

SENATE BILL NO. 122

INTRODUCED BY L. JENT

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2009 FOR MORTGAGE LENDERS, MORTGAGE BROKERS, AND MORTGAGE LOAN ORIGINATORS; PROVIDING RULEMAKING AUTHORITY TO THE COMMISSIONER OF BANKING AND FINANCIAL INSTITUTIONS AND THE DEPARTMENT OF ADMINISTRATION; PROVIDING FOR LICENSING AND CONTINUING EDUCATION; AUTHORIZING THE COMMISSIONER TO ENTER INTO VARIOUS AGREEMENTS WITH THE NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY; PROVIDING FOR CONFIDENTIALITY OF CERTAIN INFORMATION AND MATERIALS; PROVIDING PENALTIES; AMENDING SECTIONS 31-1-202, 31-1-221, 32-5-102, 32-5-301, AND 32-5-306, MCA; REPEALING SECTIONS 32-9-101, 32-9-102, 32-9-103, 32-9-104, 32-9-108, 32-9-109, 32-9-110, 32-9-115, 32-9-116, 32-9-117, 32-9-118, 32-9-119, 32-9-121, 32-9-122, 32-9-123, 32-9-124, 32-9-125, 32-9-126, 32-9-130, 32-9-132, 32-9-133, 32-9-141, 32-9-142, 32-10-101, 32-10-102, 32-10-103, 32-10-201, 32-10-202, 32-10-203, 32-10-204, 32-10-207, 32-10-208, 32-10-209, 32-10-301, 32-10-302, 32-10-303, 32-10-309, 32-10-310, 32-10-401, 32-10-402, 32-10-403, 32-10-404, 32-10-405, 32-10-406, 32-10-501, 32-10-502, 32-10-503, 32-10-504, 32-10-505, 32-10-506, 32-10-507, 32-10-512, 32-10-513, 32-10-514, AND 32-10-515, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Short Title.** [Sections 1 through 46] may be cited as the "Montana Secure and Fair Enforcement for Mortgage Licensing Act of 2009".

NEW SECTION. **Section 2. Purpose.** (1) The legislature finds that the activities in the area of mortgage loan origination and the offering of financing for residential real property have a direct, valuable, and immediate impact upon Montana's borrowers, economy, neighborhoods, communities, and housing and real estate industries.

(2) The legislature finds that accessibility to mortgage credit is vital to the state's citizens.



1 (3) The legislature finds that it is essential for the protection of the citizens of Montana and the stability
2 of Montana's economy that reasonable standards for licensing and regulation of the business practices of
3 mortgage lenders, mortgage brokers, and mortgage loan originators be imposed and that the Secure and Fair
4 Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law
5 110-289, be implemented.

6 (4) The legislature further finds that the obligations of mortgage lenders, mortgage brokers, and
7 mortgage loan originators to borrowers in connection with originating or making residential mortgage loans
8 warrant the regulation of the mortgage lending process.

9 (5) The purpose of [sections 1 through 46] is to protect borrowers seeking mortgage loans and to ensure
10 that the mortgage lending industry operates without unfair, deceptive, and fraudulent practices on the part of
11 mortgage lenders, mortgage brokers, and mortgage loan originators.

12 (6) It is the intent of the legislature to establish an effective system of supervision and enforcement of
13 the mortgage lending industry, including the authority of the commissioner to:

14 (a) issue licenses to conduct business under [sections 1 through 46];

15 (b) adopt rules or procedures necessary for the licensing and regulation of persons covered under
16 [sections 1 through 46];

17 (c) deny, suspend, condition, or revoke licenses issued under [sections 1 through 46]; and

18 (d) examine, investigate, and conduct enforcement actions necessary to carry out the purposes of
19 [sections 1 through 46], including authority to subpoena witnesses and documents, enter orders, including cease
20 and desist orders, order restitution, levy civil penalties, and order the removal and ban of a person from office or
21 employment.

22 (7) The commissioner has broad administrative authority to administer, interpret, and enforce [sections
23 1 through 46] and to adopt rules to implement [sections 1 through 46].

24
25 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 46], the following definitions
26 apply:

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

29 (2) "Affiliate" means a person, directly or indirectly, owned or controlled by a corporation, foreign
30 corporation, alien business organization, or any other form of business organization, regardless of whether the

1 affiliate is owned or controlled by the ownership interest, individually or in any combination, through one or more
2 individuals or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts,
3 joint-stock companies, or other entities or devices.

4 (3) "Borrower" means a person seeking a residential mortgage loan regardless of whether the person
5 actually obtains a loan.

6 (4) "Branch office" means a location, other than a licensee's principal place of business:

7 (a) the address of which appears on business cards, stationery, or advertising used by the licensee;

8 (b) at which the licensee's name or advertising suggests that mortgage loans are made;

9 (c) that, due to actions of an employee or independent contractor employed by the licensee, is held out
10 to the public as a branch office of the licensee where mortgage loans are made; or

11 (d) that is controlled, directly or indirectly, by a licensed entity.

12 (5) "Business day" means a day other than a Saturday or a day designated as a holiday in 1-1-216.

13 (6) "Commissioner" means the commissioner of banking and financial institutions.

14 (7) "Control" means the power, directly or indirectly, to direct the management or policies of an entity,
15 whether through ownership of securities, by contract, or otherwise. A person is presumed to control an entity if
16 that person:

17 (a) is a director, general partner, or executive officer;

18 (b) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power
19 to sell or direct the sale of 10% or more of a class of voting securities;

20 (c) in the case of a limited liability company, is a managing member; or

21 (d) in the case of a partnership, has the right to receive upon dissolution or has contributed 10% or more
22 of the capital.

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

25 (9) "Depository institution" has the meaning provided in section 3 of the Federal Deposit Insurance Act,
26 12 U.S.C. 1813(c), and includes any credit union.

27 (10) "Designated manager" means a mortgage loan originator with at least 3 years of experience as a
28 mortgage loan originator who is designated by an entity as the individual responsible for the operation of a
29 particular location that is under the designated manager's full management, supervision, and control.

30 (11) "Dwelling" means a residential structure that contains one to four units, whether or not that structure

1 is attached to real property. The term includes an individual condominium unit, mobile home, or trailer used as
2 a residence.

3 (12) "Employee" means a person engaged in the service of a licensee for a salary or wages and subject
4 to the licensee's direction and control.

5 (13) "Entity" means a business organization, including a sole proprietorship.

6 (14) "Escrow funds" means money entrusted to a mortgage lender or mortgage broker by a borrower for
7 payment of taxes, insurance, or other payments to be made in connection with the servicing of a loan.

8 (15) "Federal banking agency" means the board of governors of the federal reserve system, comptroller
9 of the currency, director of the office of thrift supervision, national credit union administration, or federal deposit
10 insurance corporation.

11 (16) "Immediate family member" means a spouse, child, sibling, grandparent, grandchild, stepchild,
12 stepbrother, or stepsister and includes parent, grandparent, child, grandchild, and sibling relationships based
13 upon adoptive relationships.

14 (17) "Independent contractor" means a person certified as an independent contractor pursuant to
15 39-71-417.

16 (18) "Individual" means a natural person.

17 (19) "Licensee" means a person authorized pursuant to [sections 1 through 46] to engage in the activities
18 regulated by [sections 1 through 46].

19 (20) "Loan commitment" means a statement transmitted in writing or electronically transmitted by a
20 mortgage lender setting forth the terms and conditions upon which the mortgage lender is willing to make a
21 particular mortgage loan to a particular borrower.

22 (21) (a) "Loan processor or underwriter" means an individual who performs clerical or support duties as
23 an employee at the direction of and subject to the supervision and instruction of a licensee or a person exempt
24 from licensure under [section 5].

25 (b) For purposes of this subsection (21), clerical or support duties may include, subsequent to the receipt
26 of a loan application:

27 (i) the receipt, collection, distribution, and analysis of information common for the processing or
28 underwriting of a residential mortgage loan; and

29 (ii) communicating with a borrower to obtain information necessary for processing or underwriting a
30 residential mortgage loan, to the extent that the communication does not include offering or negotiating loan rates

1 or terms, or counseling borrowers about residential mortgage loan rates or terms.

2 (22) (a) "Mortgage broker" means a person that obtains, attempts to obtain, or assists in obtaining a
3 mortgage loan for a borrower from a mortgage lender in return for consideration or in anticipation of consideration.

4 (b) For purposes of this subsection (22), attempting to or assisting in obtaining a mortgage loan includes
5 referring a borrower to a mortgage lender or mortgage broker, soliciting or offering to solicit a mortgage loan on
6 behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a mortgage loan with a
7 mortgage lender on behalf of a borrower.

8 (23) "Mortgage call report" means a report on the condition and activity of an entity as required by the
9 commissioner or the nationwide mortgage licensing system and registry.

10 (24) "Mortgage lender" means a person that closes a mortgage loan, advances funds, offers to advance
11 funds, or commits to advancing funds for a mortgage loan applicant.

12 (25) (a) "Mortgage loan originator" means an individual who for compensation or gain or in the
13 expectation of compensation or gain:

14 (i) takes a residential mortgage loan application; or

15 (ii) offers or negotiates terms of a residential mortgage loan.

16 (b) The term does not include a person:

17 (i) engaged solely as a loan processor or underwriter, except as provided in [section 7];

18 (ii) who performs only real estate brokerage activities and is licensed or registered pursuant to 37-51-301,
19 unless the person is compensated by a mortgage lender, a mortgage broker, a mortgage loan originator, or any
20 agent of the mortgage lender, mortgage broker, or mortgage loan originator; or

21 (iii) solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C.
22 101(53D).

23 (c) For purposes of this subsection (25), real estate brokerage activity means an activity that involves
24 offering or providing real estate brokerage services to the public, including:

25 (i) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

26 (ii) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

27 (iii) negotiating, on behalf of a party, a portion of a contract relating to the sale, purchase, lease, rental,
28 or exchange of real property, except in connection with providing financing for the transaction;

29 (iv) engaging in an activity requiring registration or licensing as a real estate agent or real estate broker
30 pursuant to 37-51-301; or

1 (v) offering to engage in an activity, or act in any capacity described in subsections (25)(c)(i) through
2 (25)(c)(iv).

3 (26) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed
4 and maintained by the conference of state bank supervisors and the American association of residential mortgage
5 regulators for the licensing and registration of mortgage lenders, mortgage brokers, and mortgage loan
6 originators.

7 (27) "Nontraditional mortgage product" means any mortgage product other than a 30-year, fixed interest
8 rate mortgage.

