



AN ACT GENERALLY REVISING THE MONTANA MORTGAGE ACT; REVISING THE ACT TO COMPLY WITH FEDERAL RULES; PROHIBITING A MORTGAGE BROKER OR MORTGAGE LENDER FROM EMPLOYING OR CONTRACTING WITH UNLICENSED PERSONS; REVISING DEFINITIONS; REVISING PROVISIONS RELATING TO EXEMPTIONS; REVISING LICENSING REQUIREMENTS; PROVIDING FOR RESTRICTIONS AND CONDITIONS ON ADVERTISING; REVISING CONTINUING EDUCATION REQUIREMENTS; REVISING OFFICE REQUIREMENTS; PROVIDING THAT BROKERS AND MANAGERS ARE RESPONSIBLE FOR ALL EMPLOYEES; REVISING RECORDKEEPING REQUIREMENTS; PROVIDING THAT CERTAIN ELECTRONIC DOCUMENTS MUST BE TREATED AS ORIGINAL DOCUMENTS; ALLOWING MORTGAGE SERVICERS TO CHARGE FEES THAT ARE UNKNOWN AT CLOSING; REVISING SURETY BOND PROVISIONS; REVISING ENFORCEMENT RULES; PROVIDING JOINT AND SEVERAL LIABILITY FOR CONTROL PERSONS AND OFFICERS AND DIRECTORS; EXPANDING THE DEPARTMENT OF ADMINISTRATION'S RULEMAKING AUTHORITY; AMENDING SECTIONS 32-9-101, 32-9-102, 32-9-103, 32-9-104, 32-9-105, 32-9-107, 32-9-109, 32-9-110, 32-9-112, 32-9-116, 32-9-117, 32-9-118, 32-9-120, 32-9-121, 32-9-122, 32-9-123, 32-9-124, 32-9-126, 32-9-129, 32-9-130, 32-9-133, 32-9-150, 32-9-151, 32-9-155, 32-9-160, 32-9-165, 32-9-167, AND 32-9-170, MCA; AMENDING SECTION 37, CHAPTER 321, LAWS OF 2009; AND REPEALING SECTION 32-9-125, MCA.

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

Section 1. Section 32-9-101, MCA, is amended to read:

"32-9-101. Short title and purpose. (1) This part may be cited as the "Montana Mortgage Act".

(2) The legislature recognizes that buying or financing a home is one of the largest, most complicated, and vitally important decisions facing consumers in Montana. Therefore, the legislature finds it desirable to license certain persons in the residential mortgage industry that are outside of the traditional banking industry and that have a direct involvement in consumers' financial welfare, including mortgage brokers, mortgage lenders, mortgage servicers, and mortgage loan originators, to promote honesty, education, and professionalism, to ensure the availability and diversity of residential mortgage funding, and to protect Montana consumers and the

stability of Montana's economy.

(3) The legislature finds that it is necessary to implement the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 and, together with the residential mortgage industry, recognizes the importance of statewide participation in the ~~nationwide mortgage licensing system and registry~~ NMLS. (See compiler's comment regarding contingent suspension.)"

Section 2. Section 32-9-102, MCA, is amended to read:

"32-9-102. License requirement -- registration. (1) Unless exempt under 32-9-104, a person may not ~~act as~~ regularly engage in the business of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator with respect to any residential mortgage loan ~~located in Montana~~ unless licensed under the provisions of this part or registered through the NMLS with a unique identifier assigned.

(2) A person ~~acting as~~ regularly engaging in the business of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator under this part is required to be licensed through, registered with, and maintain a valid unique identifier issued by the ~~nationwide mortgage licensing system and registry~~ NMLS.

(3) A mortgage broker or mortgage lender may not employ or contract with any person required to be licensed under this part if the person is not licensed. (See compiler's comment regarding contingent suspension.)"

Section 3. Section 32-9-103, MCA, is amended to read:

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

(1) "Administrative or clerical tasks" mean the receipt, collection, and distribution of information common for the processing or underwriting of a ~~residential mortgage loan in the mortgage industry, without performing any analysis of the information,~~ and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan ~~to the extent that the communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.~~

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

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

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 ~~nationalwide mortgage licensing system and registry~~ NMLS.

~~(3)~~(5) "Approved test provider" means any test provider approved by the ~~nationalwide mortgage licensing system and registry~~ NMLS.

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

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

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

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

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

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

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

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

~~(4)~~(7) "Bona fide third party" means a person that provides services relative to the origination of a residential mortgage loan. The term includes but is not limited to real estate appraisers and credit reporting agencies.

~~(5)~~(8) "Borrower" means a person seeking a residential mortgage loan or an obligor on a residential mortgage loan.

~~(6)~~(9) "Branch office" means a location at which a licensee conducts business other than a licensee's principal place of business. The location is considered a branch office if:

- (a) the address of the location appears on business cards, stationery, or advertising used by the entity;
- (b) the entity's name or advertising suggests that mortgages are made at the location;
- (c) the location is held out to the public as a licensee's place of business due to the actions of an employee or independent contractor of the entity; or
- (d) the location is controlled directly or indirectly by the entity.

(10) "Commercial context" means that an individual who acts as a mortgage loan originator does so for the purpose of obtaining profit for an entity or individual for which the individual acts, including a sole proprietorship or other entity that includes only the individual, rather than exclusively for public, charitable, or family purposes.

~~(7)~~(11) (a) "Control" means the power, directly or indirectly, to direct the management or policies of an entity, whether through ownership of securities, by contract, or otherwise.

(b) A person is presumed to control an entity if that person:

(i) is a director, general partner, or executive officer or is an individual that occupies a similar position or performs a similar function;

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

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

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

~~(8)~~(12) "Department" means the department of administration provided for in 2-15-1001, acting through its division of banking and financial institutions.

~~(9)~~(13) "Depository institution" has the meaning provided in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c), and includes any credit union.

~~(10)~~(14) "Designated manager" means a mortgage loan originator with at least 3 years of experience as a mortgage loan originator or registered mortgage loan originator who is designated by an entity as the individual responsible for the operation of a particular location that is under the designated manager's full management, supervision, and control.

~~(11)~~(15) "Dwelling" has the meaning provided in 15 U.S.C. 1602~~(v)~~(w).

~~(12)~~(16) "Entity" means a business organization, including a sole proprietorship.

~~(13)~~(17) "Escrow account" means a depository account with a financial institution that provides deposit insurance and that is separate and distinct from any personal, business, or other account of the mortgage lender or mortgage servicer and is maintained solely for the holding and payment of escrow funds.

