

Amendments to Senate Bill No. 351
1st Reading Copy

For the Senate Business, Labor, and Economic Affairs Committee

Prepared by Pat Murdo
February 16, 2009 (9:59am)

1. Title, page 1, line 8.
Following: "ORIGINATORS;"
Insert: "PROVIDING FOR REGISTERED AGENT FOR MORTGAGE LENDERS
WITHOUT AN IN-STATE OFFICE;"
2. Title, page 1, line 10.
Following: "32-9-121,"
Insert: "32-9-122,"
3. Page 2, line 10.
Following: "mortgage broker"
Insert: ", mortgage lender,"
4. Page 2, line 22.
Following: "registry"
Strike: "and recognized" through "department"
5. Page 2, line 28.
Following: "mortgage broker"
Insert: "or mortgage lender"
6. Page 3, line 5.
Following: "proprietorship,"
Insert: "or a mortgage lender"
7. Page 3, line 7.
Following: "broker"
Insert: "if the mortgage broker entity or the mortgage lender
engages in the origination of residential mortgage loans"
8. Page 3, line 9.
Following: "broker"
Insert: "or mortgage lender"
9. Page 4, line 12.
Following: "also"

Insert: "originate residential mortgage loans, have a license as a mortgage broker, and be registered with and maintain a unique identifier through the nationwide mortgage licensing system and registry."

10. Page 4, line 19.

Following: "broker"

Insert: "or a mortgage lender"

11. Page 4, line 25.

Following: "registration of"

Insert: "persons that originate residential mortgage loans, including state-licensed"

Following: "mortgage brokers,"

Insert: "state-licensed mortgage lenders, state-licensed"

12. Page 5, line 5.

Following: "or gain;"

Strike: "or"

Insert: "and"

13. Page 5, line 11 through line 15.

Following: "include" on line 11

Strike: "i" on line 11 through "(i)" on line 12

Following: "underwriter" on line 12

Strike: "; or" on line 12 through "originator" on line 15

14. Page 6.

Following: line 10

Insert: "(28) "Residential real estate" means any real property located in the state of Montana upon which is constructed a dwelling or upon which a dwelling is intended to be built within a 2-year period, subject to 24 CFR 3500.5(b)(4). The borrower's intent to construct a dwelling is presumed unless the borrower has submitted a written, signed statement to the contrary."

Renumber: subsequent subsections

15. Page 6, line 12.

Following: "mortgage broker"

Insert: "or the mortgage lender"

16. Page 7.

Following: line 7

Insert: "(a) agencies of the United States government and agencies of this state and its political subdivisions;
(b) a person licensed or chartered under the laws of the United States or of any state as a bank, savings and loan association, credit union, or industrial loan company, which may be referenced under this section as any of the following:
(i) a depository institution;
(ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency;
or
(iii) an institution regulated by the farm credit administration;"

Renumber: subsequent subsections

17. Page 7.

Following: line 11

Insert: "(d) a person employed by or that works as an independent contractor for a licensee under this part to perform only administrative or clerical tasks as a loan processor or underwriter on behalf of the licensee and who does not solicit borrowers or negotiate the terms of loans on behalf of the licensee;"

Renumber: subsequent subsections

18. Page 7, line 13.

Following: "member"

Insert: "of that individual"

19. Page 7, line 14 through line 15.

Strike: subsection (c) in its entirety

Insert: "(f) a person who offers, negotiates, or provides financing in conjunction with the sale of real property owned by that person and that is secured by a contract for deed, mortgage, deed of trust, or other equivalent security interest on the real property sold;
(g) a loan that is made by a person to an employee of that person if the proceeds of the loan are used to assist the employee in meeting the employee's housing needs;
(h) a person engaged solely in nonresidential or commercial real estate lending;
(i) a person qualified as a pension plan under 26 U.S.C. 401 if the plan makes residential mortgages only to the plan's participants;
(j) the federal national mortgage association, the federal home loan mortgage corporation, and the government national mortgage association;"

(k) a 501(c)(3) corporation, which is not otherwise engaged in or holding itself out to the public as being engaged in the mortgage loan business, that makes mortgage loans to promote home ownership or improvements for bona fide low-income individuals;

(l) a person that performs only real estate brokerage activities and is licensed or registered pursuant to 37-51-301 unless the person is compensated by a mortgage lender, a mortgage broker, or a mortgage loan originator or an agent of the mortgage lender, mortgage broker, or mortgage loan originator;"

Renumber: subsequent subsections

20. Page 7, line 19.

Strike: "."

Insert: "; or"

21. Page 7.

Following: line 19

Insert: "(n) a licensed certified public accountant or a licensed public accountant who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to providing public accounting services to the client unless the accountant is compensated by a mortgage lender, a mortgage broker, or a mortgage loan originator or an agent of the mortgage lender, mortgage broker, or mortgage loan originator."