9 (28) "Person" means an individual, corporation, company, limited liability company, partnership, limited
10 liability partnership, trust, or association.

11 (29) "Registered mortgage loan originator" means a person who:

12 (a) meets the definition of mortgage loan originator and is an employee of:

13 (i) a depository institution;

14 (ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking
15 agency; or

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

17 (b) is registered with and maintains a unique identifier through the nationwide mortgage licensing system
18 and registry.

19 (30) "Residential mortgage loan" means a loan primarily for personal, family, or household use secured
20 by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real
21 estate upon which a dwelling is constructed or intended to be constructed.

22 (31) "Residential real estate" means any real property located in Montana upon which there is an existing
23 dwelling or upon which a dwelling is intended to be constructed.

24 (32) "Third-party service provider" means a person that provides services relative to residential mortgage
25 loan transactions and includes but is not limited to real estate appraisers and credit reporting agencies.

26 (33) "Trust funds" means money entrusted to a mortgage lender or mortgage broker during the origination
27 of a mortgage loan for the payment of third-party services. The term includes appraisal fees, credit report fees,
28 and other fees for services required for the loan origination.

29 (34) "Ultimate equity owner" means an individual who, directly or indirectly, owns or controls an ownership
30 interest in a corporation, a foreign corporation, an alien business organization, or any other form of business

1 organization, regardless of whether the individual owns or controls an ownership interest, individually or in any
2 combination, through one or more persons or one or more proxies, powers of attorney, nominees, corporations,
3 associations, partnerships, trusts, joint-stock companies, or other entities or devices.

4 (35) "Unique identifier" means a number or other identifier assigned by protocols established by the
5 nationwide mortgage licensing system and registry.

6
7 **NEW SECTION. Section 4. License and registration required.** (1) Unless specifically exempt under
8 [section 5], an individual may not act as a mortgage loan originator with respect to any residential real estate
9 without first obtaining and annually renewing a license under [sections 1 through 46].

10 (2) Unless specifically exempted under [section 5], an entity may not engage in the business of mortgage
11 lending or the business of a mortgage broker with respect to any residential real estate located in Montana
12 without first obtaining and annually renewing a license under [sections 1 through 46].

13 (3) Each applicant for a license shall register with and maintain a valid unique identifier issued by the
14 nationwide mortgage licensing system and registry.

15 (4) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage
16 marketplace, the implementation date of subsection (3) is:

17 (a) April 1, 2010, for all new applicants applying after [the effective date of this act]; and

18 (b) June 30, 2010, for all licensees with current licenses as of [the effective date of this act].

19 (5) A nonfederally insured credit union that employs a mortgage loan originator shall register the
20 employee with the nationwide mortgage licensing system and registry by furnishing the information concerning
21 the employee's identity as set forth in section 1507(a)(2) of the Secure and Fair Enforcement for Mortgage
22 Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289.

23
24 **NEW SECTION. Section 5. Exemptions.** The provisions of [sections 1 through 46] do not apply to:

25 (1) a registered mortgage loan originator when acting for an entity described in [section 3(29)(a)(i),
26 (29)(a)(ii), or (29)(a)(iii)];

27 (2) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an
28 immediate family member;

29 (3) an individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that
30 served as the individual's residence; or

1 (4) a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as
2 an ancillary matter to the attorney's representation of the client unless the attorney is compensated by a mortgage
3 lender, mortgage broker, or other mortgage loan originator or any agent of the mortgage lender, mortgage broker,
4 or other mortgage loan originator.

5
6 **NEW SECTION. Section 6. Proof of exemption.** In a proceeding under [sections 1 through 46], the
7 burden of proving an exemption is on the person claiming it. The commissioner shall adopt rules on the procedure
8 for requesting an exemption.

9
10 **NEW SECTION. Section 7. Loan processors and underwriters.** (1) A person engaging solely in loan
11 processor or underwriter activities may not represent to the public, through advertising or other means of
12 communication, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional
13 items, that the person can or will perform any of the activities of a mortgage loan originator.

14 (2) A loan processor or underwriter who is an independent contractor may not engage in the activities
15 of a loan processor or underwriter unless licensed under [sections 1 through 46]. Each independent contractor
16 loan processor or underwriter licensed as a mortgage loan originator shall maintain a valid unique identifier issued
17 by the nationwide mortgage licensing system and registry.

18
19 **NEW SECTION. Section 8. Authority to require license.** (1) The commissioner is authorized to
20 participate in the nationwide mortgage licensing system and registry and shall require mortgage lenders,
21 mortgage brokers, and mortgage loan originators to be licensed through the nationwide mortgage licensing
22 system and registry by the dates set forth in [section 4].

23 (2) The commissioner may adopt rules outlining requirements for licensure, including but not limited to:

24 (a) background checks:

25 (i) for criminal history through fingerprints or other databases;

26 (ii) of civil or administrative records;

27 (iii) of credit history; and

28 (iv) of other information considered necessary by the commissioner or the nationwide mortgage licensing
29 system and registry;

30 (b) payment of nonrefundable fees, commensurate with the cost of administering the provisions of

1 [sections 1 through 46], to apply for, maintain, and renew licenses through the nationwide mortgage licensing
2 system and registry;

3 (c) renewal or reporting dates;

4 (d) amending or surrendering a license; and

5 (e) other activity the commissioner considers necessary for participation in the nationwide mortgage
6 licensing system and registry.

7 (3) The commissioner shall adopt rules for the procedure that an aggrieved consumer or a member of
8 the public may use to file a complaint against a licensed or unlicensed person when alleging a violation of a
9 provision of [sections 1 through 46].

10 (4) Fees collected under this section must be deposited into the department's account in the state special
11 revenue fund to be used for administering [sections 1 through 46].

12

13 **NEW SECTION. Section 9. Types of licenses.** (1) The five types of licenses that may be issued under
14 [sections 1 through 46] are a mortgage lender license, a mortgage lender branch license, a mortgage broker
15 license, a mortgage broker branch license, and a mortgage loan originator license.

16 (2) A mortgage loan originator license may be issued to an individual who meets the requirements of
17 [sections 17 and 18].

18 (3) An entity may apply for a license as a mortgage lender, a mortgage broker, or both.

19

20 **NEW SECTION. Section 10. Mortgage broker license, mortgage lender license, and branch**
21 **license.** (1) An entity acting as a mortgage lender or mortgage broker may apply for a license as provided in
22 [section 17].

23 (2) A mortgage lender or mortgage broker entity shall satisfy the requirements of [section 13], if
24 applicable, and the requirements of [section 14].

25 (3) A mortgage lender or mortgage broker entity shall license at least one main office and every branch
26 office.

27 (4) Each office location must have a designated manager, who may be a control person of the mortgage
28 lender or mortgage broker.

29 (5) A designated manager must be a licensed mortgage loan originator and have 3 years of experience
30 as a mortgage loan originator or equivalent work experience. The commissioner shall define equivalent work

1 experience by rule.

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

4 (7) A mortgage lender or mortgage broker entity is responsible for any conduct by a designated manager
5 or mortgage loan originator while employed or engaged by the entity that violates [sections 1 through 46] or a rule
6 adopted pursuant to [sections 1 through 46] regardless of whether the designated manager or mortgage loan
7 originator is an employee or independent contractor.

8 (8) A designated manager is responsible for any conduct violating [sections 1 through 46] or a rule
9 adopted pursuant to [sections 1 through 46]. The designated manager's responsibility includes conduct by the
10 designated manager and each mortgage loan originator while the designated manager is employed or engaged
11 by a mortgage lender or mortgage broker at the location that the designated manager manages. The designated
12 manager is responsible for a mortgage loan originator's conduct regardless of whether the mortgage loan
13 originator is an employee or independent contractor of the mortgage lender or mortgage broker.

14 (9) The commissioner shall, by rule:

15 (a) establish the requirements for an entity to retain a new designated manager in the event of the
16 departure of a designated manager;

17 (b) set forth the matters of which a licensee is required to notify the commissioner and the timeframe for
18 the notification; and

19 (c) set forth the form and content of the mortgage broker license application, mortgage lender license
20 application, and branch application.

21
22 **NEW SECTION. Section 11. Requirements for entity licensing.** (1) An entity acting as a mortgage
23 lender or mortgage broker shall apply for a license as provided in [section 17].

24 (2) In order for an entity to be considered for licensure, each of the following is required to independently
25 meet the requirements established in [section 18(1)(a) through (1)(c)]:

26 (a) ultimate equity owners of 25% or more of the applicant if the equity owners are individuals;

27 (b) control persons of the applicant if the control persons are individuals; and

28 (c) individuals that control, directly or indirectly, the election of 25% or more of the members of the board
29 of directors of the entity.

30

1 **NEW SECTION. Section 12. Dual licensure.** (1) An entity may be simultaneously licensed as a
2 mortgage lender and a mortgage broker provided that the entity meets all requirements for licensure as a
3 mortgage lender and a mortgage broker.

4 (2) The commissioner shall, by rule:

5 (a) set forth the form and content of an application for dual licensure; and

6 (b) set the fees for dual licensure. The fees must be commensurate with the cost of administering the
7 program. All fees collected under this section must be deposited in the department's account in the state special
8 revenue fund to be used by the department in administering [sections 1 through 46].

9

10 **NEW SECTION. Section 13. Registered agent for licensee without physical office in the state --**
11 **venue.** (1) An applicant for a license under [sections 1 through 46] that does not maintain a physical office within
12 the state shall file, in a form prescribed by the commissioner by rule, an irrevocable consent appointing the
13 commissioner and any successor in office as the registered agent of the applicant for the purpose of receiving
14 service of any lawful process in a noncriminal suit, action, or proceeding against the applicant or its successors,
15 executor, or administrator that is based upon an alleged violation of [sections 1 through 46] or a rule or order
16 issued pursuant to [sections 1 through 46]. Service upon the commissioner has the same force and validity as
17 if served personally on the applicant or the person filing the consent.

18 (2) Service must be made by leaving a copy of the process in the office of the commissioner, but it is not
19 effective unless:

20 (a) the plaintiff, who may be the commissioner, in an action, suit, or proceeding sends notice of the
21 service and a copy of the process by certified mail to the defendant or respondent at the last-known address on
22 file with the commissioner; and

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

25 (3) In a judicial action, suit, or proceeding arising under [sections 1 through 46] or a rule or order adopted
26 under [sections 1 through 46] between the commissioner and a licensee who does not maintain a physical office
27 in this state, venue must be exclusively in Lewis and Clark County.

