

HOUSE BILL NO. 69
INTRODUCED BY W. MCNUTT
BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA RESIDENTIAL MORTGAGE LENDER LICENSING ACT; PROVIDING DEFINITIONS; ESTABLISHING LICENSING REQUIREMENTS; PROVIDING FOR LICENSE SUSPENSION, REVOCATION, AND REINSTATEMENT; PROVIDING RULEMAKING AUTHORITY FOR THE DEPARTMENT OF ADMINISTRATION; AUTHORIZING EXAMINATIONS AND INVESTIGATIONS BY THE DEPARTMENT; REGULATING ACTIVITIES OF MORTGAGE LENDERS; PROVIDING CIVIL AND CRIMINAL PENALTIES; PROVIDING FOR CRIMINAL PROCEEDINGS; AND AMENDING SECTION 31-1-111, MCA."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 32] may be cited as the "Montana Residential Mortgage Lender Licensing Act".

NEW SECTION. **Section 2. License requirement -- scope.** (1) A person, except a person who is exempt pursuant to [section 8], may not engage in the business of making residential mortgage loans after October 1, ~~2007~~ 2008, without first obtaining a license from the department in accordance with the licensing procedures provided for in [sections 1 through 32] and rules promulgated by the department.

(2) A person required to be licensed under [sections 1 through 32] who is not licensed may not:

(a) transact business without a residential mortgage lender license under any name or title; or
(b) circulate or use any advertising, including by electronic media, or make any representation or give any information to any other person that indicates or implies that the person is authorized to conduct activities within the scope of [sections 1 through 32].

(3) Each person, unless exempt, conducting activities regulated by [sections 1 through 32] must be issued a residential mortgage lender license restricting operations to those activities that the person has applied to conduct.

(4) A residential mortgage lender license must be issued to the person applying. Employees or independent contractors of the licensee are not required to be separately licensed.

(5) A person who is exempt as provided for in [section 8] is not subject to the requirements of [sections 1 through 32].

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 32], the following definitions apply:

(1) "Advertising" means a commercial message in any medium that promotes, either directly or indirectly, a mortgage lending transaction.

(2) "Annual audit" means an audit of the licensee's books, accounts, records, and systems of internal control performed by an independent certified public accountant in accordance with generally accepted accounting principles and auditing standards.

(3) "Borrower" means the person or persons seeking a residential mortgage loan.

(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; or
- (c) that, due to the 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.

(5) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a licensee, whether through the ownership of voting stock of the licensee, the ownership of voting stock of any entity that possesses that power, or otherwise. Control must be presumed to exist if any person, directly or indirectly, owns, controls, or holds the power to vote 10% or more of the voting stock of any licensee or of any entity that owns, controls, or holds the power to vote 10% or more of the voting stock of the licensee. A person may not be considered to control a licensee solely by reason of being an officer or director of the licensee.

(6) "Department" means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.

(7) "Electronically transmitted" or "by electronic media" means any transmission via diskette, wire, or tape, including but not limited to the intranet, interactive or otherwise, the internet, any other computer network, electronic mail, or other similar method of transmission.

(8) "Employee" means an individual who is engaged in the service of a licensee for a salary or wages and who is subject to the licensee's direction and control.

(9) "Escrow funds, trust funds, or reserves" means money entrusted to a mortgage lender by a borrower

for the purpose of payment of taxes, insurance, or other payments to be made in connection with the servicing of a mortgage loan.

(10) "Financial institution" means any state, national, or federal bank, savings bank, savings and loan association, credit union, or trust company.

(11) "Financial institution holding company" means a bank holding company, as defined under 12 U.S.C. 1841, a savings and loan holding company, as defined under 12 U.S.C. 1467a, or any other financial institution holding company as defined under federal law or regulation.

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

(13) "Interest rate lock-in agreement" means an agreement, transmitted in writing or by electronic media, in which the mortgage lender guarantees for a specified number of days or until a specified date the availability of a specified rate of interest, a specified formula by which the rate of interest will be determined, or a specific number of discount points if the mortgage loan is approved and closed within the stated period of time.

(14) "Licensee" means a person who is authorized pursuant to [sections 1 through 32] to engage in the activities regulated by [sections 1 through 32].

(15) "Loan commitment" or "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.

(16) "Making a mortgage loan" means to advance funds, offer to advance funds, or make a commitment to advance funds to a loan applicant for a mortgage loan.

(17) "Mortgage lender" means a person who makes a mortgage loan or who represents that the person is capable of making a mortgage loan.

(18) "Mortgage lending" means making a mortgage loan or the capability of making a mortgage loan.

(19) "Mortgage loan" or "residential mortgage loan" means a loan ~~made primarily for personal, family, or household use~~ and primarily secured by either a mortgage, or deed of trust, OR TRUST INDENTURE on residential real estate located in this state.

(20) "Person" means an individual, partnership, corporation, association, limited liability company, limited liability partnership, or other entity.

(21) "Principal place of business" means a licensee's primary business office as designated on the application for licensure or any amendment to the application.

(22) "Residential real property" or "residential real estate" means real property located in this state THAT

IS improved by a one- to four-family dwelling OR A MANUFACTURED HOME, AS DEFINED BY 24 CFR 3280, EITHER OF WHICH IS INTENDED TO BE THE BORROWER'S PRIMARY RESIDENCE.

