

61st Legislature

## 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 BROKER AND LOAN ORIGINATOR ACT~~ 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, ~~32-9-122~~, 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:

**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."

**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.

~~(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.~~

(2) Any person licensed as a mortgage broker, mortgage lender, 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."

**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

(3) "Approved test provider" means any test provider approved by the

~~(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 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.

~~(3)~~(6) "Branch office" means a location other than a licensee's principal place of business.

~~(4)~~(7) "Department" means the department of administration provided for in 2-15-1001, acting through its division 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.

~~(5)~~(9) "Designated manager" means ~~a person~~ an individual ~~in and to the state~~ and employed by a mortgage broker entity, other than a sole proprietorship ~~in the state~~, 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 ~~in a state or a state of the United States or~~ ~~in the state of Montana or a state of the United States.~~

~~(6)~~(10) "Entity" means a business organization, other than a sole proprietorship or an individual person, that provides mortgage broker ~~in the state~~ services.

(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.

(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.

(13) "Independent contractor" means a person certified as an independent contractor pursuant to 39-71-417.

(14) "Individual" means a natural person.

(7) "Lender" means ~~an entity that funds or services a residential mortgage loan.~~

(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.

~~(8) "Loan originator" means a licensed individual employed by a mortgage broker to assist borrowers by originating a residential 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.

~~(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 and who is registered with and maintains a unique identifier through the nationwide mortgage licensing system and registry and does any of the following:

- (i) closes a residential mortgage loan;
- (ii) advances funds;
- (iii) offers to advance funds; or
- (iv) commits to advancing funds for a residential mortgage loan applicant.

(b) a mortgage lender, as defined in this section, shall not be considered the agent of a mortgage broker or a mortgage lender, as defined in this section, for any residential mortgage loan or residential mortgage loan application.

(c) 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 or mortgage lender 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.

(c) The term does not include an individual who is employed by a mortgage broker or mortgage lender 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.

(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 registration of residential mortgage brokers, mortgage loan originators, and registered mortgage loan originators.

(12-202) "Nontraditional mortgage product" means any mortgage product other than a 30-year, fixed-rate mortgage.

(12-202) (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;

(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.

(b) The term does not include

(i) the performance of purely administrative or clerical tasks as a loan processor or underwriter.

(12-202) "Person" means an individual, corporation, company, limited liability company, partnership, limited liability partnership, trust, or association.

(12-202) "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.

32-9-103. "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 regulated by a federal banking agency; or

(iii) an institution regulated by the federal farm credit administration; and

(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.

32-9-104. "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.

~~32-9-105. "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.~~

~~(13-9-305) "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.~~

32-9-106. "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry."

**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 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~~





~~AMENDED CHAPTER 32-9~~

32-9-108. 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."

**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 mortgage loan originator~~ unless licensed ~~as a mortgage loan originator~~ under this part. 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.

**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."

~~AMENDED CHAPTER 32-9~~

**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.

**Section 32-9-109.** 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."

**Section 32-9-110.** 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 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."

**Section 32-9-115.** 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 preclicensing 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 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);

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

~~SECTION 401.01. 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."~~

(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."~~

~~SECTION 401.02. 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 401.03. 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 ~~and credit history of credit, as not word~~ requirements provided for in 32-9-123;

~~(ii) an affidavit of the applicant that the applicant and its employees, independent contractors, officers, directors, or principals are at least 18 years of age;~~

(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 shall provide a list of all employees, independent contractors, officers, directors, or principals of the applicant who are at least 18 years of age;~~

~~(7) The applicant shall provide a list of all independent contractors, officers, directors, or principals of the applicant who are at least 18 years of age;~~

~~(8) The applicant shall provide a list of all independent contractors, officers, directors, or principals of the applicant who are at least 18 years of age;~~

~~(9) The applicant shall provide a list of all independent contractors, officers, directors, or principals of the applicant who are at least 18 years of age;~~

~~(10) The applicant shall provide a list of all independent contractors, officers, directors, or principals of the applicant who are at least 18 years of age.~~

~~Section 32-9-116, MCA, is amended to read: (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]; (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~~

~~(3) 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 set by the department pursuant to 32-9-117.~~

~~(4) 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 set by the department pursuant to 32-9-117.~~

**Section 32-9-116.** 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.~~

~~(g) 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~~

~~(3) 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 set by the department pursuant to 32-9-117.~~

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)(b) A mortgage loan originator may not transact business for a mortgage broker that has not on the department's list of mortgage brokers.~~

(3)(b) A mortgage loan originator may transact business only for an employing mortgage broker or ~~for a 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 principal office~~ at the ~~mortgage broker's~~ employing 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.

