	SENATE BILL NO. 122 INTRODUCED BY L. JENT BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2009 FOR MORTGAGE LENDERS, MORTGAGE BROKERS, AND MORTGAGE LOAN ORIGINATORS; PROVIDING RULEMAKING AUTHORITY TO THE COMMISSIONER OF BANKING AND FINANCIAL INSTITUTIONS AND THE DEPARTMENT OF ADMINISTRATION; PROVIDING FOR LICENSING AND CONTINUING EDUCATION; AUTHORIZING THE COMMISSIONER TO ENTER INTO VARIOUS AGREEMENTS WITH THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY; PROVIDING FOR CONFIDENTIALITY OF CERTAIN INFORMATION AND MATERIALS; PROVIDING PENALTIES; AMENDING SECTIONS 31-1-202, 31-1-221, 32-5-102, 32-5-301, AND 32-5-306, MCA; REPEALING SECTIONS 32-9-101, 32-9-102, 32-9-103, 32-9-104, 32-9-108, 32-9-109, 32-9-110, 32-9-115, 32-9-116, 32-9-117, 32-9-118, 32-9-119, 32-9-121, 32-9-122, 32-9-123, 32-9-124, 32-9-125, 32-9-126, 32-9-130, 32-9-132, 32-9-133, 32-9-141, 32-9-142, 32-10-101, 32-10-102, 32-10-103, 32-10-201, 32-10-202, 32-10-203, 32-10-204, 32-10-207, 32-10-208, 32-10-209, 32-10-301, 32-10-302, 32-10-303, 32-10-309, 32-10-310, 32-10-401, 32-10-402, 32-10-403, 32-10-404, 32-10-405, 32-10-406, 32-10-501, 32-10-502, 32-10-503, 32-10-504, 32-10-505, 32-10-506, 32-10-507, 32-10-512, 32-10-513, 32-10-514, AND 32-10-515, MCA; AND PROVIDING AN EFFECTIVE DATE." BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	SENATE BILL NO. 351 INTRODUCED BY J. ESSMANN A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING MORTGAGE LENDING LAWS; EXPANDING THE MORTGAGE BROKER AND LOAN ORIGINATOR ACT TO INCLUDE MORTGAGE LENDERS; IMPLEMENTING PROVISIONS OF THE FEDERAL SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008 WITH RESPECT TO MORTGAGE BROKERS AND MORTGAGE LOAN ORIGINATORS; REPEALING THE MONTANA RESIDENTIAL MORTGAGE LENDER LICENSING ACT; AMENDING SECTIONS 32-9-101, 32-9-102, 32-9-103, 32-9-104, 32-9-108, 32-9-109, 32-9-110, 32-9-115, 32-9-116, 32-9-117, 32-9-118, 32-9-121, 32-9-123, 32-9-124, 32-9-126, 32-9-130, AND 32-9-133, MCA; REPEALING SECTIONS 32-10-101, 32-10-102, 32-10-103, 32-10-201, 32-10-202, 32-10-203, 32-10-204, 32-10-207, 32-10-208, 32-10-209, 32-10-301, 32-10-302, 32-10-303, 32-10-309, 32-10-310, 32-10-401, 32-10-402, 32-10-403, 32-10-404, 32-10-405, 32-10-406, 32-10-501, 32-10-502, 32-10-503, 32-10-504, 32-10-505, 32-10-506, 32-10-507, 32-10-512, 32-10-513, 32-10-514, AND 32-10-515, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE." BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	

BUSINESS & LABOR
EXHIBIT NO. 11
DATE 2-16-09
BILL NO. SB 122

	NEW SECTION. **Section 1. Short Title.** [Sections 1 through 46] may be cited as the "Montana Secure and Fair Enforcement for Mortgage Licensing Act of 2009". NEW SECTION. **Section 2. Purpose.** (1) The legislature finds that the activities in the area of mortgage loan origination and the offering of financing for residential real property have a direct, valuable, and immediate impact upon Montana's borrowers, economy, neighborhoods, communities, and housing and real estate industries. (2) The legislature finds that accessibility to mortgage credit is vital to the state's citizens. (3) The legislature finds that it is essential for the protection of the citizens of Montana and the stability of Montana's economy that reasonable standards for licensing and regulation of the business practices of mortgage lenders, mortgage brokers, and mortgage loan originators be imposed and that the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, be implemented. (4) The legislature further finds that the obligations of mortgage lenders, mortgage brokers, and mortgage loan originators to borrowers in connection with originating or making residential mortgage loans warrant the regulation of the mortgage lending process. (5) The purpose of [sections 1 through 46] is to protect borrowers seeking mortgage loans and to ensure that the mortgage lending industry operates without unfair, deceptive, and fraudulent practices on the part of mortgage lenders, mortgage brokers, and mortgage loan originators. (6) It is the intent of the legislature to establish an effective system of supervision and enforcement of the mortgage lending industry, including the authority of the commissioner to: (a) issue licenses to conduct business under [sections 1 through 46]; (b) adopt rules or procedures necessary for the licensing and regulation of persons covered under [sections 1 through 46]; (c) deny, suspend, condition, or revoke licenses issued under [sections 1 through 46]; and (d) examine, investigate, and conduct enforcement actions necessary to carry out the purposes of [sections 1 through 46], including authority to subpoena witnesses and documents, enter orders, including cease and desist orders, order restitution, levy civil penalties, and order the removal and ban of a person from office or employment. (7) The commissioner has broad administrative authority to administer, interpret, and enforce [sections 1 through 46] and to adopt rules to implement [sections 1 through 46].	**Section 1.** Section 32-9-101, MCA, is amended to read: **"32-9-101. Short title and purpose.** (1) This part may be cited as the "Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act". (2) The legislature recognizes that buying or financing a home is one of the largest, most complicated, and vitally important decisions facing consumers in Montana. Therefore, the legislature finds it desirable to license certain persons in the residential mortgage industry that are outside of the traditional banking industry and that have a direct involvement in consumers' financial welfare, including ~~residential~~ mortgage brokers, mortgage lenders, and mortgage loan originators, to promote honesty, education, and professionalism, to ensure the availability and diversity of residential mortgage funding, and to protect Montana consumers and the stability of Montana's economy. (3) The legislature finds that it is necessary to implement the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 and, together with the residential mortgage industry, recognizes the importance of statewide participation in the nationwide mortgage licensing system and registry."	
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MLLL	NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 46], the following definitions apply: (1) "Advertising" means a commercial message in any medium that promotes, either directly or indirectly, a residential mortgage lending transaction. (2) "Affiliate" means a person, directly or indirectly, owned or controlled by a corporation, foreign corporation, alien business organization, or any other form of business organization, regardless of whether the affiliate is owned or controlled by the ownership interest, individually or in any combination, through one or more individuals or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint-stock companies, or other entities or devices.	**Section 3.** Section 32-9-103, MCA, is amended to read: **"32-9-103. Definitions.** As used in this part, the following definitions apply: (1) "Administrative or clerical tasks" mean the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms. (2) "Approved education course" means any course approved by the nationwide mortgage licensing system and registry and recognized by the department. (3) "Approved test provider" means any test provider approved by the department. ~~(1)~~(4) "Bona fide third party" means a person or entity that provides services relative to residential mortgage loan transactions. The term includes but is not limited	

	(3) "Borrower" means a person seeking a residential mortgage loan regardless of whether the person actually obtains a loan.	to real estate appraisers and credit reporting agencies. ~~(2)~~(5) "Borrower" means an individual who is solicited to purchase or who purchases the services of a mortgage broker for other than commercial mortgage lending.	
New	(4) "Branch office" means a location, other than a licensee's principal place of business: (a) the address of which appears on business cards, stationery, or advertising used by the licensee; (b) at which the licensee's name or advertising suggests that mortgage loans are made; (c) that, due to actions of an employee or independent contractor employed by the licensee, is held out to the public as a branch office of the licensee where mortgage loans are made; or (d) that is controlled, directly or indirectly, by a licensed entity.	~~(3)~~(6) "Branch office" means a location other than a licensee's principal place of business.	
New	(5) "Business day" means a day other than a Saturday or a day designated as a holiday in 1-1-216.	~~(4)~~(7) "Department" means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.	Model act
	(6) "Commissioner" means the commissioner of banking and financial institutions.	(8) "Depository institution" has the meaning provided in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c), and includes any credit union.	
	(7) "Control" means the power, directly or indirectly, to direct the management or policies of an entity, whether through ownership of securities, by contract, or otherwise. A person is presumed to control an entity if that person: (a) is a director, general partner, or executive officer; (b) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power to sell or direct the sale of 10% or more of a class of voting securities;	~~(5)~~(9) "Designated manager" means ~~a person~~ an individual located in this state and employed by a mortgage broker entity, other than a sole proprietorship, as the ~~person~~ individual responsible for operating the business at the location where the ~~person~~ individual is employed. A designated manager must be licensed as a mortgage broker.	Model act
MBLO	(c) in the case of a limited liability company, is a managing member; or	~~(6)~~(10) "Entity" means a business organization, other than a sole proprietorship or an individual ~~person~~, that provides mortgage broker services.	Model act
Model act	(d) in the case of a partnership, has the right to receive upon dissolution or has contributed 10% or more of the capital.	(11) "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration, or the federal deposit insurance corporation.	MLLL
	(8) "Department" means the department of administration, provided for in 2-15-1001, acting through its division of banking and financial institutions.	(12) "Immediate family member" means a spouse, child, sibling, grandparent, grandchild, stepchild, stepbrother, or stepsister and includes parent, grandparent, child, grandchild, and sibling relationships based upon adoptive relationships.	Model act
NEW	(9) "Depository institution" has the meaning provided in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c), and includes any credit union.	(13) "Independent contractor" means a person certified as an independent contractor pursuant to 39-71-417.	
Model act	(10) "Designated manager" means a mortgage loan originator with at least 3 years of experience as a mortgage loan originator who is designated by an entity as the individual responsible for the operation of a particular location that is under the designated manager's full management, supervision, and control.	(14) "Individual" means a natural person.	
MLLL	(11) "Dwelling" means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, mobile home, or trailer used as a residence.	~~(7) "Lender" means an entity that funds or services a residential mortgage loan.~~	
MLLL	(12) "Employee" means a person engaged in the service of a licensee for a salary or wages and subject to the licensee's direction and control.	(15) "Licensee" means a person authorized pursuant to this part to engage in activities regulated by this part. The term does not include an individual who is a registered mortgage loan originator.	Mostly model act
	(13) "Entity" means a business organization, including a sole proprietorship.	~~(8) "Loan originator" means a licensed individual employed by a mortgage broker to assist borrowers by originating a residential loan.~~	
Model act	(14) "Escrow funds" means money entrusted to a mortgage lender or mortgage broker by a borrower for payment of taxes, insurance, or other payments to be made in connection with the servicing of a loan.	(16) "Loan processor or underwriter" means an individual who performs administrative or clerical tasks, subsequent to the receipt of a residential mortgage loan application, at the direction of and subject to the supervision of a mortgage broker, a mortgage lender, a mortgage loan originator, or a registered mortgage loan originator.	
Model act	(15) "Federal banking agency" means the board of governors of the federal reserve system, comptroller of the currency, director of the office of thrift supervision, national credit union administration, or federal deposit insurance corporation.		
MLLL	(16) "Immediate family member" means a spouse, child, sibling, grandparent, grandchild, stepchild, stepbrother, or stepsister and includes parent, grandparent, child, grandchild, and		

Model	sibling relationships based upon adoptive relationships.		
MLLL	(17) "Independent contractor" means a person certified as an independent contractor pursuant to 39-71-417.		
MLLL	(18) "Individual" means a natural person.		
	(19) "Licensee" means a person authorized pursuant to [sections 1 through 46] to engage in the activities regulated by [sections 1 through 46].		
Model act	(20) "Loan commitment" means a statement transmitted in writing or electronically transmitted by a mortgage lender setting forth the terms and conditions upon which the mortgage lender is willing to make a particular mortgage loan to a particular borrower.		
	(21) (a) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a licensee or a person exempt from licensure under [section 5].		
	(b) For purposes of this subsection (21), clerical or support duties may include, subsequent to the receipt of a loan application:		
	(i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and		
	(ii) communicating with a borrower to obtain information necessary for processing or underwriting a residential mortgage loan, to the extent that the communication does not		
New words	include offering or negotiating loan rates or terms, or counseling borrowers about residential mortgage loan rates or terms.		
	(22) (a) "Mortgage broker" means a person that obtains, attempts to obtain, or assists in obtaining a mortgage loan for a borrower from a mortgage lender in return for consideration or in anticipation of consideration.		
	(b) For purposes of this subsection (22), attempting to or assisting in obtaining a mortgage loan includes referring a borrower to a mortgage lender or mortgage broker, soliciting or		
New words	offering to solicit a mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a mortgage loan with a mortgage lender on behalf of a borrower.		
	(23) "Mortgage call report" means a report on the condition and activity of an entity as required by the commissioner or the nationwide mortgage licensing system and registry.		
Model act	(24) "Mortgage lender" means a person that closes a mortgage loan, advances funds, offers to advance funds, or commits to advancing funds for a mortgage loan applicant.		
	(25) (a) "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain:		
	(i) takes a residential mortgage loan application; or		
	(ii) offers or negotiates terms of a residential mortgage loan.		
	(b) The term does not include a person:		
	(i) engaged solely as a loan processor or underwriter, except as provided in [section 7];		
	(ii) who 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, a mortgage loan originator, or any agent of the mortgage lender, mortgage broker, or mortgage loan originator; or		
	(iii) solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101(53D).		
		~~(9)~~(17) "Mortgage" means a consensual interest in real property located in Montana, including improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real property.	
		~~(10) "Mortgage banker" means a person or entity that makes, services, or buys and sells mortgage loans and that may be required to submit audited financial statements to the United States department of housing and urban development, the United States department of veterans affairs, the federal national mortgage association, the federal home loan mortgage corporation, or the government national mortgage association.~~	
		~~(11)~~(18) "Mortgage broker" means a person or entity that provides services for a fee as an intermediary between a borrower and a mortgage lender in obtaining financing for the borrower ~~that is~~ to be secured by a residential dwelling containing one to four units, ~~for between one and four families~~ that is licensed with the state, and that is registered with and maintains a unique identifier through the nationwide mortgage licensing system and registry.	
		(19) (a) "Mortgage lender" means a person, licensed by the state, that closes a residential mortgage loan, advances funds, offers to advance funds, or commits to advancing funds for a residential mortgage loan applicant. A mortgage lender may also be licensed as a mortgage broker upon meeting the qualifications for that license. (b) The term does not include mortgage lenders that are: (i) depository institutions; (ii) subsidiaries that are owned and controlled by a depository institution and regulated by a federal banking agency; or (iii) institutions regulated by the federal farm credit administration.	
		(20) (a) "Mortgage loan originator" means an individual who is employed by a mortgage broker to assist borrowers by originating a residential loan, who is licensed by the state, and who is registered with and maintains a unique identifier through the nationwide mortgage licensing system and registry. (b) The term does not include an individual engaged solely as a loan processor or underwriter.	
		(21) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the	