~~(14)~~(18) "Escrow funds" means funds entrusted to a mortgage lender or mortgage servicer by a borrower for payment of taxes, insurance, or other payments to be made in connection with the servicing of a loan.

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

~~(15)~~(20) "Federal banking agency" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration, or the federal deposit insurance corporation.

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

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

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

~~(17)~~(23) "Individual" means a natural person.

~~(18)~~(24) "Licensee" means a person authorized pursuant to this part to engage in activities regulated by this part. The term does not include an individual who is a registered mortgage loan originator.

~~(19)~~(25) "Loan commitment" means a statement transmitted in writing or electronically by a mortgage lender setting forth the terms and conditions upon which the mortgage lender is willing to make a particular residential mortgage loan to a particular borrower.

~~(20)~~(26) (a) "Loan processor or underwriter" means an individual who, with respect to the origination of a residential mortgage loan, performs administrative or clerical tasks as an employee, ~~subsequent to the receipt of a residential mortgage loan application~~, at the direction of and subject to the supervision of a licensed mortgage loan originator or registered mortgage loan originator.

(b) For the purposes of subsection (26)(a), "origination of a residential mortgage loan" means all activities related to a residential mortgage loan from the taking of a residential mortgage loan application through the

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

~~(21)~~(27) "Mortgage" means a consensual interest in real property located in Montana, including improvements, securing a debt evidenced by a mortgage, trust indenture, deed of trust, or other lien on real property.

~~(22)~~(28) (a) "Mortgage broker" means an entity that obtains, attempts to obtain, or assists in obtaining a mortgage loan for a borrower from a mortgage lender in return for consideration or in anticipation of consideration.

(b) For purposes of this subsection ~~(22)~~ (28), attempting to or assisting in obtaining a mortgage loan includes referring a borrower to a mortgage lender or mortgage broker, soliciting or offering to solicit a mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a mortgage loan with a mortgage lender on behalf of a borrower.

~~(23)~~(29) "Mortgage lender" means an entity that closes a residential mortgage loan, advances funds, offers to advance funds, or commits to advancing funds for a mortgage loan applicant.

~~(24)~~(30) (a) "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain:

- (i) takes a residential mortgage loan application; or
- (ii) offers or negotiates terms of a residential mortgage loan.
- (b) The term does not include an individual:
 - (i) engaged solely as a loan processor or underwriter, except as provided in 32-9-129; or
 - (ii) involved solely in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C.

101(53D).

~~(25)~~(31) "Mortgage servicer" means an entity that:

- (a) engages, for compensation or gain from another or on its own behalf, in the business of receiving any scheduled periodic payment from a borrower pursuant to the terms of a residential mortgage loan, residential mortgage servicing documents, or a residential mortgage servicing contract; or
- (b) meets the definition of "servicer" in 12 U.S.C. 2605(i)(2) with respect to residential mortgage loans.

~~(26)~~(32) "Nationwide mortgage licensing system ~~and registry and registry~~" or "NMLS" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the registration ~~of state-licensed mortgage brokers,~~

~~state-licensed mortgage lenders, state-licensed mortgage servicers, state-licensed mortgage loan originators, and registered mortgage loan originators~~ and licensing of persons providing nondepository financial services.

~~(27)~~(33) "Nontraditional mortgage product" means any mortgage product other than a 30-year, fixed-rate mortgage.

~~(28)~~(34) "Person" means an individual, sole proprietorship, corporation, company, limited liability company, partnership, limited liability partnership, trust, or association.

~~(29)~~(35) "Real estate brokerage activities" means activities that involve offering or providing real estate brokerage services to the public, including:

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

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

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

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

(e) offering to engage in any activity or act in any capacity described in subsections ~~(29)(a)~~ (35)(a) through ~~(29)(d)~~ (35)(d).

~~(30)~~(36) "Registered mortgage loan originator" means an individual who:

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

(i) a depository institution;

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

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

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

(37) "Regularly engage" means that a person:

(a) has engaged in the business of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator on more than 12 residential mortgage loans in the previous calendar year or expects to engage

in the business of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator on more than 12 residential mortgage loans in the current calendar year; or

(b) has served as the prospective source of financing or performed other phases of loan originations on more than 12 residential mortgage loans in the previous calendar year or expects to serve as the prospective source of financing or perform some other phases of loan origination on more than 12 residential mortgage loans in the current calendar year.

~~(31)~~(38) "Residential mortgage loan" means a loan primarily for personal, family, or household use secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real estate located in Montana.

~~(32)~~(39) "Residential real estate" means any real property located in the state of Montana upon which is constructed a dwelling or upon which a dwelling is intended to be built within a 2-year period, subject to 24 CFR 3500.5(b)(4). The borrower's intent to construct a dwelling is presumed unless the borrower has submitted a written, signed statement to the contrary.

~~(33)~~ "Trust account" means a depository account with a financial institution that provides deposit insurance that is separate and distinct from any personal, business, or other account of the mortgage broker or the mortgage lender and that is maintained solely for the holding and payment of bona fide third-party fees:

~~———(34)~~ "Trust account funds" means money entrusted to a mortgage lender or mortgage broker during the origination of a mortgage loan for the payment of services provided by a bona fide third party, which does not include the services of a mortgage broker, mortgage lender, or mortgage loan originator. The term includes appraisal fees, credit report fees, and other fees required for the mortgage loan origination.

~~(35)~~(40) "Ultimate equity owner" means an individual who, directly or indirectly, owns or controls an ownership interest in a corporation, a foreign corporation, an alien business organization, or any other form of business organization, regardless of whether the individual owns or controls an ownership interest, individually or in any combination, through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint-stock companies, or other entities or devices.

~~(36)~~(41) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry NMLS. (See compiler's comment regarding contingent suspension.)"