(3)(c) If the employment of a mortgage loan originator is terminated, the mortgage broker ~~of 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 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.~~

**Section 32-9-117.** 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 a 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 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 15-1-10. Compliance of current mortgage brokers, mortgage lenders 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, mortgage lender, 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 information to the nationwide mortgage and licensing system and registry regarding the following:

(a) 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

(b) 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) 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).

**NEW SECTION. Section 32-9-123. Waiver of prelicensing 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) completion of a minimum of 20 hours of approved education courses within the 5 years preceding the date of the application;~~

(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.

**NEW SECTION. Section 32-9-117. 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.



(3) (a) In any printed, published, 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 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 mortgage loan originator's license number but is not required to list the entity's license number if the entity's name is listed."

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(1) The amount of the required surety bond shall be calculated by combining the annual loan production amounts for all business locations of the mortgage broker or mortgage lender.

The department shall use the proceeds of the mortgage broker or mortgage lender 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 one surety bond in the amount of \$25,000 for each principal location and branch office identified in the application for licensure.

(b) The amount of the required surety bond must be calculated by combining the annual loan production amounts for all business locations of the mortgage broker or mortgage lender.

**Section 32-9-123.** 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) The amount of the required surety bond must be calculated by combining the annual loan production amounts for all business locations of the mortgage broker or mortgage lender.~~

(b) The department shall use the proceeds of the ~~irrevocable letter 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 ~~one~~ one surety bond in the amount of \$25,000 for each principal location and branch office identified in the application for licensure.

(b) The amount of the required surety bond ~~must be calculated by combining the annual loan production amounts for all~~ must be calculated by combining the annual loan production amounts for all business locations of the mortgage broker or mortgage lender.

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;
- (ii) \$50,000 for annual loan production exceeding \$50 million per year.

Section 32-9-123. (a) In lieu of a surety bond, a mortgage broker 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.

(a) Evidence that a mortgage broker 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)(5) 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."

Section 32-9-124. 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, ~~mortgage lender~~, or mortgage loan originator ~~and is~~ 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~~ mortgage ~~lender~~ services to a borrower, the mortgage broker ~~is~~ ~~must be~~ 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 must be signed by the borrower:

"MORTGAGE LOAN ORIGATION 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."

**Section 32-9-126.** 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 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."~~

**NEW SECTION. Section 402. 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, and 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~~ 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.

**NEW SECTION. Section 403. Mortgage call reports.** Each mortgage broker and ~~mortgage loan originator~~ entity shall submit to the nationwide mortgage licensing system and registry reports of condition, which must be in the form and must contain information that the nationwide mortgage licensing system and registry may require.

**NEW SECTION. Section 404. Nationwide mortgage licensing system and registry information challenge process.** The department shall establish a process under which mortgage brokers ~~and mortgage loan originators~~ and mortgage loan originators may challenge information entered into the nationwide

mortgage licensing system and registry by the department.

**Section 32-9-130.** 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) prescribing a system of fees for the department to be used to fund the department's operations;~~

~~(f) prescribing a system of fees for the department to be used to fund the department's operations;~~

~~(g) establishing fees for the department to be used to fund the department's operations.~~

(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 ~~at any time~~ transaction and may examine the residential mortgage loan files, trust account records, and other information related to mortgage loan transactions of a licensee.