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

1

2 **NEW SECTION. Section 14. Surety bond.** (1) A mortgage loan originator must be covered by a surety
3 bond in accordance with this section. If a mortgage loan originator is an employee of or independent contractor
4 for a licensed mortgage lender or mortgage broker, the surety bond of the licensed mortgage lender or mortgage
5 broker may be used in lieu of a mortgage loan originator's surety bond.

6 (2) The surety bond must provide coverage for a mortgage loan originator in an amount established
7 pursuant to subsection (4).

8 (3) The surety bond must be in a form prescribed by the commissioner and the commissioner shall
9 establish requirements for surety bonds by rule.

10 (4) The penal sum of a surety bond must be maintained in an amount that reflects the dollar amount of
11 loans originated as determined by the commissioner.

12 (5) Whenever an action is commenced on a surety bond, the commissioner may require the filing of a
13 new bond.

14 (6) Immediately upon recovery of an action on the bond, the licensee shall file a new bond.

15

16 **NEW SECTION. Section 15. Prelicensing and relicensing education.** (1) To meet the prelicensing
17 education requirement referred to in [section 18(1)(f)], an applicant shall complete at least 20 hours of education
18 approved in accordance with subsection (2) of this section, including at least:

19 (a) 3 hours of training on federal law and regulations;

20 (b) 3 hours of training in ethics, including instruction on fraud, consumer protection, and fair lending
21 issues; and

22 (c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

23 (2) Prelicensing education courses must be reviewed and approved by the nationwide mortgage
24 licensing system and registry based upon reasonable standards. Review and approval of a prelicensing education
25 course must include review and approval of the course provider.

26 (3) This section does not preclude any prelicensing education course approved by the nationwide
27 mortgage licensing system and registry that is provided by the employer of the applicant, that is provided by an
28 entity that is affiliated with the applicant by an agency contract, or that is provided by any subsidiary or affiliate
29 of the employer or entity.

30 (4) Prelicensing education may be offered either in a classroom, online, or by any other means approved

1 by the nationwide mortgage licensing system and registry.

2 (5) The prelicensing education courses that comply with the requirements of subsection (1) and that are
3 approved by the nationwide mortgage licensing system and registry for any other state must be accepted with
4 respect to the completion of prelicensing education requirements in Montana.

5 (6) An individual who is previously licensed under [sections 1 through 46] and who, subsequent to [the
6 effective date of this act], applies to be relicensed under [sections 1 through 46] shall prove that the individual has
7 completed all of the continuing education requirements for the year in which the license was last held.

8

9 **NEW SECTION. Section 16. Testing of mortgage loan originators.** (1) To meet the written test
10 requirement referred to in [section 18(1)(g)], an applicant is required to pass, in accordance with the standards
11 established under this section, a qualified written test that is developed by the nationwide mortgage licensing
12 system and registry and administered by a test provider. The test provider must be approved by the nationwide
13 mortgage licensing system and registry, and the approval must be based upon reasonable standards.

14 (2) In order for a written test to be treated as a qualified written test, the test must adequately measure
15 the applicant's knowledge and comprehension in appropriate subject areas, including:

16 (a) ethics;

17 (b) federal law and regulations pertaining to mortgage origination;

18 (c) state law and rules pertaining to mortgage origination; and

19 (d) federal law and regulations and state law and rules that pertain to fraud, consumer protection, the
20 nontraditional mortgage product marketplace, and fair lending issues.

21 (3) This section does not prohibit a test provider approved by the nationwide mortgage licensing system
22 and registry from providing a test at the location of the employer of an applicant, the location of a subsidiary or
23 affiliate of the employer, or the location of an entity with which the applicant holds an exclusive arrangement to
24 conduct the business of a mortgage loan originator.

25 (4) (a) An individual may not be considered to have passed a qualified written test unless the individual
26 passes a test with a score of at least 75%.

27 (b) An individual may retake a test three consecutive times with each consecutive test being taken at
28 least 30 days after the previous testing date.

29 (c) An individual who fails three consecutive tests may not take the test for at least 6 months from the
30 date of failing the third test.

1 (5) A licensed mortgage loan originator who fails to maintain a valid license for a period of 5 years shall
2 retake the test. The 5-year period may not take into account any time during which the person is a registered
3 mortgage loan originator.

4
5 **NEW SECTION. Section 17. License application.** (1) An applicant under [sections 1 through 46] shall
6 apply for a license in a form prescribed by the commissioner. Each form must contain content as set forth by rule
7 and may be changed or updated by the commissioner as necessary.

8 (2) The commissioner may establish a relationship or contract with the nationwide mortgage licensing
9 system and registry or another entity designated by the nationwide mortgage licensing system and registry to
10 collect and maintain records and process transaction fees or other fees related to licensees or other persons
11 subject to [sections 1 through 46].

12 (3) An applicant shall furnish information to the nationwide mortgage licensing system and registry
13 concerning the applicant's identity, including but not limited to:

14 (a) fingerprints for submission to the federal bureau of investigation and any governmental agency or
15 entity authorized to receive information for a state, national, and international criminal history background check;

16 (b) legal name, birth date, and social security number for submission to the criminal investigation bureau
17 of the Montana department of justice as authorized for a state criminal history background check; and

18 (c) personal history and experience in a form prescribed by the nationwide mortgage licensing system
19 and registry, including submission of authorization for the nationwide mortgage licensing system and registry and
20 the commissioner to obtain:

21 (i) an independent credit report from a credit reporting agency described in section 603(p) of the Fair
22 Credit Reporting Act, 15 U.S.C. 1681, et seq.; and

23 (ii) information related to administrative, civil, or criminal findings by a governmental jurisdiction.

24 (4) To reduce the points of contact that the federal bureau of investigation may be required to maintain
25 for purposes of subsection (3), the commissioner may use the nationwide mortgage licensing system and registry
26 as a channeling agent for requesting information from and distributing information to the United States department
27 of justice or other governmental agencies.

28 (5) To reduce the points of contact that the commissioner may be required to maintain for purposes of
29 subsection (3), the commissioner may use the nationwide mortgage licensing system and registry as a channeling
30 agent for requesting and distributing information to and from any source directed by the commissioner.

1
2 **NEW SECTION. Section 18. Issuance of license.** (1) The commissioner may not issue a mortgage
3 loan originator license unless the commissioner makes the following findings:

4 (a) The applicant has never had a mortgage loan originator license, mortgage broker license, mortgage
5 lender license, or the equivalent revoked in any governmental jurisdiction. A subsequent formal vacation of a
6 revocation may not be considered a revocation.

7 (b) (i) The applicant has not been convicted of or pled guilty or nolo contendere to a felony in a domestic,
8 foreign, or military court:

9 (A) during the 7-year period preceding the date of the application for licensing; or

10 (B) at any time preceding the date of application if the felony involved an act of fraud, dishonesty, a
11 breach of trust, or money laundering.

12 (ii) The pardon of a conviction is not a conviction for purposes of this subsection (1)(b).

13 (c) The applicant has demonstrated financial responsibility, character, and general fitness to command
14 the confidence of the community and to warrant a determination that the mortgage loan originator will operate
15 honestly, fairly, and efficiently within the purposes of [sections 1 through 46]. An applicant must be held to be not
16 financially responsible when the applicant has shown a disregard in the management of the applicant's own
17 financial condition. A determination that an applicant has not shown financial responsibility may include but is not
18 limited to:

19 (i) current outstanding judgments, except judgments solely as a result of medical expenses;

20 (ii) current outstanding tax liens or other government liens and filings;

21 (iii) foreclosures within the past 3 years; or

22 (iv) a pattern of seriously delinquent accounts within the past 3 years.

23 (d) The applicant has met the registered agent requirement in [section 13] if applicable.

24 (e) The applicant has met the surety bond requirement as required pursuant to [section 14].

25 (f) The applicant has completed the prelicensing education requirement described in [section 15].

26 (g) The applicant has passed a written test that meets the test requirements described in [section 16].

27 (h) The applicant for a mortgage loan originator license must have 6 months of experience as a mortgage
28 loan originator or equivalent work experience. The commissioner shall define equivalent work experience by rule.

29 (i) The applicant will be employed by a licensed mortgage lender or a licensed mortgage broker.

30 (2) The commissioner shall adopt rules to implement this section.

1
2 **NEW SECTION. Section 19. Denial of license -- abandonment of application.** (1) The commissioner
3 may deny an application or refuse to renew a license if an applicant:

4 (a) does not meet a qualification required by [sections 1 through 46] or rules adopted under [sections
5 1 through 46]; or

6 (b) makes a material misstatement of fact or material omission of fact in an application.

7 (2) The commissioner shall notify an applicant in writing of the grounds upon which the denial or refusal
8 is based.

9 (3) An applicant has the right to a hearing under the Montana Administrative Procedure Act on a denial
10 or refusal to issue or renew a license. The applicant shall request a hearing on the notice within 10 days of
11 service of the notice.

12 (4) If an application for licensure has been denied or refused, the applicant may not reapply for 1 year
13 following the denial or refusal.

14 (5) The commissioner may consider an application abandoned if an applicant fails to provide or respond
15 to a request for additional information within the specified time period.

16
17 **NEW SECTION. Section 20. License effective date -- prohibitions -- notices.** (1) A license is not
18 effective during a period of time when a person is not authorized to act as a licensee under [sections 1 through
19 46], including a period of time during which a mortgage loan originator is not employed by a licensed entity.

20 (2) Whenever a mortgage loan originator ceases to be employed by an entity, the employing entity shall
21 notify the commissioner in writing within 10 days of the cessation of employment.

22 (3) Whenever an entity terminates the authority of a mortgage loan originator to act on its behalf, the
23 entity shall notify the commissioner in writing within 10 days of the termination. The notice must include a
24 statement of the specific reasons for the termination of the mortgage loan originator's authority.

25 (4) An entity remains responsible for an act of its mortgage loan originator until notice of separation is
26 received by the commissioner.

27 (5) A mortgage loan originator may not be employed simultaneously by more than one licensed entity.

28 (6) A mortgage lender entity or mortgage broker entity may not employ or contract with any person who
29 is required to be licensed under [sections 1 through 46] if the person is not licensed.

30 (7) Each entity shall maintain on file with the commissioner a list of designated managers and mortgage

1 loan originators employed or under contract and the location at which each manager and mortgage loan originator
2 is employed or under contract.

3 (8) A licensee may surrender the licensee's license by delivering a written notice of surrender to the
4 commissioner. The surrender does not affect the licensee's civil or criminal liability or an administrative action
5 arising from an act or omission occurring before the surrender.