	(c) For purposes of this subsection (25), real estate brokerage activity means an activity that involves offering or providing real estate brokerage services to the public, including: (i) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property; (ii) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; (iii) negotiating, on behalf of a party, a portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, except in connection with providing financing for the transaction; (iv) engaging in an activity requiring registration or licensing as a real estate agent or real estate broker pursuant to 37-51-301; or (v) offering to engage in an activity, or act in any capacity described in subsections (25)(c)(i) through (25)(c)(iv).	registration of mortgage brokers, mortgage loan originators, and registered mortgage loan originators. (22) "Nontraditional mortgage product" means any mortgage product other than a 30-year, fixed-rate mortgage. (b) The term does not include: (i) the performance of purely administrative or clerical tasks as a loan processor or underwriter; or (ii) the performance of real estate brokerage activities if done by a person licensed as a real estate broker, unless the person is compensated by a mortgage lender, a mortgage broker, or mortgage loan originator or by an agent of a mortgage lender, mortgage broker, or mortgage loan originator.	
Model act	(26) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of mortgage lenders, mortgage brokers, and mortgage loan originators.	~~(12)~~(23) (a) "Originate" means: ~~(a) to negotiate or arrange or to offer to negotiate or arrange a mortgage loan between a borrower and a person or entity that makes or funds mortgage loans;~~ ~~(b) to issue a commitment for a mortgage loan to a borrower; or~~ ~~(c) to place, assist in placing, or find a mortgage loan for a borrower.~~ (i) taking a residential mortgage loan application; (ii) offering or negotiating terms of a residential mortgage loan for compensation or gain; or (iii) assisting a consumer in obtaining or applying to obtain a residential mortgage loan by, including but not limited to: (A) advising on loan terms including rates, fees, other costs; (B) preparing loan packages; and (C) collecting information on behalf of the consumer with regard to a residential mortgage loan.	
Model act	(27) "Nontraditional mortgage product" means any mortgage product other than a 30-year, fixed interest rate mortgage.		
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Model act	(28) "Person" means an individual, corporation, company, limited liability company, partnership, limited liability partnership, trust, or association.	(24) "Person" means an individual, corporation, company, limited liability company, partnership, limited liability partnership, trust, or association.	
Model act	(29) "Registered mortgage loan originator" means a person who: (a) meets the definition of mortgage loan originator and is an employee of: (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; and (b) is registered with and maintains a unique identifier through the nationwide mortgage licensing system and registry.	(25) "Real estate brokerage activities" means activities that involve offering or providing real estate brokerage services to the public, including: (a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real property; (b) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property; (c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property other than in connection with providing financing with respect to the transaction; or (d) engaging in any activity for which a person is required to be licensed as a real estate salesperson or real estate broker under Montana law.	
Model act	(30) "Residential mortgage loan" means a loan primarily for personal, family, or household use secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real estate upon which a dwelling is constructed or intended to be constructed.		
MBLO	(31) "Residential real estate" means any real property located in Montana upon which there is an existing dwelling or upon which a dwelling is intended to be constructed.	(26) "Registered mortgage loan originator" means an individual who: (a) assists borrowers by originating residential mortgage loans and therefore meets the definition of mortgage loan originator except that the individual is not employed by a mortgage broker or mortgage lender but is employed by one of the following: (i) a depository institution; (ii) a subsidiary that is owned and controlled by a depository institution and	
MLLL	(32) "Third-party service provider" means a person that provides services relative to residential mortgage loan transactions and includes but is not limited to real estate appraisers		

	and credit reporting agencies.	regulated by a federal banking agency; or (iii) an institution regulated by the federal farm credit administration; and	
MLLL	(33) "Trust funds" means money entrusted to a mortgage lender or mortgage broker during the origination of a mortgage loan for the payment of third-party services. The term includes appraisal fees, credit report fees, and other fees for services required for the loan origination.	(b) is not required by this part to be licensed but is required to be registered with and maintain a unique identifier through the nationwide mortgage licensing system and registry.	
Model act	(34) "Ultimate equity owner" means an individual who, directly or indirectly, owns or controls an ownership interest in a corporation, a foreign corporation, an alien business organization, or any other form of business organization, regardless of whether the individual owns or controls an ownership interest, individually or in any combination, through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint-stock companies, or other entities or devices.	(27) "Residential mortgage loan" means a loan primarily for personal, family, or household use secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in regulation Z of the Truth in Lending Act, 12 CFR 226.2, or on residential real estate located in Montana. ~~(13)~~(28) "Trust account" means a depository account with a financial institution that provides deposit insurance that is separate and distinct from any personal, business, or other account of the mortgage broker and that is maintained solely for the holding and payment of bona fide third-party fees.	
	(35) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.	(29) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry."	
Model act	NEW SECTION. **Section 4. License and registration required.** (1) Unless specifically exempt under [section 5], an individual may not act as a mortgage loan originator with respect to any residential real estate without first obtaining and annually renewing a license under [sections 1 through 46].	**Section 2.** Section 32-9-102, MCA, is amended to read: **"32-9-102. License requirement -- registration.** (1) Unless exempt under 32-9-104, a ~~A~~ person ~~or entity~~ may not act as a ~~residential~~ mortgage broker, mortgage lender, or mortgage loan originator unless licensed under the provisions of this part.	
New	(2) Unless specifically exempted under [section 5], an entity may not engage in the business of mortgage lending or the business of a mortgage broker with respect to any residential real estate located in Montana without first obtaining and annually renewing a license under [sections 1 through 46].	~~(2) A mortgage banker who provides services for a fee as an intermediary between a borrower and a lender in obtaining financing for a borrower that is to be secured by a residential dwelling for between one and four families is acting as a mortgage broker and must be licensed as a mortgage broker.~~	
Model act	(3) Each applicant for a license shall register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.	(2) Any person licensed as a mortgage broker or mortgage loan originator under this part or who is employed as a registered mortgage loan originator is required to register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry."	
	(4) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the implementation date of subsection (3) is:		
New	(a) April 1, 2010, for all new applicants applying after [the effective date of this act]; and		
	(b) June 30, 2010, for all licensees with current licenses as of [the effective date of this act].		
Model	(5) A nonfederally insured credit union that employs a mortgage loan originator shall register the employee with the nationwide mortgage licensing system and registry by furnishing the information concerning the employee's identity as set forth in section 1507(a)(2) of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289.		
Model act	NEW SECTION. **Section 5. Exemptions.** The provisions of [sections 1 through 46] do not apply to:	**Section 4.** Section 32-9-104, MCA, is amended to read: **"32-9-104. Exemptions -- proof of exemption.** (1) The provisions of this part do not apply to:	
	(1) a registered mortgage loan originator when acting for an entity described in [section 3(29)(a)(i), (29)(a)(ii), or (29)(a)(iii)];	~~(1) a person or entity that makes or collects loans, to the extent that those activities are subject to licensure or registration by this state under other provisions of Montana law unless the person or entity is also acting as a mortgage broker or loan originator;~~	
	(2) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member;	~~(2) (a) a bank or trust company chartered under Title 32, chapter 1, a bank or trust company chartered under the National Bank Acts in Title 12 of the United States Code,~~	
	(3) an individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence; or		

New words	(4) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client unless the attorney is compensated by a mortgage lender, mortgage broker, or other mortgage loan originator or any agent of the mortgage lender, mortgage broker, or other mortgage loan originator. NEW SECTION. **Section 6. Proof of exemption.** In a proceeding under [sections 1 through 46], the burden of proving an exemption is on the person claiming it. The commissioner shall adopt rules on the procedure for requesting an exemption.	~~a building and loan association chartered under Title 32, chapter 2, a savings and loan association chartered under the Home Owners' Loan Act in Title 12 of the United States Code, a credit union chartered under Title 32, chapter 3, or a credit union chartered under the Federal Credit Union Act in Title 12 of the United States Code;~~ ~~(b) any employee of an entity listed in subsection (2)(a); or~~ ~~(c) any subsidiary of an entity listed in subsection (2)(a) and any employee of the subsidiary if the subsidiary is subject to the examination and supervision of:~~ ~~(i) the department;~~ ~~(ii) the federal deposit insurance corporation;~~ ~~(iii) the federal reserve system;~~ ~~(iv) the national credit union administration; or~~ ~~(v) the department of the treasury through its office of the comptroller of the currency or office of thrift supervision;~~ ~~(3) a person or entity engaged solely in commercial mortgage lending; or~~ ~~(4) a political subdivision or governmental entity of the United States or any state of the United States.~~ (a) a registered mortgage loan originator and the employer of a registered mortgage loan originator when acting for or as an entity described in 32-9-103(26)(a)(i) through (26)(a)(iii), except that the requirement of registration with and maintenance of a unique identifier through the nationwide mortgage licensing system and registry applies; (b) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member; (c) an individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling owned by that individual; or (d) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client unless the attorney is compensated by a mortgage lender, mortgage broker, or mortgage loan originator or any agent of the mortgage lender, mortgage broker, or mortgage loan originator. (2) The burden of proving an exemption under this section is on the person claiming the exemption. The department shall create a form for requesting an exemption."	
Model act	NEW SECTION. **Section 7. Loan processors and underwriters.** (1) A person engaging solely in loan processor or underwriter activities may not represent to the public, through advertising or other means of communication, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the person can or will perform any of the activities of a mortgage loan originator. (2) A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless licensed under [sections 1 through 46]. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator shall maintain a valid unique identifier issued by the nationwide mortgage licensing system and Registry.	NEW SECTION. **Section 5. Loan processors and underwriters.** (1) A person engaging solely in loan processor or underwriter activities may not represent to the public, through advertising or other means of communication, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the person can or will perform any of the activities pertaining to originating a residential mortgage loan. (2) A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless licensed under this part. Each independent contractor loan processor or underwriter licensed as mortgage loan originator shall maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.	

Model act MBLO	NEW SECTION. **Section 8. Authority to require license.** (1) The commissioner is authorized to participate in the nationwide mortgage licensing system and registry and shall require mortgage lenders, mortgage brokers, and mortgage loan originators to be licensed through the nationwide mortgage licensing system and registry by the dates set forth in [section 4]. (2) The commissioner may adopt rules outlining requirements for licensure, including but not limited to: (a) background checks: (i) for criminal history through fingerprints or other databases; (ii) of civil or administrative records; (iii) of credit history; and (iv) of other information considered necessary by the commissioner or the nationwide mortgage licensing system and registry; (b) payment of nonrefundable fees, commensurate with the cost of administering the provisions of [sections 1 through 46], to apply for, maintain, and renew licenses through the nationwide mortgage licensing system and registry; (c) renewal or reporting dates; (d) amending or surrendering a license; and (e) other activity the commissioner considers necessary for participation in the nationwide mortgage licensing system and registry. (3) The commissioner shall adopt rules for the procedure that an aggrieved consumer or a member of the public may use to file a complaint against a licensed or unlicensed person when alleging a violation of a provision of [sections 1 through 46]. (4) Fees collected under this section must be deposited into the department's account in the state special revenue fund to be used for administering [sections 1 through 46].	**Section 25.** Section 32-9-130, MCA, is amended to read: **"32-9-130. Department authority -- rulemaking.** (1) The department shall adopt rules necessary to carry out the intent and purposes of this part. The rules adopted are binding on all licensees and enforceable through the power of suspension or revocation of licenses. (2) The rules must address: (a) revocation or suspension of licenses for cause; (b) investigation of applicants, licensees, and unlicensed persons alleged to have violated a provision of this part and handling of complaints made by any person in connection with any business transacted by a licensee; (c) (i) ensuring that all persons are informed of their right to contest a decision by the department under the Montana Administrative Procedure Act; and (ii) holding contested case hearings pursuant to the Montana Administrative Procedure Act and issuing cease and desist orders, orders of restitution, and orders for the recovery of administrative costs; (d) prescribing forms for applications; (e) developing or approving tests to be given as a prerequisite for licensure; (f) approval of programs for continuing education; and (g) establishing fees for testing, continuing education programs, and license renewals. (3) The department may seek a writ or order restraining or enjoining, temporarily or permanently, any act or practice violating any provision of this part. (4) (a) The department may at any time examine any mortgage broker transaction and may examine the residential mortgage loan files, trust account records, and other information related to mortgage loan transactions of a licensee. (b) When conducting a financial examination or an audit of a licensee, the department may require the licensee to pay a fee of $300 per day for each examiner performing the financial examination or audit. (c) If any examination fees are not paid within 30 days of the department's mailing of an invoice, the license of the mortgage broker or designated manager for the mortgage broker entity may be suspended or revoked. (5) (a) The department may: (i) exchange information with federal and state regulatory agencies, the attorney general, the consumer protection office of the department, and the legislative auditor; (ii) exchange information other than confidential information with the mortgage asset research institute, inc., and other similar organizations; and (iii) refer any matter to the appropriate law enforcement agency for prosecution of a violation of this part. (b) Except as provided in subsection (5)(a)(i), the department shall treat all confidential criminal justice information as confidential unless otherwise required by law. (6) The department shall prepare, at least once each calendar year, a roster listing the name and locations for each mortgage broker and a roster of all mortgage loan originators and designated managers and the name of their employing brokers. The roster must be available to interested persons and to the general public.	