~~(b) The department may at any time examine any mortgage broker at any time transaction and may examine the residential mortgage loan files, trust account records, and other information related to mortgage loan transactions of a licensee.~~

~~(c) The department may at any time examine any mortgage broker at any time transaction and may examine the residential mortgage loan files, trust account records, and other information related to mortgage loan transactions of a licensee.~~

(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 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) The department shall maintain a list of mortgage brokers and designated managers who are licensed under this part. The list shall include the name, address, and telephone number of each mortgage broker and designated manager. The list shall be available to the public upon request.

(c) The department shall maintain a list of mortgage asset research institute, inc., and other similar organizations. The list shall include the name, address, and telephone number of each organization.

(d) The department shall maintain a list of mortgage brokers and designated managers who are licensed under this part. The list shall include the name, address, and telephone number of each mortgage broker and designated manager. The list shall be available to the public upon request.

(e) The department shall maintain a list of mortgage asset research institute, inc., and other similar organizations. The list shall include the name, address, and telephone number of each organization.

(f) Except as provided in subsection (5)(a)(i) and (5)(a)(ii), 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 mortgage brokers or mortgage lenders. 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 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.

(d) The department shall enforce the provisions of this part, including the suspension, termination, revocation, or nonrenewal of a license for violation of state or federal law;

(e) The department shall ensure that all mortgage broker and mortgage loan originator licensees under this part register with the nationwide mortgage licensing system and registry; and

**Section 32-9-133.** 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 or mortgage loan 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 treasury and used to defray the costs of the department.

(5) In addition to the penalties in subsection (1), a person practicing as a mortgage broker, mortgage loan originator, 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."

**NEW SECTION.** **Section 13-2-201. 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 SECTION. Section 32-10-101. Repealer.** 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, are repealed.