Section 4. Section 32-9-104, MCA, is amended to read:

"32-9-104. Exemptions -- proof of exemption. (1) The provisions of this part do not apply to:

- (a) an entity that is an agency of the federal, state, tribal, or municipal local government;
- (b) an individual who is an employee of a federal, state, tribal, local government, or housing finance agency acting as a loan originator only pursuant to the individual's official duties as an employee of the federal, state, tribal, local government, or housing finance agency;
- ~~(b)(c)~~ (c) an entity described in 32-9-103~~(30)(a)(i)(36)(a)(i)~~ through ~~(30)(a)(iii)~~ (36)(a)(iii);
- ~~(e)(d)~~ (d) a registered mortgage loan originator when acting for an entity described in 32-9-103~~(30)(a)(i)(36)(a)(i)~~ through ~~(30)(a)(iii)~~ (36)(a)(iii);
- ~~(d) an individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of that individual;~~
- ~~(e) a person who offers, negotiates, or provides financing in conjunction with the sale of real property owned by that person and that is secured by a contract for deed, mortgage, deed of trust, or other equivalent security interest on the real property sold;~~
- ~~(f) a loan that is made by an entity to an employee of the entity if the proceeds of the loan are used to assist the employee in meeting the employee's housing needs;~~
- ~~(g) an entity engaged solely in commercial real estate lending;~~
- ~~(h) an entity qualified as a pension plan under 26 U.S.C. 401 if the plan makes residential mortgages only to the plan's participants;~~
- ~~(i) the federal national mortgage association, the federal home loan mortgage corporation, and the government national mortgage association;~~
- ~~(j) a 501(c)(3) corporation, which is not otherwise engaged in or holding itself out to the public as being engaged in the mortgage loan business, that makes mortgage loans to promote home ownership or improvements for bona fide low-income individuals;~~
- (e) an individual who performs only administrative or clerical tasks at the direction of and subject to the supervision and instruction of an individual who:
 - (i) is a licensed and registered mortgage loan originator pursuant to this part; or
 - (ii) is not required to be licensed in accordance with subsections (1)(b), (1)(d), or (1)(g);
 - (f) an entity that is a bona fide not-for-profit entity;

(g) an employee of a bona fide not-for-profit entity who acts as a loan originator only with respect to work duties for the bona fide not-for-profit entity and who acts as a loan originator only with respect to residential mortgage loans with terms that are favorable to the borrower;

~~(k)(h)~~ a person that performs only real estate brokerage activities and is licensed or registered pursuant to 37-51-301 unless the person is compensated by a mortgage lender broker, a mortgage broker lender, or a mortgage loan originator or an agent of the mortgage lender broker, mortgage broker lender, or mortgage loan originator;

(i) a person regulated by the commissioner of insurance if that person's principal business is that of preparing abstracts or making searches of titles that are used as a basis for the issuance of any title insurance policy by a company doing business under the laws of this state relating to insurance companies;

~~(j)(i)~~ a Montana-licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client unless the attorney is compensated by a mortgage lender, mortgage broker, or mortgage loan originator or any agent of the mortgage lender, mortgage broker, or mortgage loan originator; or performing activities that fall within the definition of a mortgage loan originator if the activities are:

(i) considered by the Montana supreme court to be part of the authorized practice of law within this state;

(ii) carried out within an attorney-client relationship; and

(iii) accomplished by the attorney in compliance with all applicable laws, rules, and standards; or

(k) an individual who is an employee of a retailer of manufactured or modular homes if the employee is performing only administrative or clerical tasks in connection with the sale or lease of a manufactured or modular home and if the individual receives no compensation or other gain from a mortgage lender or a mortgage broker for the performance of the administrative or clerical tasks.

~~(m) a Montana-licensed certified public accountant or a Montana-licensed public accountant who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to providing public accounting services to the client unless the accountant is compensated by a mortgage lender, a mortgage broker, or a mortgage loan originator or an agent of the mortgage lender, mortgage broker, or mortgage loan originator.~~

(2) (a) To qualify for an exemption under subsection (1)(f), an entity shall certify, on a form prescribed by the department, that it is a bona fide not-for-profit entity and shall provide additional documentation as required by the department by rule. To maintain this exemption, the entity shall file the prescribed certification and

accompanying documentation by December 31 of each year.

(b) In determining if an entity is a bona fide not-for-profit entity, the department may rely on its receipt and review of:

(i) reports filed with federal, state, tribal, local government, or housing finance agencies and authorities;

or

(ii) reports and attestations prescribed by the department.

~~(2)(3)~~ The burden of proving an exemption under this section is on the person claiming the exemption. ~~A person seeking an exemption under subsection (1)(a), (1)(b), (1)(c), (1)(f), (1)(h), (1)(j), (1)(l), or (1)(m) is required to obtain a written exemption from the department before the exemption applies. The department shall create a form for requesting an exemption.~~

~~(3)(4)~~ A person who is exempt from licensure ~~under subsection (1)~~ or is not required to be licensed or registered under this part may register on the nationwide mortgage licensing system NMLS as an exempt registrant for purposes of sponsoring a mortgage loan originator and for purposes of satisfying the mortgage loan originator bonding requirements. (See compiler's comment regarding contingent suspension.)"

Section 5. Section 32-9-105, MCA, is amended to read:

"32-9-105. Nationwide mortgage licensing system and registry for mortgage brokers, mortgage lenders, mortgage servicers, and mortgage loan originators. (1) The department may participate in the nationwide mortgage licensing system and registry NMLS and shall require mortgage ~~lenders~~ brokers, mortgage ~~brokers~~ lenders, mortgage servicers, and mortgage loan originators to apply for state licensure on applications approved by the nationwide mortgage licensing system and registry NMLS.

(2) The department may establish requirements through rulemaking as necessary to comply with the nationwide mortgage licensing system and registry NMLS, including requirements:

(a) for payment of nonrefundable fees to apply for, maintain, and renew licenses through the nationwide mortgage licensing system and registry NMLS;

(b) for renewal or reporting dates;

(c) for procedures to amend or to surrender a license; and

(d) pertaining to any other activity necessary for participation in the nationwide mortgage licensing system and registry NMLS.

(3) The ~~state department's~~ portion of the licensing fees collected by the ~~nationwide mortgage licensing system and registry NMLS~~ under this section must be deposited ~~into~~ in the department's account in the state special revenue fund to be used for administering this part.

~~(4) The provisions of this part apply to the activities of retail sellers of manufactured homes and recreational vehicles to the extent determined by the United States department of housing and urban development through guidelines, regulations, or interpretive letters. (See compiler's comment regarding contingent suspension.)"~~

Section 6. Section 32-9-107, MCA, is amended to read:

"32-9-107. Prelicensing education requirements for mortgage loan originators. (1) An individual seeking a mortgage loan originator's license shall complete at least 20 hours of approved education courses, which must include at least:

- (a) 3 hours of training on federal law and regulations;
- (b) 3 hours of training in ethics, including instruction on fraud, consumer protection, and fair lending issues; and
- (c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) In addition to the training required in subsection (1), the department may require by rule that applicants complete additional hours of training that are specific to Montana residential mortgage statutes and rules.