(23) "Subsidiary" means an organization that is wholly owned or controlled by a financial institution.

(24) "Third-party fees" means fees received by a mortgage lender as part of the mortgage loan application process that are designated to be paid to a person other than the mortgage lender. These fees include but are not limited to credit reports, property appraisals, title searches, title insurance, and attorney, survey, or private mortgage insurance fees.

(25) "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 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.

NEW SECTION. Section 4. Licensee name. A person engaged in the business regulated by [sections 1 through 32] may not operate the business under names other than the names filed with the department and appearing on the license.

NEW SECTION. Section 5. License application -- investigation -- fees. (1) The department shall issue a license to an applicant upon:

- (a) the applicant filing a complete application for a residential mortgage lender license;
- (b) the applicant filing a listing of material judgments entered against and bankruptcy petitions by the applicant for the preceding 5 years and the disposition of those actions;
- (c) the applicant paying nonrefundable investigation and application fees for licensure as a mortgage lender in the amount of \$750 and an application fee for any branch location of \$250; and
- (d) the department completing an investigation to ensure the fitness of the applicant to transact business pursuant to [sections 1 through 32].

(2) (A) The department shall conduct an investigation that is sufficient to allow the department to make findings pertaining to the financial responsibility and criminal records of the applicant or, if the applicant is other than an individual, pertaining to the financial responsibility and criminal records of the principal officers, directors, managers, or members of the entity making the application. The findings may be verified by fingerprints, AN EXAMINATION OF experience, character, ~~and~~ general fitness, AND CRIMINAL RECORDS. The department may not issue

a license to an applicant unless the department concludes after completing the investigation that the business will be operated honestly, fairly, and efficiently within the purposes of [sections 1 through 32].

(B) (I) AS A PREREQUISITE TO THE ISSUANCE OF A LICENSE, THE DEPARTMENT SHALL REQUIRE THE APPLICANT TO SUBMIT FINGERPRINTS FOR THE PURPOSE OF FINGERPRINT CHECKS BY THE MONTANA DEPARTMENT OF JUSTICE AND THE FEDERAL BUREAU OF INVESTIGATION.

(II) THE APPLICANT SHALL SIGN A RELEASE OF INFORMATION TO THE DEPARTMENT AND IS RESPONSIBLE TO THE DEPARTMENT OF JUSTICE FOR THE PAYMENT OF ALL FEES ASSOCIATED WITH THE CRIMINAL BACKGROUND CHECK.

(III) UPON COMPLETION OF THE CRIMINAL BACKGROUND CHECK, THE DEPARTMENT OF JUSTICE SHALL FORWARD ALL CRIMINAL JUSTICE INFORMATION, AS DEFINED IN 44-5-103, CONCERNING THE APPLICANT THAT INVOLVES THE CONVICTION OF A CRIMINAL OFFENSE IN ANY JURISDICTION TO THE DEPARTMENT, AS AUTHORIZED IN 44-5-303.

(IV) AT THE CONCLUSION OF ANY BACKGROUND CHECK REQUIRED BY THIS SECTION, THE DEPARTMENT MUST RECEIVE THE CRIMINAL BACKGROUND CHECK REPORT BUT MAY NOT RECEIVE THE FINGERPRINT CARD OF THE APPLICANT. UPON RECEIPT OF THE CRIMINAL BACKGROUND CHECK REPORT, THE DEPARTMENT OF JUSTICE SHALL PROMPTLY DESTROY THE FINGERPRINT CARD OF THE APPLICANT.

(3) All fees collected under this section must be deposited in the department's state special revenue account to be used by the department in administering the provisions of [sections 1 through 32].

(4) Licenses issued pursuant to [sections 1 through 32] are nontransferable and nonassignable.

(5) A MORTGAGE BROKER AND ITS BRANCHES LICENSED UNDER TITLE 32, CHAPTER 9, IS EXEMPT FROM LICENSING FEES UNDER [SECTIONS 1 THROUGH 32]. A LICENSED MORTGAGE BROKER THAT ENGAGES IN MORTGAGE LENDING SHALL COMPLY WITH THE PROVISIONS OF [SECTIONS 1 THROUGH 32].

NEW SECTION. Section 6. License application. (1) The application for a residential 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 10% or greater interest in the entity making the application.

(b) The application must include a detailed description of the proposed activities of the license 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 requirements provided for in [section 13]

and has provided access to supporting credit information as required by rule;

(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, 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 [sections 1 through 32].

NEW SECTION. Section 7. License renewal. (1) Residential mortgage lender licenses must be renewed annually and expire on September 30. Properly completed renewal application forms and nonrefundable renewal fees set by rule must be received by the department by July 31.

(2) It is the responsibility of each licensee to renew its license. Failure of the licensee to receive renewal forms, absent a request by the licensee for forms sent by certified mail, does not waive the licensee's renewal responsibility. Failure by a licensee to submit a properly completed renewal application form and nonrefundable renewal fees in a timely fashion, absent a written extension from the department, will result in the assessment of additional fees and the reversion of the license to an inactive status. A residential mortgage lender license that is not renewed by September 30 automatically expires.

(3) A licensee that ceases any activity regulated by [sections 1 through 32] and that desires to

discontinue being licensed as a mortgage lender shall inform the department in writing and at the same time convey the license and all other symbols or indicia of licensure. The licensee shall include a plan for the withdrawal from regulated business, including a timetable for the disposition of the business, and shall identify the location where the books, accounts, records, and documents will be kept until the end of the retention period provided for in [section 15].