		(7) Pursuant to section 1508(d) of the of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the department is authorized to: (a) supervise and enforce the provisions of this part, including the suspension, termination, revocation, or nonrenewal of a license for violation of state or federal law; (b) ensure that all mortgage broker and mortgage loan originator licensees under this part register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry; and (c) regularly report violations of state or federal law and enforcement actions to the nationwide mortgage licensing system and registry."	
New	NEW SECTION. **Section 9. Types of licenses.** (1) The five types of licenses that may be issued under [sections 1 through 46] are a mortgage lender license, a mortgage lender branch license, a mortgage broker license, a mortgage broker branch license, and a mortgage loan originator license. (2) A mortgage loan originator license may be issued to an individual who meets the requirements of [sections 17 and 18]. (3) An entity may apply for a license as a mortgage lender, a mortgage broker, or both.		
New	NEW SECTION. **Section 10. Mortgage broker license, mortgage lender license, and branch license.** (1) An entity acting as a mortgage lender or mortgage broker may apply for a license as provided in [section 17]. (2) A mortgage lender or mortgage broker entity shall satisfy the requirements of [section 13], if applicable, and the requirements of [section 14]. (3) A mortgage lender or mortgage broker entity shall license at least one main office and every branch office. (4) Each office location must have a designated manager, who may be a control person of the mortgage lender or mortgage broker. (5) A designated manager must be a licensed mortgage loan originator and have 3 years of experience as a mortgage loan originator or equivalent work experience. The commissioner shall define equivalent work experience by rule. (6) A designated manager is responsible for the operation of the business at the location under the designated manager's full charge, supervision, and control. (7) A mortgage lender or mortgage broker entity is responsible for any conduct by a designated manager or mortgage loan originator while employed or engaged by the entity that violates [sections 1 through 46] or a rule adopted pursuant to [sections 1 through 46] regardless of whether the designated manager or mortgage loan originator is an employee or independent contractor. (8) A designated manager is responsible for any conduct violating [sections 1 through 46] or a rule adopted pursuant to [sections 1 through 46]. The designated manager's responsibility includes conduct by the designated manager and each mortgage loan originator while the designated manager is employed or engaged by a mortgage lender or mortgage broker at the location that the designated manager manages. The designated manager is responsible for a mortgage loan originator's conduct regardless of whether the mortgage loan originator is an employee or independent contractor of the mortgage lender or mortgage broker. (9) The commissioner shall, by rule: (a) establish the requirements for an entity to retain a new designated manager in the	**Section 6.** Section 32-9-108, MCA, is amended to read: **"32-9-108. Overall licensing requirements for mortgage brokers and mortgage loan originators.** ~~All persons and entities~~ Any person, including a mortgage lender, desiring to conduct business as a mortgage broker ~~or~~ and any person desiring to work as a mortgage loan originator shall apply to the department for a license and pay a license fee under the provisions of this part. Applicants shall comply with all requirements of this part, including but not limited to requisite work experience, prelicensing education, successful completion of an examination, and completion of an application approved by the department. All licenses issued under this section are nontransferable and nonassignable." **Section 8.** Section 32-9-109, MCA, is amended to read: **"32-9-109. Experience requirements.** (1) (a) An individual applying for a license as a mortgage broker must have a minimum of 3 years of experience working as a mortgage loan originator~~, as a mortgage banker,~~ or in a related field. (b) An individual applying for a license as a mortgage loan originator must have a minimum of 6 months of experience working in a related field. (2) The department shall by rule establish what constitutes work in a related field."	

	event of the departure of a designated manager; (b) set forth the matters of which a licensee is required to notify the commissioner and the timeframe for the notification; and (c) set forth the form and content of the mortgage broker license application, mortgage lender license application, and branch application.		
New	NEW SECTION. **Section 11. Requirements for entity licensing.** (1) An entity acting as a mortgage lender or mortgage broker shall apply for a license as provided in [section 17]. (2) In order for an entity to be considered for licensure, each of the following is required to independently meet the requirements established in [section 18(1)(a) through (1)(c)]: (a) ultimate equity owners of 25% or more of the applicant if the equity owners are individuals; (b) control persons of the applicant if the control persons are individuals; and (c) individuals that control, directly or indirectly, the election of 25% or more of the members of the board of directors of the entity.		
New	NEW SECTION. **Section 12. Dual licensure.** (1) An entity may be simultaneously licensed as a mortgage lender and a mortgage broker provided that the entity meets all requirements for licensure as a mortgage lender and a mortgage broker. (2) The commissioner shall, by rule: (a) set forth the form and content of an application for dual licensure; and (b) set the fees for dual licensure. The fees must be commensurate with the cost of administering the program. All fees collected under this section must be deposited in the department's account in the state special revenue fund to be used by the department in administering [sections 1 through 46].	AMENDMENT – NEW Section on dual licensure	
New, taken from 30-10-208	NEW SECTION. **Section 13. Registered agent for licensee without physical office in the state -- venue.** (1) An applicant for a license under [sections 1 through 46] that does not maintain a physical office within the state shall file, in a form prescribed by the commissioner by rule, an irrevocable consent appointing the commissioner and any successor in office 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 upon an alleged violation of [sections 1 through 46] or a rule or order issued pursuant to [sections 1 through 46]. Service upon the commissioner 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 commissioner, but it is not effective unless: (a) the plaintiff, who may be the commissioner, in an action, suit, or proceeding sends notice of the service and a copy of the process by certified mail to the defendant or respondent at the last-known address on file with the commissioner; 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 [sections 1 through 46] or a rule or order adopted under [sections 1 through 46] between the commissioner 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	**Section 18.** Section 32-9-121, MCA, is amended to read: **"32-9-121. In-state office requirement -- records maintenance -- advertising requirement.** (1) Except for an individual mortgage broker working as an employee of a licensed mortgage broker, a person or entity licensed as a mortgage broker shall maintain at least one physical office located in this state either on its own accord or in conjunction with another licensed mortgage broker or regulated lender located in this state. Licensees shall maintain books, accounts, records, and copies of residential mortgage loan files and trust account records that are necessary to enable the department to determine whether a licensee is in compliance with the applicable laws and rules. The required materials must be maintained at the Montana office location where services are provided, and the materials must be maintained in accordance with generally accepted accounting principles and good business practices. Each office location must have at least one phone line. Licensees shall pay state income tax on all income earned in Montana. (2) A mortgage broker shall maintain a residential mortgage file for a minimum of 5 years from the date of the last activity pertaining to the file. A mortgage broker shall maintain trust account records for a minimum of 5 years. (3) (a) In any printed, published, televised, e-mail, or internet advertisement for the provision of services, the following information must be included: (i) a name, address, and license number for each mortgage broker or mortgage loan originator advertising as an individual; or (ii) the name, address, and license number only of the licensed entity when the	

	certified mail at the last-known address for which a license was issued or, in the case of an unlicensed person, at the last-known address of the person.	licensed entity is advertising on its own behalf or as an entity with one or more mortgage brokers or mortgage loan originators also listed. (b) For the purposes of this subsection (3), advertising does not include stationery or business forms but does include business cards. A business card must include a mortgage broker's or loan originator's license number but is not required to list the entity's license number if the entity's name is listed." AMENDMENT -	
Model act	NEW SECTION. **Section 14. Surety bond.** (1) A mortgage loan originator must be covered by a surety bond in accordance with this section. If a mortgage loan originator is an employee of or independent contractor for a licensed mortgage lender or mortgage broker, the surety bond of the licensed mortgage lender or mortgage broker may be used in lieu of a mortgage loan originator's surety bond. (2) The surety bond must provide coverage for a mortgage loan originator in an amount established pursuant to subsection (4). (3) The surety bond must be in a form prescribed by the commissioner and the commissioner shall establish requirements for surety bonds by rule. (4) The penal sum of a surety bond must be maintained in an amount that reflects the dollar amount of loans originated as determined by the commissioner. (5) Whenever an action is commenced on a surety bond, the commissioner may require the filing of a new bond. (6) Immediately upon recovery of an action on the bond, the licensee shall file a new bond.	**Section 19.** Section 32-9-123, MCA, is amended to read: **"32-9-123. ~~Irrevocable letter of credit or surety~~ Surety bond, irrevocable letter of credit, or net worth requirement -- notice of legal action.** (1) (a) ~~Each~~ Except as provided in subsection (1)(b), each mortgage broker and mortgage lender, other than an individual mortgage broker working as an employee of a mortgage broker or mortgage lender, shall maintain at all times ~~an irrevocable letter of credit or~~ a surety bond, naming the department as a beneficiary~~, in the amount of $25,000 for each principal location and branch office identified in the application for licensure.~~ (b) A mortgage lender may provide an irrevocable letter of credit naming the department as beneficiary in lieu of a surety bond as provided in subsection (3). (c) The department shall use the proceeds of the irrevocable letters of credit or surety bonds to reimburse borrowers or bona fide third parties who successfully demonstrate a financial loss because of an act of a ~~licensee~~ mortgage broker or mortgage lender that violates the provisions of this part. (2) (a) A mortgage broker or mortgage lender is required to maintain only one surety bond or letter of credit for the principal location and all other locations identified in the mortgage broker's or mortgage lender's application for licensure. (b) The amount of the required surety bond or letter of credit must be calculated by combining the annual loan production amounts for all business locations of the mortgage broker or mortgage lender and must be in the following amount: (i) $25,000 for a combined annual loan production that does not exceed $50 million per year; or (ii) $50,000 for annual loan production above $50 million per year. (3) In lieu of a surety bond, a mortgage lender may provide an irrevocable letter of credit issued by a federally insured banking institution in an amount equal to and on the same basis as the surety bond requirements referenced in subsections (2)(a) and (2)(b). (4) (a) In lieu of a surety bond, a mortgage broker may meet a minimum net worth requirement, and in lieu of a surety bond or irrevocable letter of credit, a mortgage lender may meet a minimum net worth requirement. (b) Minimum net worth must be maintained in an amount determined by the department that reflects the dollar amount of loans originated. (c) The department shall adopt rules with respect to the requirements for minimum net worth as are necessary to accomplish the purposes of this part. (5) Evidence that a mortgage broker or a mortgage lender is approved by the department of housing and urban development to originate loans insured by the	

		federal housing administration must be considered as satisfying the net worth requirement. ~~(2)~~(6) A mortgage broker, mortgage lender, or mortgage loan originator shall give notice to the department by certified mail within 15 days of the mortgage broker's, mortgage lender's, or mortgage loan originator's obtaining knowledge of the initiation of an investigation or the entry of a judgment in a criminal or civil action. The notice must be given if the investigation or the legal action is in any state and involves a mortgage broker, mortgage lender, anyone having an ownership interest in a mortgage broker entity or mortgage lender entity, or a mortgage loan originator. In the case of a legal action, the notice must include a copy of the criminal or civil judgment."	
Model act	NEW SECTION. **Section 15. Prelicensing and relicensing education.** (1) To meet the prelicensing education requirement referred to in [section 18(1)(f)], an applicant shall complete at least 20 hours of education approved in accordance with subsection (2) of this section, including at least: (a) 3 hours of training on federal law and regulations; (b) 3 hours of training in ethics, including instruction on fraud, consumer protection, and fair lending issues; and (c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace. (2) Prelicensing education courses must be reviewed and approved by the nationwide mortgage licensing system and registry based upon reasonable standards. Review and approval of a prelicensing education course must include review and approval of the course provider. (3) This section does not preclude any prelicensing education course approved by the nationwide mortgage licensing system and registry that is provided by the employer of the applicant, that is provided by an entity that is affiliated with the applicant by an agency contract, or that is provided by any subsidiary or affiliate of the employer or entity. (4) Prelicensing education may be offered either in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry. (5) The prelicensing education courses that comply with the requirements of subsection (1) and that are approved by the nationwide mortgage licensing system and registry for any other state must be accepted with respect to the completion of prelicensing education requirements in Montana. (6) An individual who is previously licensed under [sections 1 through 46] and who, subsequent to [the effective date of this act], applies to be relicensed under [sections 1 through 46] shall prove that the individual has completed all of the continuing education requirements for the year in which the license was last held.	NEW SECTION. **Section 7. Prelicensing education requirements for mortgage brokers and mortgage loan originators.** An individual seeking a mortgage broker's license or a mortgage loan originator's license shall complete at least 20 hours of approved education courses, which must include: (1) at least 3 hours of training on federal law and regulations; (2) 3 hours of training in ethics, including instruction on fraud, consumer protection, and fair lending issues; and (3) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.	
Model act	NEW SECTION. **Section 16. Testing of mortgage loan originators.** (1) To meet the written test requirement referred to in [section 18(1)(g)], an applicant is required to pass, in accordance with the standards established under this section, a qualified written test that is developed by the nationwide mortgage licensing system and registry and administered by a test provider. The test provider must be approved by the nationwide mortgage licensing	**Section 9.** Section 32-9-110, MCA, is amended to read: **"32-9-110. Examination requirements for mortgage brokers and mortgage loan originators.** (1) ~~Individuals~~ An individual seeking a mortgage broker's license ~~and individuals seeking~~ or a mortgage loan originator's license shall submit to an examination ~~provided for by the department. The department may use a third-party to~~	