~~(2)(3)~~ (3) The prelicensing education courses that comply with the requirements of subsection (1) and that are approved by the ~~nationwide mortgage licensing system and registry NMLS~~ for any other state must be accepted with respect to the completion of prelicensing education requirements in Montana. (See compiler's comment regarding contingent suspension.)"

Section 7. Section 32-9-109, MCA, is amended to read:

"32-9-109. Experience requirements. (1) ~~(a)~~ An individual may not act as a designated manager without a minimum of 3 years of experience working as a mortgage loan originator or in a related field.

~~(b) An individual applying for a license as a mortgage loan originator must have a minimum of 6 months of experience working in a related field.~~

(2) The department shall by rule establish what constitutes work in a related field. (See compiler's comment regarding contingent suspension.)"

Section 8. Section 32-9-110, MCA, is amended to read:

"32-9-110. Examination requirements for mortgage loan originators. (1) An individual seeking a mortgage loan originator's license shall submit to an examination.

(2) In order to meet the examination requirement referred to in subsection (1), an individual shall pass, in accordance with the standards established under this section, a qualified written exam developed by the ~~nationwide mortgage licensing system and registry~~ NMLS that is administered by an approved test provider.

(3) A written examination may not be treated as a qualified written examination for purposes of this section unless the exam adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including but not limited to:

- (a) ethics;
- (b) federal and state laws and regulations pertaining to mortgage origination; and
- (c) federal and state laws and regulations pertaining to fraud, consumer protection, the nontraditional mortgage product marketplace, and fair lending issues.

(4) An individual may not be considered to have passed a qualified examination unless the individual achieves an exam score of at least 75%.

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

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

(7) A licensed mortgage loan originator who fails to maintain a valid license for a period of 5 years shall retake the test. The 5-year period may not take into account any time during which the person is a registered mortgage loan originator. (See compiler's comment regarding contingent suspension.)"

Section 9. Section 32-9-112, MCA, is amended to read:

"32-9-112. Application for mortgage broker, mortgage lender, mortgage servicer, and mortgage loan originator license -- renewals. (1) An applicant under this part shall apply for a state license or renewal

of a license on a form prescribed by the department that complies with the requirements of the ~~nationwide mortgage licensing system and registry~~ NMLS. Each form must contain content as set forth by the ~~nationwide mortgage licensing system and registry~~ NMLS and may be changed or updated by the department as necessary to comply with the ~~nationwide mortgage licensing system and registry~~ NMLS.

(2) The department may establish a ~~relationship~~ relationships or ~~contract~~ contracts with the ~~nationwide mortgage licensing system and registry~~ NMLS or ~~another entity~~ other entities designated by the ~~nationwide mortgage licensing system and registry~~ NMLS to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this part.

(3) An applicant for a license or license renewal shall furnish information to the ~~nationwide mortgage licensing system and registry~~ NMLS concerning the applicant's identity, including but not limited to:

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

(b) personal history and experience in a form prescribed by the ~~nationwide mortgage licensing system and registry~~ NMLS, including submission of authorization for the ~~nationwide mortgage licensing system and registry~~ NMLS and the department to obtain:

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

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

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

(5) ~~To~~ For the purposes of this section and to reduce the points of contact that the department may ~~be required~~ have to maintain for purposes of subsection (3), the department may use the ~~nationwide mortgage licensing system and registry~~ NMLS as a channeling agent for requesting and distributing information to and from any source directed by the department.

(6) ~~The department shall issue a license to an applicant that has met all the requirements of this section, has paid the fee required under 32-9-117, and is not determined ineligible under 32-9-120. (See compiler's~~

comment regarding contingent suspension.)"

Section 10. Section 32-9-116, MCA, is amended to read:

"32-9-116. Employment of mortgage loan originator. (1) A mortgage loan originator may transact business for only one employing mortgage broker or one employing mortgage lender licensed in accordance with the provisions of this part.

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

Section 11. Section 32-9-117, MCA, is amended to read:

"32-9-117. Fees -- ~~license renewal~~ -- disposition of fees -- rulemaking. (1) (a) ~~An entity seeking licensure as a mortgage broker shall pay through the nationwide mortgage licensing system and registry an initial nonrefundable license application fee of \$500 and an additional application fee of \$250 for any branch office. A mortgage loan originator shall pay through the nationwide mortgage licensing system and registry an initial nonrefundable license application fee of \$400. An entity seeking licensure as a mortgage lender shall pay through the nationwide mortgage licensing system and registry an initial nonrefundable license application fee of \$750 and an additional application fee of \$250 for any branch office. An entity seeking licensure as a mortgage servicer shall pay through the nationwide mortgage licensing system and registry an initial nonrefundable license application fee of \$750 and an additional nonrefundable application fee of \$250 for each branch office.~~ Application fees are:

(i) mortgage broker, \$500;

- (ii) mortgage broker branch, \$250;
- (iii) mortgage lender or mortgage servicer, \$750;
- (iv) mortgage lender branch or mortgage servicer branch, \$250; and
- (v) mortgage loan originator, \$400.

(b) A mortgage broker entity owned by a Montana-licensed mortgage loan originator shall pay through the nationwide mortgage licensing system and registry an initial nonrefundable a license application fee of \$100.

(2) All application fees must be paid through the NMLS and are not refundable.

(3) The department shall by rule establish the fees for renewal applications and reinstatement of expired licenses. The fees set by the department must be commensurate with the costs of the program.

~~(2) The license of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator is valid for up to a 1-year period and expires on December 31. A state licensee shall submit a renewal application and pay to the nationwide mortgage licensing system and registry a renewal fee in an amount set by the department by rule. The department shall establish by rule the requirements for renewal applications. The fees set by the department must be commensurate with the costs of the program. If the required information or fees are not submitted within the time prescribed, the license will automatically be placed in "Terminated-Expired" status. The department may adopt procedures for reinstatement of expired licenses that are consistent with the standards established by the nationwide mortgage licensing system and registry.~~

~~————(3) An application for renewal of a mortgage loan originator license must be accompanied by evidence that the continuing education requirements provided for in 32-9-118 have been met and that there has not been a material change in the status of the licensee in the preceding 12 months. An application for renewal also must demonstrate that the licensee continues to meet the standards for licensure under this part and that the licensee has paid all fees for renewal of the license.~~

(4) The state department's portion of the fees collected under this section must be deposited in the department's state special revenue fund to be used by the department in administering the provisions of this part.

~~(5) An applicant for a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator license renewal shall apply for state licensure on an application form approved by the nationwide mortgage licensing system and registry. (See compiler's comment regarding contingent suspension.)"~~

Section 12. License renewal -- rulemaking. (1) All persons licensed under this part are required to

renew their licenses by December 31 of each year.