(4) An application for the renewal of an existing residential mortgage lender license must contain the information specified pursuant to [sections 1 through 32] and by department rule. However, only the requested information that has changed from the most recent application must be submitted.

NEW SECTION. Section 8. Exemption from licensing. The following are not subject to the licensing provisions of [sections 1 through 32]:

(1) A person is exempt who is doing business under the laws of this state, another state, or the United States as a financial institution. Wholly owned operating subsidiaries of an exempt financial institution are also exempt.

(2) A person is exempt who is engaged solely in nonresidential or commercial real estate lending.

(3) A person is exempt who does not make more than five mortgage loans with the person's own funds for the person's own investment during any 12-month period and who does not represent to the public in any manner that the person is in the mortgage lending business.

(4) An individual is exempt who assists in the performance of the activities regulated by [sections 1 through 32] as an employee or independent contractor of a licensee or exempt person. A licensee is responsible for the actions of an independent contractor under the licensee's license and bond.

(5) An agency of a federal, state, or municipal government is exempt.

(6) An employee or employer pension plan is exempt if the plan makes mortgage loans only to the plan's participants.

(7) A person is exempt who is acting in a fiduciary capacity conferred by the authority of any court except for a person subject to an injunction to comply with a provision of [sections 1 through 32] or subject to an order of the department issued under [sections 1 through 32].

(8) A PERSON IS EXEMPT WHO IS LICENSED UNDER TITLE 32, CHAPTER 9, IF THE PERSON IS ENGAGED SOLELY IN THE BUSINESS OF MORTGAGE BROKERING AND DOES NOT ADVANCE FUNDS, OFFER TO ADVANCE FUNDS, OR COMMIT TO ADVANCING FUNDS.

(9) A PERSON IS EXEMPT WHO IS A RETAIL SELLER, AS DEFINED IN 31-1-102, IF THE PERSON COMPLIES WITH THE

PROVISIONS OF TITLE 31, CHAPTER 1, PART 2.(10) A PERSON IS EXEMPT WHO SELLS THE PERSON'S OWN REAL PROPERTY.

NEW SECTION. Section 9. Representations of applicant. Each application for a residential mortgage lender license must be accompanied by the following representations stating that the applicant, if granted a license:

(1) shall maintain a staff reasonably adequate to meet the requirements of [sections 1 through 32] and rules adopted by the department;

(2) shall keep and maintain for 5 years business records and any other information required by [section 15] or by rules of the department regarding any mortgage loan made subject to [sections 1 through 32];

(3) shall file with the department, when due, any required report;

(4) shall post the license at the physical location listed on the license application and shall display the license number or other evidence of licensing on any advertising or internet websites or other electronic media used by the licensee;

(5) shall disburse funds in accordance with the licensee's loan agreements and shall make a good faith effort to effect closings in a timely manner;

(6) has not committed a crime against any law of this state, any other state, or the United States involving moral turpitude or fraudulent or dishonest dealing and that a final judgment has not been entered against the applicant in a civil action upon grounds of fraud, misrepresentation, or deceit that has not been previously reported to the department;

(7) shall account for or deliver to any person at the time that has been agreed upon or is required by law or, in the absence of a fixed time, upon demand of the person entitled to the accounting or delivery any personal property, such as money, funds, a deposit, check, or draft, a mortgage, or any other document or thing of value, that has come into the licensee's possession and that is not the licensee's property or that a licensee is not in law or equity entitled to retain under the circumstances;

(8) has not engaged in any conduct that would be cause for denial of a license;

(9) shall continuously maintain the surety bond required by [section 13];

(10) shall advise the department in writing, signed in the same form as the license application being amended, of any material changes to the address, officers, and names of controlling shareholders submitted on the most recent application for a residential mortgage lender license within 45 days of the change;

(11) shall comply with the provisions of [sections 1 through 32] and with any lawful order or rule issued

or made under the provisions of [sections 1 through 32];

(12) shall submit to periodic examinations by the department as provided for in [sections 1 through 32];

and

(13) shall advise the department in writing of financially material judgments entered against or bankruptcy petitions filed by the licensee within 10 days of the occurrence.

NEW SECTION. Section 10. Refusal to issue or renew license. The department may refuse to issue or renew a residential mortgage lender license if:

(1) it is determined that the license applicant is not in material compliance with any provision of [sections 1 through 32];

(2) the department cannot make the findings specified in [section 5(2)]; or

(3) all material requirements for renewal or issuance of a license have not been met.

NEW SECTION. Section 11. Change in control. (1) Except with the prior approval of the department, it is unlawful for any action to be taken that results in a change of control of the business of a licensee. Prior to any change of control of the business of a licensee, the person wishing to acquire control shall apply in writing to the department and pay an application and investigation fee to the department. The application must contain any information the department prescribes by rule as being necessary or appropriate for the purpose of determining that a person meets the requirements of [sections 1 through 32].

(2) The department shall approve or disapprove the proposed change of control of a licensee in accordance with the provisions of [sections 1 through 32].

(3) The department shall grant a 90-day temporary residential mortgage lender license for the principal place of business and each branch office location that currently has a residential mortgage lender license within 10 days after the department's receipt of an application for the change of control. The department may issue subsequent 90-day temporary licenses at the department's discretion. The existing licensee shall surrender the existing license for each licensed location, including the principal place of business and each branch office location, within 10 business days of receipt of the temporary licenses. The temporary licensee is subject to all provisions of [sections 1 through 32] and all rules adopted under [sections 1 through 32].

