

SENATE BILL NO. 243

INTRODUCED BY P. CONNELL

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA MORTGAGE ACT; CREATING AN
5 EXEMPTION FOR A FEDERALLY CHARTERED SAVINGS BANK FOR CERTAIN MORTGAGE LOAN
6 ORIGINATORS; REQUIRING CERTAIN MORTGAGE LOAN ORIGINATORS TO HOLD ACTIVE AND VALID
7 INSURANCE PRODUCER LICENSES FROM CERTAIN INSURERS; ALLOWING THE FEDERALLY
8 CHARTERED SAVINGS BANKS TO REGISTER WITH THE NMLS FOR THE PURPOSE OF GETTING A
9 UNIQUE IDENTIFIER; CREATING A CERTIFICATE OF EXEMPTION FOR MORTGAGE LOAN ORIGINATORS;
10 ALLOWING A PROCESSING FEE FOR A CERTIFICATE OF EXEMPTION APPLICATION; PROVIDING
11 RULEMAKING AUTHORITY; AND AMENDING SECTIONS 32-9-103, 32-9-116, AND 32-9-165, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14
15 NEW SECTION. **Section 1. Certificate of exemption -- insurance -- rules.** (1) A federally chartered
16 savings bank that is registered with the NMLS may file a written application with the department for a certificate
17 of exemption for the purpose of:

- 18 (a) registering with the NMLS and obtaining a unique identifier, except that the registration may not affect
- 19 the exempt status of the applicant;
- 20 (b) sponsoring one or more mortgage loan originators who is under an exclusive written contract with
- 21 and originates residential mortgage loans solely on behalf of a federally chartered savings bank, holds an active
- 22 and valid insurance producer license under Title 33, chapter 17, and has a current notice of appointment under
- 23 33-17-231 from an insurer that controls, is controlled by, or is under common control with the federally chartered
- 24 savings bank that has obtained an exemption under this section;
- 25 (c) sponsoring a designated manager pursuant to this section;
- 26 (d) holding a surety bond that meets the requirements of 32-9-123;
- 27 (e) fulfilling the reporting requirements of 32-9-151; and
- 28 (f) supervising the activities of a mortgage loan originator who is licensed pursuant to this chapter and
- 29 is under exclusive contract with the applicant.

30 (2) The application for a certificate of exemption or the renewal of a certificate of exemption must be

1 made in writing and on the form in the manner prescribed by the department by rule. The department may by rule
2 require additional information on the experience, background, honesty, truthfulness, integrity, and competency
3 of the applicant and the designated manager designated by the applicant.

4 (3) The department may charge a fee for processing the original or renewal application for a certificate
5 of exemption and for other costs incurred by the department. The fee must be the mortgage lender fee provided
6 in 32-9-117(1)(a)(iii) and the renewal fee for mortgage lenders provided by rule pursuant to 32-9-117(3). The
7 provisions of 32-9-117 apply to [section 1].

8 (4) The exempt entity shall sponsor a bank employee as the designated manager to actively manage
9 the activities of any mortgage loan originator licensees working under it at all locations that originate a residential
10 mortgage loan in Montana. The designated manager sponsored pursuant to this section may be located in this
11 state or in the state where the primary business is conducted and must be a licensed mortgage loan originator
12 and have at least 3 years of experience as a mortgage loan originator or in a related field. The designated
13 manager sponsored pursuant to this section may supervise one or more Montana-licensed mortgage loan
14 originators at all locations in this state.

15 (5) If the designated manager ceases to act in that capacity, the exempt entity shall designate another
16 individual licensed as a mortgage loan originator as designated manager within 15 days and shall submit
17 information to the NMLS establishing that the subsequent designated manager is in compliance with the
18 provisions of this section.

19 (6) A certificate of exemption expires if either of the following occurs:

20 (a) the exempt entity does not replace the designated manager in the time and manner outlined in this
21 section; or

22 (b) the exempt entity does not provide notice of replacement of the designated manager under this
23 section.

24 (7) Except as provided in subsection (8), after reviewing the application for a certificate of exemption and
25 after verifying the submitted information, the department shall issue the certificate of exemption.