(2) A renewal application for a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator must demonstrate that:

- (a) the licensee continues to meet the standards for licensure under this part;
- (b) a mortgage loan originator has satisfied annual continuing education requirements pursuant to 32-9-118; and
- (c) the licensee has paid all required fees for renewal of the license, all outstanding examination fees and investigation fees, and any civil penalties.

(3) Any license not renewed by December 31 expires on December 31. The department may adopt rules regarding requirements for renewal applications and the procedures for the reinstatement of expired licenses consistent with the standards established by the NMLS.

Section 13. Use of name -- advertising. (1) A licensee engaged in a business regulated by this part may not operate under a name other than the name licensed by the department.

(2) A licensee may not:

- (a) advertise that an applicant has unqualified access to credit without disclosing that material limitations on the availability of credit may exist, such as the percentage required as a down payment, that a higher interest rate or points could be required, or that restrictions as to the maximum principal amount of the mortgage loan offered could apply;
- (b) advertise a mortgage loan with a prevailing interest rate indicated in the advertisement unless the advertisement specifically states that the interest rate could change or not be available at the time of commitment or closing;
- (c) advertise mortgage loans, including interest rates, margins, discounts, points, fees, commissions, or other material information, including material limitations on the mortgage loans, unless the licensee is able to make or broker the offered mortgage loans to a reasonable number of qualified applicants;
- (d) engage in false, deceptive, or misleading advertising; or
- (e) falsely advertise or misuse names in violation of 18 U.S.C. 709.

(3) In any printed, published, e-mail, or internet advertisement for the provision of services, the following information must be included:

- (a) a name and unique identifier for a mortgage loan originator advertising as an individual; or
- (b) the name and unique identifier only of the licensed entity when the licensed entity is advertising on its own behalf or as an entity with one or more mortgage loan originators listed.

Section 14. Section 32-9-118, MCA, is amended to read:

"32-9-118. Continuing education requirements for mortgage loan originators. (1) All mortgage loan originators shall complete and submit to the ~~nationalwide mortgage licensing system and registry~~ NMLS evidence of at least 8 hours of continuing education every year at the time they submit their license renewal applications. The 8 hours of continuing education must be obtained in approved education courses.

(2) The 8 hours of education must include at least:

- (a) 3 hours of training on federal laws and regulations;
- (b) 2 hours of training in ethics, including instruction on fraud prevention, consumer protection, and fair lending issues; and
- (c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(3) A person who has successfully completed the education requirements that comply with the requirements of subsections (1) and (2) and that are approved by the ~~nationalwide mortgage licensing system and registry~~ NMLS for any other state must be given credit toward completion of continuing education requirements in Montana.

(4) Except as provided in subsection (6), a licensed mortgage loan originator may receive credit for a continuing education course only in the year in which the course is taken and may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

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

(6) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license. The continuing education requirements of this subsection are not subject to the ~~provisions~~ provision of subsection (4) that credit may be given only in the year a course is taken. (See compiler's comment regarding contingent suspension.)"

Section 15. Section 32-9-120, MCA, is amended to read:

"32-9-120. Denial of mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator license application or license renewal. (1) The department may not issue or renew any mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator license if any of the following facts are found during the application procedure:

(a) the applicant has ever had a ~~mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator license~~ or an equivalent license revoked in any governmental jurisdiction. A subsequent formal vacation of a revocation means that the revocation may not be considered a revocation. The department may by order vacate a revocation of a license and enter an appropriate order.

(b) the applicant has been convicted of or pled guilty or nolo contendere to a felony in a domestic, foreign, or military court during the 7-year period preceding the date of the application for licensing or renewal or at any time preceding the date of application if the felony involved an act of fraud, dishonesty, a breach of trust, or money laundering. The pardon or expungement of a conviction is not a conviction for the purposes of this subsection (1)(b). When determining the eligibility of the applicant for licensure under subsection (1)(c) or this subsection (1)(b), the department may consider the underlying crime, facts, or circumstances of a pardoned or expunged felony conviction.

(c) the applicant has failed to demonstrate financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this section;

(d) the applicant has not provided and maintained the surety bond as required pursuant to 32-9-123;

(e) the applicant has not completed the prelicensing education requirement described in 32-9-107;

(f) the applicant has not passed a written test that meets the test requirements described in 32-9-110;

(g) the applicant made a material misstatement of fact or material omission of fact in the application;

or

(h) the applicant has been found to have violated:

(i) any rule of conduct for persons taking the mortgage loan originator national or state test under the federal Secure and Fair Enforcement for Mortgage Licensing Act; or

(ii) the nationwide multistate licensing system industry terms of use as they pertain to enrolling, scheduling, or taking the mortgage loan originator national or state test under the Secure and Fair Enforcement for Mortgage Licensing Act.

(2) The department shall determine that the applicant has demonstrated the qualities of financial responsibility, character, and general fitness referred to in subsection (1)(c) if all other requirements for licensure under this section have been satisfied and the department's investigation does not reveal a specific problem on the applicant's part with respect to subsection (1)(c). The department may consider an application abandoned if an applicant fails to provide or respond to a request for additional information within the time period specified by the department by rule.

(3) For purposes of subsection (1)(b), a pardoned or expunged felony conviction does not necessitate denial of the license application. The department may consider the underlying crime, facts, or circumstances of a pardoned or expunged felony conviction when determining the eligibility of an applicant for licensure under subsection (1)(b) or (1)(c). Whether a particular crime is classified as a felony must be determined by the law of the jurisdiction in which an individual is convicted. (See compiler's comment regarding contingent suspension.)"

Section 16. Section 32-9-121, MCA, is amended to read:

"32-9-121. Records maintenance ~~—advertising requirement.~~ (1) Licensees shall maintain books, accounts, records, and copies of residential mortgage loan files and ~~trust account or~~ escrow account records that are necessary to enable the department to determine whether a licensee is in compliance with the applicable laws and rules. The materials must be maintained in accordance with generally accepted accounting principles and good business practices. ~~Each office location must have at least one phone line.~~ Whenever a licensee's usual business location is outside of this state the licensee shall, at its election, either maintain its books and records at a location in this state or reimburse the department for expenses incurred, including but not limited to staff time, transportation, food, and lodging expenses, relating to an examination or investigation under this part.

(2) A mortgage broker, mortgage lender, or mortgage servicer shall maintain a residential mortgage file for a minimum of 5 years from the date of the last activity pertaining to the file. A mortgage broker, mortgage lender, or mortgage servicer shall maintain trust account or escrow account records for a minimum of 5 years.