NEW SECTION. Section 12. Annual audit. (1) (a) Within 180 days of the end of a licensee's fiscal year, the licensee shall have the licensee's books and accounts audited by an independent certified public accountant

and have the audit report filed with the department. THE DEPARTMENT MAY ACCEPT THE AUDIT OF A PARENT COMPANY OF THE LICENSEE IN LIEU OF AN AUDIT OF THE LICENSEE IF THE DEPARTMENT DETERMINES THAT THE PARENT COMPANY'S AUDIT IS SUFFICIENT FOR THE DEPARTMENT'S PURPOSES.

(b) The audit must be sufficiently comprehensive in scope to permit the expression of an opinion on the financial statements.

(c) The audit must be prepared in accordance with generally accepted accounting principles and must be performed in accordance with generally accepted auditing standards.

(d) The audit report must be certified by the certified public accountant conducting the audit.

(2) As used in this section, the term "expression of an opinion" includes either:

(a) an unqualified opinion;

(b) a qualified opinion;

(c) a disclaimer of opinion; or

(d) an adverse opinion.

(3) If a qualified or adverse opinion is expressed or if an opinion is disclaimed, the reasons must be fully explained. An opinion qualified in its scope is not acceptable.

(4) If a licensee fails to obtain an audit as required, the department may obtain an audit by an independent certified public accountant at the licensee's expense. The department may select an independent certified public accountant by advertising for bids or by other fair and impartial means as the department establishes by rule if allowed by law.

(5) Audits conducted in accordance with the Consolidated Audit Guide for Audits of HUD Programs may be accepted to fulfill the requirements of this section.

(6) The department may establish by rule additional requirements for annual audits.

NEW SECTION. Section 13. Surety bonds. (1)(a) Licensees shall continuously maintain a surety bond in accordance with this section.

(b) A surety bond must be used for the recovery of expenses, fines, and fees levied by the department for losses or damages incurred by borrowers or consumers as the result of a licensee's noncompliance with [sections 1 through 32].

(c) The surety bond must be payable when a licensee fails to comply with any provision of [sections 1 through 32], must be payable to the department, and must be issued by an insurance company authorized to do business in this state.

(d) A copy of the surety bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, must be filed with the department within 10 days of the execution of the bond.

(2) The department may adopt rules with respect to the requirements for surety bonds.

(3) The surety bond must contain a clause that the insurance company will notify the department at least 30 days prior to canceling the surety bond for any reason.

(4) If a licensee or the issuer of the surety bond cancels the bond, the licensee shall inform the department of the cancellation in writing by certified mail and provide a new surety bond to the department.

(5) If the department is notified that a surety bond has been canceled and the licensee has not supplied a new surety bond to the department by the date of the cancellation, the licensee's license is automatically suspended until a new surety bond acceptable to the department is received.

NEW SECTION. Section 14. Escrow funds -- trust funds -- reserves. (1) Escrow funds, trust funds, or reserves authorized for any purpose by the mortgage loan contract are subject to all applicable state and federal requirements, must be immediately placed and maintained in separate accounts in a federally insured financial institution having an office in this state, and may not be commingled with any licensee funds.

(2) An escrow fund or reserves account must be placed in a segregated account with a federally insured financial institution having an office in this state. The funds must be kept in the segregated account until disbursement. The escrow funds or reserves account may be used only for:

(a) payments authorized by the borrower, allowed by the mortgage loan contract, or required by federal or state law;

(b) refunds to the borrower;

(c) transfer to another federally insured financial institution having an office in this state;

(d) forwarding to the appropriate mortgage lender or mortgage servicer in case of a transfer of servicing;

(e) any other purpose authorized by the mortgage loan contract; or

(f) compliance with a department or court order.

(3) All accounting for escrow funds or reserves must be performed in compliance with the aggregate accounting rules established in regulation X, 24 CFR 3500.

(4) A trust fund account must be placed in a segregated account with a federally insured financial institution having an office in this state. The funds must be kept in the segregated account until disbursement.

Trust funds may be removed from the trust fund account and used only for:

(a) payments authorized by the borrower to pay for third-party services required for origination of the

mortgage loan;

- (b) refunds to the borrower;
- (c) transfer to another financial institution or mortgage lender; or
- (d) compliance with a department or court order.

(5) The requirement of keeping the escrow funds, trust funds, or reserves in accounts in a financial institution having an office in this state may be waived by the department by rule.

NEW SECTION. Section 15. Recordkeeping requirements. (1) (a) Each licensee shall maintain at its principal place of business as designated on the license, all books, accounts, records, and documents necessary to determine the licensee's compliance with [sections 1 through 32].

(b) All books, accounts, records, and documents must be kept available for review and examination by the department for a period of 5 years from the date of the last entry.

(2) (a) The department may authorize the maintenance of books, accounts, records, and documents at a location other than a principal place of business if the licensee ensures that the books, accounts, records, and documents will be kept in a secure location under conditions that will not lead to the damage or destruction of the books, accounts, records, or documents.

(b) The department may require that books, accounts, records, and documents be produced and made available at a reasonable and convenient location in this state.

