Banking & Financial Institutions**

Greg Gianforte, Governor  
Misty Ann Giles, Director  
Melanie Hall, Commissioner

BY: Kelly M. O'Sullivan, Deputy Commissioner/Staff Attorney

RE: Legal Opinion Usury – Retail Installment Sales

DATE: January 30, 2024

**Issue**

The Montana Division of Banking and Financial Institutions has been asked for a formal opinion as to whether the usury statutes in Title 31, Chapter 1, Part 1 apply to the Retail Installment Sales Act in Title 31, Chapter 1, Part 2. Specifically, because sales finance companies are not listed as a regulated lender in Mont. Code Ann. § 31-1-111, are they subject to the general usury statute in Montana instead of the finance charges listed in the Retail Installment Sales Act, Mont. Code Ann. § 31-1-241?

**Answer**

No, they are not.

**Opinion**

The usury statutes in Title 31, Chapter 1, Part 1 apply to loans of money as defined in Mont. Code Ann. § 31-1-101. That section provides, “[a] loan of money is a contract by which a person delivers a sum of money to another person and the other person agrees to return at a future time a sum equivalent to that which the other person borrowed.”

Interest is defined as, “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.” Mont. Code Ann. § 31-1-104.

The interest rate that can be allowed is limited by Mont. Code Ann. § 31-1-107, which is the general usury statute in Montana. It allows the parties to agree in writing to the payment of any rate of interest that does not exceed the greater of 15% or an amount that is 6 percentage points per year above the prime rate published by the federal reserve system in its statistical release H.15 Selected Interest Rates for bank prime loans dated 3 business days prior to the execution of the agreement.

However, the provisions of Mont. Code Ann. § 31-1-107 do not apply to regulated lenders, which are:

(1) a bank, building and loan association, savings and loan association, trust company, credit union, credit association, consumer loan licensee, deferred deposit loan licensee, residential mortgage lender licensee, development

corporation, bank holding company, or mutual or stock insurance company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by:

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

(b) an agency of the federal government;

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

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

(4) a corporation or other entity established by congress or the state of Montana that is owned, in whole or in part, by the United States or the state of Montana and that is authorized to lend money. Mont. Code Ann. § 31-1-111.

Sales finance companies are not listed as a regulated lender in this statute.

The Retail Installment Sales Act, however, does not involve a loan of money. A transaction covered by the Retail Installment Sales Act is a transaction between a retail buyer and a retail seller. A retail buyer is defined as a person who buys goods or obtains services from a retail seller in a retail installment transaction and not for the purpose of resale. Mont. Code Ann. § 31-1-202(1)(m). A retail seller is a person who sells goods or furnishes services to a retail buyer in a written retail installment contract or written retail installment transaction. Mont. Code Ann. § 31-1-202(1)(q).

Retail installment sales can either be a retail installment charge account agreement (as in a Macy's or TJ Maxx credit card) or a retail installment contract (a contract to buy a car).

Retail installment contract is defined in Mont. Code Ann. § 31-1-202(1)(o) as 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 time sale price of the goods includes the finance charge. The finance charge is 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. Note, a finance charge is not interest on a loan because there is no loan in a retail installment sales contract. The buyer is purchasing goods or services on time.

The Montana Supreme Court ruled on this issue in 1973. A woman who held a charge card to The Paris of Montana, a retail department store, sued the department store alleging that her revolving charge card which had finance charges on it, violated part of Art. V., Sec. 26, 1889 Montana Constitution, prohibiting enactment of local or special laws regulating the rate of interest on money.

The Montana Supreme Court noted that Montana had a general usury statute that prohibited the charging or receiving of any rate of interest exceeding ten percent per year. (Section 47-125, R.C.M. 1947.) Interest was defined as "the compensation allowed by law or fixed by the parties for the use, or forbearance, or detention of money." (Section 47-122, R.C.M. 1947.) The Court also noted that since 1959, Montana has had a Retail Installment Sales Act containing finance charge limitations for covered retail installment transactions which allows finance charges in excess of the maximum interest rate permitted under the foregoing general usury statute. (Section 74-601 et seq. R.C.M. 1947.)

The Court held:

We hold that the finance charges permitted by the Retail Installment Sales Act are time price differentials included in the price of goods purchased on credit and payable in installments, and as such are not subject to constitutional or statutory

limitations on interest rates. The time price doctrine exempting bona fide sales from maximum interest rates has been firmly embedded in the common law of England since the eighteenth century. Floyer v. Edwards, (K.B. 1774), 98 Eng.Rep. 995; Beete v. Bidgood, (K.B. 1827), 108 Eng.Rep. 792. It has likewise been a firmly established rule of law throughout most of the United States for over 100 years, the United States Supreme Court having recognized it in 1861 in the leading case of Hogg v. Ruffner, 66 U.S. (1 Black) 115, 17 L.Ed. 38. It is considered the established general rule by some text authorities, 45 Am.Jur.2d, Interest & Usury, a recognized principle of law by others, 91 C.J.S. Usury § 18(b); and an exception to usury prohibitions because there is no loan of money by Restatement of the Law of Contracts, § 526, Illustration 4. Perhaps the best summary statement of the time price doctrine is found in the following statement from 6 Williston, Contracts, § 1685, (Rev.Ed. 1938):

"The statute of Anne applied only to a loan or forbearance of money, and in the construction of this statute it was held that where property was sold, even though the contract provided in terms for the payment of a fixed price payable in the future with interest at a greater rate than that allowed by the statute, the transaction was, nevertheless, not usurious since everything the buyer promised must be deemed consideration for the sale of property, not interest on a loan or forbearance of money. In the United States like statutes have been similarly construed, so that where property is sold the parties may agree that the price, if paid after a certain time, shall be a sum greater by more than legal interest than the price payable at an earlier day; and though the difference between an agreed price for cash and that for credit is in terms stated in the form of interest at greater than the legal rate, the contract is not usurious." Cecil v. Allied Stores Corp., 162 M 491, 498, 513 P2d 704, 707-708 (1973).

"In our view, the Montana Retail Installment Sales Act is a codification of the time price doctrine." Id. at 500, 513 P2d 709.

Therefore, the general usury statutes in Montana do not apply to the Retail Installment Sales Act, which is a codification of the time price doctrine.