	system and registry, and the approval must be based upon reasonable standards. (2) In order for a written test to be treated as a qualified written test, the test must adequately measure the applicant's knowledge and comprehension in appropriate subject areas, including: (a) ethics; (b) federal law and regulations pertaining to mortgage origination; (c) state law and rules pertaining to mortgage origination; and (d) federal law and regulations and state law and rules that pertain to fraud, consumer protection, the nontraditional mortgage product marketplace, and fair lending issues. (3) This section does not prohibit a test provider approved by the nationwide mortgage licensing system and registry from providing a test at the location of the employer of an applicant, the location of a subsidiary or affiliate of the employer, or the location of an entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator. (4) (a) An individual may not be considered to have passed a qualified written test unless the individual passes a test with a score of at least 75%. (b) An individual may retake a test three consecutive times with each consecutive test being taken at least 30 days after the previous testing date. (c) An individual who fails three consecutive tests may not take the test for at least 6 months from the date of failing the third test. (5) A licensed mortgage loan originator who fails to maintain a valid license for a period of 5 years shall retake the test. The 5-year period may not take into account any time during which the person is a registered mortgage loan originator.	~~perform examination and grading services~~. ~~(2) The examination must be designed to demonstrate that the applicant possesses competency to originate loans. The test may cover subject matter areas including but not limited to:~~ ~~(a) knowledge of this part;~~ ~~(b) knowledge of disclosures and protections that borrowers are entitled to by state and federal law;~~ ~~(c) the ability to read, understand, and explain appraisal basics, credit reports, and title commitments; and~~ ~~(d) the ability to evaluate credit, calculate a basic debt-to-income ratio, calculate loan-to-value ratios, and complete a basic loan application.~~ (2) In order to meet the examination requirement referred to in subsection (1), an individual shall pass, in accordance with the standards established under this section, a qualified written exam developed by the nationwide mortgage licensing system and registry and adopted by the department that is administered by an approved test provider. (3) A written examination may not be treated as a qualified written examination for purposes of this section unless the exam adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including but not limited to: (a) ethics; (b) federal and state laws and regulations pertaining to mortgage origination; and (c) federal and state laws and regulations pertaining to fraud, consumer protection, the nontraditional mortgage product marketplace, and fair lending issues. (4) An individual may not be considered to have passed a qualified examination unless the individual achieves an exam score of at least 75%. (5) The department shall by rule establish procedures for retesting after examination failures or after lapse of license in compliance with provisions of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289." **NEW SECTION. Section 15. Waiver of examination and education requirements for current mortgage broker and mortgage loan originator licensees.** (1) Upon application by a current mortgage broker or mortgage loan originator licensee for license renewal, the department shall grant a waiver of the prelicensing education requirements established in [section 7] and the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, if: (a) the applicant is currently acting as a state-licensed mortgage broker or mortgage loan originator in this state; (b) the applicant's license is valid and current; (c) the applicant has never had a mortgage broker or mortgage loan originator license revoked or suspended in any jurisdiction; (d) the applicant has not been convicted of a felony that would authorize the department to deny a license;	

		(e) the applicant otherwise meets or exceeds all applicable requirements of this part for licensure including: (i) the applicant has demonstrated financial responsibility, character, and general fitness to engage in the business of originating mortgage loans; and (ii) the applicant has provided satisfactory evidence of a surety bond or net worth requirement as provided in 32-9-123; and (f) the applicant can demonstrate at least one of the following: (i) completion of a minimum of 20 hours of approved education courses within the 5 years preceding the date of the application; (ii) a passing score on a written examination administered by an approved test provider within the 5 years preceding the date of the application; or (iii) employment as a licensed mortgage broker, mortgage lender, or mortgage loan originator under this part for a period of 2 years as of the date of application. (2) This section may not be construed as granting any mortgage broker or mortgage loan originator a waiver of the continuing education requirements prescribed under 32-9-118.	
Model act	NEW SECTION. **Section 17. License application.** (1) An applicant under [sections 1 through 46] shall apply for a license in a form prescribed by the commissioner. Each form must contain content as set forth by rule and may be changed or updated by the commissioner as necessary. (2) The commissioner may establish a relationship or contract with the nationwide mortgage licensing system and registry or another entity designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to [sections 1 through 46]. (3) An applicant shall furnish information to the nationwide mortgage licensing system and registry concerning the applicant's identity, including but not limited to: (a) fingerprints for submission to the federal bureau of investigation and any governmental agency or entity authorized to receive information for a state, national, and international criminal history background check; (b) legal name, birth date, and social security number for submission to the criminal investigation bureau of the Montana department of justice as authorized for a state criminal history background check; and (c) personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including submission of authorization for the nationwide mortgage licensing system and registry and the commissioner to obtain: (i) an independent credit report from a credit reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.; and (ii) information related to administrative, civil, or criminal findings by a governmental jurisdiction. (4) To reduce the points of contact that the federal bureau of investigation may be required to maintain for purposes of subsection (3), the commissioner may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the United States department of justice or other governmental agencies.	**Section 10.** Section 32-9-115, MCA, is amended to read: **"32-9-115. Application for mortgage broker license.** (1) An application for a mortgage broker license must include: (a) the proposed principal location of the business, with a photograph of the principal location and each branch office at which business will be transacted. If the business is to be conducted out of a residence, verification must be supplied concerning compliance with all zoning laws and regulations. The application for an individual mortgage broker intending to work as an employee of another mortgage broker must contain the name and principal address of the licensed employing mortgage broker. (b) (i) the name and address of the sole proprietor; (ii) the name and address of each partner; or (iii) the name and address of any person that owns 10% or more of a mortgage broker entity that is other than a sole proprietorship or partnership; (c) evidence ~~of an irrevocable letter of credit or surety bond required by~~ that the applicant has met either the surety bond or net worth requirement provided for in 32-9-123; ~~(d) a statement as to whether the applicant or, to the best of the applicant's knowledge, any shareholder, member, partner, designated manager, or employee of the applicant is currently under investigation, has been convicted of or has pleaded guilty to any felony or criminal offense involving fraud or dishonesty, or has been subject to any adverse civil judgment for any conduct involving fraudulent or dishonest dealing; and~~ ~~(e)~~(d) evidence that the designated manager meets the requirements for licensure as a mortgage broker; (e) evidence that the applicant has met the prelicensing education requirements of [section 7]; (f) a written statement of the applicant's personal employment and personal residential history during the 7-year period preceding the date of the application for	

	(5) To reduce the points of contact that the commissioner may be required to maintain for purposes of subsection (3), the commissioner may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source directed by the commissioner.	licensure; (g) an independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p); and (h) information pertaining to the applicant that is related to any administrative, civil, or criminal findings by any governmental jurisdiction. (2) The department shall investigate each individual applicant. The investigation shall include a criminal records check based on the fingerprints of each individual applicant and a civil records check. The department shall require each individual 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. ~~The department may deny the application if the applicant's criminal history demonstrates any felony criminal convictions or other convictions involving fraud or dishonesty or if the applicant has had any adverse civil judgments involving fraudulent or dishonest dealings.~~" NEW SECTION. **Section 11. Application for mortgage lender license.** (1) The application for a mortgage lender license must be in a form prescribed by the department. (2) (a) The application must contain the name and complete business address or addresses of the applicant. If the applicant is other than an individual, the application must contain the names and complete business and residential addresses of each officer, director, manager, and ultimate equity owner of a 10% or greater interest in the entity making the application. (b) The application must include a detailed description of the proposed activities of the licensee that the department may require by rule. (c) The application must also include the following: (i) evidence that the applicant meets the minimum surety bond, irrevocable letter of credit, or net worth requirements provided for in 32-9-123; (ii) an affirmation that the applicant and its employees, independent contractors, officers, directors, or principals are at least 18 years of age; (iii) a biographical statement providing information as to the character, fitness, financial and business responsibility, background, experience, and criminal convictions of any person that: (A) owns or controls, directly or indirectly, 10% or more of any class of stock of the entity making the application; (B) controls with respect to an applicant, directly or indirectly, the election of 25% or more of the members of the board of directors or, if a limited liability company, controls the election of its manager; or	

(C) significantly influences or controls the management of the entity making the application.

(3) The department may require that each officer, director, and ultimate equity owner of 10% or greater interest in the entity making the application file a personal financial statement, a biographical report, and a complete set of fingerprints taken by an authorized law enforcement officer or other person authorized by the state.

(4) If the applicant is other than an individual, evidence must be submitted that the applicant is duly incorporated, registered, or otherwise formed as a general partnership, limited partnership, limited liability company, or other lawful entity under the laws of this state or another state.

(5) An applicant shall provide all other information required by rule.

(6) The applicant may obtain branch licenses upon compliance with this section and the applicable provisions of this part.

(7) An applicant may be simultaneously licensed as a mortgage lender and mortgage broker provided that all requirements for licensure for each license are met, subject to a single application fee as set forth in 32-9-117.

Section 12. Section 32-9-116, MCA, is amended to read:

"32-9-116. Application for mortgage loan originator license -- employment of mortgage loan originator. (1) An application for a mortgage loan originator license must include:

(a) the name and address of the applicant;

(b) evidence of the applicant's experience and knowledge of the mortgage industry; ~~and~~

(c) evidence that the applicant has met the prelicensing education requirements of [section 7];

(d) a written statement of the applicant's personal employment and personal residential history during the 7-year period preceding the date of the application for licensing;

(e) an independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p); and

(f) information pertaining to the applicant that is related to any administrative, civil, or criminal findings by any governmental jurisdiction.

~~(c) a statement as to whether the applicant is under investigation, has been convicted of or pleaded guilty to any felony or criminal offense involving fraud or dishonesty, or has been subject to any adverse civil judgment for any conduct involving fraudulent or dishonest dealing.~~

(2) The department shall investigate each applicant. The investigation shall 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. ~~The department may deny the application if the applicant's criminal history demonstrates any felony criminal convictions or other convictions involving fraud or dishonesty or if the applicant has had any adverse civil judgments involving fraudulent or dishonest dealings.~~ (3) A mortgage loan originator may transact business only for an employing mortgage broker licensed in accordance with the provisions of this part. Each original license issued to a mortgage loan originator must be provided to and maintained by the employing mortgage broker at the mortgage broker's main office. A copy of the mortgage loan originator's license must be displayed at the office where that mortgage loan originator principally transacts business. (4) If the employment of a mortgage loan originator is terminated, the mortgage broker shall return the mortgage loan originator's license to the department within 5 business days after the termination. For a period of 6 months after the termination of employment, the mortgage loan originator may request the transfer of the license to another mortgage broker or mortgage lender by submitting a relocation application to the department, along with a fee established by the department by rule. The return of the license of any mortgage loan originator to the department that is not transferred to another mortgage broker terminates the right of the mortgage loan originator to engage in any residential mortgage loan origination activity until department procedures have been followed to reinstate the license. The license of any mortgage loan originator that has been returned to the department and not transferred within 6 months of termination of employment must be canceled."	
Model act	NEW SECTION. **Section 18. Issuance of license.** (1) The commissioner may not issue a mortgage loan originator license unless the commissioner makes the following findings: (a) The applicant has never had a mortgage loan originator license, mortgage broker license, mortgage lender license, or the equivalent revoked in any governmental jurisdiction. A subsequent formal vacation of a revocation may not be considered a revocation. (b) (i) The applicant has not been convicted of or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court: (A) during the 7-year period preceding the date of the application for licensing; or (B) at any time preceding the date of application if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. (ii) The pardon of a conviction is not a conviction for purposes of this subsection (1)(b). (c) The applicant has demonstrated financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of [sections 1 through 46]. An applicant must be held to be not financially responsible when the applicant has shown a disregard in the management of the applicant's own financial condition. A determination that an applicant has not shown financial responsibility may include but is not limited to: (i) current outstanding judgments, except judgments solely as a result of medical	**Section 13.** Section 32-9-117, MCA, is amended to read: **"32-9-117. Fees -- license renewal -- disposition of fees.** (1) (a) Except as provided in subsection (1)(b), an individual mortgage broker or an entity seeking licensure as a mortgage broker shall pay an initial nonrefundable license application fee of $500. A mortgage loan originator shall pay an initial nonrefundable license application fee of $400. An individual mortgage lender or an entity seeking licensure as a mortgage lender shall pay an initial nonrefundable license application fee of $750 and an additional application fee of $250 for any branch location. An applicant shall pay one-half of these initial nonrefundable license application fees for any license period of less than 6 months. (b) (i) An individual who is seeking licensure as a mortgage broker and who is the ~~sole~~ owner of an entity that is seeking licensure as a mortgage broker shall pay a single initial nonrefundable license application fee of $500. (ii) The department shall assess only one licensing fee of $750 for an applicant seeking dual licensure as a mortgage broker and a mortgage lender. (2) The license of a mortgage broker, mortgage lender, or mortgage loan originator is valid for a 1-year period and expires on ~~June 30~~ December 31. ~~Every~~ A licensee shall, on or before ~~May 31~~ November 30 of ~~the~~ each year, submit a renewal application and pay to the department a renewal fee in an amount set by the department by rule. The department shall establish by rule the requirements for renewal applications. The	