(3) If the department determines that it is more effective or cost-efficient to perform a review or examination of the books, accounts, records, and documents at a licensee's out-of-state location, the licensee shall pay the reasonable travel expenses and per diem for each department employee who participates in the review or examination.

(4) The department may prescribe by rule the minimum information to be shown in the books, accounts, records, and documents of licensees to enable the department to determine compliance with [sections 1 through 32].

(5) This section does not prohibit a licensee from the use of document imaging or other electronic means in 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.

(6) Failure to comply with this section is grounds for administrative action by the department in accordance with [sections 1 through 32].

NEW SECTION. Section 16. Prohibited practices. It is unlawful for any person to:

- (1) provide or offer to provide any service requiring a license unless the person has been issued the appropriate license or is exempt from licensure;
- (2) disburse the mortgage loan proceeds to a closing agent in any form other than, as applicable:
 - (a) direct deposit to a borrower's account;
 - (b) wire;
 - (c) bank or certified check;
 - (d) attorney's check drawn on a trust account; or
 - (e) other form as specifically authorized by applicable law;
- (3) disburse the proceeds of a mortgage loan without sufficient collected funds on hand at the time of the disbursement in the account upon which the funds are drawn;
- (4) fail to disburse funds in accordance with a loan commitment to make a mortgage loan that was accepted by the borrower;
- (5) accept any fees at closing that were not disclosed as required by law;
- (6) retain third-party fees at closing in excess of the actual cost of third-party services;
- (7) require the borrower to be represented by a third-party service provider except under the terms permitted by applicable federal law;
- (8) fail to take the actions required to effect a release of the lender's security interest in the property ~~with the release to be issued within 30 days after the mortgage loan has been fully satisfied~~ AS DESCRIBED IN 71-1-212;
- (9) obtain any agreement or instrument in which blanks are left to be filled in after execution;
- (10) obtain any exclusive dealing or exclusive agency agreement from any borrower;
- (11) delay closing of any mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;
- (12) engage in unfair, deceptive, or fraudulent mortgage loan practices;
- (13) make payment of any kind, whether directly or indirectly, to any appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of any residential real property that is to be mortgaged;
- (14) make any misrepresentations or false promises likely to influence or persuade or pursue a course of misrepresentation and false promises through officers, directors, partners, trustees, independent contractors, employees, agents, advertising, or otherwise;
- (15) misrepresent, circumvent, or conceal, through any subterfuge or device, any of the material facts

or terms of a mortgage loan;

(16) act as a mortgage lender in this state without a license issued by the department;

(17) advertise that a mortgage applicant will have unqualified access to credit without disclosing what material limitations on the availability of credit exist, such as the percentage of down payment required, that a higher rate or points could be required, or that restrictions as to the maximum principal amount of the mortgage loan offered could apply;

(18) advertise a mortgage loan for which a prevailing rate is indicated in the advertisement unless the advertisement specifically states that the expressed rate could change or not be available at commitment or closing;

(19) advertise mortgage loans, including rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on mortgage loans, unless the person is able to make advertised mortgage loans to a reasonable number of qualified applicants;

(20) falsely advertise or misuse names in violation of 18 U.S.C. 709; or

(21) make any untrue statement of a material fact in any document filed with the department or to omit any material fact that is required to be stated in any document.

NEW SECTION. Section 17. Violation of specified federal law. A violation of any provision of the federal Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601, et seq., the federal Truth in Lending Act, 15 U.S.C. 1601, et seq., or any regulations promulgated under those acts is also a violation of [sections 1 through 32].

NEW SECTION. Section 18. Appropriation of licensee's property -- omissions -- false statements -- withholding documents. (1) A person who is an officer, director, partner, trustee, independent contractor, or employee of a licensee, a licensee's holding company, or a licensee's affiliates violates the provisions of [sections 1 through 32] if the person:

(a) knowingly receives or appropriates any of the licensee's property other than in payment of a just demand;

(b) with intent to defraud, causes or concurs in an omission being made in the licensee's books and accounts; or

(c) (i) knowingly makes or concurs in the making or publishing of any false entry of a material fact in the licensee's books or records or in any written report, exhibit, or statement of the licensee's affairs or pecuniary

condition; or

(ii) having the custody of the licensee's books, willfully refuses or neglects to make any proper entry in the books as required by law or refuses to allow the books to be inspected by the department or the department's designees.

(2) An officer, director, partner, trustee, independent contractor, or employee of a licensee, its holding company, or its affiliates violates the provisions of [sections 1 through 32] upon:

(a) making a false entry of material fact in any book, record, or other document of the licensee's business or in connection with any condition, affair, or transaction of the licensee's business with the intent to deceive any authorized public officer, any officer, director, partner, trustee, independent contractor, or employee of the licensee, or any agent, investigator, or examiner employed or lawfully appointed to examine any condition, affair, or transaction of the licensee's business;

(b) failing to make an entry of a material fact in any book, account, record, or other document of the licensee's business pertaining to any condition, affair, or transactions of the licensee; or

(c) making unavailable any book, accounts, record, or document of the licensee that is required to be made, written, or kept and that is subject to disclosure to the public, the department, or any state or federal agency.

NEW SECTION. Section 19. Taking, withholding, or misapplication of funds or property -- restitution. (1) It is a violation of [sections 1 through 32] for an officer, director, partner, trustee, independent contractor, or employee of a licensee to:

(a) take, withhold, or misapply the funds or property of a licensee or misapply the licensee's credit; or

(b) take, withhold, or misapply funds, trust obligations, or property deposited with a licensee.