6 (9) An entity that ceases operating as a licensee under the provisions of [sections 1 through 46] shall:

7 (a) 30 days prior to the discontinuance of business, notify the commissioner of the physical location
8 where required records will be preserved; and

9 (b) designate a custodian of records and notify the commissioner of the name, physical address,
10 electronic mail address, and telephone number of the custodian of records. The custodian of records shall
11 preserve records required under [sections 1 through 46] and allow access to the commissioner for examination
12 and investigation upon request of the commissioner.

13

14 **NEW SECTION. Section 21. Use of name -- advertising.** (1) A licensee engaged in a business
15 regulated by [sections 1 through 46] may not operate under a name other than the name licensed by the
16 commissioner.

17 (2) A licensee may not:

18 (a) advertise that an applicant has unqualified access to credit without disclosing what material limitations
19 on the availability of credit may exist, such as the percentage required as a down payment, that a higher interest
20 rate or points could be required, or that restrictions as to the maximum principal amount of the mortgage loan
21 offered could apply;

22 (b) advertise a mortgage loan with a prevailing interest rate indicated in the advertisement unless the
23 advertisement specifically states that the interest rate could change or not be available at the time of commitment
24 or closing;

25 (c) advertise mortgage loans, including interest rates, margins, discounts, points, fees, commissions,
26 or other material information, including material limitations on the mortgage loans, unless the licensee is able to
27 make or broker the offered mortgage loans to a reasonable number of qualified applicants;

28 (d) engage in false, deceptive, or misleading advertising; or

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

30

1 **NEW SECTION. Section 22. Display of unique identifier -- posting of license.** (1) The unique
2 identifier of any person originating a residential mortgage loan must be shown on all residential mortgage loan
3 applications, on forms, on solicitations, on advertisements, including business cards and websites, and any on
4 other documents as established by the commissioner by rule.

5 (2) A licensee shall post the licensee's license at the physical location listed on the license application.
6

7 **NEW SECTION. Section 23. License renewal.** (1) A licensee is required to renew the licensee's
8 license by December 31 of each year.

9 (2) A renewal application for an entity or a mortgage loan originator must demonstrate the following:

10 (a) that the licensee continues to meet the standards for licensure under [sections 1 through 46];

11 (b) that a mortgage loan originator has satisfied annual continuing education requirements pursuant to
12 [section 24]; and

13 (c) that the licensee has paid all required fees for renewal of the license and all outstanding examination
14 fees, all investigation fees, and any civil penalties.

15 (3) The license of a licensee failing to satisfy the minimum standards for license renewal expires on
16 January 1. The commissioner may adopt rules regarding the procedures for the reinstatement of expired licenses
17 consistent with the standards established by the nationwide mortgage licensing system and registry.
18

19 **NEW SECTION. Section 24. Continuing education for mortgage loan originators.** (1) A licensed
20 mortgage loan originator is required to complete annually at least 8 hours of education approved in accordance
21 with subsection (2). The 8 hours of education must include at least:

22 (a) 3 hours of training on federal laws and regulations;

23 (b) 2 hours of training in ethics, including instruction on fraud prevention, consumer protection, and fair
24 lending issues; and

25 (c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

26 (2) Continuing education courses must be reviewed and approved by the nationwide mortgage licensing
27 system and registry based upon reasonable standards. Review and approval of a continuing education course
28 must include review and approval of the course provider.

29 (3) This section does not preclude an education course approved by the nationwide mortgage licensing
30 system and registry that is provided by an employer of a mortgage loan originator, that is provided by an entity

1 that is affiliated with the mortgage loan originator by an agency contract, or that is provided by a subsidiary or
2 affiliate of the employer or entity.

3 (4) Continuing education may be offered either in a classroom, online, or by other means approved by
4 the nationwide mortgage licensing system and registry.

5 (5) (a) Except as provided in [section 23(3)] and subsection (9) of this section, a licensed mortgage loan
6 originator may receive credit for a continuing education course only in the year in which the course is taken.

7 (b) A licensed mortgage loan originator may not take the same approved course in the same or
8 successive years to meet the annual requirements for continuing education.

9 (6) A licensed mortgage loan originator who is an approved instructor of an approved continuing
10 education course may receive credit for the licensed mortgage loan originator's own annual continuing education
11 requirement at the rate of 2 hours credit for every 1 hour taught.

12 (7) A person who has successfully completed the education requirements that comply with the
13 requirements of subsection (1) and that are approved by the nationwide mortgage licensing system and registry
14 for any other state must be given credit toward completion of continuing education requirements in Montana.

15 (8) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the
16 continuing education requirements for the last year in which the license was held prior to issuance of a new or
17 renewed license.

18 (9) A person meeting the requirements of [section 23(2)(a) and (2)(c)] may make up any deficiency in
19 continuing education pursuant to rules adopted by the commissioner.

20

21 **NEW SECTION. Section 25. Right to challenge information filed with nationwide mortgage**
22 **licensing system and registry.** The commissioner shall adopt rules establishing a process to allow a mortgage
23 loan originator to challenge information entered into the nationwide mortgage licensing system and registry by
24 the commissioner.

25

26 **NEW SECTION. Section 26. Provisional licenses and previously licensed persons.** The
27 commissioner may establish by rule licensing requirements, fees, and interim procedures for licensing and
28 acceptance of applications for the purposes of implementing an orderly and efficient licensing process. The
29 commissioner may by rule establish expedited review and licensing procedures for a previously licensed person.

30

1 NEW SECTION. **Section 27. Mortgage call report.** (1) Each entity shall submit reports of condition
2 to the nationwide mortgage licensing system and registry in the form and containing the information required by
3 the nationwide mortgage licensing system and registry and the commissioner.

4 (2) The commissioner shall adopt rules regarding the form, content, and filing requirements for the
5 mortgage call report and the penalty for failure to file the report.

6 (3) The commissioner shall adopt rules regarding the form, content, and filing requirements for entity
7 reports of loans currently being processed and the penalty for failure to file the reports.

8
9 NEW SECTION. **Section 28. Disclosure requirements.** The commissioner shall adopt rules to
10 establish disclosure requirements for mortgage lenders and mortgage brokers.

11
12 NEW SECTION. **Section 29. Mortgage lender, mortgage broker, and mortgage loan originator**
13 **agreements -- validity of contracts.** (1) A contract between a mortgage lender, mortgage broker, or mortgage
14 loan originator and a borrower must be in writing and signed and dated by both the borrower and the authorized
15 representative of the mortgage lender, mortgage broker, or mortgage loan originator.

16 (2) Any contract under this section entered into by a mortgage loan originator is binding on the mortgage
17 lender or mortgage broker that employs or contracts with the mortgage loan originator.

18 (3) A mortgage broker is required to have a written correspondence or loan broker agreement with a
19 mortgage lender before any solicitation of or contracting with the public.

20 (4) The commissioner shall by rule adopt any additional requirements for mortgage lender, mortgage
21 broker, or mortgage loan originator agreements.

22
23 NEW SECTION. **Section 30. Escrow fund or trust fund.** (1) An escrow fund or trust fund authorized
24 for any purpose by a mortgage loan contract is subject to applicable state and federal requirements. Money
25 received from a borrower by a mortgage lender, mortgage broker, or other entity licensed under [sections 1
26 through 46] must be considered as held in trust immediately upon receipt. The mortgage lender, mortgage broker,
27 or other licensed entity shall place escrow funds or trust funds in a depository institution prior to the end of the
28 third business day following their receipt.

29 (2) An escrow fund or trust fund account must be a separate account established to hold only borrowers'
30 funds. The account must be designated and maintained for the benefit of borrowers. Escrow funds and trust

1 funds may not be commingled with any other funds.

2 (3) Escrow funds or trust funds must be kept in the segregated account until disbursement. Money
3 maintained in an escrow fund or trust fund account is exempt from execution, attachment, or garnishment.

4 (4) A licensee may not encumber the corpus of an escrow fund or trust fund account or commingle other
5 operating funds with account funds.

6 (5) An escrow fund or trust fund account may be used only for:

7 (a) a payment authorized by the borrower or the mortgage loan contract or required by federal or state
8 law;

9 (b) a refund to the borrower;

10 (c) transfer to a depository institution;

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

12 (e) a purpose authorized by the mortgage loan contract; or

13 (f) purposes of complying with an order issued by the commissioner or a court.

14 (6) Accounting for escrow funds and trust funds must be performed in compliance with the aggregate
15 accounting rules established in regulation X, 24 CFR 3500, and 71-1-115.

16 (7) The commissioner may adopt rules that:

17 (a) direct a licensee on how to handle checks and other instruments received that combine escrow funds
18 or trust funds with other funds; and

19 (b) permit the transfer of escrow funds or trust funds from an escrow or trust account for the payment
20 of other costs only when necessary and only with the prior express written permission of the borrower.

21 (8) A mortgage loan originator may not accept or receive any escrow funds or trust funds from a
22 borrower.

23

24 **NEW SECTION. Section 31. Recordkeeping requirements.** (1) A licensee shall use generally
25 accepted accounting principles.

26 (2) Except as provided in subsection (3), a licensee shall maintain accurate and current books and
27 records for a period of 5 years from the date of last entry. Books, accounts, records, and documents necessary
28 to determine the licensee's compliance with [sections 1 through 46] must be maintained.

29 (3) Whenever a licensee's usual business location is outside of this state the licensee shall, as
30 established by the commissioner by rule, either maintain its books and records at a location in this state or

1 reimburse the commissioner for expenses incurred, including but not limited to staff time, transportation, food,
2 and lodging expenses, relating to an examination or investigation under [sections 1 through 46].

3 (4) (a) A licensee's books and records include but are not limited to copies of advertisements placed by
4 or at the request of the licensee that mention rates or fees. In the case of radio or television advertisements,
5 advertisements placed on a telephonic information line, or other electronic sources of information, including but
6 not limited to a computer database or an electronic bulletin board, a licensee shall keep copies of the precise
7 script for the advertisement.

8 (b) Advertisement records include:

9 (i) for each advertisement, the unique identifier, the date or dates of publication, and the name of each
10 periodical, broadcast station, or telephone information line that published or disseminated the advertisement or,
11 in the case of a flyer or other material distributed by the licensee, the dates, methods, and areas of distribution;
12 and

13 (ii) a copy of all documents, notes, computer records not stored in printed form, correspondence, or
14 memoranda relating to a borrower when the licensee has:

15 (A) accepted a deposit or other funds;

16 (B) accepted a residential mortgage loan application; or

17 (C) entered into an agreement to assist in obtaining a residential mortgage loan.