MBLO	expenses; (ii) current outstanding tax liens or other government liens and filings; (iii) foreclosures within the past 3 years; or (iv) a pattern of seriously delinquent accounts within the past 3 years. (d) The applicant has met the registered agent requirement in [section 13] if applicable. (e) The applicant has met the surety bond requirement as required pursuant to [section 14]. (f) The applicant has completed the prelicensing education requirement described in [section 15]. (g) The applicant has passed a written test that meets the test requirements described in [section 16]. (h) The applicant for a mortgage loan originator license must have 6 months of experience as a mortgage loan originator or equivalent work experience. The commissioner shall define equivalent work experience by rule. (i) The applicant will be employed by a licensed mortgage lender or a licensed mortgage broker. (2) The commissioner shall adopt rules to implement this section.	department shall establish a single renewal fee for individuals and entities described in ~~subsection~~ subsections (1)(b)(i) and (1)(b)(ii) ~~that are licensed as mortgage brokers~~. An individual described in subsection (1)(b)(i) may act as a designated manager under 32-9-122 and is not subject to any additional license fees for acting in the capacity of a designated manager. The fees set by the department must be commensurate with the costs of the program. Failure to submit required information or fees within the time prescribed automatically revokes the license. (3) An application for renewal must be accompanied by evidence that the continuing education requirements provided for in 32-9-118 have been met and that there has not been a material change in the status of the licensee in the preceding 12 months. (4) All fees collected under this section must be deposited in the department's state special revenue fund to be used by the department in administering the provisions of this part. (5) An applicant for a mortgage broker or mortgage loan originator license renewal shall provide evidence of registration with and maintenance of a unique identifier issued by the nationwide mortgage licensing system and registry." **NEW SECTION. Section 14. Compliance of current mortgage brokers and mortgage loan originator licensees with background check and minimum standards.** (1) Upon application to the department by a current licensee for renewal of a mortgage broker or mortgage loan originator license, the applicant shall provide evidence of registration with and maintenance of a unique identifier issued by the nationwide mortgage licensing system and registry and shall simultaneously furnish to the nationwide mortgage and licensing system and registry the following: (a) an authorization to the nationwide mortgage licensing system and registry to request that the federal bureau of investigation access previously submitted fingerprints for purposes of a supplemental criminal history background check; and (b) a written statement of personal history and experience, including authorization for the nationwide mortgage licensing system and registry to obtain: (i) a current independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p); and (ii) information related to any administrative, civil, or criminal findings by any governmental jurisdiction. (2) Upon application to the department by a current licensee for renewal of a mortgage broker, mortgage lender, or mortgage loan originator license, the department shall commence a supplemental investigation of the applicant and may not renew any license if any of the following facts are found: (a) (i) the applicant has ever had a mortgage broker, mortgage lender, or mortgage loan originator license or their equivalent revoked in any governmental jurisdiction; (ii) for the purposes of subsection (2)(a)(i), "revoked" means that the license of a mortgage broker, mortgage lender, or mortgage loan originator has been expressly revoked as the result of a publicly adjudicated disciplinary or enforcement action by the department or other governmental jurisdiction. The term does not include other forms of license treatment such as surrender of a license, vacation of a license, or lapse of a	

		license that are not to be considered a license revocation if that license treatment is to be the determining factor relied upon by the department in denying, refusing to renew, or revoking the existing license of a mortgage broker, mortgage lender, or mortgage loan originator. The nature of the license treatment and not the label given it by any governmental jurisdiction is controlling. (b) the applicant has been convicted of or plead guilty or nolo contendere to a felony in a domestic, foreign, or military court during the 7-year period preceding the date of the application for renewal or at any time preceding the date of application if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering; (c) the applicant has failed to demonstrate financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the mortgage broker, mortgage lender, or mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this section. (3) The department shall determine that the applicant has demonstrated the qualities of financial responsibility, character, and general fitness referred to in subsection (2)(c) if all other requirements for licensure under this section have been satisfied and the department's investigation does not reveal a specific problem on the applicant's part with respect to subsection (2)(c).	
MLLL and new – same as for title & d'ferred deposit loan acts	NEW SECTION. **Section 19. Denial of license -- abandonment of application.** (1) The commissioner may deny an application or refuse to renew a license if an applicant: (a) does not meet a qualification required by [sections 1 through 46] or rules adopted under [sections 1 through 46]; or (b) makes a material misstatement of fact or material omission of fact in an application. (2) The commissioner shall notify an applicant in writing of the grounds upon which the denial or refusal is based. (3) An applicant has the right to a hearing under the Montana Administrative Procedure Act on a denial or refusal to issue or renew a license. The applicant shall request a hearing on the notice within 10 days of service of the notice. (4) If an application for licensure has been denied or refused, the applicant may not reapply for 1 year following the denial or refusal. (5) The commissioner may consider an application abandoned if an applicant fails to provide or respond to a request for additional information within the specified time period.	NEW SECTION. **Section 16. Denial of mortgage broker, mortgage lender, or mortgage loan originator license application or license renewal.** (1) The department may not issue or renew any mortgage broker, mortgage lender, or mortgage loan originator license if any of the following facts are found during the application procedure: (a) (i) the applicant has ever had a mortgage broker, mortgage lender, or mortgage loan originator license or their equivalent revoked in any governmental jurisdiction; (ii) for the purposes of subsection (1)(a)(i), "revoked" means that the license of a mortgage broker, mortgage lender, or mortgage loan originator has been expressly revoked as the result of a publicly adjudicated disciplinary or enforcement action by the department or other governmental jurisdiction. The term does not include other forms of license treatment such as surrender of a license, vacation of a license, or lapse of a license that are not to be considered a license revocation if that license treatment is to be the determining factor relied upon by the department in denying, refusing to renew, or revoking the existing license of a mortgage broker, mortgage lender, or mortgage loan originator. The nature of the license treatment and not the label given it by any governmental jurisdiction is controlling. (b) the applicant has been convicted of or plead guilty or nolo contendere to a felony in a domestic, foreign, or military court during the 7-year period preceding the date of the application for licensing or renewal or at any time preceding the date of application if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering; (c) the applicant has failed to demonstrate financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the mortgage broker, mortgage lender, or mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this section. (2) The department shall determine that the applicant has demonstrated the	

		qualities of financial responsibility, character, and general fitness referred to in subsection (1)(c) if all other requirements for licensure under this section have been satisfied and the department's investigation does not reveal a specific problem on the applicant's part with respect to subsection (1)(c). (3) For purposes of this section and to reduce the points of contact for investigation by the department, the department may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information.	
New plus MBLO for sub (5) and sub (8) – in concept	NEW SECTION. **Section 20. License effective date -- prohibitions -- notices.** (1) A license is not effective during a period of time when a person is not authorized to act as a licensee under [sections 1 through 46], including a period of time during which a mortgage loan originator is not employed by a licensed entity. (2) Whenever a mortgage loan originator ceases to be employed by an entity, the employing entity shall notify the commissioner in writing within 10 days of the cessation of employment. (3) Whenever an entity terminates the authority of a mortgage loan originator to act on its behalf, the entity shall notify the commissioner in writing within 10 days of the termination. The notice must include a statement of the specific reasons for the termination of the mortgage loan originator's authority. (4) An entity remains responsible for an act of its mortgage loan originator until notice of separation is received by the commissioner. (5) A mortgage loan originator may not be employed simultaneously by more than one licensed entity. (6) A mortgage lender entity or mortgage broker entity may not employ or contract with any person who is required to be licensed under [sections 1 through 46] if the person is not licensed. (7) Each entity shall maintain on file with the commissioner a list of designated managers and mortgage loan originators employed or under contract and the location at which each manager and mortgage loan originator is employed or under contract. (8) A licensee may surrender the licensee's license by delivering a written notice of surrender to the commissioner. The surrender does not affect the licensee's civil or criminal liability or an administrative action arising from an act or omission occurring before the surrender. (9) An entity that ceases operating as a licensee under the provisions of [sections 1 through 46] shall: (a) 30 days prior to the discontinuance of business, notify the commissioner of the physical location where required records will be preserved; and (b) designate a custodian of records and notify the commissioner of the name, physical address, electronic mail address, and telephone number of the custodian of records. The custodian of records shall preserve records required under [sections 1 through 46] and allow access to the commissioner for examination and investigation upon request of the commissioner.	AMENDMENT	
MLLL (2)(d) is new	NEW SECTION. **Section 21. Use of name -- advertising.** (1) A licensee engaged in a business regulated by [sections 1 through 46] may not operate under a name other than the name licensed by the commissioner. (2) A licensee may not:		

	(a) advertise that an applicant has unqualified access to credit without disclosing what material limitations on the availability of credit may exist, such as the percentage required as a down payment, that a higher interest rate or points could be required, or that restrictions as to the maximum principal amount of the mortgage loan offered could apply; (b) advertise a mortgage loan with a prevailing interest rate indicated in the advertisement unless the advertisement specifically states that the interest rate could change or not be available at the time of commitment or closing; (c) advertise mortgage loans, including interest rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on the mortgage loans, unless the licensee is able to make or broker the offered mortgage loans to a reasonable number of qualified applicants; (d) engage in false, deceptive, or misleading advertising; or (e) falsely advertise or misuse names in violation of 18 U.S.C. 709.		
Model act (2) is from MBLO in concept	NEW SECTION. **Section 22. Display of unique identifier -- posting of license.** (1) The unique identifier of any person originating a residential mortgage loan must be shown on all residential mortgage loan applications, on forms, on solicitations, on advertisements, including business cards and websites, and any on other documents as established by the commissioner by rule. (2) A licensee shall post the licensee's license at the physical location listed on the license application.	NEW SECTION. **Section 22. Unique identifier for mortgage brokers, mortgage loan originators, and registered mortgage loan originators.** (1) Each licensed mortgage broker, mortgage loan originator, and registered mortgage loan originator shall post the mortgage broker's, mortgage loan originator's, or registered mortgage loan originator's unique identifier in a conspicuous place within the office where the licensee principally transacts business. (2) The department shall post on its website the names of all licensees, together with their license numbers. In conjunction with that posting, the department shall also provide the unique identifier of all licensed mortgage brokers and mortgage loan originators so that consumers, borrowers, and the public may access that information for use in conjunction with the nationwide mortgage licensing system and registry. (3) The department shall also post on its website the names and unique identifiers of all registered mortgage loan originators conducting business in the state.	
Mostly model act	NEW SECTION. **Section 23. License renewal.** (1) A licensee is required to renew the licensee's license by December 31 of each year. (2) A renewal application for an entity or a mortgage loan originator must demonstrate the following: (a) that the licensee continues to meet the standards for licensure under [sections 1 through 46]; (b) that a mortgage loan originator has satisfied annual continuing education requirements pursuant to [section 24]; and (c) that the licensee has paid all required fees for renewal of the license and all outstanding examination fees, all investigation fees, and any civil penalties. (3) The license of a licensee failing to satisfy the minimum standards for license renewal expires on January 1. The commissioner may adopt rules regarding the procedures for the reinstatement of expired licenses consistent with the standards established by the nationwide mortgage licensing system and registry.		
Model act	NEW SECTION. **Section 24. Continuing education for mortgage loan originators.** (1) A licensed mortgage loan originator is required to complete annually at least 8 hours of education approved in accordance with subsection (2). The 8 hours of education must include at least: (a) 3 hours of training on federal laws and regulations;	**Section 17.** Section 32-9-118, MCA, is amended to read: **"32-9-118. Continuing education requirements for mortgage loan originators and mortgage brokers.** All mortgage loan originators and all individual mortgage brokers shall complete and submit to the department evidence of at least 12 hours of continuing education every year at the time they submit their license renewal	