(3) An entity that ceases operation as a licensee under the provisions of this part shall:

(a) 30 days prior to the discontinuance of business, notify the department of the physical location where

required records will be preserved; and

(b) designate a custodian of records and notify the department of the name, physical address, electronic mail address, and telephone number of the custodian of records. The custodian of records shall preserve records required under this part and allow the department access for examination and investigation purposes upon request of the department.

(4) The department shall adopt rules to control the maintenance, storage, transfer, and destruction of records after a licensee ceases operation.

~~(5) (a) In any printed, published, e-mail, or internet advertisement for the provision of services, the following information must be included:~~

~~—— (i) a name and unique identifier for each mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator advertising as an individual; or~~

~~—— (ii) the name and unique identifier only of the licensed entity when the licensed entity is advertising on its own behalf or as an entity with one or more mortgage brokers, mortgage lenders, mortgage servicers, or mortgage loan originators also listed:~~

~~—— (b) For the purposes of this subsection (5), advertising does not include stationery or business forms but does include business cards. A business card must include a mortgage broker's, a mortgage lender's, a mortgage servicer's, or a mortgage loan originator's unique identifier but is not required to list the entity's unique identifier if the entity's name is listed. (See compiler's comment regarding contingent suspension.)"~~

Section 17. Section 32-9-122, MCA, is amended to read:

"32-9-122. Designated manager and branch office license requirements. (1) A mortgage broker, mortgage lender, or mortgage servicer ~~entity~~ shall apply for a license for a main office and for every branch office through the nationwide mortgage licensing system and registry NMLS and maintain a unique identifier.

~~(2) A mortgage broker entity shall designate to the nationwide mortgage licensing system and registry an individual who is licensed by this state as a mortgage loan originator to serve as the designated manager of the main office and a separate designated manager to serve at each branch office.~~

~~(3)~~(2) A mortgage broker or mortgage lender ~~entity~~ shall designate to the nationwide mortgage licensing system and registry NMLS for each office that originates a residential mortgage loan an individual who is licensed as a mortgage loan originator as the designated manager of the main office and shall designate a separate

designated manager to serve each branch office that originates a residential mortgage loan.

~~(4)~~(3) A designated manager must have 3 years of experience as either a mortgage loan originator or a registered mortgage loan originator.

~~(5)~~(4) A designated manager is responsible for the operation of the business at the location under the designated manager's full charge, supervision, and control.

~~(6)~~(5) A mortgage broker or mortgage lender ~~entity~~ is responsible for the conduct of ~~a designated manager or mortgage loan originator while the designated manager or mortgage loan originator is employed by the mortgage broker or mortgage lender entity~~ its employees, including for violations of federal laws and regulations that are applicable to the origination of residential mortgage loans, violations of this part, and violations of any administrative rule adopted pursuant to this part.

~~(7)~~(6) A designated manager is responsible for conduct that violates federal laws and regulations that are applicable to the origination of residential mortgage loans, violations of this part, and violations of any administrative rule adopted pursuant to this part. The designated manager's responsibility includes conduct by the designated manager and each ~~mortgage loan originator employed by~~ employee of the entity while the designated manager is employed mortgage broker or mortgage lender at the location that the designated manager manages.

~~(8)~~(7) If the designated manager ceases to act in that capacity, within 15 days the mortgage broker or mortgage lender shall designate another individual licensed as a mortgage loan originator as designated manager and shall submit information to the ~~nationwide mortgage licensing system and registry~~ NMLS establishing that the subsequent designated manager is in compliance with the provisions of this part.

~~(9)~~(8) If the employment of a designated manager is terminated, the mortgage broker or mortgage lender shall remove the sponsorship of the designated manager on the ~~nationwide mortgage licensing system and registry~~ NMLS within 5 business days of the termination.

~~(10)~~(9) A mortgage servicer is responsible for the acts and omissions of its employees, agents, and independent contractors acting in the course and scope of their employment, agency, or contract. (See compiler's comment regarding contingent suspension.)"

Section 18. Section 32-9-123, MCA, is amended to read:

"32-9-123. Surety bond requirement -- notice of legal action. (1) (a) A mortgage loan originator must

be covered by a surety bond in accordance with this section. If a mortgage loan originator is an employee of a licensed mortgage lender or mortgage broker, the surety bond of the licensed mortgage lender or mortgage broker may be used in lieu of a mortgage loan originator's surety bond.

(b) The bond must run to the state of Montana as obligee and must run first to the benefit of the borrower and then to the benefit of the state and any person who suffers loss by reason of the obligor's or its loan originator's violation of any provision of this part or rules adopted under this part. The department shall use the proceeds of the surety bonds to reimburse borrowers, the department, or bona fide third parties who successfully demonstrate a financial loss because of an act of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator that violates any provision of this part.

(2) (a) An entity licensed as a mortgage broker, mortgage lender, and mortgage servicer is required to maintain one surety bond for each entity license.

(b) The amount of the required surety bond must be calculated by combining the annual loan production amounts for all persons originating residential mortgage loans and for all business locations of the mortgage broker or mortgage lender and must be in the following amount:

- (i) \$25,000 for a combined annual loan production that does not exceed \$50 million a year;
 - (ii) \$50,000 for annual loan production of \$50 million but not exceeding \$100 million a year; or
 - (iii) \$100,000 for annual loan production of more than \$100 million a year.
- (c) The amount of the required surety bond for a mortgage servicer is \$100,000.

(3) A mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator shall give notice to the department by certified mail within 15 days of the mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator obtaining knowledge of the initiation of an investigation or the entry of a judgment in a criminal or civil action. The notice must be given if the investigation or the legal action is in any state and involves a mortgage broker, a mortgage lender, a mortgage servicer, a mortgage loan originator, or anyone having an ownership interest in a mortgage broker entity, mortgage lender entity, or mortgage servicer entity. In the case of a legal action, the notice must include a copy of the criminal or civil judgment.

(4) (a) An obligor shall give written notice to the department of any action that may be brought against it by any creditor or borrower when the action:

- (i) is brought under this part;
- (ii) involves a claim against the bond filed with the department for the purposes of compliance with this

section; or

(iii) involves a claim for damages in excess of \$20,000 for a mortgage broker or mortgage loan originator or \$200,000 for a mortgage lender or mortgage servicer.

(b) An obligor shall give written notice to the department of any judgment that may be entered against it by any creditor or any borrower or prospective borrower.