22. Page 7, line 27.

Following: "engage in"

Strike: "the"

Insert: "residential mortgage loan originator"

23. Page 7, line 28.

Following: "licensed"

Insert: "as a mortgage broker or a mortgage loan originator"

24. Page 7, line 29.

Following: "licensed as"

Insert: "a mortgage broker or a"

25. Page 8.

Following: line 10

Insert: "NEW SECTION. Section 7. Dual licensure. A mortgage lender that also originates residential mortgage loans must also be licensed as a mortgage broker upon meeting the qualifications for a mortgage broker license. A person dually licensed is subject to a single application fee as provided in 32-9-117."

Renumber: subsequent sections

26. Page 11.

Following: line 4

Insert: "(3) The department shall issue a mortgage broker license to an applicant that has met all the requirements of this section, has paid the fee required under 32-9-117, and is not determined ineligible under [section 17]."

27. Page 12.

Following: line 5

Insert: "(7) The department shall investigate each applicant. The investigation must include a criminal records check based on the fingerprints of the applicant and a civil records check. The department shall require each applicant to file a set of the applicant's fingerprints, taken by a law enforcement agency, and any other information necessary to complete a statewide and nationwide criminal check with the criminal investigation bureau of the department of justice for state processing and with the federal bureau of investigation for federal processing. All costs associated with the criminal history check are the responsibility of the applicant. Criminal history records provided to the department under this section are confidential and the department may use the records only to determine if the applicant is eligible for licensure. If an investigation outside this state is necessary, the department may require the applicant to advance sufficient funds to pay the actual expenses of the investigation."

Renumber: subsequent subsection

28. Page 12, line 6 through line 8.

Strike: subsection (7) in its entirety

Insert: "(8) The department shall issue a mortgage lender license to an applicant that has met all the requirements of this section, has paid the fee required under 32-9-117, and is not determined ineligible under [section 17]."

29. Page 13.

Following: line 6

Insert: "(3) The department shall issue a mortgage loan originator license to an applicant that has met all the requirements of this section, has paid the fee required under 32-9-117, and is not determined ineligible under [section 17]."

Renumber: subsequent subsections

30. Page 13, line 7.

Following: "broker"

Insert: "or an employing mortgage lender"

31. Page 13, line 9.

Following: "broker"

Insert: "or employing mortgage lender"

Following: "at the"

Strike: "mortgage broker's"

Insert: "employing licensee's"

32. Page 13, line 12.

Following: "broker"

Insert: "or the mortgage lender"

33. Page 13, line 17.

Following: "broker"

Insert: "or mortgage lender"

34. Page 13, line 25.

Following: "\$500"

Insert: "and an additional application fee of \$250 for any branch location"

35. Page 14, line 17.

Following: "months."

Insert: "An application for renewal also must demonstrate that the licensee continues to meet the standards for licensure under this part."

36. Page 14, line 20.

Following: "broker"

Insert: ", mortgage lender,"

37. Page 14, line 25.

Following: "standards"

Insert: "-- renewals"

38. Page 14, line 28.

Following: "furnish"

Insert: "information concerning the applicant"

39. Page 14, line 29.

Following: "registry"

Insert: "regarding"

40. Page 14, line 30 through page 15, line 2.

Strike: subsection (a) in its entirety

Insert: "(a) fingerprints for submission to the federal bureau of investigation and any governmental agency or entity authorized to receive information to allow a supplemental criminal history background check at the state, federal, and international levels;

(b) legal name, birth date, and social security number; and"

Renumber: subsequent subsection

41. Page 17, line 26.

Strike: "For purposes" through "and to"

Insert: "To"

Following: "for investigation"

Insert: "of any applicant for licensure"

42. Page 17, line 28.

Following: "information"

Insert: "and distributing information to and from any source directed by the department, including the United States department of justice and the federal bureau of investigation"

43. Page 19, line 1.

Insert: "Section 20. Section 32-9-122, MCA, is amended to read:

"32-9-122. Requirement for designated Designated manager and branch license requirements. (1) A mortgage broker or mortgage lender entity shall apply for a license for a main office and for every branch office.

(1)(2) A mortgage broker that is not a sole proprietorship entity shall designate to the department an individual within its organization who is located in this state and who is licensed by this state as a mortgage broker to serve as the designated manager of the organization main office and a separate designated manager to serve at each branch location.

(3) A mortgage lender entity shall designate to the department an individual who is licensed as a mortgage broker as the designated manager of the main office and each branch location.

(4) A designated manager must have 3 years of experience as either a mortgage broker, a mortgage loan originator, or a registered loan originator.

(5) A designated manager is responsible for the operation of the business at the location under the designated manager's full charge, supervision, and control.

(6) A mortgage broker or mortgage lender entity is responsible for the conduct of a designated manager or mortgage loan originator while the designated manager or mortgage loan

originator is employed by the mortgage broker or mortgage lender entity, including for violations of federal laws that are applicable to the origination of residential mortgage loans, violations of this part, and violations of any administrative rule adopted pursuant to this part.