(2) If a violation of this section also results in a criminal conviction under applicable criminal law, the court shall, in addition to any other punishment imposed, order the person convicted to make full restitution to the licensee.

NEW SECTION. Section 20. Improper disbursement of escrow, reserves, or escrow closing funds -- misstatement or omission of material fact pertaining to mortgage loan -- misappropriation of funds. (1) Any person subject to the provisions of [sections 1 through 32], including but not limited to a licensee, a director, partner, or shareholder controlling an ownership interest of 10% or more of a licensee, or an officer, trustee, agent, independent contractor, or employee of a licensee may not:

(a) knowingly or recklessly take, withhold, disburse, or cause the disbursement of escrow funds, trust funds, reserves, or escrow closing funds except as permitted by [sections 1 through 32] or knowingly or recklessly direct, participate in, or aid or abet in a material way any activity that constitutes theft or fraud in connection with any escrow funds, trust funds, reserves, or escrow closing funds transaction; or

(b) knowingly or recklessly make or cause to be made any misstatement or omission of a material fact pertaining to mortgage lending.

(2) If a violation of this section also results in a criminal conviction under applicable criminal law, the court shall, in addition to any other punishment imposed, order the person convicted to make full restitution to injured parties.

NEW SECTION. Section 21. Disclosure of mortgage costs. (1) Within 3 business days of taking a mortgage loan application and prior to receiving any consideration from the borrower, the mortgage lender shall disclose the terms of the loan to the borrower in compliance with the disclosure requirements of the federal Real Estate Settlement Procedures Act, 12 U.S.C. 2601, et seq., the federal Truth in Lending Act, 15 U.S.C. 1601, et seq., and any regulations promulgated under those acts.

(2) A mortgage lender shall disclose the terms of any prepayment penalty on the mortgage loan, including the amount of the prepayment penalty or the formula for calculating the prepayment penalty. If the initial mortgage loan offer does not include a prepayment penalty, but a prepayment penalty is later included in the mortgage loan offer, disclosure of the terms of the prepayment penalty must be made within 3 business days of the prepayment penalty being added to the mortgage loan offer.

(3) A licensed mortgage lender may not require a borrower to pay any fees or charges prior to the mortgage loan closing, except:

(a) charges to be incurred by the mortgage lender on behalf of the borrower for services from third parties necessary to process the application, such as credit reports and appraisals;

(b) an application fee;

(c) an interest rate lock-in fee if the borrower is provided an interest rate lock-in agreement, the terms of which must include but are not limited to:

(i) the expiration date of the interest rate lock-in agreement;

(ii) the principal amount of the mortgage loan, the term of the mortgage loan, and identification of the residential real estate;

(iii) the initial interest rate and the discount points to be paid; and

(iv) the amounts and payment terms of the interest rate lock-in along with a statement as to whether the fee is refundable and the terms and conditions necessary to obtain a refund; and

(d) a commitment fee, upon approval of the mortgage loan application, if the borrower is provided a commitment in writing that it is signed by the mortgage lender and the borrower and the terms include the terms and conditions of the mortgage loan as well as the terms and conditions of the commitment, including but not limited to:

(i) the time period during which the commitment is irrevocable and may be accepted by the borrower, which may not be less than 7 calendar days from date of commitment or date of mailing, whichever is later;

(ii) the amount and payment terms of the commitment fee, along with a statement as to whether the fee is refundable and the terms and conditions necessary to obtain a refund;

(iii) the expiration date of the commitment;

(iv) conditions precedent to closing; and

(v) the terms and conditions, if any, for obtaining a refund of fees for third-party services or arranging for the transfer of third-party service work products to another mortgage lender.

(4) Any amount collected under subsection (3) in excess of the actual costs must be returned to the borrower within 60 days after rejection, withdrawal, or closing.

(5) (a) Except as provided in subsection (5)(b), fees or charges collected pursuant to this section, other than fees for third-party services collected pursuant to subsection (3)(a), must be refunded if a valid commitment is not produced or if closing does not occur.

(b) Applicable fees may be retained by the licensee in accordance with the terms of the commitment upon the licensee's ability to demonstrate any of the following:

(i) the borrower withdraws the mortgage loan application after the lender has issued a commitment on the same terms and conditions disclosed to the borrower on the most recent good faith estimate;

(ii) the borrower has made a material misrepresentation or omission on the mortgage loan application;
or

(iii) the borrower has failed to provide documentation necessary to the processing or closing of the mortgage loan application and closing does not occur without fault of the lender.

NEW SECTION. Section 22. License suspension and revocation -- restitution -- penalty. (1) If the department finds, after providing a 10-day written notice that includes a statement of alleged violations and a notice of an opportunity for hearing, as provided in the Montana Administrative Procedure Act, that any person,

licensee, or officer, director, partner, trustee, employee, or representative, whether licensed or unlicensed, of the person or licensee has violated any of the provisions of [sections 1 through 32], has failed to comply with the rules 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 license, the department may impose a civil penalty not to exceed \$10,000 for each violation and may issue an order revoking or suspending the right of the person or licensee, directly or through an officer, director, partner, trustee, employee, or representative, to do business in this state as a licensee or to engage in the business of making residential mortgage loans. In addition, the department may issue an order requiring restitution to borrowers and reimbursement of the department's cost in bringing the administrative action.