18 (5) This section does not prohibit a licensee from document imaging or other electronic means of
19 maintaining books, accounts, records, and documents if the licensee can ensure adequate safeguards against
20 alteration, damage, or destruction of the imaged or electronically stored books, accounts, records, or documents.

21
22 **NEW SECTION. Section 32. Changes in control.** (1) Without the prior approval of the commissioner,
23 it is unlawful for an action to be taken that results in a change of control of a licensed entity. Prior to a change of
24 control of a licensed entity, a person wishing to acquire control shall apply for a new license and pay all applicable
25 fees.

26 (2) The commissioner shall approve or disapprove the application for a new licensee in accordance with
27 the provisions of [sections 1 through 46].

28
29 **NEW SECTION. Section 33. Duties of mortgage loan originator.** (1) A mortgage loan originator:

30 (a) may not compromise a borrower's right or interest in favor of another's right or interest;

1 (b) shall disclose to a borrower all material facts known to the mortgage loan originator and other
 2 knowledge that might reasonably affect a borrower's rights, interests, or ability to receive the borrower's intended
 3 benefit from a residential mortgage loan; and

4 (c) shall provide a written account to a borrower for the borrower's money and property received by the
 5 mortgage loan originator.

6 (2) A mortgage loan originator may contract for or collect a fee for services rendered to a borrower or
 7 mortgage lender if the fee has been properly disclosed to the borrower in advance of providing a service.

8

9 **NEW SECTION. Section 34. Violation of specified federal law.** (1) A violation of a provision of the
 10 Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601, et seq., the Truth in Lending Act, 15 U.S.C.
 11 1601, et seq., the Equal Credit Opportunity Act, 15 U.S.C. 1691, et seq., the Homeownership and Equity
 12 Protection Act of 1994, 15 U.S.C. 1602, et seq., the Fair Housing Act, 42 U.S.C. 3601, et seq., the Fair Credit
 13 Reporting Act, 15 U.S.C. 1681, et seq., the Fair Debt Collection Practices Act, 15 U.S.C. 1692, et seq., the
 14 Financial Services Modernization Act of 1999, 15 U.S.C. 6801, et seq., the USA PATRIOT Act of 2001, as
 15 reauthorized, Public Law 107-56, or the John Warner National Defense Authorization Act for Fiscal Year 2007,
 16 Public Law 109-364, or any regulations promulgated under those acts is also a violation of [sections 1 through
 17 46].

18 (2) The commissioner shall adopt rules to implement this section.

19

20 **NEW SECTION. Section 35. Prohibited acts and practices.** It is a violation of [sections 1 through 46]
 21 for a licensee or person subject to the provisions of [sections 1 through 46] to:

22 (1) directly or indirectly employ a scheme, device, or artifice to defraud or mislead a borrower, lender,
 23 or other person;

24 (2) engage in an unfair or deceptive practice toward a person;

25 (3) obtain property by fraud or misrepresentation;

26 (4) solicit or enter into a contract with a borrower that provides in substance that a person subject to
 27 [sections 1 through 46] may earn a fee or commission through best efforts to obtain a loan even though a loan
 28 is not actually obtained for the borrower;

29 (5) solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms
 30 unless the terms are actually available at the time of soliciting, advertising, or contracting;

1 (6) conduct business covered by [sections 1 through 46] without holding a valid license required under
2 [sections 1 through 46] or assist or aid and abet a person in the conduct of a business under [sections 1 through
3 46] without a valid license;

4 (7) fail to make a disclosure required by [sections 1 through 46] and other applicable state or federal
5 laws, rules, or regulations;

6 (8) fail to comply with [sections 1 through 46], rules adopted under [sections 1 through 46], or any other
7 state or federal laws, including the rules and regulations adopted under the state or federal laws, that are
8 applicable to a business authorized or conducted under [sections 1 through 46];

9 (9) make, in any manner, a false or deceptive statement or representation, including but not limited to
10 interest rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and
11 switch advertising;

12 (10) negligently make a false statement or an omission of material fact in connection with:

13 (a) information provided to the commissioner;

14 (b) a report filed with a governmental agency, the commissioner, or the nationwide mortgage licensing
15 system and registry; or

16 (c) an investigation conducted by the commissioner or another governmental agency;

17 (11) make a payment, threat, or promise, directly or indirectly, to a person for the purpose of influencing
18 the independent judgment of the person in connection with a residential mortgage loan or to an appraiser of a
19 property for the purpose of influencing the independent judgment of the appraiser with respect to the value of a
20 property;

21 (12) collect, charge, attempt to collect or charge, or use or propose an agreement purporting to collect
22 or charge a fee prohibited by [sections 1 through 46];

23 (13) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the
24 replacement cost of the improvements as established by the property insurer;

25 (14) fail to truthfully account for money belonging to a party to a residential mortgage loan transaction;

26 (15) refuse to permit an investigation or examination of the person's or licensee's books and records or
27 refuse to comply with the commissioner's subpoena or subpoena duces tecum;

28 (16) engage in a pattern of substantially underestimating or not disclosing closing costs;

29 (17) make a prepayment penalty that extends beyond 2 years a condition of a residential mortgage loan;

30 (18) knowingly withhold, abstract, remove, mutilate, destroy, alter, or keep secret any books, records,

- 1 computer records, or other information from the commissioner or the department or knowingly provide false
2 information to the commissioner or department;
- 3 (19) fail to pay a fee, civil penalty, or cost required by [sections 1 through 46];
- 4 (20) accept a fee or compensation in excess of that allowed by state or federal law;
- 5 (21) accept a fee or compensation at closing that is not disclosed or redisclosed as required by state or
6 federal law;
- 7 (22) fail to pay a third-party service provider within 30 days after the recording of loan closing documents
8 or 90 days after completion of a third-party service, whichever is earlier, unless otherwise agreed by the parties;
- 9 (23) retain a third-party fee at closing in excess of the actual cost of the third-party service;
- 10 (24) disburse proceeds of a mortgage loan without sufficient collected funds on hand in the account upon
11 which the funds are drawn;
- 12 (25) fail to disburse funds in accordance with a loan commitment to make a mortgage loan that has been
13 accepted by a borrower;
- 14 (26) fail to take an action required to effect a release of the lender's security interest in a property as
15 described in 71-1-212;
- 16 (27) obtain an agreement or instrument in which blanks are left to be filled in after execution;
- 17 (28) obtain an exclusive dealing or exclusive agency agreement from a borrower; or
- 18 (29) provide or offer to provide any service requiring a license unless the person or individual has been
19 issued a license or is exempt from licensure.

20

21 **NEW SECTION. Section 36. Investigation and examination authority.** (1) (a) In addition to any
22 authority granted under [sections 1 through 46], the commissioner may conduct investigations and examinations
23 for the purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation,
24 or license termination or to determine compliance with [sections 1 through 46].

25 (b) The commissioner has the authority to access, receive, and use any books, accounts, records, files,
26 documents, information, or evidence including but not limited to:

27 (i) criminal, civil, and administrative history information, including confidential criminal justice information
28 as defined in 44-5-103;

29 (ii) personal history and experience information including independent credit reports obtained from a
30 credit reporting agency described in section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681, et seq.; and

1 (iii) any other documents, information, or evidence the commissioner considers relevant to an inquiry
2 or investigation regardless of the location, possession, control, or custody of the documents, information, or
3 evidence.

4 (2) The office of the commissioner is a criminal justice agency as defined in 44-5-103.

5 (3) (a) For the purposes of investigating violations or complaints arising under [sections 1 through 46]
6 or for the purposes of examination, the commissioner may review, investigate, or examine any licensee or person
7 subject to [sections 1 through 46] as often as necessary in order to carry out the purposes of [sections 1 through
8 46].

9 (b) The commissioner may direct, subpoena, or order the attendance of and may examine under oath
10 any person whose testimony may be required about the subject matter of any examination or investigation and
11 may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents
12 the commissioner considers relevant to the inquiry.

13 (4) If a person fails to comply with a subpoena issued by the commissioner or if a party or witness
14 refuses to testify on any matter, the judge of the district court of any county, on the application of the
15 commissioner, shall compel obedience by proceedings for contempt for disobedience of the requirements of the
16 subpoena or the refusal to testify.

17 (5) Each licensee or person subject to [sections 1 through 46] shall make available to the commissioner
18 upon request the documents and records relating to the operations of the licensee or person. The commissioner
19 is entitled to access to the documents and records and to interview the officers, principals, mortgage loan
20 originators, employees, independent contractors, agents, customers of the licensee or person concerning the
21 business of the licensee or person, or any other person having knowledge the commissioner considers relevant.

22 (6) Each licensee or person subject to [sections 1 through 46] shall make or compile reports or prepare
23 other information as directed by the commissioner in carrying out the purposes of this section, including but not
24 limited to:

25 (a) accounting compilations;

26 (b) information lists and data concerning loan transactions in a format prescribed by the commissioner;

27 and

28 (c) any other information the commissioner considers necessary to carry out the purposes of this section.

29 (7) (a) In making any examination or investigation authorized by [sections 1 through 46], the
30 commissioner may control access to any documents and records of the licensee or person under examination

1 or investigation. The commissioner may take possession of the documents and records or place a person in
2 exclusive charge of the documents and records in the place where they are usually kept.

3 (b) During the period of control, an individual or person may not remove or attempt to remove any of the
4 documents and records except pursuant to a court order or with the consent of the commissioner.

5 (c) Unless the commissioner has reasonable grounds to believe the documents or records of the
6 licensee or person have been or are at risk of being altered or destroyed for purposes of concealing a violation
7 of [sections 1 through 46], the licensee, person, or owner of the documents and records is entitled to access to
8 the documents or records as necessary to conduct ordinary business affairs.

9 (8) To carry out the purposes of this section, the commissioner may:

10 (a) retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or
11 investigators to conduct or assist in the conduct of examinations or investigations;

12 (b) enter into agreements or relationships with other government officials or regulatory associations to
13 improve efficiencies and reduce the regulatory burden by sharing resources, adopting standardized or uniform
14 methods or procedures, and sharing documents, records, information, or evidence obtained under this section;

15 (c) use, hire, contract, or employ public or privately available analytical systems, methods, or software
16 to examine or investigate the licensee or person subject to [sections 1 through 46];

17 (d) accept and rely on examination or investigation reports made by other government officials, within
18 or outside of this state;

19 (e) accept audit reports made by an independent certified public accountant for the licensee or person
20 subject to [sections 1 through 46] if the examination or investigation covers at least in part the same general
21 subject matter as the audit report and may incorporate the audit report in the report of the examination, report of
22 investigation, or other writing of the commissioner; and

23 (f) assess the licensee or person subject to [sections 1 through 46] the costs incurred by the department
24 in conducting the investigation or examination.