	(b) 2 hours of training in ethics, including instruction on fraud prevention, consumer protection, and fair lending issues; and (c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace. (2) Continuing education courses must be reviewed and approved by the nationwide mortgage licensing system and registry based upon reasonable standards. Review and approval of a continuing education course must include review and approval of the course provider. (3) This section does not preclude an education course approved by the nationwide mortgage licensing system and registry that is provided by an employer of a mortgage loan originator, that is provided by an entity that is affiliated with the mortgage loan originator by an agency contract, or that is provided by a subsidiary or affiliate of the employer or entity. (4) Continuing education may be offered either in a classroom, online, or by other means approved by the nationwide mortgage licensing system and registry. (5) (a) Except as provided in [section 23(3)] and subsection (9) of this section, a licensed mortgage loan originator may receive credit for a continuing education course only in the year in which the course is taken. (b) A licensed mortgage loan originator may not take the same approved course in the same or successive years to meet the annual requirements for continuing education. (6) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of 2 hours credit for every 1 hour taught. (7) A person who has successfully completed the education requirements that comply with the requirements of subsection (1) and that are approved by the nationwide mortgage licensing system and registry for any other state must be given credit toward completion of continuing education requirements in Montana. (8) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license. (9) A person meeting the requirements of [section 23(2)(a) and (2)(c)] may make up any deficiency in continuing education pursuant to rules adopted by the commissioner. AMENDMENT	applications. The 12 hours of continuing education must be obtained in ~~courses or programs of study approved by the department and in areas established by the department by rule~~ an approved education course."	
Model act	NEW SECTION. **Section 25. Right to challenge information filed with nationwide mortgage licensing system and registry.** The commissioner shall adopt rules establishing a process to allow a mortgage loan originator to challenge information entered into the nationwide mortgage licensing system and registry by the commissioner.	NEW SECTION. **Section 24. Nationwide mortgage licensing system and registry information challenge process.** The department shall establish a process under which mortgage brokers and mortgage loan originators may challenge information entered into the nationwide mortgage licensing system and registry by the department.	
Model act	NEW SECTION. **Section 26. Provisional licenses and previously licensed persons.** The commissioner may establish by rule licensing requirements, fees, and interim procedures for licensing and acceptance of applications for the purposes of implementing an orderly and efficient licensing process. The commissioner may by rule establish expedited review and licensing procedures for a previously licensed person.		
(1) is model	NEW SECTION. **Section 27. Mortgage call report.** (1) Each entity shall submit reports of condition to the nationwide mortgage licensing system and registry in the form and	NEW SECTION. **Section 23. Mortgage call reports.** Each mortgage broker entity shall submit to the nationwide mortgage licensing system and registry reports of	

act Rest is new	containing the information required by the nationwide mortgage licensing system and registry and the commissioner. (2) The commissioner shall adopt rules regarding the form, content, and filing requirements for the mortgage call report and the penalty for failure to file the report. (3) The commissioner shall adopt rules regarding the form, content, and filing requirements for entity reports of loans currently being processed and the penalty for failure to file the reports.	condition, which must be in the form and must contain information that the nationwide mortgage licensing system and registry may require.	
Model act Model act	NEW SECTION. **Section 28. Disclosure requirements.** The commissioner shall adopt rules to establish disclosure requirements for mortgage lenders and mortgage brokers. NEW SECTION. **Section 35. Prohibited acts and practices.** It is a violation of [sections 1 through 46] for a licensee or person subject to the provisions of [sections 1 through 46] to: (1) directly or indirectly employ a scheme, device, or artifice to defraud or mislead a borrower, lender, or other person; (2) engage in an unfair or deceptive practice toward a person; (3) obtain property by fraud or misrepresentation; (4) solicit or enter into a contract with a borrower that provides in substance that a person subject to [sections 1 through 46] may earn a fee or commission through best efforts to obtain a loan even though a loan is not actually obtained for the borrower; (5) solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting; (6) conduct business covered by [sections 1 through 46] without holding a valid license required under [sections 1 through 46] or assist or aid and abet a person in the conduct of a business under [sections 1 through 46] without a valid license; (7) fail to make a disclosure required by [sections 1 through 46] and other applicable state or federal laws, rules, or regulations; (8) fail to comply with [sections 1 through 46], rules adopted under [sections 1 through 46], or any other state or federal laws, including the rules and regulations adopted under the state or federal laws, that are applicable to a business authorized or conducted under [sections 1 through 46]; (9) make, in any manner, a false or deceptive statement or representation, including but not limited to interest rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising; (10) negligently make a false statement or an omission of material fact in connection with: (a) information provided to the commissioner; (b) a report filed with a governmental agency, the commissioner, or the nationwide mortgage licensing system and registry; or (c) an investigation conducted by the commissioner or another governmental agency; (11) make a payment, threat, or promise, directly or indirectly, to a person for the purpose of influencing the independent judgment of the person in connection with a residential mortgage loan or to an appraiser of a property for the purpose of influencing the independent judgment of the appraiser with respect to the value of a property; (12) collect, charge, attempt to collect or charge, or use or propose an agreement	**Section 20.** Section 32-9-124, MCA, is amended to read: **"32-9-124. Prohibitions -- required disclosure.** (1) A mortgage broker, mortgage lender, or mortgage loan originator may not do any of the following: (a) retain original documents owned by the borrower and submitted in connection with the loan application; (b) directly or indirectly employ any scheme to defraud or mislead a borrower, a mortgage lender, or any other person; (c) make any misrepresentation or deceptive statement in connection with a residential mortgage loan, including but not limited to interest rates, points, costs at closing, or other financing terms or conditions; (d) fail to pay a bona fide third party later than 30 days after recording of the loan closing documents or 90 days after completion of the bona fide third-party service, whichever is earlier, unless otherwise agreed by the parties; (e) accept any fees or compensation at closing that were not disclosed as required by state or federal law; (f) accept any fees or compensation in excess of those allowed by state or federal law; ~~or~~ (g) sign a borrower's application or related documents on behalf of or in lieu of another mortgage broker, mortgage lender, or mortgage loan originator.; (h) (i) assist or aid and abet any person in the conduct of business under this part without a valid license as required under this part; or (ii) if a mortgage broker or mortgage loan originator, conduct any business covered by the provisions of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, without holding a valid license as required under this part; (i) fail to comply with this part or rules promulgated under this part or fail to comply with any other state or federal laws, including the rules and regulations adopted pursuant to those laws, applicable to any business authorized by or conducted under this part; (j) negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a government agency or the nationwide mortgage licensing system and registry or in connection with any investigation conducted by the department or another governmental agency. (2) Prior to providing mortgage broker services to a borrower, the mortgage broker licensee, in addition to other disclosures required by this part, subsection (3) ~~of this section~~, and other state and federal laws, shall provide to the borrower ~~at the time of application~~ a written disclosure containing substantially the following language, which	

(20) thru (22) from MBLO (23) thru (29) is MLLL	purporting to collect or charge a fee prohibited by [sections 1 through 46]; (13) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer; (14) fail to truthfully account for money belonging to a party to a residential mortgage loan transaction; (15) refuse to permit an investigation or examination of the person's or licensee's books and records or refuse to comply with the commissioner's subpoena or subpoena duces tecum; (16) engage in a pattern of substantially underestimating or not disclosing closing costs; (17) make a prepayment penalty that extends beyond 2 years a condition of a residential mortgage loan; (18) knowingly withhold, abstract, remove, mutilate, destroy, alter, or keep secret any books, records, computer records, or other information from the commissioner or the department or knowingly provide false information to the commissioner or department; (19) fail to pay a fee, civil penalty, or cost required by [sections 1 through 46]; (20) accept a fee or compensation in excess of that allowed by state or federal law; (21) accept a fee or compensation at closing that is not disclosed or redisclosed as required by state or federal law; (22) fail to pay a third-party service provider within 30 days after the recording of loan closing documents or 90 days after completion of a third-party service, whichever is earlier, unless otherwise agreed by the parties; (23) retain a third-party fee at closing in excess of the actual cost of the third-party service; (24) disburse proceeds of a mortgage loan without sufficient collected funds on hand in the account upon which the funds are drawn; (25) fail to disburse funds in accordance with a loan commitment to make a mortgage loan that has been accepted by a borrower; (26) fail to take an action required to effect a release of the lender's security interest in a property as described in 71-1-212; (27) obtain an agreement or instrument in which blanks are left to be filled in after execution; (28) obtain an exclusive dealing or exclusive agency agreement from a borrower; or (29) provide or offer to provide any service requiring a license unless the person or individual has been issued a license or is exempt from licensure.	must be signed by the borrower: "MORTGAGE LOAN ORIGINATION DISCLOSURE (Name of licensee) is a licensed mortgage broker in Montana authorized to provide mortgage brokerage services to you in connection with your real estate loan. Lenders whose loan products we distribute generally provide their loan products to us at a wholesale rate. The rate you pay may be higher. SECTION 1. NATURE OF RELATIONSHIP. In connection with this mortgage loan: (1) (name of licensee) is acting as an independent contractor and not as your agent; (2) (name of licensee) enters into separate independent contractor agreements with various lenders; and (3) while (name of licensee) seeks to assist you in meeting your financial needs, (name of licensee) does not distribute products of all lenders or investors in the market and cannot guarantee the lowest price or best terms available. SECTION 2. OUR COMPENSATION. (1) The retail price (name of licensee) offers you, including the interest rate, total points, and fees, will include (name of licensee's) compensation. (2) In some cases, (name of licensee) may be paid all of (name of licensee's) compensation by either you or the lender. (3) Alternatively, (name of licensee) may be paid a portion of (name of licensee's) compensation by both you and the lender. For example, in some cases, if you would rather pay a lower interest rate, you may pay more money in upfront points and fees. Also, in some cases, if you would rather pay less money up front, you may be able to pay some or all of our compensation indirectly through a higher interest rate, in which case (name of licensee) will be paid directly by the lender. (4) (Name of licensee) may also be paid by the lender based on the value of the mortgage loan or related servicing rights in the market place or based on other services, goods, or facilities performed or provided by (name of licensee) to the lender. By signing below, you acknowledge that you have received a copy of this disclosure." (3) The disclosure must include the address of the department's division of banking and financial institutions, the division's phone number and website, and a statement informing borrowers that the division can provide information about whether a mortgage broker or mortgage loan originator is licensed as well as other legally available information. (4) The disclosure must include the unique identifier issued by the nationwide mortgage licensing system and registry for the mortgage broker or mortgage loan originator."	
New (from WA state law)	NEW SECTION. **Section 29. Mortgage lender, mortgage broker, and mortgage loan originator agreements -- validity of contracts.** (1) A contract between a mortgage lender, mortgage broker, or mortgage loan originator and a borrower must be in writing and signed and dated by both the borrower and the authorized representative of the mortgage lender, mortgage broker, or mortgage loan originator. (2) Any contract under this section entered into by a mortgage loan originator is binding on the mortgage lender or mortgage broker that employs or contracts with the mortgage loan		

	originator. (3) A mortgage broker is required to have a written correspondence or loan broker agreement with a mortgage lender before any solicitation of or contracting with the public. (4) The commissioner shall by rule adopt any additional requirements for mortgage lender, mortgage broker, or mortgage loan originator agreements.		
MLLL (3) & (4) are new words (5) & (6) are MLLL (7) is new	NEW SECTION. **Section 30. Escrow fund or trust fund.** (1) An escrow fund or trust fund authorized for any purpose by a mortgage loan contract is subject to applicable state and federal requirements. Money received from a borrower by a mortgage lender, mortgage broker, or other entity licensed under [sections 1 through 46] must be considered as held in trust immediately upon receipt. The mortgage lender, mortgage broker, or other licensed entity shall place escrow funds or trust funds in a depository institution prior to the end of the third business day following their receipt. (2) An escrow fund or trust fund account must be a separate account established to hold only borrowers' funds. The account must be designated and maintained for the benefit of borrowers. Escrow funds and trust funds may not be commingled with any other funds. (3) Escrow funds or trust funds must be kept in the segregated account until disbursement. Money maintained in an escrow fund or trust fund account is exempt from execution, attachment, or garnishment. (4) A licensee may not encumber the corpus of an escrow fund or trust fund account or commingle other operating funds with account funds. (5) An escrow fund or trust fund account may be used only for: (a) a payment authorized by the borrower or the mortgage loan contract or required by federal or state law; (b) a refund to the borrower; (c) transfer to a depository institution; (d) transfer to the appropriate mortgage lender or mortgage servicer in the case of a transfer of servicing; (e) a purpose authorized by the mortgage loan contract; or (f) purposes of complying with an order issued by the commissioner or a court. (6) Accounting for escrow funds and trust funds must be performed in compliance with the aggregate accounting rules established in regulation X, 24 CFR 3500, and 71-1-115. (7) The commissioner may adopt rules that: (a) direct a licensee on how to handle checks and other instruments received that combine escrow funds or trust funds with other funds; and (b) permit the transfer of escrow funds or trust funds from an escrow or trust account for the payment of other costs only when necessary and only with the prior express written permission of the borrower. (8) A mortgage loan originator may not accept or receive any escrow funds or trust funds from a borrower.		
(1) and (2) are MBLO	NEW SECTION. **Section 31. Recordkeeping requirements.** (1) A licensee shall use generally accepted accounting principles. (2) Except as provided in subsection (3), a licensee shall maintain accurate and current books and records for a period of 5 years from the date of last entry. Books, accounts, records, and documents necessary to determine the licensee's compliance with [sections 1 through 46] must be maintained.		