**NEW SECTION. Section 32-10-102. Codification instruction.** [Sections 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67, 69, 71, 73, 75, 77, 79, 81, 83, 85, 87, 89, 91, 93, 95, 97, 99, 101, 103, 105, 107, 109, 111, 113, 115, 117, 119, 121, 123, 125, 127, 129, 131, 133, 135, 137, 139, 141, 143, 145, 147, 149, 151, 153, 155, 157, 159, 161, 163, 165, 167, 169, 171, 173, 175, 177, 179, 181, 183, 185, 187, 189, 191, 193, 195, 197, 199, 201, 203, 205, 207, 209, 211, 213, 215, 217, 219, 221, 223, 225, 227, 229, 231, 233, 235, 237, 239, 241, 243, 245, 247, 249, 251, 253, 255, 257, 259, 261, 263, 265, 267, 269, 271, 273, 275, 277, 279, 281, 283, 285, 287, 289, 291, 293, 295, 297, 299, 301, 303, 305, 307, 309, 311, 313, 315, 317, 319, 321, 323, 325, 327, 329, 331, 333, 335, 337, 339, 341, 343, 345, 347, 349, 351, 353, 355, 357, 359, 361, 363, 365, 367, 369, 371, 373, 375, 377, 379, 381, 383, 385, 387, 389, 391, 393, 395, 397, 399, 401, 403, 405, 407, 409, 411, 413, 415, 417, 419, 421, 423, 425, 427, 429, 431, 433, 435, 437, 439, 441, 443, 445, 447, 449, 451, 453, 455, 457, 459, 461, 463, 465, 467, 469, 471, 473, 475, 477, 479, 481, 483, 485, 487, 489, 491, 493, 495, 497, 499, 501, 503, 505, 507, 509, 511, 513, 515, 517, 519, 521, 523, 525, 527, 529, 531, 533, 535, 537, 539, 541, 543, 545, 547, 549, 551, 553, 555, 557, 559, 561, 563, 565, 567, 569, 571, 573, 575, 577, 579, 581, 583, 585, 587, 589, 591, 593, 595, 597, 599, 601, 603, 605, 607, 609, 611, 613, 615, 617, 619, 621, 623, 625, 627, 629, 631, 633, 635, 637, 639, 641, 643, 645, 647, 649, 651, 653, 655, 657, 659, 661, 663, 665, 667, 669, 671, 673, 675, 677, 679, 681, 683, 685, 687, 689, 691, 693, 695, 697, 699, 701, 703, 705, 707, 709, 711, 713, 715, 717, 719, 721, 723, 725, 727, 729, 731, 733, 735, 737, 739, 741, 743, 745, 747, 749, 751, 753, 755, 757, 759, 761, 763, 765, 767, 769, 771, 773, 775, 777, 779, 781, 783, 785, 787, 789, 791, 793, 795, 797, 799, 801, 803, 805, 807, 809, 811, 813, 815, 817, 819, 821, 823, 825, 827, 829, 831, 833, 835, 837, 839, 841, 843, 845, 847, 849, 851, 853, 855, 857, 859, 861, 863, 865, 867, 869, 871, 873, 875, 877, 879, 881, 883, 885, 887, 889, 891, 893, 895, 897, 899, 901, 903, 905, 907, 909, 911, 913, 915, 917, 919, 921, 923, 925, 927, 929, 931, 933, 935, 937, 939, 941, 943, 945, 947, 949, 951, 953, 955, 957, 959, 961, 963, 965, 967, 969, 971, 973, 975, 977, 979, 981, 983, 985, 987, 989, 991, 993, 995, 997, 999, 1001, 1003, 1005, 1007, 1009, 1011, 1013, 1015, 1017, 1019, 1021, 1023, 1025, 1027, 1029, 1031, 1033, 1035, 1037, 1039, 1041, 1043, 1045, 1047, 1049, 1051, 1053, 1055, 1057, 1059, 1061, 1063, 1065, 1067, 1069, 1071, 1073, 1075, 1077, 1079, 1081, 1083, 1085, 1087, 1089, 1091, 1093, 1095, 1097, 1099, 1101, 1103, 1105, 1107, 1109, 1111, 1113, 1115, 1117, 1119, 1121, 1123, 1125, 1127, 1129, 1131, 1133, 1135, 1137, 1139, 1141, 1143, 1145, 1147, 1149, 1151, 1153, 1155, 1157, 1159, 