25 (9) (a) The total cost for any investigation or examination must be in accordance with fees determined
26 by the commissioner by rule pursuant to this section and may include expenses for necessary travel outside the
27 state for the purposes of conducting the inspection or examination.

28 (b) The fees set by the commissioner must be commensurate with the cost of the examination or
29 investigation. All fees collected under this section must be deposited in the department's account in the state
30 special revenue fund to be used by the department to cover the department's costs of conducting examinations

1 and investigations.

2 (10) The cost of an examination or investigation must be paid by the licensee or person within 30 days
3 after the date of the invoice. Failure to pay the cost of investigation or examination when due will result in the
4 suspension or revocation of a licensee's license or a claim on the licensee's bond at the election of the
5 commissioner.

6 (11) The authority of this section remains in effect regardless of whether a licensee or person subject to
7 [sections 1 through 46] acts or claims to act under any licensing or registration law of this state or claims to act
8 without that authority.

9 (12) A licensee or person subject to investigation or examination under this section may not knowingly
10 withhold, abstract, remove, mutilate, destroy, fabricate, or keep secret any books, records, computer records, or
11 other information or create false books, records, computer records, or other information.

12 (13) The department shall issue a report of examination or report of investigation to the licensee or person
13 examined or investigated. A licensee or person shall respond to the findings in the report in writing within 30 days
14 of the mailing of the report.

15
16 **NEW SECTION. Section 37. Disciplinary action against licensee by other agencies.** (1) A
17 disciplinary action taken against a licensee by an agency of this state, another state, or the federal government
18 for an action substantially related to an activity regulated under [sections 1 through 46] may be grounds for
19 disciplinary action by the commissioner. A certified copy of the record of a disciplinary action taken against a
20 licensee must be treated as evidence of the events related in the record.

21 (2) A disciplinary action taken against a licensee by another agency does not preclude the commissioner
22 from applying a specific statutory provision in [sections 1 through 46] that provides for discipline against a
23 licensee.

24
25 **NEW SECTION. Section 38. Confidentiality.** (1) (a) Except as otherwise provided in section 1512 of
26 the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act
27 of 2008, Public Law 110-289, the requirements under federal law, the Montana constitution, or Montana law
28 regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage
29 licensing system and registry and any privilege arising under federal or state law, including the rules of a federal
30 or state court, pertaining to the information or material continue to apply to the information or material after the

1 information or material has been disclosed to the nationwide mortgage licensing system and registry.

2 (b) Information and material may be shared with all state and federal regulatory officials with mortgage
3 industry oversight authority and with the board of governors of the federal reserve system without the loss of
4 confidentiality protections or the loss of privilege provided by federal law, the Montana constitution, or Montana
5 law.

6 (2) The commissioner may enter into agreements or sharing arrangements with other governmental
7 agencies, the conference of state bank supervisors, the American association of residential mortgage regulators,
8 or associations representing governmental agencies as established by rule of the commissioner.

9 (3) Information or material subject to confidentiality or a privilege under subsection (1) is not subject to:

10 (a) disclosure under a federal or state law governing disclosure to the public of information held by an
11 officer or an agency of the federal government or the respective state; or

12 (b) subpoena, discovery, or admission into evidence in any private civil action or administrative process
13 unless, with respect to any privilege held by the nationwide mortgage licensing system and registry concerning
14 the information or material, the person to whom the information or material pertains waives, in whole or in part,
15 that privilege.

16 (4) Montana law relating to the disclosure of confidential supervisory information or information or
17 material described in subsection (1) that is inconsistent with subsection (1) is superseded by the requirements
18 of section 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and
19 Economic Recovery Act, Public Law 110-289.

20 (5) Examination reports, information contained in examination reports, and examiners' work papers are
21 confidential, subject to the licensee's and any uninvolved person's reasonable expectation of privacy, and
22 although filed with the commissioner as provided in [sections 1 through 46] are not subject to public inspection.

23 (6) This section does not apply to information or material relating to the employment history of and
24 publicly adjudicated disciplinary and enforcement actions against mortgage lenders, mortgage brokers, and
25 mortgage loan originators included in the nationwide mortgage licensing system and registry that is available for
26 public access.

27
28 **NEW SECTION. Section 39. Action on bond.** (1) The commissioner or a person injured by a violation
29 of [sections 1 through 46] or rules adopted under [sections 1 through 46] may bring an action against the surety
30 bond of a licensee who committed the violation or who employed or engaged a mortgage loan originator who

1 committed the violation.

2 (2) The commissioner or a person damaged by the licensee's violation of [sections 1 through 46] or any
3 rule adopted under [sections 1 through 46] may bring suit upon the surety bond in the district court of any county
4 in which jurisdiction over the licensee may be obtained.

5 (3) (a) Except as provided in subsection (4), if the valid claims of borrowers against a bond exceed the
6 amount of the bond, a borrower claimant is entitled only to a pro rata amount, based on the amount of the
7 borrower's claim that is valid against the bond, without regard to the date of filing of the claim or action based on
8 the claim.

9 (b) If, after all valid borrower claims are paid, valid claims by nonborrower claimants exceed the
10 remaining amount of the bond, each nonborrower claimant is entitled only to a pro rata amount, based on the
11 amount of the nonborrower's claim that is valid against the bond, without regard to the date of a filing of the claim
12 or action based on the claim.

13 (c) A judgment arising from a violation of [sections 1 through 46] or any rule adopted under [sections 1
14 through 46] must be entered for actual damages and may not be less than the amount paid by a borrower to the
15 licensee plus reasonable attorney fees and costs. The surety bond may not, under any circumstances, provide
16 payment for treble or punitive damages.

17 (4) A borrower must be given priority over the commissioner and other persons in distributions provided
18 for in an action against a surety bond. After the borrower is paid, the commissioner and other third parties are
19 then entitled to distribution against the remainder of the bond to the extent that their claims are considered valid.

20 (5) The remedies provided under this section are cumulative and nonexclusive and do not affect any
21 other remedy available by law.

22
23 **NEW SECTION. Section 40. Failure to comply with reporting requirements.** (1) A licensee shall
24 file any report required by the commissioner on or before the date required by the commissioner or within any
25 extension of time granted by the commissioner.

26 (2) The commissioner may charge the licensee a fine of up to \$100 a day for each day, up to 10 days,
27 that a required report is late in being filed.

28 (3) If a licensee fails to submit a report as required, including a mortgage call report, the commissioner
29 may suspend or revoke the licensee's license.

30 (4) The failure of a licensee to include in a report any matter required to be included by law or by the

1 commissioner is grounds for suspension or revocation of the licensee's license.

2

3 **NEW SECTION. Section 41. Enforcement authority and violations.** (1) To ensure the effective
4 supervision and enforcement of [sections 1 through 46], the commissioner may, pursuant to the Montana
5 Administrative Procedure Act:

6 (a) deny, suspend, revoke, condition, or decline to renew a license for a violation of [sections 1 through
7 46], rules adopted under [sections 1 through 46], or an order or directive issued pursuant to [sections 1 through
8 46];

9 (b) deny, suspend, revoke, condition, or decline to renew a license if an applicant or licensee fails at any
10 time to meet the requirements of [section 18 or 23], withholds information, or makes a material misstatement in
11 an application for a license or renewal of a license;

12 (c) order restitution against persons subject to [sections 1 through 46] for violations of [sections 1 through
13 46] or any rules adopted pursuant to [sections 1 through 46];

14 (d) impose civil penalties on persons subject to [sections 1 through 46] pursuant to [section 42]; and

15 (e) issue orders or directives, including immediate temporary orders, under [sections 1 through 46], as
16 follows:

17 (i) ordering or directing persons subject to [sections 1 through 46] to cease and desist from conducting
18 business;

19 (ii) ordering or directing persons subject to [sections 1 through 46] to cease any harmful activities or
20 violations of [sections 1 through 46];

21 (iii) ordering or directing the immediate temporary cessation of business under a license or interim license
22 issued pursuant to the authority granted under [section 26] if the commissioner determines that the provisional
23 license was erroneously granted or the provisional licensee is currently in violation of [sections 1 through 46]; and

24 (iv) ordering or directing any other affirmative action the commissioner considers necessary.

25 (2) For purposes of any action brought by the commissioner under [sections 1 through 46], any person
26 that knowingly provides substantial assistance to another person in a violation of a provision of [sections 1
27 through 46] or of any rule adopted under [sections 1 through 46] must be considered to be in violation of that
28 provision to the same extent as the person to whom the assistance is provided.

29 (3) A person who directly or indirectly controls a person liable under this section and any partner, officer,
30 director, employee, or independent contractor of a person or any person occupying a similar status or performing

1 similar functions who is liable under this section and any person who participates or materially aids in the
2 transaction is liable jointly and severally with and to the same extent as the person liable under this section if the
3 other person knew or, in the exercise of reasonable care, should have known of the existence of the facts by
4 reason of which the liability is alleged to exist. Any person subject to liability under this subsection is also subject
5 to contribution for any penalties or restitution imposed pursuant to this section.

6 (4) In the case of an immediate temporary order to cease and desist, the department may issue a
7 temporary order pending an administrative hearing that:

8 (a) remains in effect until the agency decisionmaker issues the final order; or

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

11 (5) The commissioner shall provide a written notice of violation and opportunity for hearing to the
12 licensee or person accused of a violation. The respondent is required to request a hearing within 10 days of the
13 date the notice is served.

14
15 **NEW SECTION. Section 42. Penalty.** (1) The commissioner may impose a civil penalty on a licensee
16 or person subject to the provisions of [sections 1 through 46] if the commissioner finds, on the record after notice
17 and opportunity for hearing, that the licensee or person has violated or failed to comply with a requirement of
18 [sections 1 through 46] or a rule adopted by or an order issued by the commissioner under [sections 1 through
19 46].

20 (2) The maximum penalty for an act or omission described in subsection (1) is a fine of \$25,000.

21 (3) Each violation or failure to comply with a directive or order of the commissioner is a separate and
22 distinct violation or failure to comply.

23 (4) When imposing a civil penalty under this section the commissioner shall, by notice, provide an
24 opportunity for a contested case proceeding under the Montana Administrative Procedure Act. The respondent
25 is required to request an administrative hearing within 10 days of the date of the notice.