(3) and (5) are MLLL (4) is new	(3) Whenever a licensee's usual business location is outside of this state the licensee shall, as established by the commissioner by rule, either maintain its books and records at a location in this state or reimburse the commissioner for expenses incurred, including but not limited to staff time, transportation, food, and lodging expenses, relating to an examination or investigation under [sections 1 through 46]. (4) (a) A licensee's books and records include but are not limited to copies of advertisements placed by or at the request of the licensee that mention rates or fees. In the case of radio or television advertisements, advertisements placed on a telephonic information line, or other electronic sources of information, including but not limited to a computer database or an electronic bulletin board, a licensee shall keep copies of the precise script for the advertisement. (b) Advertisement records include: (i) for each advertisement, the unique identifier, the date or dates of publication, and the name of each periodical, broadcast station, or telephone information line that published or disseminated the advertisement or, in the case of a flyer or other material distributed by the licensee, the dates, methods, and areas of distribution; and (ii) a copy of all documents, notes, computer records not stored in printed form, correspondence, or memoranda relating to a borrower when the licensee has: (A) accepted a deposit or other funds; (B) accepted a residential mortgage loan application; or (C) entered into an agreement to assist in obtaining a residential mortgage loan. (5) This section does not prohibit a licensee from document imaging or other electronic means of maintaining books, accounts, records, and documents if the licensee can ensure adequate safeguards against alteration, damage, or destruction of the imaged or electronically stored books, accounts, records, or documents.		
(1) is MLLL (2) is new	NEW SECTION. **Section 32. Changes in control.** (1) Without the prior approval of the commissioner, it is unlawful for an action to be taken that results in a change of control of a licensed entity. Prior to a change of control of a licensed entity, a person wishing to acquire control shall apply for a new license and pay all applicable fees. (2) The commissioner shall approve or disapprove the application for a new licensee in accordance with the provisions of [sections 1 through 46].		
	NEW SECTION. **Section 33. Duties of mortgage loan originator.** (1) A mortgage loan originator: (a) may not compromise a borrower's right or interest in favor of another's right or interest; (b) shall disclose to a borrower all material facts known to the mortgage loan originator and other knowledge that might reasonably affect a borrower's rights, interests, or ability to receive the borrower's intended benefit from a residential mortgage loan; and (c) shall provide a written account to a borrower for the borrower's money and property received by the mortgage loan originator. (2) A mortgage loan originator may contract for or collect a fee for services rendered to a borrower or mortgage lender if the fee has been properly disclosed to the borrower in advance of providing a service.		
First part is MLLL	NEW SECTION. **Section 34. Violation of specified federal law.** (1) A violation of a provision of the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601, et seq., the Truth in Lending Act, 15 U.S.C. 1601, et seq., the Equal Credit Opportunity Act, 15 U.S.C.		

rest is new	1691, et seq., the Homeownership and Equity Protection Act of 1994, 15 U.S.C. 1602, et seq., the Fair Housing Act, 42 U.S.C. 3601, et seq., the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq., the Fair Debt Collection Practices Act, 15 U.S.C. 1692, et seq., the Financial Services Modernization Act of 1999, 15 U.S.C. 6801, et seq., the USA PATRIOT Act of 2001, as reauthorized, Public Law 107-56, or the John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109-364, or any regulations promulgated under those acts is also a violation of [sections 1 through 46]. (2) The commissioner shall adopt rules to implement this section.		
Model act	NEW SECTION. **Section 36. Investigation and examination authority.** (1) (a) In addition to any authority granted under [sections 1 through 46], the commissioner may conduct investigations and examinations for the purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation, or license termination or to determine compliance with [sections 1 through 46]. (b) The commissioner has the authority to access, receive, and use any books, accounts, records, files, documents, information, or evidence including but not limited to: (i) criminal, civil, and administrative history information, including confidential criminal justice information as defined in 44-5-103; (ii) personal history and experience information including independent credit reports obtained from a credit reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.; and (iii) any other documents, information, or evidence the commissioner considers relevant to an inquiry or investigation regardless of the location, possession, control, or custody of the documents, information, or evidence.		
(2) is new	(2) The office of the commissioner is a criminal justice agency as defined in 44-5-103.		
	(3) (a) For the purposes of investigating violations or complaints arising under [sections 1 through 46] or for the purposes of examination, the commissioner may review, investigate, or examine any licensee or person subject to [sections 1 through 46] as often as necessary in order to carry out the purposes of [sections 1 through 46]. (b) The commissioner may direct, subpoena, or order the attendance of and may examine under oath any person whose testimony may be required about the subject matter of any examination or investigation and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the commissioner considers relevant to the inquiry.		
(4) is MBLO	(4) If a person fails to comply with a subpoena issued by the commissioner or if a party or witness refuses to testify on any matter, the judge of the district court of any county, on the application of the commissioner, shall compel obedience by proceedings for contempt for disobedience of the requirements of the subpoena or the refusal to testify. (5) Each licensee or person subject to [sections 1 through 46] shall make available to the commissioner upon request the documents and records relating to the operations of the licensee or person. The commissioner is entitled to access to the documents and records and to interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, customers of the licensee or person concerning the business of the licensee or person, or any other person having knowledge the commissioner considers relevant. (6) Each licensee or person subject to [sections 1 through 46] shall make or compile		

	reports or prepare other information as directed by the commissioner in carrying out the purposes of this section, including but not limited to: (a) accounting compilations; (b) information lists and data concerning loan transactions in a format prescribed by the commissioner; and (c) any other information the commissioner considers necessary to carry out the purposes of this section. (7) (a) In making any examination or investigation authorized by [sections 1 through 46], the commissioner may control access to any documents and records of the licensee or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. (b) During the period of control, an individual or person may not remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. (c) Unless the commissioner has reasonable grounds to believe the documents or records of the licensee or person have been or are at risk of being altered or destroyed for purposes of concealing a violation of [sections 1 through 46], the licensee, person, or owner of the documents and records is entitled to access to the documents or records as necessary to conduct ordinary business affairs. (8) To carry out the purposes of this section, the commissioner may: (a) retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations; (b) enter into agreements or relationships with other government officials or regulatory associations to improve efficiencies and reduce the regulatory burden by sharing resources, adopting standardized or uniform methods or procedures, and sharing documents, records, information, or evidence obtained under this section; (c) use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee or person subject to [sections 1 through 46]; (d) accept and rely on examination or investigation reports made by other government officials, within or outside of this state; (e) accept audit reports made by an independent certified public accountant for the licensee or person subject to [sections 1 through 46] if the examination or investigation covers at least in part the same general subject matter as the audit report and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the commissioner; and		
(8) (f) is new	(f) assess the licensee or person subject to [sections 1 through 46] the costs incurred by the department in conducting the investigation or examination. (9) (a) The total cost for any investigation or examination must be in accordance with fees determined by the commissioner by rule pursuant to this section and may include expenses for necessary travel outside the state for the purposes of conducting the inspection or examination.		
(9)(b) is in concept	(b) The fees set by the commissioner must be commensurate with the cost of the examination or investigation. All fees collected under this section must be deposited in the		

from MLLL but words are new (10) is MBLO (11) & (12) are model act (13) is new	department's account in the state special revenue fund to be used by the department to cover the department's costs of conducting examinations and investigations. (10) The cost of an examination or investigation must be paid by the licensee or person within 30 days after the date of the invoice. Failure to pay the cost of investigation or examination when due will result in the suspension or revocation of a licensee's license or a claim on the licensee's bond at the election of the commissioner. (11) The authority of this section remains in effect regardless of whether a licensee or person subject to [sections 1 through 46] acts or claims to act under any licensing or registration law of this state or claims to act without that authority. (12) A licensee or person subject to investigation or examination under this section may not knowingly withhold, abstract, remove, mutilate, destroy, fabricate, or keep secret any books, records, computer records, or other information or create false books, records, computer records, or other information. (13) The department shall issue a report of examination or report of investigation to the licensee or person examined or investigated. A licensee or person shall respond to the findings in the report in writing within 30 days of the mailing of the report.		
MLLL	NEW SECTION. **Section 37. Disciplinary action against licensee by other agencies.** (1) A disciplinary action taken against a licensee by an agency of this state, another state, or the federal government for an action substantially related to an activity regulated under [sections 1 through 46] may be grounds for disciplinary action by the commissioner. A certified copy of the record of a disciplinary action taken against a licensee must be treated as evidence of the events related in the record. (2) A disciplinary action taken against a licensee by another agency does not preclude the commissioner from applying a specific statutory provision in [sections 1 through 46] that provides for discipline against a licensee.	**Section 26.** Section 32-9-133, MCA, is amended to read: **"32-9-133. Penalties -- restitution.** (1) If the department finds, after providing a 10-day written notice that includes a statement of alleged violations and a hearing or an opportunity for hearing, as provided in the Montana Administrative Procedure Act, that any person, licensee, or officer, agent, employee, or representative of the person or licensee, whether licensed or unlicensed, has violated any of the provisions of this part, has failed to comply with the rules, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, has furnished false information to the department, or has operated without a required license, the department may impose a civil penalty not to exceed $5,000 for the first violation and not to exceed $10,000 for each subsequent violation. (2) The department may issue an order requiring restitution to borrowers and reimbursement of the department's cost in bringing the administrative action. In addition, the department may issue an order revoking or suspending the right of the person or licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee or to engage in the mortgage broker business. (3) 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. (4) The fines must be deposited in the state general fund. (5) In addition to the penalties in subsection (1), a person practicing as a mortgage broker or mortgage loan originator without being licensed as required under subsection (1) is guilty of a misdemeanor and may be punished by a fine of not less than $250 or more than $1,000, by imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of subsection (1) constitutes a separate offense."	

Model act (5) is new words	NEW SECTION. **Section 38. Confidentiality.** (1) (a) Except as otherwise provided in section 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the requirements under federal law, the Montana constitution, or Montana law regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry and any privilege arising under federal or state law, including the rules of a federal or state court, pertaining to the information or material continue to apply to the information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry. (b) Information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority and with the board of governors of the federal reserve system without the loss of confidentiality protections or the loss of privilege provided by federal law, the Montana constitution, or Montana law. (2) The commissioner may enter into agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or associations representing governmental agencies as established by rule of the commissioner. (3) Information or material subject to confidentiality or a privilege under subsection (1) is not subject to: (a) disclosure under a federal or state law governing disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or (b) subpoena, discovery, or admission into evidence in any private civil action or administrative process unless, with respect to any privilege held by the nationwide mortgage licensing system and registry concerning the information or material, the person to whom the information or material pertains waives, in whole or in part, that privilege. (4) Montana law relating to the disclosure of confidential supervisory information or information or material described in subsection (1) that is inconsistent with subsection (1) is superseded by the requirements of section 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act, Public Law 110-289. (5) Examination reports, information contained in examination reports, and examiners' work papers are confidential, subject to the licensee's and any uninvolved person's reasonable expectation of privacy, and although filed with the commissioner as provided in [sections 1 through 46] are not subject to public inspection. (6) This section does not apply to information or material relating to the employment history of and publicly adjudicated disciplinary and enforcement actions against mortgage lenders, mortgage brokers, and mortgage loan originators included in the nationwide mortgage licensing system and registry that is available for public access.	NEW SECTION. **Section 27. Confidentiality.** (1) (a) Except as otherwise provided in section 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the requirements under federal law, the Montana constitution, or Montana law regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry and any privilege arising under federal or state law, including the rules of a federal or state court, pertaining to the information or material continue to apply to the information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry. (b) Information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority and with the board of governors of the federal reserve system without the loss of confidentiality protections or the loss of privilege provided by federal law, the Montana constitution, or Montana law. (2) The department may enter into agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or associations representing governmental agencies as established by rule of the department. (3) Information or material subject to confidentiality or a privilege under subsection (1) is not subject to: (a) disclosure under a federal or state law governing disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or (b) subpoena, discovery, or admission into evidence in any private civil action or administrative process unless, with respect to any privilege held by the nationwide mortgage licensing system and registry concerning the information or material, the person to whom the information or material pertains waives, in whole or in part, that privilege. (4) Montana law relating to the disclosure of confidential supervisory information or information or material described in subsection (1) that is inconsistent with subsection (1) is superseded by the requirements of section 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act, Public Law 110-289. (5) Examination reports, information contained in examination reports, and examiners' work papers are confidential, subject to the licensee's and any uninvolved person's reasonable expectation of privacy and, although filed with the department as provided in this part, are not subject to public inspection. (6) This section does not apply to information or material relating to the employment history of and publicly adjudicated disciplinary and enforcement actions against mortgage lenders, mortgage brokers, and mortgage loan originators included in the nationwide mortgage licensing system and registry that is available for public access.	
New words based on WA state	NEW SECTION. **Section 39. Action on bond.** (1) The commissioner or a person injured by a violation of [sections 1 through 46] or rules adopted under [sections 1 through 46] may bring an action against the surety bond of a licensee who committed the violation or who employed or engaged a mortgage loan originator who committed the violation. (2) The commissioner or a person damaged by the licensee's violation of [sections 1		

law	through 46] or any rule adopted under [sections 1 through 46] may bring suit upon the surety bond in the district court of any county in which jurisdiction over the licensee may be obtained. (3) (a) Except as provided in subsection (4), if the valid claims of borrowers against a bond exceed the amount of the bond, a borrower claimant is entitled only to a pro rata amount, based on the amount of the borrower's claim that is valid against the bond, without regard to the date of filing of the claim or action based on the claim. (b) If, after all valid borrower claims are paid, valid claims by nonborrower claimants exceed the remaining amount of the bond, each nonborrower claimant is entitled only to a pro rata amount, based on the amount of the nonborrower's claim that is valid against the bond, without regard to the date of a filing of the claim or action based on the claim. (c) A judgment arising from a violation of [sections 1 through 46] or any rule adopted under [sections 1 through 46] must be entered for actual damages and may not be less than the amount paid by a borrower to the licensee plus reasonable attorney fees and costs. The surety bond may not, under any circumstances, provide payment for treble or punitive damages. (4) A borrower must be given priority over the commissioner and other persons in distributions provided for in an action against a surety bond. After the borrower is paid, the commissioner and other third parties are then entitled to distribution against the remainder of the bond to the extent that their claims are considered valid. (5) The remedies provided under this section are cumulative and nonexclusive and do not affect any other remedy available by law.		
(1), (2) & (4) are from MLLL (3) is new words	NEW SECTION. **Section 40. Failure to comply with reporting requirements.** (1) A licensee shall file any report required by the commissioner on or before the date required by the commissioner or within any extension of time granted by the commissioner. (2) The commissioner may charge the licensee a fine of up to $100 a day for each day, up to 10 days, that a required report is late in being filed. (3) If a licensee fails to submit a report as required, including a mortgage call report, the commissioner may suspend or revoke the licensee's license. (4) The failure of a licensee to include in a report any matter required to be included by law or by the commissioner is grounds for suspension or revocation of the licensee's license.		
Model act except for (2), which is new words and (4) from MLLL	NEW SECTION. **Section 41. Enforcement authority and violations.** (1) To ensure the effective supervision and enforcement of [sections 1 through 46], the commissioner may, pursuant to the Montana Administrative Procedure Act: (a) deny, suspend, revoke, condition, or decline to renew a license for a violation of [sections 1 through 46], rules adopted under [sections 1 through 46], or an order or directive issued pursuant to [sections 1 through 46]; (b) deny, suspend, revoke, condition, or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of [section 18 or 23], withholds information, or makes a material misstatement in an application for a license or renewal of a license; (c) order restitution against persons subject to [sections 1 through 46] for violations of [sections 1 through 46] or any rules adopted pursuant to [sections 1 through 46]; (d) impose civil penalties on persons subject to [sections 1 through 46] pursuant to [section 42]; and (e) issue orders or directives, including immediate temporary orders, under [sections 1 through 46], as follows:	**Section 21.** Section 32-9-126, MCA, is amended to read: **"32-9-126. Revocation, suspension, and reinstatement of licenses.** (1) The department, upon giving ~~the~~ a mortgage broker, mortgage lender, or mortgage loan originator licensee 10 days' written notice, which includes a statement of the grounds for the proposed suspension or revocation, and informing the licensee that the licensee has the right to be heard at an administrative hearing if requested by the licensee, may suspend or revoke a license if it finds that the licensee has violated any provision of this part. (2) All notices, hearing schedules, and orders must be mailed to the licensee by certified mail to the address for which the license was issued. (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) The department may reinstate any suspended or revoked license if there is not	