(2) 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.

(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 refusing to originally issue the license. If a license has been revoked for cause, an application may not be made for issuance of a new license or the reinstatement of a revoked license for a period of 6 months from the date of revocation.

(5) All civil fines collected under this section must be deposited in the general fund.

NEW SECTION. Section 23. Authority of department -- rulemaking. (1) The department has the powers set forth in [sections 1 through 32]. These powers may be exercised whether or not an application for a license has been filed with the department or whether or not a license has been issued or, if issued, has been surrendered, suspended, or revoked.

(2) The department may adopt rules to implement the provisions of [sections 1 through 32]. The rules may include but are not limited to establishing forms and procedures for licensing, acceptable practices, establishing surety bond amounts, annual audits, records maintenance, and fees for license renewal and examination.

NEW SECTION. Section 24. Investigations by department -- subpoenas -- oaths -- examination of witnesses and evidence. (1) The department may investigate any matter, upon complaint or otherwise, if it

appears that a person has engaged or offered to engage in any act or practice that is in violation of any provision of [sections 1 through 32] or any rule adopted or order issued by the department pursuant to [sections 1 through 32].

(2) The department may issue subpoenas to compel the attendance of witnesses and the production of books, accounts, records, documents, and other evidence in any matter over which the department has jurisdiction, control, or supervision under [sections 1 through 32]. The department may administer oaths and affirmations to a person whose testimony is required.

(3) If a person refuses to obey a subpoena or to give testimony or produce evidence as required by the subpoena issued by the department, a judge of the district court of Lewis and Clark County or the county in which the licensed premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department to give testimony and produce evidence as may be required. The clerk of the court shall issue the subpoena requiring the person to whom it is directed to appear at the time and place designated in the subpoena.

(4) If a person served with a court-ordered subpoena refuses to obey the subpoena or to give testimony or produce evidence as required by the subpoena, the department may proceed under the contempt provisions of Title 3, chapter 1, part 5.

(5) Failure to comply with the requirements of a court-ordered subpoena is punishable pursuant to 45-7-309.

NEW SECTION. Section 25. Cease and desist orders. (1) If it appears to the department that a person is engaged in or is about to engage in any act or practice constituting a violation of any provision of [sections 1 through 32] or any rule adopted or order issued by the department pursuant to [sections 1 through 32], the department may issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for hearing. THE ORDER MAY APPLY ONLY TO THE ALLEGED ACT OR PRACTICE CONSTITUTING A VIOLATION OF [SECTIONS 1 THROUGH 32]. The department may issue a temporary order pending the hearing that:

(a) remains in effect until 10 days after the hearings examiner issues proposed findings of fact and conclusions of law; or

(b) becomes final if the person to whom notice is addressed does not request a hearing within 10 days after receipt of the notice.

(2) A violation of an order issued pursuant to this section is subject to the penalty provisions of [sections

1 through 32].

NEW SECTION. Section 26. Injunctions -- receivers. (1) Whenever the department has reason to believe that a person is using, has used, or is about to use any method, act, or practice that violates any provision of [sections 1 through 32] or any rule adopted or order issued by the department pursuant to [sections 1 through 32], the department, upon determining that proceeding would be in the public interest, may bring an action in the name of the state to restrain by temporary or permanent injunction or temporary restraining order the use of the unlawful method, act, or practice.

(2) The notice for an action pursuant to subsection (1) must state generally the relief sought and must be served at least 20 days before the hearing of the action in which the relief sought is a temporary or permanent injunction. The notice for a temporary restraining order is governed by 27-19-315.

(3) An action under this section may be brought in the district court in the county in which a person resides or has the person's principal place of business or in the district court of Lewis and Clark County IF THE PERSON IS NOT A RESIDENT OF THIS STATE OR DOES NOT MAINTAIN A PLACE OF BUSINESS IN THIS STATE.

(4) A district court may issue temporary or permanent injunctions or temporary restraining orders to restrain and prevent violations of [sections 1 through 32], and an injunction must be issued without bond to the department. If the department is successful in obtaining an injunction or restraining order under this section, the department is entitled to an award of reasonable attorney fees and costs.

(5) In addition to all other means provided by law for the enforcement of a restraining order or injunction, the court in which the action is brought may impound and appoint a receiver for the property and business of the defendant, including books, accounts, records, and documents pertaining to the property or business, or as much of the property or business as the court considers reasonably necessary to prevent violations of [sections 1 through 32]. The receiver, when appointed and qualified, has the powers and duties as to custody, collection, administration, winding up, and liquidation of the property and business that are conferred upon the receiver by the court.

NEW SECTION. Section 27. Failure to comply with reporting requirements. (1) A licensee shall file any report required by the department on or before the date required by the department or within any extension of time granted by the department.

(2) The department 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) The failure of a licensee to include in a report any matter required by law or by the department is grounds for the suspension or revocation of the licensee's license.

NEW SECTION. Section 28. Examinations by department -- confidentiality -- sharing information with other agencies. (1) The department and the department's appointees may examine the books, records, accounts, documents, and operations of a licensee or person required to be licensed under [sections 1 through 32] as often as the department considers necessary. The department may cooperate and share information with any agency of this state, the federal government, or agencies of other states. The department may accept an examination conducted by the federal government or an agency of this state or another state in place of an examination by the department.