26 (8) The department may deny a certificate of exemption to an entity or suspend or revoke a certificate
27 of exemption if the department finds that an applicant or certificate holder has done any of the following:

28 (a) shown that the applicant or certificate holder is not a person of honesty, truthfulness, and good
29 character;

30 (b) violated any applicable law, rule, or order;

1 (c) refused or failed to furnish, within a reasonable time, any information or make any report that may
2 be required by the department;

3 (d) had a final judgment entered against the applicant or certificate holder in a civil action on grounds
4 of fraud, deceit, or misrepresentation and the conduct on which the judgment is based indicates that it would be
5 contrary to the interest of the public to permit the applicant or certificate holder to manage a mortgage loan
6 originator;

7 (e) had an order entered against the applicant or certificate holder involving fraud, deceit, or
8 misrepresentation by an administrative agency of this state, the federal government, or any other state or territory
9 of the United States and the facts relating to the order indicate that it would be contrary to the interest of the public
10 to permit the applicant or certificate holder to manage a mortgage loan originator; or

11 (f) made a material misstatement or suppressed or withheld information on the application for a certificate
12 of exemption or any document required to be filed with the department.

13 (9) (a) A federally chartered savings bank that has been issued a certificate of exemption pursuant to
14 this section shall deposit with the NMLS, before doing business as a registered exempt federally chartered
15 savings bank, a bond executed by the federally chartered savings bank as the principal and a surety company
16 authorized to do business in this state as a surety. The bond must be in the amount of \$200,000. Only one bond
17 is required for each registered exempt federally chartered savings bank doing business in this state.

18 (b) The bond must comply with 32-9-123(1)(b) and the exempt entity must comply with 32-9-123(3)
19 through (6) as if it were a mortgage lender.

20

21 **Section 2.** Section 32-9-103, MCA, is amended to read:

22 **"32-9-103. Definitions.** As used in this part, the following definitions apply:

23 (1) "Administrative or clerical tasks" mean the receipt, collection, and distribution of information common
24 for the processing or underwriting of a loan in the mortgage industry, without performing any analysis of the
25 information, and communication with a consumer to obtain information necessary for the processing or
26 underwriting of a residential mortgage loan.

27 (2) "Advertising" means a commercial message in any medium, including social media and software,
28 that promotes, either directly or indirectly, a residential mortgage loan transaction.

29 (3) "Application" means a request, in any form, for an offer of residential mortgage loan terms or a
30 response to a solicitation of an offer of residential mortgage loan terms and includes the information about the

1 borrower that is customary or necessary in a decision on whether to make such an offer.

2 (4) "Approved education course" means any course approved by the NMLS.

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

4 (6) "Bona fide not-for-profit entity" means an entity that:

5 (a) maintains tax-exempt status under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code, 26
6 U.S.C. 501(c)(3) or 501(c)(4);

7 (b) promotes affordable housing or provides homeownership education or similar services;

8 (c) conducts its activities in a manner that serves public or charitable purposes, rather than commercial
9 purposes;

10 (d) receives funding and revenue and charges fees in a manner that does not create incentives for the
11 entity or its employees to act other than in the best interests of its clients;

12 (e) compensates employees in a manner that does not create incentives for employees to act other than
13 in the best interests of clients;

14 (f) provides to or identifies for the borrower residential mortgage loans with terms that are favorable to
15 the borrower and comparable to mortgage loans and housing assistance provided under government housing
16 assistance programs. For purposes of this subsection (6)(f), for residential mortgage loans to have terms that are
17 favorable to the borrower, the department shall determine that the terms are consistent with loan origination in
18 a public or charitable context, rather than a commercial context.

19 (g) is either certified by the U.S. department of housing and urban development or has received a
20 community housing development organization designation as defined in 24 CFR 92.2.

21 (7) "Bona fide third party" means a person that provides services relative to the origination of a residential
22 mortgage loan. The term includes but is not limited to real estate appraisers and credit reporting agencies.

23 (8) "Borrower" means a person seeking a residential mortgage loan or an obligor on a residential
24 mortgage loan.