	(i) ordering or directing persons subject to [sections 1 through 46] to cease and desist from conducting business; (ii) ordering or directing persons subject to [sections 1 through 46] to cease any harmful activities or violations of [sections 1 through 46]; (iii) ordering or directing the immediate temporary cessation of business under a license or interim license issued pursuant to the authority granted under [section 26] if the commissioner determines that the provisional license was erroneously granted or the provisional licensee is currently in violation of [sections 1 through 46]; and (iv) ordering or directing any other affirmative action the commissioner considers necessary. (2) For purposes of any action brought by the commissioner under [sections 1 through 46], any person that knowingly provides substantial assistance to another person in a violation of a provision of [sections 1 through 46] or of any rule adopted under [sections 1 through 46] must be considered to be in violation of that provision to the same extent as the person to whom the assistance is provided. (3) A person who directly or indirectly controls a person liable under this section and any partner, officer, director, employee, or independent contractor of a person or any person occupying a similar status or performing similar functions who is liable under this section and any person who participates or materially aids in the transaction is liable jointly and severally with and to the same extent as the person liable under this section if the other person knew or, in the exercise of reasonable care, should have known of the existence of the facts by reason of which the liability is alleged to exist. Any person subject to liability under this subsection is also subject to contribution for any penalties or restitution imposed pursuant to this section. (4) In the case of an immediate temporary order to cease and desist, the department may issue a temporary order pending an administrative hearing that: (a) remains in effect until the agency decisionmaker issues the final order; or (b) becomes final if the person to whom notice is addressed does not request a hearing within 10 days after service of the notice. (5) The commissioner shall provide a written notice of violation and opportunity for hearing to the licensee or person accused of a violation. The respondent is required to request a hearing within 10 days of the date the notice is served.	a fact or condition existing at the time of reinstatement that would have justified the department's refusal to originally issue the license. ~~If a license has been revoked for cause, an application may not be made for the issuance of a new license or the reinstatement of a revoked license for a period of 6 months from the date of revocation.~~"	
Model act except for (4) which is from MLLL and (5), which is new words	NEW SECTION. **Section 42. Penalty.** (1) The commissioner may impose a civil penalty on a licensee or person subject to the provisions of [sections 1 through 46] if the commissioner finds, on the record after notice and opportunity for hearing, that the licensee or person has violated or failed to comply with a requirement of [sections 1 through 46] or a rule adopted by or an order issued by the commissioner under [sections 1 through 46]. (2) The maximum penalty for an act or omission described in subsection (1) is a fine of $25,000. (3) Each violation or failure to comply with a directive or order of the commissioner is a separate and distinct violation or failure to comply. (4) When imposing a civil penalty under this section the commissioner shall, by notice, provide an opportunity for a contested case proceeding under the Montana Administrative Procedure Act. The respondent is required to request an administrative hearing within 10 days of the date of the notice.		

	(5) Money received under this section must be deposited in the department's account in the state special revenue fund and used to administer the provisions of [sections 1 through 46].		
New words	NEW SECTION. **Section 43. Criminal penalties.** (1) A person is guilty of residential mortgage fraud when a person purposely or knowingly does any of the following: (a) employs a device, scheme, or artifice to defraud; (b) engages in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person; (c) fails to disburse funds in accordance with a loan commitment; (d) makes, uses, or facilitates or attempts to make, use, or facilitate any material misstatement, misrepresentation, or omission within the mortgage lending process with the intention that a mortgage lender, mortgage broker, borrower, or any other person or entity involved in the mortgage lending process relies on it; (e) receives or attempts to receive proceeds or any other funds in connection with a residential mortgage closing that the person knew or should have known resulted from a violation of subsections (1)(a) through (1)(d); (f) causes to be filed with the commissioner or in any proceeding under [sections 1 through 46] any document that is, at the time and in light of the circumstances under which it is filed, false or misleading in any material respect; or (g) conspires with, aids and abets, or solicits another to violate any of the provisions of this subsection (1). (2) It is sufficient in any prosecution under this section to show that the person accused acted with the requisite intent. It is not necessary to show that any particular person or entity was harmed financially in the transaction or that the person or entity to whom a misstatement, misrepresentation, or omission was made relied upon the misstatement, misrepresentation, or omission. (3) In any criminal proceeding brought under this section, the violation must be construed to have been committed: (a) in the county in which the residential real property for which the mortgage loan was being sought is located; (b) in any county in which any act was performed in furtherance of the violation; (c) in any county in which any person alleged to have violated this section had control or possession of any proceeds related to the violation; (d) if a closing occurred, in any county in which the closing occurred; or (e) in any county in which a document containing a material misstatement, misrepresentation, or omission is filed with the county clerk and recorder or, in the case of a mobile home or trailer, with the division of motor vehicles. (4) (a) Unless the conduct is prohibited by some other provision of law providing for greater punishment, a violation of this section involving a mortgage loan is a misdemeanor for the first offense and a felony for each subsequent offense. (b) A person convicted of a misdemeanor under this section is subject to the fine in subsection (7) and may also be sentenced for up to 1 year in jail. A person convicted of a felony under this section is subject to the fine in subsection (7) and may also be sentenced to prison for a term of not less than 1 year. (5) In the absence of fraud, bad faith, or malice, a person is not subject to an action for civil		

	liability for filing reports or furnishing other information regarding suspected residential mortgage fraud to a regulatory or law enforcement agency. (6) The provisions of [sections 1 through 46] may not be construed as limiting the powers of the state of Montana to punish any person for any conduct that constitutes a crime. (7) The court may assess a fine of not less than $5,000 or more than $25,000 against any person who is convicted of violating any provision of this section. (8) The commissioner shall adopt rules to implement the provisions of this section.		
From MLLL	NEW SECTION. **Section 44. Institution of criminal proceedings.** (1) The commissioner may refer available evidence concerning a violation of the provisions of [section 43] or a rule adopted or order issued pursuant to the provisions of [section 43] to the attorney general, to law enforcement, or to the appropriate county attorney. (2) The attorney general, law enforcement, or a county attorney may, with or without the commissioner's referral, institute criminal proceedings for a violation described in subsection (1). (3) The commissioner or an appointee of the commissioner may, upon request of the attorney general, law enforcement, or county attorney, assist in presenting the law or facts at trial. (4) After an examination, investigation, or hearing under [sections 1 through 46], if the commissioner considers it in the public's interest, the commissioner may certify a record to the attorney general or the proper prosecuting official of the county or city in which the act complained of, examined, or investigated occurred.		
New words from DOJ and SAO	NEW SECTION. **Section 45. Disposition of civil penalties, costs, and fees.** All civil penalties, costs, and fees received or recovered by the department pursuant to [sections 1 through 46] must be deposited into a state special revenue account to the credit of the department and must be used to defray the expenses of the department in discharging administrative and regulatory powers and duties in relation to [sections 1 through 46]. Excess civil penalties, costs, or fees must be transferred to the general fund.		
Model act	NEW SECTION. **Section 46. Reports of violations to nationwide mortgage licensing system and registry.** The commissioner shall report in a timely fashion any violation of [sections 1 through 46], as well as any enforcement action taken along with any other relevant information, to the nationwide mortgage licensing system and registry.		
	Section 47. Section 31-1-202, MCA, is amended to read: **"31-1-202. Definitions.** ~~(1)~~ Unless the context requires otherwise, in this part the following definitions apply: ~~(a)~~(1) "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)~~(2) "Department" means the department of administration provided for in Title 2, chapter 15, part 10. ~~(c)~~(3) "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)~~(4) "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, or a dwelling as defined in 12 CFR 226.2(a)(19). ~~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)~~(5) "Holder" means:

~~(i)~~(a) 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)~~(b) 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)~~(c) 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)~~(6) (a) "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)~~(b) The term does not include any vehicle that runs only on rails or tracks or in the air or a dwelling as defined in 12 CFR 226.2(a)(19).

~~(h)~~(7) "Official fees" means:

~~(i)~~(a) 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)~~(b) 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)~~(8) "Person" means an individual, partnership, corporation, association, and any other group, however organized.

~~(j)~~(9) "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)~~(10) "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)~~(11) "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)~~(12) "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)~~(13) "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)~~(14) "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)~~(15) (a) "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)~~(b) 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)~~(16) "Services" means work, labor, and services furnished in the delivery, installation, servicing, repair, or improvement of goods. ~~(s)~~(17) "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.~~"		
New words Code recom: T31,1,2	NEW SECTION. **Section 48. Applicability.** This part does not apply to: (1) a person who is doing business under the laws of this state, another state, or the United States as a financial institution or as a wholly owned operating subsidiary of an exempt financial institution; or (2) a person who is licensed pursuant to [sections 1 through 46] and who complies with the		

	provisions of [sections 1 through 46].		
	Section 49. Section 31-1-221, MCA, is amended to read: **"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."		
	Section 50. Section 32-5-102, MCA, is amended to read: **"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."		
	Section 51. Section 32-5-301, MCA, is amended to read: **"32-5-301. Fees charged to consumers.** (1) A licensee may contract for and receive, on any loan of money, interest as provided under 31-1-112. (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; and ~~(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)~~(c) 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."		
	Section 52. Section 32-5-306, MCA, is amended to read: **"32-5-306. Insurance ~~-- real property security -- definitions~~.** (1) Except as provided in this section, insurance may not be written by a licensee or an 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.~~"		
	NEW SECTION. **Section 53. Repealer.** Sections 32-9-101, 32-9-102, 32-9-103, 32-9-	NEW SECTION. **Section 28. Repealer.** Sections 32-10-101, 32-10-102, 32-10-	

	104, 32-9-108, 32-9-109, 32-9-110, 32-9-115, 32-9-116, 32-9-117, 32-9-118, 32-9-119, 32-9-121, 32-9-122, 32-9-123, 32-9-124, 32-9-125, 32-9-126, 32-9-130, 32-9-132, 32-9-133, 32-9-141, 32-9-142, 32-10-101, 32-10-102, 32-10-103, 32-10-201, 32-10-202, 32-10-203, 32-10-204, 32-10-207, 32-10-208, 32-10-209, 32-10-301, 32-10-302, 32-10-303, 32-10-309, 32-10-310, 32-10-401, 32-10-402, 32-10-403, 32-10-404, 32-10-405, 32-10-406, 32-10-501, 32-10-502, 32-10-503, 32-10-504, 32-10-505, 32-10-506, 32-10-507, 32-10-512, 32-10-513, 32-10-514, and 32-10-515, MCA, are repealed.	103, 32-10-201, 32-10-202, 32-10-203, 32-10-204, 32-10-207, 32-10-208, 32-10-209, 32-10-301, 32-10-302, 32-10-303, 32-10-309, 32-10-310, 32-10-401, 32-10-402, 32-10-403, 32-10-404, 32-10-405, 32-10-406, 32-10-501, 32-10-502, 32-10-503, 32-10-504, 32-10-505, 32-10-506, 32-10-507, 32-10-512, 32-10-513, 32-10-514, and 32-10-515, MCA, are repealed.	
	NEW SECTION. **Section 54. Codification instruction.** (1) [Sections 1 through 46] are intended to be codified as an integral part of Title 32, and the provisions of Title 32 apply to [sections 1 through 46]. (2) [Section 48] is intended to be codified as an integral part of Title 31, chapter 1, part 2, and the provisions of Title 31, chapter 1, part 2, apply to [section 48].	NEW SECTION. **Section 29. Codification instruction.** [Sections 5, 7, 11, 14 through 16, 22 through 24, and 27] are intended to be codified as an integral part of Title 32, chapter 9, part 1, and the provisions of Title 32, chapter 9, part 1, apply to [sections 5, 7, 11, 14 through 16, 22 through 24, and 27].	
Model act	NEW SECTION. **Section 55. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.	NEW SECTION. **Section 30. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.	
	NEW SECTION. **Section 56. Effective date.** [This act] is effective July 1, 2009.	NEW SECTION. **Section 31. Effective date.** [This act] is effective July 1, 2009.	
		NEW SECTION. **Section 32. Termination.** [Sections 14 and 15] terminate December 31, 2010.	