

SENATE BILL NO. 281

INTRODUCED BY F. MOORE, S. FITZPATRICK

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CONSUMER PROTECTION LAWS TO EXEMPT A REGULATED LENDER AND CLARIFY DAMAGES AWARDED; AND AMENDING SECTIONS ~~30-14-102 AND~~ SECTION 30-14-133, MCA."

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

~~Section 1.~~ Section 30-14-102, MCA, is amended to read:

~~"30-14-102. Definitions.~~ As used in this part, the following definitions apply:

~~(1) "Consumer" means a person who purchases or leases goods, services, real property, or information primarily for personal, family, or household purposes.~~

~~(2) "Department" means the department of justice created in 2-15-2001.~~

~~(3) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording.~~

~~(4) "Examination" of documentary material includes the inspection, study, or copying of documentary material and the taking of testimony under oath or acknowledgment in respect to any documentary material or copy of documentary material.~~

~~(5) (a) "Gift certificate" means a record, including a gift card or stored value card, that is provided for paid consideration and that indicates a promise by the issuer or seller of the record that goods or services will be provided to the possessor of the record for the value that is shown on the record or contained within the record by means of a microprocessor chip, magnetic stripe, bar code, or other electronic information storage device. The consideration provided for the gift certificate must be made in advance. The value of the gift certificate is reduced by the amount spent with each use. A gift certificate is considered trust property of the possessor if the issuer or seller of the gift certificate declares bankruptcy after issuing or selling the gift certificate. The value represented by the gift certificate belongs to the possessor, to the extent provided by law, and not to the issuer or seller.~~

~~(b) The term does not include:~~

~~(i) prepaid telecommunications and technology cards, including but not limited to prepaid telephone~~



1 ~~calling cards, prepaid technical support cards, and prepaid internet disks that have been distributed to or~~
 2 ~~purchased by a consumer;~~
 3 ~~—— (ii) a coupon provided to a consumer pursuant to any award, loyalty, or promotion program without any~~
 4 ~~money or consideration being given in exchange for the card; or~~
 5 ~~—— (iii) a gift certificate usable with multiple sellers of goods or services.~~
 6 ~~—— (6) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated~~
 7 ~~associations, and any other legal entity.~~
 8 ~~—— (7) "Possessor" means a natural person who has physical control over a gift certificate.~~
 9 ~~—— (8) (a) "Trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any~~
 10 ~~services, any property, tangible or intangible, real, personal, or mixed, or any other article, commodity, or thing~~
 11 ~~of value, wherever located, and includes any trade or commerce directly or indirectly affecting the people of this~~
 12 ~~state.~~
 13 ~~—— (b) The term does not include the making or servicing of loans in excess of \$50,000 by a regulated lender~~
 14 ~~as defined in 31-1-111."~~

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 16 **Section 1.** Section 30-14-133, MCA, is amended to read:

17 **"30-14-133. Damages -- notice to public agencies -- attorney fees -- prior judgment as evidence.**

18 (1) A consumer who suffers any ascertainable loss of money or property, real or personal, as a result of the use
 19 or employment by another person of a method, act, or practice declared unlawful by 30-14-103 may bring an
 20 individual but not a class action under the rules of civil procedure in the district court of the county in which the
 21 seller, lessor, or service provider resides or has its principal place of business or is doing business to recover
 22 ~~actual damages~~ money damages in the amount of any ascertainable loss of money or property or \$500,
 23 whichever is greater. An individual claim may be brought in justice's court. The court may not award punitive
 24 damages but may, in its discretion, award up to three times the ~~actual damages~~ money damages in the amount
 25 of any ascertainable loss of money or property sustained and may provide any other equitable relief that it
 26 considers necessary or proper.

27 (2) Upon commencement of any action brought under subsection (1), the clerk of court shall mail a copy
 28 of the complaint or initial pleading to the department and the appropriate county attorney and, upon entry of any
 29 judgment or decree in the action, shall mail a copy of the judgment or decree to the department and the
 30 appropriate county attorney.