(c) The written notice must provide details sufficient to identify the action or judgment and must be submitted within 30 days after the commencement of any action or within 30 days after the entry of any judgment.

(5) A corporate surety shall, within 10 days after it pays any claim or judgment to any claimant, give written notice to the department of the payment with details sufficient to identify the claimant and the claim or judgment paid. Whenever the principal sum of a required bond is reduced by one or more recoveries or payments on the bond, the obligor shall furnish a new or additional bond so that the total or aggregate principal sum of the bond or bonds equals the sum required under this section or the obligor shall furnish an endorsement duly executed by the corporate surety reinstating the bond to the required principal sum.

(6) A bond filed with the department for the purpose of compliance with this section may not be canceled by the obligor or the corporate surety except upon written notice to the department. The cancellation may not take effect until 30 days after receipt by the department of the notice. The cancellation is effective only with respect to any occurrence after the effective date of the cancellation. (See compiler's comment regarding contingent suspension.)"

Section 19. Electronic record as original document. Any document or record that is required to be signed and that is filed in this state as an electronic record through the NMLS and any other electronic record filed through the NMLS must be considered a valid original document upon reproduction to paper form by the department.

Section 20. Section 32-9-124, MCA, is amended to read:

"32-9-124. Prohibitions -- required disclosure. (1) A mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator may not do any of the following:

(a) retain original documents owned by the borrower and submitted in connection with the loan application;

(b) directly or indirectly employ any scheme to defraud or mislead a borrower, a mortgage broker, a mortgage lender, a mortgage servicer, or any other person;

(c) make any misrepresentation or deceptive statement in connection with a residential mortgage loan, including but not limited to interest rates, points, costs at closing, or other financing terms or conditions;

(d) fail to pay a bona fide third party within 30 days after recording of the loan closing documents or within 90 days after completion of the bona fide third-party service, whichever is earlier, unless otherwise agreed by the parties;

~~(e) accept any fees or compensation at closing that were not disclosed as required by state or federal law;~~

~~(f)~~(e) accept any fees or compensation in excess of those allowed by state or federal law;

~~(g)~~(f) sign a borrower's application or related documents on behalf of or in lieu of another mortgage broker, mortgage lender, or mortgage loan originator;

~~(h)~~~~(i)~~(g) assist or aid and abet any person in the conduct of business under this part without a valid license as required under this part; ~~or~~

~~(i)~~(h) conduct any business covered by the provisions of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, without holding a valid license as required under this part;

(i) fail to comply with this part or rules promulgated under this part or fail to comply with any other state or federal laws, including the rules and regulations adopted pursuant to those laws, applicable to any business authorized by or conducted under this part;

(j) fail to account for or deliver to any person any funds, documents, or other thing of value obtained in connection with a mortgage loan that the mortgage ~~lender~~ broker, mortgage ~~broker~~ lender, mortgage servicer, or mortgage loan originator is not entitled to retain under the circumstances;

(k) refuse to permit an investigation or examination of the mortgage ~~lender's~~ broker's, mortgage ~~broker's~~ lender's, mortgage servicer's, or mortgage loan originator's books and records or refuse to comply with a department subpoena or subpoena duces tecum;

(l) knowingly withhold, abstract, remove, mutilate, destroy, alter, or keep secret any books, records, computer records, or other information from the department; or

(m) negligently make any false statement or knowingly and willfully make any omission of material fact

in connection with any information or reports filed with a government agency or the ~~national mortgage licensing system and registry~~ NMLS or in connection with any investigation conducted by the department or another governmental agency.

(2) Within 3 business days of taking an application, the mortgage loan originator working for a mortgage broker, in addition to other disclosures required by this part and other state and federal laws, shall provide to the borrower a written disclosure as prescribed by the department by rule.

(3) A mortgage broker or mortgage lender may not accept any fees or compensation that were not disclosed as required by state or federal law.

(4) A mortgage broker or mortgage lender may not charge or receive, directly or indirectly, fees for assisting a borrower in obtaining a mortgage until all of the services that the mortgage broker or mortgage lender has agreed to perform for the borrower are completed.

(5) A mortgage broker or mortgage lender may not charge or receive an amount in excess of the amount allowed by federal law. (See compiler's comment regarding contingent suspension.)"

Section 21. Section 32-9-126, MCA, is amended to read:

"32-9-126. Revocation, suspension, conditioning, and reinstatement of licenses. (1) The department, upon giving a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator licensee ~~40~~ 14 days' written notice, which includes a statement of the grounds for the proposed suspension, conditioning, or revocation, and informing the licensee that the licensee has the right to be heard at an administrative hearing if requested by the licensee, may suspend, condition, or revoke a license if it finds that the licensee has violated any provision of this part or any rule adopted under this part.

(2) The license of a licensee that refuses to make documents and records relating to the operation of the licensee available upon request by the department must be summarily suspended.

(3) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

(4) The department may reinstate any suspended license if the suspended licensee has complied with all the reinstatement conditions set forth at the time the license was suspended and if the licensee is otherwise qualified to have the license reinstated.

(5) The department may by order vacate a revocation of a license and enter an appropriate order.

(6) The department may refuse to accept a licensee's offer to surrender a license under the following circumstances:

(a) a final order has been issued in an enforcement action and the licensee has not fully complied with the order regardless of whether compliance is yet due;

(b) the licensee has violated or is under investigation for a suspected violation of this part or any rule adopted under this part;

(c) there is an enforcement action or complaint pending against the licensee; or

(d) the licensee has not made arrangements satisfactory to the department regarding loans in process at the time of the offer of surrender.

(7) A revocation, suspension, or surrender of a license does not impair or affect the obligation of a preexisting lawful contract between the licensee and any person, including a borrower.

(8) In the event of a revoked, suspended, or surrendered mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator license, fees may not be refunded by the department. (See compiler's comment regarding contingent suspension.)"

Section 22. Section 32-9-129, MCA, is amended to read:

"32-9-129. Loan processors and underwriters. (1) A person engaging ~~solely~~ in loan processor or underwriter activities may not represent to the public, through advertising or other means of communication, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the person can or will perform any of the activities ~~pertaining to originating of a residential mortgage loan originator.~~

(2) ~~A loan processor or underwriter who is an An independent contractor may not engage in mortgage loan originator activities as a loan processor or underwriter unless licensed as a mortgage loan originator under this part. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator shall maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry residential mortgage loan origination activities as a loan processor or underwriter with respect to any dwelling or residential real estate in this state unless the individual first registers as a mortgage loan originator through and obtains a unique identifier from the NMLS and obtains and maintains a valid mortgage loan originator license.~~

(3) For purposes of this section, "residential mortgage loan origination activities" means all activities related to residential mortgage loans from the taking of a residential mortgage loan application through the

completion of all required loan closing documents and funding of the residential mortgage loan. (See compiler's comment regarding contingent suspension.)"