25 (9) "Branch office" means a location at which a licensee conducts business other than a licensee's
26 principal place of business. The location is considered a branch office if:

27 (a) the address of the location appears on business cards, stationery, or advertising used by the entity;

28 (b) the entity's name or advertising suggests that mortgages are made at the location;

29 (c) the location is held out to the public as a licensee's place of business due to the actions of an
30 employee or independent contractor of the entity; or

- 1 (d) the location is controlled directly or indirectly by the entity.
- 2 (10) (a) "Clerical or support duties" includes:
- 3 (i) the receipt, collection, distribution, and analysis of information common for the processing or
- 4 underwriting of a residential mortgage loan; and
- 5 (ii) communicating with a consumer to obtain the information necessary for the processing or underwriting
- 6 of a residential mortgage loan to the extent that the communication does not include offering or negotiating loan
- 7 rates or terms or counseling consumers about residential mortgage loan rates or terms.
- 8 (b) The term does not include:
- 9 (i) taking a residential mortgage loan application; or
- 10 (ii) offering or negotiating the terms of a residential mortgage loan.
- 11 (11) "Commercial context" means that an individual who acts as a mortgage loan originator does so for
- 12 the purpose of obtaining profit for an entity or individual for which the individual acts, including a sole
- 13 proprietorship or other entity that includes only the individual, rather than exclusively for public, charitable, or
- 14 family purposes.
- 15 (12) (a) "Control" means the power, directly or indirectly, to direct the management or policies of an entity,
- 16 whether through ownership of securities, by contract, or otherwise.
- 17 (b) A person is presumed to control an entity if that person:
- 18 (i) is a director, general partner, or executive officer or is an individual that occupies a similar position
- 19 or performs a similar function;
- 20 (ii) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the power
- 21 to sell or direct the sale of 10% or more of a class of voting securities;
- 22 (iii) in the case of a limited liability company, is a managing member; or
- 23 (iv) in the case of a partnership, has the right to receive upon dissolution or has contributed 10% or more
- 24 of the capital.
- 25 (13) "Department" means the department of administration provided for in 2-15-1001, acting through its
- 26 division of banking and financial institutions.
- 27 (14) "Depository institution" has the meaning provided in section 3 of the Federal Deposit Insurance Act,
- 28 12 U.S.C. 1813(c), and includes any credit union.
- 29 (15) "Designated manager" means a mortgage loan originator with at least 3 years of experience as a
- 30 mortgage loan originator, or a registered mortgage loan originator who is designated by an entity as the individual

1 responsible for the operation of a particular location that is under the designated manager's full management,
2 supervision, and control, or a sponsored designated manager as provided in [section 1].

3 (16) "Dwelling" has the meaning provided in 15 U.S.C. 1602(w).

4 (17) "Entity" means a business organization, including a sole proprietorship.

5 (18) "Escrow account" means a depository account with a financial institution that provides deposit
6 insurance and that is separate and distinct from any personal, business, or other account of the mortgage lender
7 or mortgage servicer and is maintained solely for the holding and payment of escrow funds.

8 (19) "Escrow funds" means funds entrusted to a mortgage lender or mortgage servicer by a borrower for
9 payment of taxes, insurance, or other payments to be made in connection with the servicing of a loan.

10 (20) "Expungement" means a court-ordered process that involves the destruction of documentation
11 related to past arrests and convictions.

12 (21) "Federal banking agency" means the board of governors of the federal reserve system, the
13 comptroller of the currency, the national credit union administration, or the federal deposit insurance corporation.

14 (22) "Housing finance agency" includes the Montana board of housing provided for in 2-15-1814.

15 (23) "Independent contractor" means an individual who performs duties other than at the direction of and
16 subject to the supervision and instruction of another individual who is licensed and registered in accordance with
17 this part or who is not required to be licensed in accordance with 32-9-104(1)(b), (1)(d), or (1)(g).

18 (24) "Independent contractor entity" means an entity that offers or provides clerical or support duties for
19 another person.

20 (25) "Individual" means a natural person.

21 (26) "Licensee" means a person authorized pursuant to this part to engage in activities regulated by this
22 part. The term does not include an individual who is a registered mortgage loan originator.

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

26 (28) (a) "Loan processor or underwriter" means an individual who, with respect to the origination of a
27 residential mortgage loan, performs clerical or support duties as an employee at the direction of and subject to
28 the supervision of a licensed mortgage loan originator or registered mortgage loan originator.

29 (b) For the purposes of subsection (28)(a), "origination of a residential mortgage loan" means all activities
30 related to a residential mortgage loan from the taking of a residential mortgage loan application through the

1 completion of all required loan closing documents and funding of the residential mortgage loan.