1161, 1163, 1165, 1167, 1169, 1171, 1173, 1175, 1177, 1179, 1181, 1183, 1185, 1187, 1189, 1191, 1193, 1195, 1197, 1199, 1201, 1203, 1205, 1207, 1209, 1211, 1213, 1215, 1217, 1219, 1221, 1223, 1225, 1227, 1229, 1231, 1233, 1235, 1237, 1239, 1241, 1243, 1245, 1247, 1249, 1251, 1253, 1255, 1257, 1259, 1261, 1263, 1265, 1267, 1269, 1271, 1273, 1275, 1277, 1279, 1281, 1283, 1285, 1287, 1289, 1291, 1293, 1295, 1297, 1299, 1301, 1303, 1305, 1307, 1309, 1311, 1313, 1315, 1317, 1319, 1321, 1323, 1325, 1327, 1329, 1331, 1333, 1335, 1337, 1339, 1341, 1343, 1345, 1347, 1349, 1351, 1353, 1355, 1357, 1359, 1361, 1363, 1365, 1367, 1369, 1371, 1373, 1375, 1377, 1379, 1381, 1383, 1385, 1387, 1389, 1391, 1393, 1395, 1397, 1399, 1401, 1403, 1405, 1407, 1409, 1411, 1413, 1415, 1417, 1419, 1421, 1423, 1425, 1427, 1429, 1431, 1433, 1435, 1437, 1439, 1441, 1443, 1445, 1447, 1449, 1451, 1453, 1455, 1457, 1459, 1461, 1463, 1465, 1467, 1469, 1471, 1473, 1475, 1477, 1479, 1481, 1483, 1485, 1487, 1489, 1491, 1493, 1495, 1497, 1499, 1501, 1503, 1505, 1507, 1509, 1511, 1513, 1515, 1517, 1519, 1521, 1523, 1525, 1527, 1529, 1531, 1533, 1535, 1537, 1539, 1541, 1543, 1545, 1547, 1549, 1551, 1553, 1555, 1557, 1559, 1561, 1563, 1565, 1567, 1569, 1571, 1573, 1575, 1577, 1579, 1581, 1583, 1585, 1587, 1589, 1591, 1593, 1595, 1597, 1599, 1601, 1603, 1605, 1607, 1609, 1611, 1613, 1615, 1617, 1619, 1621, 1623, 1625, 1627, 1629, 1631, 1633, 1635, 1637, 1639, 1641, 1643, 1645, 1647, 1649, 1651, 1653, 1655, 1657, 1659, 1661, 1663, 1665, 1667, 1669, 1671, 1673, 1675, 1677, 1679, 1681, 1683, 1685, 1687, 1689, 1691, 1693, 1695, 1697, 1699, 1701, 1703, 1705, 1707, 1709, 1711, 1713, 1715, 1717, 1719, 1721, 1723, 1725, 1727, 1729, 1731, 1733, 1735, 1737, 1739, 1741, 1743, 1745, 1747, 1749, 1751, 1753, 1755, 1757, 1759, 1761, 1763, 1765, 1767, 1769, 1771, 1773, 1775, 1777, 1779, 1781, 1783, 1785, 1787, 1789, 1791, 1793, 1795, 1797, 1799, 1801, 1803, 1805, 1807, 1809, 1811, 1813, 1815, 1817, 1819, 1821, 1823, 1825, 1827, 1829, 1831, 1833, 1835, 1837, 1839, 1841, 1843, 1845, 1847, 1849, 1851, 1853, 1855, 1857, 1859, 1861, 1863, 1865, 1867, 1869, 1871, 1873, 1875, 1877, 1879, 1881, 1883, 1885, 1887, 1889, 1891, 1893, 1895, 1897, 1899, 1901, 1903, 1905, 1907, 1909, 1911, 1913, 1915, 1917, 1919, 1921, 1923, 1925, 1927, 1929, 1931, 1933, 1935, 1937, 1939, 1941, 1943, 1945, 1947, 1949, 1951, 1953, 1955, 1957, 1959, 1961, 1963, 1965, 1967, 1969, 1971, 1973, 1975, 1977, 1979, 1981, 1983, 1985, 1987, 1989, 1991, 1993, 1995, 1997, 1999, 2001, 2003, 2005, 2007, 2009, 2011, 2013, 2015, 2017, 2019, 2021, 2023, 2025, 2027, 2029, 2031, 2033, 2035, 2037, 2039, 2041, 2043, 2045, 2047, 2049, 2051, 2053, 2055, 2057, 2059, 2061, 2063, 2065, 2067, 2069, 2071, 2073, 2075, 2077, 2079, 2081, 2083, 2085, 2087, 2089, 2091, 2093, 2095, 2097, 2099, 2101, 2103, 2105, 2107, 2109, 2111, 2113, 2115, 2117, 2119, 2121, 2123, 2125, 2127, 2129, 2131, 2133, 