

HOUSE BILL NO. 108

INTRODUCED BY G. PIERSON

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE REGULATION OF ESCROW BUSINESSES ACT; ALLOWING ANNUAL REPORTS OF ESCROW BUSINESSES TO BE REVIEWED BY A CERTIFIED PUBLIC ACCOUNTANT EVERY ODD-NUMBERED YEAR; ALLOWING SERVICE BY COMMON COURIER WITH TRACKING CAPABILITY; AMENDING SECTIONS 32-7-115 AND 32-7-124, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 32-7-115, MCA, is amended to read:

"32-7-115. Maintenance of records. (1) A licensee shall establish and maintain the books, accounts, and records necessary to enable the department at any time to determine whether the escrow transactions performed by the licensee comply with the provisions of this part. The books, accounts, and records must be maintained in accordance with generally accepted accounting principles and good business practice.

(2) A licensee shall establish and maintain the following records concerning general accounts:

(a) a general record reflecting the assets, liabilities, capital, income, and expense of the business, maintained in accordance with generally accepted accounting principles;

(b) a cash receipt and disbursement journal; and

(c) a reconciliation of monthly statements to the general record.

(3) The records referred to in subsections (1) and (2) must be reconciled at least once each month with the bank statements reflecting each escrow account.

(4) A licensee shall preserve for at least 3 years after the close of any escrow:

(a) all bank statements reflecting each escrow account and records of monthly reconciliations of the statements to the general record;

(b) all canceled checks drawn on each escrow account;

(c) any additional records reflecting banking transactions regarding each escrow account, including copies of all receipts for funds transferred from other accounts into each escrow account;

- 1 (d) all statements of account;
- 2 (e) all escrow instructions and amendments to them; and
- 3 (f) all additional records pertinent to each escrow transaction.
- 4 (5) A licensee shall file annually with the department by a date set by the department by rule a statement
- 5 of the licensee's financial condition as of December 31 of the preceding calendar year and its transactions and
- 6 escrow activities during that preceding calendar year concerning consumers in this state. The financial statement
- 7 must be ~~certified~~ reviewed by an independent public accountant every odd-numbered year and must be in a form
- 8 and contain the information that the department requires."

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10 **Section 2.** Section 32-7-124, MCA, is amended to read:

11 **"32-7-124. Hearings -- penalties.** (1) The department may impose a civil penalty not to exceed \$1,000

12 for each violation if the department finds, after providing a 14-day written notice of alleged violations and

13 opportunity for administrative hearing, that any person, any licensee, or any officer, agent, employee, or

14 representative of the person or licensee, whether licensed or unlicensed, has:

- 15 (a) violated any of the provisions of this part;
- 16 (b) failed to comply with the rules or orders promulgated by the department;
- 17 (c) failed or refused to make required reports to the department;
- 18 (d) furnished false information to the department; or
- 19 (e) operated without a required license.

20 (2) The department may issue an order requiring restitution to parties and reimbursement of the

21 department's costs of bringing an administrative action. In addition, the department may issue an order revoking,

22 conditioning, or suspending the right of the licensee, directly or through another, to engage in escrow business

23 activities in this state.

24 (3) All hearing schedules and orders must be mailed to the person or licensee by certified mail to the

25 address for which the license was issued or, in the case of an unlicensed business, to the last-known address

26 of record.

27 (4) For purposes of this part, the department is considered to have complied with the requirements of

28 law concerning service of process ~~upon mailing by certified mail~~ by sending by common courier with tracking

29 capability any notice required under this part, postage prepaid and addressed to:

- 30 (a) the last-known address of the licensee's registered agent for service of process on file with the

1 department;

2 (b) the last-known address of the licensee on file with the department for an in-state licensee; or

3 (c) the last-known address of an unlicensed person.

4 (5) In a judicial action, suit, or proceeding arising under this part or any administrative rule adopted
5 pursuant to this part between the department and a licensee who does not maintain a physical office in this state,
6 venue is in the district court of Lewis and Clark County.

7 (6) The provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a
8 contested case brought under this part."

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10 NEW SECTION. **Section 3. Effective date.** [This act] is effective October 1, 2019.

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