26 (5) Money received under this section must be deposited in the department's account in the state special
27 revenue fund and used to administer the provisions of [sections 1 through 46].

28
29 **NEW SECTION. Section 43. Criminal penalties.** (1) A person is guilty of residential mortgage fraud
30 when a person purposely or knowingly does any of the following:

- 1 (a) employs a device, scheme, or artifice to defraud;
- 2 (b) engages in any act, practice, or course of business that operates or would operate as a fraud or
3 deceit upon any person;
- 4 (c) fails to disburse funds in accordance with a loan commitment;
- 5 (d) makes, uses, or facilitates or attempts to make, use, or facilitate any material misstatement,
6 misrepresentation, or omission within the mortgage lending process with the intention that a mortgage lender,
7 mortgage broker, borrower, or any other person or entity involved in the mortgage lending process relies on it;
- 8 (e) receives or attempts to receive proceeds or any other funds in connection with a residential mortgage
9 closing that the person knew or should have known resulted from a violation of subsections (1)(a) through (1)(d);
- 10 (f) causes to be filed with the commissioner or in any proceeding under [sections 1 through 46] any
11 document that is, at the time and in light of the circumstances under which it is filed, false or misleading in any
12 material respect; or
- 13 (g) conspires with, aids and abets, or solicits another to violate any of the provisions of this subsection
14 (1).
- 15 (2) It is sufficient in any prosecution under this section to show that the person accused acted with the
16 requisite intent. It is not necessary to show that any particular person or entity was harmed financially in the
17 transaction or that the person or entity to whom a misstatement, misrepresentation, or omission was made relied
18 upon the misstatement, misrepresentation, or omission.
- 19 (3) In any criminal proceeding brought under this section, the violation must be construed to have been
20 committed:
- 21 (a) in the county in which the residential real property for which the mortgage loan was being sought is
22 located;
- 23 (b) in any county in which any act was performed in furtherance of the violation;
- 24 (c) in any county in which any person alleged to have violated this section had control or possession of
25 any proceeds related to the violation;
- 26 (d) if a closing occurred, in any county in which the closing occurred; or
- 27 (e) in any county in which a document containing a material misstatement, misrepresentation, or
28 omission is filed with the county clerk and recorder or, in the case of a mobile home or trailer, with the division
29 of motor vehicles.
- 30 (4) (a) Unless the conduct is prohibited by some other provision of law providing for greater punishment,

1 a violation of this section involving a mortgage loan is a misdemeanor for the first offense and a felony for each
2 subsequent offense.

3 (b) A person convicted of a misdemeanor under this section is subject to the fine in subsection (7) and
4 may also be sentenced for up to 1 year in jail. A person convicted of a felony under this section is subject to the
5 fine in subsection (7) and may also be sentenced to prison for a term of not less than 1 year.

6 (5) In the absence of fraud, bad faith, or malice, a person is not subject to an action for civil liability for
7 filing reports or furnishing other information regarding suspected residential mortgage fraud to a regulatory or law
8 enforcement agency.

9 (6) The provisions of [sections 1 through 46] may not be construed as limiting the powers of the state
10 of Montana to punish any person for any conduct that constitutes a crime.

11 (7) The court may assess a fine of not less than \$5,000 or more than \$25,000 against any person who
12 is convicted of violating any provision of this section.

13 (8) The commissioner shall adopt rules to implement the provisions of this section.
14

15 **NEW SECTION. Section 44. Institution of criminal proceedings.** (1) The commissioner may refer
16 available evidence concerning a violation of the provisions of [section 43] or a rule adopted or order issued
17 pursuant to the provisions of [section 43] to the attorney general, to law enforcement, or to the appropriate county
18 attorney.

19 (2) The attorney general, law enforcement, or a county attorney may, with or without the commissioner's
20 referral, institute criminal proceedings for a violation described in subsection (1).

21 (3) The commissioner or an appointee of the commissioner may, upon request of the attorney general,
22 law enforcement, or county attorney, assist in presenting the law or facts at trial.

23 (4) After an examination, investigation, or hearing under [sections 1 through 46], if the commissioner
24 considers it in the public's interest, the commissioner may certify a record to the attorney general or the proper
25 prosecuting official of the county or city in which the act complained of, examined, or investigated occurred.
26

27 **NEW SECTION. Section 45. Disposition of civil penalties, costs, and fees.** All civil penalties, costs,
28 and fees received or recovered by the department pursuant to [sections 1 through 46] must be deposited into a
29 state special revenue account to the credit of the department and must be used to defray the expenses of the
30 department in discharging administrative and regulatory powers and duties in relation to [sections 1 through 46].

1 Excess civil penalties, costs, or fees must be transferred to the general fund.

2

3 **NEW SECTION. Section 46. Reports of violations to nationwide mortgage licensing system and**
4 **registry.** The commissioner shall report in a timely fashion any violation of [sections 1 through 46], as well as any
5 enforcement action taken along with any other relevant information, to the nationwide mortgage licensing system
6 and registry.

7

8 **Section 47.** Section 31-1-202, MCA, is amended to read:

9 **"31-1-202. Definitions.** ~~(1)~~ Unless the context requires otherwise, in this part the following definitions
10 apply:

11 ~~(a)~~(1) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other
12 memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge account
13 agreement for which the seller would have sold or furnished to the buyer and the buyer would have bought or
14 obtained from the seller the goods or services that are the subject matter of the retail installment transaction, if
15 the sale had been a sale for cash. The cash sale price may include any taxes, registration, certificate of title,
16 license, and official fees and cash sale prices for services, if any, and for accessories and their installation and
17 for delivering, servicing, repairing, or improving the goods.

18 ~~(b)~~(2) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

19 ~~(c)~~(3) "Finance charge" means the amount, as limited by 31-1-241, in addition to the principal balance,
20 agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or
21 services to be paid for by the buyer in one or more deferred installments.

22 ~~(d)~~(4) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or
23 coupons exchangeable for chattels personal but not including money, or things in action, or a dwelling as defined
24 in 12 CFR 226.2(a)(19). ~~The term includes goods that, at the time of the sale or subsequently, are to be so affixed~~
25 ~~to realty as to become a part of the realty, whether or not severable from it.~~

26 ~~(e)~~(5) "Holder" means:

27 ~~(i)~~(a) the retail seller of the goods or services under the retail installment contract or retail charge account
28 agreement or a person who establishes and administers retail charge account agreements with retail buyers;

29 ~~(ii)~~(b) the assignee, if the retail installment contract or the retail charge account agreement or the balance
30 in the account under either has been sold or otherwise transferred; or

1 ~~(iii)(c)~~ any other person entitled to the rights of the retail seller under any retail installment contract or any
2 retail charge account agreement.

3 ~~(f) "Manufactured structure" means any structure, transportable in one or more sections, designed to be~~
4 ~~used as a single family dwelling or commercial building with or without a permanent foundation when connected~~
5 ~~to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained in~~
6 ~~the structure.~~

7 ~~(g) (i)(6) (a)~~ "Motor vehicle" means any new or used automobile, motorcycle, quadricycle, truck, trailer,
8 semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used
9 to transport persons or property on a public highway.

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

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

13 ~~(i)(a)~~ the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying
14 any title or lien retained or taken by a seller in connection with a retail installment transaction; or

15 ~~(ii)(b)~~ the premium for insurance in lieu of filing, recording, or otherwise perfecting any title or lien retained
16 or taken by a seller in connection with a retail installment transaction to the extent that the premium does not
17 exceed the fees that would otherwise be payable for filing, recording, or otherwise perfecting and releasing or
18 satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

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

21 ~~(j)(9)~~ "Principal balance" means the cash sale price of the goods or services that are the subject matter
22 of a retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is
23 made and stated in the contract, for insurance and other benefits and official fees, minus the amount of the
24 buyer's downpayment in money or goods.

25 ~~(k) "Recreational vehicle" means a vehicular type unit that either has its own motor power or is mounted~~
26 ~~on or drawn by another vehicle, primarily designed as temporary living quarters for recreational, camping, or~~
27 ~~travel use.~~

28 ~~(l)(10)~~ "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller
29 in a retail installment transaction and not for the purpose of resale.

30 ~~(m)(11)~~ "Retail charge account agreement" means an instrument in writing prescribing the terms of retail

1 installment transactions that may be made under it from time to time under which a retail seller gives to a retail
 2 buyer the privilege of using a credit card issued by the retail seller or any other person or other credit confirmation
 3 or identification for the purpose of purchasing goods or services from the retail seller, from the retail seller and
 4 any other person, or from a person licensed or franchised by the retail seller and under the terms of which a
 5 finance charge may be computed in relation to the buyer's average daily balance in the account during the billing
 6 cycle or the buyer's balance from time to time.

7 ~~(n)~~(12) "Retail installment contract" or "contract" means an agreement evidencing a retail installment
 8 transaction entered into in this state under which a buyer promises to pay in one or more deferred installments
 9 the time sale price of goods or services, or both. The term includes a chattel mortgage, a conditional sales
 10 contract, and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as
 11 compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that
 12 the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of
 13 becoming, the owner of the goods upon full compliance with the provisions of the contract.

14 ~~(o)~~(13) "Retail installment transaction" means a written contract to sell or furnish, or the sale or furnishing
 15 of, goods or services by a retail seller to a retail buyer pursuant to a retail charge account agreement or under
 16 a retail installment contract.

17 ~~(p)~~(14) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer
 18 in a written retail installment contract or written retail installment transaction.

19 ~~(q)~~ ~~(r)~~(15) (a) "Sales finance company" means a person engaged, in whole or in part, in the business of
 20 purchasing retail installment contracts from one or more sellers. ~~The term includes but is not limited to a bank,~~
 21 ~~trust company, investment company, or savings and loan association, if engaged in purchasing retail installment~~
 22 ~~contracts.~~

23 ~~(r)~~(b) The term does not include a person who makes only isolated purchases of retail installment
 24 contracts that are not being made in the course of repeated and successive purchases of retail installment
 25 contracts from the same seller.

26 ~~(s)~~(16) "Services" means work, labor, and services furnished in the delivery, installation, servicing, repair,
 27 or improvement of goods.

28 ~~(t)~~(17) "Time sale price" means the total of the cash sale price of the goods or services and the amount,
 29 if any, included for insurance and other benefits, if a separate identified charge is made for insurance and
 30 benefits, and the amounts of the official fees and the finance charge.