2135, 2137, 2139, 2141, 2143, 2145, 2147, 2149, 2151, 2153, 2155, 2157, 2159, 2161, 2163, 2165, 2167, 2169, 2171, 2173, 2175, 2177, 2179, 2181, 2183, 2185, 2187, 2189, 2191, 2193, 2195, 2197, 2199, 2201, 2203, 2205, 2207, 2209, 2211, 2213, 2215, 2217, 2219, 2221, 2223, 2225, 2227, 2229, 2231, 2233, 2235, 2237, 2239, 2241, 2243, 2245, 2247, 2249, 2251, 2253, 2255, 2257, 2259, 2261, 2263, 2265, 2267, 2269, 2271, 2273, 2275, 2277, 2279, 2281, 2283, 2285, 2287, 2289, 2291, 2293, 2295, 2297, 2299, 2301, 2303, 2305, 2307, 2309, 2311, 2313, 2315, 2317, 2319, 2321, 2323, 2325, 2327, 2329, 2331, 2333, 2335, 2337, 2339, 2341, 2343, 2345, 2347, 2349, 2351, 2353, 2355, 2357, 2359, 2361, 2363, 2365, 2367, 2369, 2371, 2373, 2375, 2377, 2379, 2381, 2383, 2385, 2387, 2389, 2391, 2393, 2395, 2397, 2399, 2401, 2403, 2405, 2407, 2409, 2411, 2413, 2415, 2417, 2419, 2421, 2423, 2425, 2427, 2429, 2431, 2433, 2435, 2437, 2439, 2441, 2443, 2445, 2447, 2449, 2451, 2453, 2455, 2457, 2459, 2461, 2463, 2465, 2467, 2469, 2471, 2473, 2475, 2477, 2479, 2481, 2483, 2485, 2487, 2489, 2491, 2493, 2495, 2497, 2499, 2501, 2503, 2505, 2507, 2509, 2511, 2513, 2515, 2517, 2519, 2521, 2523, 2525, 2527, 2529, 2531, 2533, 2535, 2537, 2539, 2541, 2543, 2545, 2547, 2549, 2551, 2553, 2555, 2557, 2559, 2561, 2563, 2565, 2567, 2569, 2571, 2573, 2575, 2577, 2579, 2581, 2583, 2585, 2587, 2589, 2591, 2593, 2595, 2597, 2599, 2601, 2603, 2605, 2607, 2609, 2611, 2613, 2615, 2617, 2619, 2621, 2623, 2625, 2627, 2629, 2631, 2633, 2635, 2637, 2639, 2641, 2643, 2645, 2647, 2649, 2651, 2653, 2655, 2657, 2659, 2661, 2663, 2665, 2667, 2669, 2671, 2673, 2675, 2677, 2679, 2681, 2683, 2685, 2687, 2689, 2691, 2693, 2695, 2697, 2699, 2701, 2703, 2705, 2707, 2709, 2711, 2713, 2715, 2717, 2719, 2721, 2723, 2725, 2727, 2729, 2731, 2733, 2735, 2737, 2739, 2741, 2743, 2745, 2747, 2749, 2751, 2753, 2755, 2757, 2759, 2761, 2763, 2765, 2767, 2769, 2771, 2773, 2775, 2777, 2779, 2781, 2783, 2785, 2787, 2789, 2791, 2793, 2795, 2797, 2799, 2801, 2803, 2805, 2807, 2809, 2811, 2813, 2815, 2817, 2819, 2821, 2823, 2825, 2827, 2829, 2831, 2833, 2835, 2837, 2839, 2841, 2843, 2845, 2847, 2849, 2851, 2853, 2855, 2857, 2859, 2861, 2863, 2865, 2867, 2869, 2871, 2873, 2875, 2877, 2879, 2881, 2883, 2885, 2887, 2889, 2891, 2893, 2895, 2897, 2899, 2901, 2903, 2905, 2907, 2909, 2911, 2913, 2915, 2917, 2919, 2921, 2923, 2925, 2927, 2929, 2931, 2933, 2935, 2937, 2939, 2941, 2943, 2945, 2947, 2949, 2951, 2953, 2955, 2957, 2959, 2961, 2963, 2965, 2967, 2969, 2971, 2973, 2975, 2977, 2979, 2981, 2983, 2985, 2987, 2989, 2991, 2993, 2995, 2997, 2999, 3001, 3003, 3005, 3007, 3009, 3011, 3013, 3015, 3017, 3019, 3021, 3023, 3025, 3027, 3029, 3031, 3033, 3035, 3037, 3039, 3041, 3043, 3045, 3047, 3049, 3051, 3053, 3055, 3057, 3059, 3061, 3063, 3065, 3067, 3069, 3071, 3073, 3075, 3077, 3079, 3081, 3083, 3085, 3087, 3089, 3091, 3093, 3095, 3097, 3099, 3101, 3103, 3105, 3107, 3109, 