2 (29) "Mortgage" means a consensual interest in real property located in Montana, including
3 improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real
4 property.

5 (30) (a) "Mortgage broker" means an entity that obtains, attempts to obtain, or assists in obtaining a
6 mortgage loan for a borrower from a mortgage lender in return for consideration or in anticipation of consideration
7 or holds itself out as being able to assist a person in obtaining a mortgage loan.

8 (b) For purposes of this subsection (30), attempting to obtain or assisting in obtaining a mortgage loan
9 includes referring a borrower to a mortgage lender or mortgage broker, soliciting or offering to solicit a mortgage
10 loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a mortgage loan
11 with a mortgage lender on behalf of a borrower.

12 (31) "Mortgage lender" means an entity that closes a residential mortgage loan, advances funds, offers
13 to advance funds, commits to advancing funds for a mortgage loan applicant, or holds itself out as being able to
14 perform any of those functions.

15 (32) (a) "Mortgage loan originator" means an individual who for compensation or gain or in the
16 expectation of compensation or gain:

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

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

19 (b) The term includes an individual who represents to the public that the individual can or will perform
20 the services described in subsection (32)(a).

21 (c) The term does not include an individual:

22 (i) engaged solely as a loan processor or underwriter, except as provided in 32-9-135; or

23 (ii) involved solely in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C.
24 101(53D).

25 (33) "Mortgage servicer" means an entity that:

26 (a) engages, for compensation or gain from another or on its own behalf, in the business of receiving
27 any scheduled periodic payment from a borrower pursuant to the terms of a residential mortgage loan, residential
28 mortgage servicing documents, or a residential mortgage servicing contract;

29 (b) meets the definition of servicer in 12 U.S.C. 2605(i)(2) with respect to residential mortgage loans; or

30 (c) holds out to the public that the entity is able to comply with subsection (33)(a) or (33)(b).

1 (34) "Nationwide mortgage licensing system and registry" or "NMLS" means a licensing system
2 developed and maintained by the conference of state bank supervisors and the American association of
3 residential mortgage regulators for the registration and licensing of persons providing nondepository financial
4 services.

5 (35) "Nontraditional mortgage product" means any mortgage product other than a 30-year, fixed-rate
6 mortgage.

7 (36) "Person" means an individual, sole proprietorship, corporation, company, limited liability company,
8 partnership, limited liability partnership, trust, or association.

9 (37) "Real estate brokerage activities" means activities that involve offering or providing real estate
10 brokerage services to the public, including:

11 (a) acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real
12 property;

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

14 (c) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease,
15 rental, or exchange of real property other than in connection with providing financing with respect to the
16 transaction;

17 (d) engaging in any activity for which a person is required to be licensed as a real estate salesperson
18 or real estate broker under Montana law; or

19 (e) offering to engage in any activity or act in any capacity described in subsections (37)(a) through
20 (37)(d).

21 (38) "Registered mortgage loan originator" means an individual who:

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

23 (i) a depository institution;

24 (ii) a subsidiary that is wholly owned and controlled by a depository institution and regulated by a federal
25 banking agency; or

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

27 (b) is registered with and maintains a unique identifier through the NMLS.

28 (39) "Regularly engage" means that a person:

29 (a) has engaged in the business of a mortgage broker, mortgage lender, mortgage servicer, or mortgage
30 loan originator on more than five residential mortgage loans in the previous calendar year or expects to engage

1 in the business of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator on more
2 than five residential mortgage loans in the current calendar year; or

3 (b) has served as the prospective source of financing or performed other phases of loan originations on
4 more than five residential mortgage loans in the previous calendar year or expects to serve as the prospective
5 source of financing or perform some other phases of loan origination on more than five residential mortgage loans
6 in the current calendar year.

7 (40) "Residential mortgage loan" means a loan primarily for personal, family, or household use secured
8 by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real
9 estate located in Montana.

10 (41) "Residential real estate" means any real property located in the state of Montana upon which is
11 constructed a dwelling or upon which a dwelling is intended to be built within a 2-year period, subject to 24 CFR
12 3500.5(b)(4). The borrower's intent to construct a dwelling is presumed unless the borrower has submitted a
13 written, signed statement to the contrary.