1 ~~(2) (a) This part does not apply to the lending of money by banks or other lending institutions and~~
2 ~~securing loans by chattel mortgages of goods in the ordinary course of lending by those banks or other lending~~
3 ~~institutions.~~

4 ~~_____ (b) This part applies to the extension of credit by those banks or other lending institutions under retail~~
5 ~~installment contracts or credit cards issued by those banks or other lending institutions."~~

6

7 NEW SECTION. Section 48. Applicability. This part does not apply to:

8 (1) a person who is doing business under the laws of this state, another state, or the United States as
9 a financial institution or as a wholly owned operating subsidiary of an exempt financial institution; or

10 (2) a person who is licensed pursuant to [sections 1 through 46] and who complies with the provisions
11 of [sections 1 through 46].

12

13 **Section 49.** Section 31-1-221, MCA, is amended to read:

14 **"31-1-221. Licensing of sales finance companies required.** (1) A person may not engage in the
15 business of a sales finance company, including the purchase of retail installment contracts that are entered into
16 in this state, without a license as provided in this part, ~~except that a bank, trust company, or savings and loan~~
17 ~~association authorized to do business in this state is not required to obtain a license under this part but shall~~
18 ~~comply with all of the other provisions of this part.~~

19 (2) The application for a license must be in writing, under oath, and in the form prescribed by the
20 department. The application must contain:

21 (a) the name of the applicant;

22 (b) the date of incorporation, if incorporated;

23 (c) the address where the business is or is to be conducted and similar information with regard to any
24 branch office of the applicant;

25 (d) the name and resident address of the owner or partners or, if a corporation or association, of the
26 directors, trustees, and principal officers; and

27 (e) other pertinent information as the department may require.

28 (3) The license fee for each calendar year or part of a year is \$100 for each place of business of the
29 licensee in this state.

30 (4) Each license must specify the location of the office or branch and must be conspicuously displayed

1 there. If the location is changed, the department shall endorse the change of location of the license without
2 charge.

3 (5) Upon the filing of a license application and the payment of the license fee, the department shall issue
4 a license to the applicant to engage in the business of a sales finance company in accordance with the provisions
5 of this part for a period that expires December 31 following the date of the license's issuance. The license is not
6 transferable or assignable. A licensee may not transact any business provided for by this part under any other
7 name.

8 (6) Fees collected under this chapter must be deposited in the state special revenue fund for the use
9 of the department in its supervision function."
10

11 **Section 50.** Section 32-5-102, MCA, is amended to read:

12 **"32-5-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions
13 apply:

14 (1) "Balloon payment" means any repayment option in which the borrower is required to repay the entire
15 amount of any outstanding balance as of a specific date or at the end of a specified term and the aggregate
16 amount of the required minimum periodic payments would not fully amortize the outstanding balance by the
17 specific date or at the end of the loan term.

18 (2) (a) "Consumer loan" means credit offered or extended to an individual primarily for personal, family,
19 or household purposes, including loans for personal, family, or household purposes ~~that are not primarily secured~~
20 ~~by a mortgage, deed of trust, trust indenture, or other security interest in real estate.~~

21 (b) Consumer loans do not include:

22 (i) deferred deposit loans provided for in Title 31, chapter 1, part 7; or

23 (ii) title loans provided for in Title 31, chapter 1, part 8.

24 (3) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

25 (4) "Interest" means the compensation allowed by law or fixed by the parties for the use or forbearance
26 or detention of money and includes loan origination fees, points, and prepaid finance charges, as defined in 12
27 CFR 226.2.

28 (5) "License" means a license provided for by this chapter.

29 (6) "Licensee" means the person holding a license.

30 (7) "Person" means individuals, partnerships, associations, corporations, and all legal entities."

1

2 **Section 51.** Section 32-5-301, MCA, is amended to read:

3 **"32-5-301. Fees charged to consumers.** (1) A licensee may contract for and receive, on any loan of
4 money, interest as provided under 31-1-112.

5 (2) If provided for in the contract, an additional fee may be charged for any amount past due according
6 to the original terms of the contract, whether by reason of default or extension agreement. The fee charged may
7 be the greater of \$15 or 5% of the amount past due, not to exceed \$50. The fee charged for any past-due amount
8 may be charged only once. Except as provided in subsection (3), other fees may not be charged for default or
9 extension of the contract by the borrower.

10 (3) (a) If provided for in the contract, a licensee may grant a deferral at any time. A deferral postpones
11 the scheduled due date of the earliest unpaid installment and all subsequent installments as originally scheduled
12 or as previously deferred for a period equal to the agreed-upon deferral period. The deferral period is that period
13 during which an installment is not scheduled to be paid by reason of the deferral.

14 (b) A licensee may charge an additional fee for each deferral. The fee charged may be the greater of
15 \$15 or 5% of the amount currently due, not to exceed \$50.

16 (c) Other fees may not be charged by the lender for any deferrals granted by the lender.

17 (4) The licensee may include in the principal amount of any loan:

18 (a) the actual fees paid a public official or agency of the state for filing, recording, or releasing any
19 instrument securing the loan;

20 (b) the premium for insurance in lieu of filing or recording any instrument securing the loan to the extent
21 that the premium does not exceed the fees that would otherwise be payable for filing, recording, or releasing any
22 instrument securing the loan; and

23 ~~(c) bona fide fees or charges related to real estate security paid to third parties;~~

24 ~~—— (d) fees or premiums for title examination, title insurance, or similar purposes, including survey;~~

25 ~~—— (e) fees for preparation of a deed, settlement statement, or other documents;~~

26 ~~—— (f) fees for notarizing deeds and other documents;~~

27 ~~—— (g) appraisal fees;~~

28 ~~(h)(c) fees for credit reports; and~~

29 ~~—— (i) fees paid to a trustee for release of a trust deed.~~

30 (5) (a) Other fees may not be directly or indirectly contracted for or received by any licensee except those

1 specifically authorized by this chapter. A licensee may not divide into separate parts any contract made for the
 2 purpose of or with the effect of obtaining fees in excess of those authorized by this chapter. If any amount in
 3 excess of the fees permitted by this chapter is charged, contracted for, or received, the licensee shall forfeit to
 4 the borrower a sum that is double the amount that is in excess of the fees authorized by this chapter.

5 (b) This section does not apply to fees for services rendered in connection with a loan after the loan has
 6 been consummated and if the borrower's participation in the services is strictly voluntary."

7

8 **Section 52.** Section 32-5-306, MCA, is amended to read:

9 **"32-5-306. Insurance --real property security--definitions.** (1) Except as provided in this section,
 10 insurance may not be written by a licensee or an employee, affiliate, or associate of the licensee in connection
 11 with any loan.

12 (2) Insurance permitted under the provisions of this section must be obtained through an insurance
 13 company authorized to conduct business in Montana by a licensed insurance producer or agency of this state.
 14 Premiums may not exceed those fixed by law or current applicable manual rates. ~~Insurance written as authorized~~
 15 ~~by this section may contain a mortgagee clause or other appropriate provisions to protect the insurable interest~~
 16 ~~of the licensee.~~

17 (3) ~~(a)~~ When the principal amount of the loan exceeds \$300 exclusive of the portion of the loan
 18 attributable to insurance premiums and fees, the licensee may require a borrower to insure property offered as
 19 security against any substantial risk of loss, damage, or destruction for an amount not to exceed the reasonable
 20 value of the property insured or the amount of the loan, whichever is smaller, and for the customary term
 21 approximating the term of the loan contract. It is optional with the borrower to obtain insurance in an amount
 22 greater than the amount of the loan or for a longer term.

23 ~~(b) A lender may not require a borrower, as a condition of obtaining or maintaining a loan secured by~~
 24 ~~real property, to provide insurance on improvements to real property in an amount that exceeds the reasonable~~
 25 ~~replacement value of the improvements.~~

26 (4) Subject to the laws of this state, credit life insurance, credit disability insurance, and loss of income
 27 insurance may be provided at the expense of the borrower and may be provided by a licensee upon the request
 28 of the borrower when the principal amount of the loan exceeds \$300, exclusive of the portion of the loan
 29 attributable to insurance premiums and fees.

30 (5) The insurance authorized by this section may be sold, obtained, or provided by or through a licensee,

1 and the premium or identifiable fee for the insurance may be included in the principal amount of the loan.
 2 However, a licensee may not require a borrower to purchase insurance from the licensee or from any particular
 3 insurance producer, broker, or insurance company as a condition precedent for obtaining a loan. Any gain or
 4 advantage to the licensee or any employee, affiliate, or associate of the licensee from the sale, provision, or
 5 obtaining of insurance as authorized by this section may not be considered to be a violation of this chapter.

6 (6) A licensee may not require insurance under this section until any existing insurance of the same type
 7 has expired or has been canceled.

8 ~~(7) As used in this section:~~

9 ~~—— (a) "borrower" means a mortgagor, grantor of a deed of trust, or other debtor;_~~

10 ~~—— (b) "improvement to real property" means a fixture, building, or other structure attached to real property~~
 11 ~~and intended as a permanent addition to the real property; and~~

12 ~~—— (c) "lender" means a mortgagee, beneficiary of a deed of trust, or other creditor who holds a mortgage,~~
 13 ~~deed of trust, or other instrument that encumbers real property as security for the repayment of a debt."~~

14
 15 **NEW SECTION. Section 53. Repealer.** Sections 32-9-101, 32-9-102, 32-9-103, 32-9-104, 32-9-108,
 16 32-9-109, 32-9-110, 32-9-115, 32-9-116, 32-9-117, 32-9-118, 32-9-119, 32-9-121, 32-9-122, 32-9-123, 32-9-124,
 17 32-9-125, 32-9-126, 32-9-130, 32-9-132, 32-9-133, 32-9-141, 32-9-142, 32-10-101, 32-10-102, 32-10-103,
 18 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,
 19 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,
 20 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,
 21 32-10-514, and 32-10-515, MCA, are repealed.

22
 23 **NEW SECTION. Section 54. Codification instruction.** (1) [Sections 1 through 46] are intended to be
 24 codified as an integral part of Title 32, and the provisions of Title 32 apply to [sections 1 through 46].

25 (2) [Section 48] is intended to be codified as an integral part of Title 31, chapter 1, part 2, and the
 26 provisions of Title 31, chapter 1, part 2, apply to [section 48].

27
 28 **NEW SECTION. Section 55. Severability.** If a part of [this act] is invalid, all valid parts that are
 29 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
 30 the part remains in effect in all valid applications that are severable from the invalid applications.

1

2 NEW SECTION. **Section 56. Effective date.** [This act] is effective July 1, 2009.

3

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