(7) A designated manager is responsible for conduct that violates federal laws that are applicable to the origination of residential mortgage loans, violations of this part, and violations of any administrative rule adopted pursuant to this part. The designated manager's responsibility includes conduct by the designated manager, each mortgage broker, and each mortgage loan originator employed by the entity while the designated manager is employed at the location that the designated manager manages.

~~(2)~~(8) If the designated manager ceases to act in that capacity, within 15 days the mortgage broker or mortgage lender shall designate another individual licensed as a mortgage broker as designated manager and shall submit information in writing to the department establishing that the subsequent designated manager is in compliance with the provisions of this part.

~~(3)~~(9) If the employment of a designated manager is terminated, the mortgage broker or mortgage lender shall return the designated manager's license to the department within 5 business days of the termination."

{ Internal References to 32-9-122:

32-9-117a }"

Insert: "NEW SECTION. Section 21. Registered agent for mortgage lender licensee without physical office in state -- venue. (1) An applicant for a mortgage lender license under [section 12] who does not maintain a physical office within the state shall file, in a form prescribed by the department, an irrevocable consent appointing the department as the registered agent of the applicant for the purpose of receiving service of any lawful process in a noncriminal suit, action, or proceeding against the applicant or its successors, executor, or administrator that is based on an alleged violation of this part or any administrative rule adopted pursuant to this part. Service on the department has the same force and validity as if served personally on the applicant or the person filing the consent.

(2) Service must be made by leaving a copy of the process in the office of the department and is effective only if:

(a) notice of the service and a copy of the process are sent by certified mail to the defendant or respondent at the last-known address on file with the department by the plaintiff, which may be the department, in an action, suit, or proceeding; and

(b) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within a time the court allows.

(3) In a judicial action, suit, or proceeding arising under this part or any administrative rule adopted pursuant to this

part between the department and a licensee who does not maintain a physical office in this state, venue must be exclusively in Lewis and Clark County.

(4) A notice, hearing schedule, or order must be mailed to the person or licensee by certified mail at the last-known address for which the license was issued or, in the case of an unlicensed person, at the last-known address of the person."

Renumber: subsequent sections

44. Page 19, line 10.

Following: "subsection (3)."

Insert: "A mortgage lender may not use an irrevocable letter of credit to comply with this section if the mortgage lender or any employees or agents of the mortgage lender engage in any residential mortgage loan origination activities."

45. Page 19, line 18.

Following: "for all"

Insert: "persons originating residential loans and for all"

46. Page 21, line 2.

Following: "broker"

Insert: ", mortgage lender,"

Following: "originator"

Strike: "conduct"

Insert: "conducts"

47. Page 21, line 12.

Following: "providing"

Insert: "residential"

Following: "mortgage"

Strike: "broker"

Following: "mortgage broker"

Insert: "or mortgage loan originator"

48. Page 23, line 2.

Following: "mortgage brokers,"

Insert: "mortgage lenders,"

49. Page 23, line 3 through line 5.

Following: "mortgage broker," on line 3

Insert: "mortgage lender, and"

Following: "originator" on line 3

Strike: ", and" on line 3 through "originator" on line 4

Following: "broker's," on line 4

Insert: "mortgage lender's, or"

Following: "originator's" on line 4
Strike: ", or registered" on line 4 through "originator's" on line 5

50. Page 23, line 9.
Following: "brokers"
Insert: ", mortgage lenders,"

51. Page 23, line 14.
Following: "broker"
Insert: "and mortgage lender"

52. Page 23, line 19.
Following: "brokers"
Insert: ", mortgage lenders,"

53. Page 24, line 6.
Following: "applications;"
Insert: "and"

54. Page 24, line 7 through line 8.
Strike: subsections (e) and (f) in their entirety
ReNUMBER: subsequent subsection

55. Page 24, line 12.
Following: "broker"
Insert: "or mortgage lender"

56. Page 25.
Following: line 5
Insert: "(b) participate in the nationwide mortgage licensing system and registry, including the payment of any associated costs;"
ReNUMBER: subsequent subsections

57. Page 25, line 6.
Following: "broker"
Insert: ", mortgage lender,"
Following: "register with"
Insert: ", pay any required fees to,"

58. Page 25, line 23.
Following: "mortgage broker"
Insert: "or mortgage lender"
Following: "business"
Insert: "or to be employed as a mortgage loan originator"

59. Page 27, line 13 through line 14.

Strike: "11," on line 13 through "27" on line 14

Insert: "8, 12, 15 through 17, 20, 21, 25 through 27, and 30"

60. Page 27, line 15.

Strike: "11," through "27"

Insert: "8, 12, 15 through 17, 20, 21, 25 through 27, and 30"

61. Page 27, line 17.

Following: "invalid,"

Insert: "including a determination that any part of [this act] is
out of compliance with the Secure and Fair Enforcement for
Mortgage Licensing Act of 2008,"

62. Page 27, line 23.

Strike: "14 and 15"

Insert: "15 and 16"

- END -