3111, 3113, 3115, 3117, 3119, 3121, 3123, 3125, 3127, 3129, 3131, 3133, 3135, 3137, 3139, 3141, 3143, 3145, 3147, 3149, 3151, 3153, 3155, 3157, 3159, 3161, 3163, 3165, 3167, 3169, 3171, 3173, 3175, 3177, 3179, 3181, 3183, 3185, 3187, 3189, 3191, 3193, 3195, 3197, 3199, 3201, 3203, 3205, 3207, 3209, 3211, 3213, 3215, 3217, 3219, 3221, 3223, 3225, 3227, 3229, 3231, 3233, 3235, 3237, 3239, 3241, 3243, 3245, 3247, 3249, 3251, 3253, 3255, 3257, 3259, 3261, 3263, 3265, 3267, 3269, 3271, 3273, 3275, 3277, 3279, 3281, 3283, 3285, 3287, 3289, 3291, 3293, 3295, 3297, 3299, 3301, 3303, 3305, 3307, 3309, 3311, 3313, 3315, 3317, 3319, 3321, 3323, 3325, 3327, 3329, 3331, 3333, 3335, 3337, 3339, 3341, 3343, 3345, 3347, 3349, 3351, 3353, 3355, 3357, 3359, 3361, 3363, 3365, 3367, 3369, 3371, 3373, 3375, 3377, 3379, 3381, 3383, 3385, 3387, 3389, 3391, 3393, 3395, 3397, 3399, 3401, 3403, 3405, 3407, 3409, 3411, 3413, 3415, 3417, 3419, 3421, 3423, 3425, 3427, 3429, 3431, 3433, 3435, 3437, 3439, 3441, 3443, 3445, 3447, 3449, 3451, 3453, 3455, 3457, 3459, 3461, 3463, 3465, 3467, 3469, 3471, 3473, 3475, 3477, 3479, 3481, 3483, 3485, 3487, 3489, 3491, 3493, 3495, 3497, 3499, 3501, 3503, 3505, 3507, 3509, 3511, 3513, 3515, 3517, 3519, 3521, 3523, 3525, 3527, 3529, 3531, 3533, 3535, 3537, 3539, 3541, 3543, 3545, 3547, 3549, 3551, 3553, 3555, 3557, 3559, 3561, 3563, 3565, 3567, 3569, 3571, 3573, 3575, 3577, 3579, 3581, 3583, 3585, 3587, 3589, 3591, 3593, 3595, 3597, 3599, 3601, 3603, 3605, 3607, 3609, 3611, 3613, 3615, 3617, 3619, 3621, 3623, 3625, 3627, 3629, 3631, 3633, 3635, 3637, 3639, 3641, 3643, 3645, 3647, 3649, 3651, 3653, 3655, 3657, 3659, 3661, 3663, 3665, 3667, 3669, 3671, 3673, 3675, 3677, 3679, 3681, 3683, 3685, 3687, 3689, 3691, 3693, 3695, 3697, 3699, 3701, 3703, 3705, 3707, 3709, 3711, 3713, 3715, 3717, 3719, 3721, 3723, 3725, 3727, 3729, 3731, 3733, 3735, 3737, 3739, 3741, 3743, 3745, 3747, 3749, 3751, 3753, 3755, 3757, 3759, 3761, 3763, 3765, 3767, 3769, 3771, 3773, 3775, 3777, 3779, 3781, 3783, 3785, 3787, 3789, 3791, 3793, 3795, 3797, 3799, 3801, 3803, 3805, 3807, 3809, 3811, 3813, 3815, 3817, 3819, 3821, 3823, 3825, 3827, 3829, 3831, 3833, 3835, 3837, 3839, 3841, 3843, 3845, 3847, 3849, 3851, 3853, 3855, 3857, 3859, 3861, 3863, 3865, 3867, 3869, 3871, 3873, 3875, 3877, 3879, 3881, 3883, 3885, 3887, 3889, 3891, 3893, 3895, 3897, 3899, 3901, 3903, 3905, 3907, 3909, 3911, 3913, 3915, 3917, 3919, 3921, 3923, 3925, 3927, 3929, 3931, 3933, 3935, 3937, 3939, 3941, 3943, 3945, 3947, 3949, 3951, 3953, 3955, 3957, 3959, 3961, 3963, 3965, 3967, 3969, 39

~~Whenever~~ ~~Chapter 101 of 2009~~, 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 101.01~~. **Effective date.** [This act] is effective July 1, 2009.

NEW SECTION. ~~Section 101.02~~. **Termination.** [Sections ~~101.01~~ ~~101.02~~ ~~101.03~~] terminate December 31, 2010.

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