(2) Within 6 months of the completion of an examination, the department shall issue a statement of findings of the examination to the licensee or person examined. The department may allow the licensee or person 30 days to respond to the examination findings. The department shall take appropriate steps to ensure correction of any violations of [sections 1 through 32] indicated by the examination.

(3) An affiliate of a licensee is subject to examination by the department on the same basis as the licensee, but only when reports from a licensee or examination of a licensee provides documented evidence of unlawful activity between a licensee and affiliate.

(4) The expenses of any examination of a licensee or affiliate of the licensee must be borne by the licensee and must be assessed by the department as established by rule. Fees collected under this section must be deposited into the department's state special revenue fund to be used by the department in administering the provisions of [sections 1 through 32].

(5) Unless otherwise required by state law, examination findings and any information contained in the examination report must be considered confidential information for the department's use only. The information may not be released to persons who are not officially associated with the department, and the information contained in the findings and report may be used by the department only in the furtherance of its official duties.

(6) Information obtained during an examination or investigation or from an application may be disclosed to law enforcement officials and other state and federal agencies for further investigation and enforcement.

NEW SECTION. Section 29. Conviction of crime -- nolo contendere. (1) Any person who has pleaded guilty to, been convicted of, or pleaded nolo contendere to any offense specified in subsection (2) within the past 10 years or who has been held liable in any civil action by final judgment or administrative judgment by

any public agency within the past 7 years of any of the provisions specified in subsection (2) may not serve as an officer, director, partner, trustee, independent contractor, or employee of a mortgage lender or may not be a shareholder controlling 10% or more of the ownership interest in the mortgage lender without prior written approval of the department.

(2) Subsection (1) applies to criminal convictions of, pleas of nolo contendere to, or civil or administrative judgments entered for the following:

(a) offenses involving robbery, burglary, theft, embezzlement, fraud, fraudulent conversion or misappropriation of property, forgery, bookmaking, receiving stolen property, counterfeiting, extortion, or check, credit card, or computer violations specified in the provisions of Montana's criminal laws, federal criminal laws, or another state's criminal laws; or

(b) offenses specified in provisions of the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 12 U.S.C. 3310, et seq.

(3) Any officer, director, partner, trustee, or other person who seeks a controlling ownership interest of 10% or more in the business of a licensed mortgage lender shall, as a condition to obtaining that interest or participation, authorize the department access to that person's criminal history information for purposes of determining whether the person has a prior conviction of or has pleaded nolo contendere to a criminal offense specified in subsection (2).

(4) A person who violates a provision of this section, including but not limited to a licensee who permits a controlling ownership interest in or other participation in the business of the licensee in violation of this section, is subject to the penalty provisions of [sections 1 through 32].

(5) For purposes of this section, the term "employee" means:

(a) a loan officer or other individual who negotiates agreements with the public; or

(b) an individual with access to or responsibility for escrow funds, trust funds, reserves, or escrow closing funds held by the licensee.

NEW SECTION. Section 30. Penalties. (1) A person who knowingly violates any provision of [sections 1 through 32] or any rule adopted or order issued pursuant to [sections 1 through 32] is subject to a fine for each violation not to exceed \$10,000 or imprisonment for not more than 1 year, or both.

(2) All fines collected under this section must be deposited in the general fund.

NEW SECTION. Section 31. Institution of criminal proceedings. (1) (a) The department may refer

any evidence that is available concerning a violation of the provisions of [sections 1 through 32] or of a rule adopted or order issued pursuant to the provisions of [sections 1 through 32] to the attorney general or to the appropriate county attorney in the jurisdiction in which the violation occurred.

(b) The attorney general or the appropriate county attorney may, with or without the department's referral, institute criminal proceedings under the provisions of [sections 1 through 32].

(c) The department and its employees may, upon request of the attorney general or the appropriate county attorney, assist in presenting the law or facts at trial.

(2) After an examination, investigation, or hearing under [sections 1 through 32], if the department considers it of public interest or advantage, the department may certify a record to the proper prosecuting official of the county or city in which the act complained of, examined, or investigated occurred.

NEW SECTION. Section 32. Disciplinary action against licensee by other agencies. (1) A disciplinary action taken against a licensee by another agency of this state, another state, or the federal government for any action substantially related to an activity regulated under [sections 1 through 32] may be grounds for disciplinary action by the department. A certified copy of the record of the disciplinary action taken against the licensee must be treated as evidence of the events related in the record.

(2) A disciplinary action taken against the licensee by another agency does not preclude the department from applying a specific statutory provision in [sections 1 through 32] that provides for discipline against a licensee.

Section 33. Section 31-1-111, MCA, is amended to read:

"31-1-111. Definition of regulated lender. The term "regulated lender", as used in 31-1-112 and 31-1-116, means:

(1) a bank, building and loan association, savings and loan association, trust company, credit union, credit association, consumer loan licensee, residential mortgage lender licensee, development corporation, bank holding company, or a mutual or stock insurance company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by:

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

(b) an agency of the federal government;

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

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

(4) a corporation or other entity established by congress or the state of Montana that is owned, in whole or in part, by the United States or the state of Montana and that is authorized to lend money."

NEW SECTION. **Section 34. Codification instruction.** [Sections 1 through 32] are intended to be codified as an integral part of Title 32, and the provisions of Title 32 apply to [sections 1 through 32].

- END -