14 (42) "Responsible individual" means a Montana-licensed mortgage loan originator with at least 1 1/2
15 years of experience as a mortgage loan originator or registered mortgage loan originator who is designated by
16 an independent contractor entity as the individual responsible for the operation of a particular location that is
17 under the responsible individual's full management, supervision, and control.

18 (43) "Ultimate equity owner" means an individual who, directly or indirectly, owns or controls an ownership
19 interest in a corporation, a foreign corporation, an alien business organization, or any other form of business
20 organization, regardless of whether the individual owns or controls an ownership interest, individually or in any
21 combination, through one or more persons or one or more proxies, powers of attorney, nominees, corporations,
22 associations, partnerships, trusts, joint-stock companies, or other entities or devices.

23 (44) "Unique identifier" means a number or other identifier assigned by protocols established by the
24 NMLS. (See part compiler's comment regarding contingent suspension.)"

25

26 **Section 3.** Section 32-9-116, MCA, is amended to read:

27 **"32-9-116. Employment or sponsorship of mortgage loan originator.** (1) A mortgage loan originator
28 may transact business for only one employing mortgage broker or one employing mortgage lender licensed in
29 accordance with the provisions of this part. An entity exempt under [section 1] may sponsor any number of
30 mortgage loan originators who are independent contractors of the exempt entity.

1 (2) If the employment of a mortgage loan originator or sponsorship of a mortgage loan originator by an
2 exempt entity is terminated, the sponsoring mortgage broker, ~~or mortgage lender,~~ or exempt entity shall remove
3 sponsorship of the mortgage loan originator on the NMLS within 5 business days of the termination. The
4 mortgage loan originator's license must be placed in "Approved-Inactive" status until the license is sponsored by
5 a mortgage broker or mortgage lender. If at the end of the next renewal period the license is not sponsored by
6 a mortgage broker or mortgage lender, it must be automatically placed in "Terminated-Expired" status for failure
7 to renew. The removal of sponsorship of the license of any mortgage loan originator extinguishes the right of the
8 mortgage loan originator to engage in any residential mortgage loan origination activity until NMLS procedures
9 have been followed to sponsor the license. (See part compiler's comment regarding contingent suspension.)"
10

11 **Section 4.** Section 32-9-165, MCA, is amended to read:

12 **"32-9-165. Types of licenses.** (1) The four types of licenses under this part are mortgage broker
13 licenses, mortgage lender licenses, mortgage servicer licenses, and mortgage loan originator licenses.

14 (2) A mortgage broker license may be issued to an entity that meets the requirements of 32-9-112,
15 32-9-113, 32-9-116, 32-9-117, 32-9-122, and 32-9-123 and employs at least one Montana-licensed mortgage
16 loan originator.

17 (3) A mortgage lender license may be issued to an entity that meets the requirements of 32-9-112,
18 32-9-113, 32-9-116, 32-9-117, 32-9-122, and 32-9-123 and employs at least one Montana-licensed mortgage
19 loan originator.

20 (4) A mortgage servicer license may be issued to an entity that meets the requirements of 32-9-112,
21 32-9-113, 32-9-117, and 32-9-123.

22 (5) A mortgage loan originator license may be issued to an individual who meets the requirements of
23 32-9-107, 32-9-109, 32-9-110, 32-9-112, 32-9-116, and 32-9-117 and is sponsored by a Montana-licensed
24 mortgage broker, ~~or mortgage lender,~~ or exempt entity under [section 1].

25 (6) A de novo inactive license may be issued to a mortgage loan originator that has met all the
26 requirements for licensure except sponsorship.

27 (7) A de novo inactive license may be issued to an entity that has met all the requirements for licensure
28 except employment of at least one Montana-licensed mortgage loan originator.

29 (8) Business may not be conducted under a de novo inactive license.

30 (9) A Montana-licensed entity may have one or more branch offices if the entity meets the requirements

1 of 32-9-122 and has paid the fee required under 32-9-117.

2 (10) Licenses under this part may not be assigned or transferred."

3

4 NEW SECTION. **Section 5. Codification instruction.** [Section 1] is intended to be codified as an
5 integral part of Title 32, chapter 9, and the provisions of Title 32, chapter 9, apply to [section 1].

6 - END -