Section 23. Section 32-9-130, MCA, is amended to read:

"32-9-130. Department authority -- rulemaking. (1) The department shall adopt rules necessary to carry out the intent and purposes of this part. The rules adopted are binding on all licensees and enforceable ~~through the power of suspension or revocation of licenses~~ as provided under this part.

(2) The rules must address:

(a) revocation or suspension of licenses for cause;

(b) investigation of applicants, licensees, and unlicensed persons alleged to have violated a provision of this part and handling of complaints made by any person in connection with any business transacted by a licensee;

(c) (i) ensuring that all persons are informed of their right to contest a decision by the department under the Montana Administrative Procedure Act; and

(ii) holding contested case hearings pursuant to the Montana Administrative Procedure Act and issuing cease and desist orders, orders of restitution, and orders for the recovery of administrative costs;

(d) prescribing forms for applications; and

(e) establishing fees for license renewals.

(3) The department may seek a writ or order restraining or enjoining, temporarily or permanently, any act or practice violating any provision of this part.

(4) (a) For the purposes of investigating violations or complaints arising under this part or for the purposes of examination, the department may review, investigate, or examine any licensee or person subject to this part as often as necessary in order to carry out the purposes of this part.

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

(5) Each licensee or person subject to this part shall make available to the department upon request the documents and records relating to the operations of the licensee or person. The department may access the

documents and records and may interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, or customers of the licensee or person concerning the business of the licensee or person or any other person having knowledge that the department considers relevant.

(6) (a) The department may conduct investigations and examinations for the purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation, or license termination or to determine compliance with this part.

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

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

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

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

(7) (a) The total cost for any examination or investigation must be in accordance with fees determined by the department by rule pursuant to this section and may include expenses for necessary travel outside the state for the purposes of conducting the examination or investigation. The fees set by the department must be commensurate with the cost of the examination or investigation. All fees collected under this section must be deposited in the department's account in the state special revenue fund to be used by the department to cover the department's cost of conducting examinations and investigations.

(b) The cost of an examination or investigation must be paid by the licensee or person within 30 days after the date of the invoice. Failure to pay the cost of an examination or investigation when due must result in the suspension or revocation of a licensee's license.

(8) (a) The department may:

(i) exchange information with federal and state regulatory agencies, the attorney general, the attorney general's consumer protection office ~~of the department~~, and the legislative auditor;

(ii) exchange information other than confidential information with the mortgage asset research institute,

inc., and other similar organizations; and

(iii) refer any matter to the appropriate law enforcement agency for prosecution of a violation of this part.

(b) To carry out the purposes of this section, the department may:

(i) enter into agreements or relationships with other government officials or regulatory associations to improve efficiencies and reduce the regulatory burden by sharing resources, adopting standardized or uniform methods or procedures, and sharing documents, records, information, or evidence obtained under this part, including agreements to maintain the confidentiality of information under laws, rules, or evidentiary privileges of another state, the federal government, or this state;

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

(iii) use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee or person subject to this part;

(iv) accept and rely on examination or investigation reports by other government officials, within or outside of this state, without the loss of any privileges or confidentiality protection afforded by state or federal laws, rules, or evidentiary privileges that cover those reports;

(v) accept audit reports made by an independent certified public accountant for the licensee or person subject to this part if the examination or investigation covers at least in part the same general subject matter as the audit report and may incorporate the audit report in the report of the examination, report of the investigation, or other writing of the department under this part; and

(vi) assess against the licensee or person subject to this part the costs incurred by the department in conducting the examination or investigation.

(c) Except as provided in 32-9-160 and subsection (8)(a)(i) of this section, the department shall treat all confidential criminal justice information as confidential unless otherwise required by law.

(9) Pursuant to section 1508(d) of the of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the department is authorized to:

(a) supervise and enforce the provisions of this part, including the suspension, termination, revocation, or nonrenewal of a license for violation of state or federal law;

(b) participate in the ~~nationwide mortgage licensing system and registry~~ NMLS;

(c) ensure that all mortgage broker, mortgage lender, and mortgage loan originator applicants under this part apply for state licensure and pay any required nonrefundable fees to and maintain a valid unique identifier issued by the ~~nationwide mortgage licensing system and registry~~ NMLS; and

(d) regularly report violations of state or federal law and enforcement actions to the ~~nationwide mortgage licensing system and registry~~ NMLS.

(10) (a) The department may, if the U.S. ~~department of housing and urban development~~ consumer financial protection bureau determines that a provision of this part does not meet the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, or that additional persons are subject to this part, refrain from enforcing the provision that is determined to be noncompliant and shall by rule invalidate any noncompliant exemption to this part or require that additional persons be temporarily subject to this part to be compliant with federal law, including the provisions for licensure and registration with and maintenance of a valid unique identifier with the ~~nationwide mortgage licensing system and registry~~ NMLS.

(b) The department shall propose to the regular session of the legislature that follows the determination by the U.S. ~~department of housing and urban development~~ consumer financial protection bureau legislation to address the incompatibility with federal law. The provisions that the ~~United States department of housing and urban development~~ U.S. consumer financial protection bureau determines to not be in compliance with the requirements of the Secure and Fair Enforcement for Mortgage Licensing Act, Public Law 110-289, must be amended in the correcting legislation.

(11) The department may be approved by the ~~nationwide mortgage licensing system and registry~~ NMLS as a provider of educational courses. If the department chooses to become an approved provider of educational courses, it may charge fees to attendees. The amount of the fees must be set by rule and must be commensurate with the total course costs, including the costs of becoming an approved provider. All fees collected under this section must be deposited in the department's account in the state special revenue fund to be used by the department to cover the department's cost of presenting education courses. (See compiler's comment regarding contingent suspension.)"

Section 24. Section 32-9-133, MCA, is amended to read:

"32-9-133. Penalties -- restitution. (1) If the department finds, after providing a ~~40-day~~ 14-day written

notice that includes a statement of alleged violations and a hearing or an opportunity for hearing, as provided in the Montana Administrative Procedure Act, that any person, licensee, or officer, agent, employee, or representative of the person or licensee, whether licensed or unlicensed, has violated any of the provisions of this part, has failed to comply with the rules, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, has furnished false information to the department, or has operated without a required license, the department may impose a civil penalty not to exceed \$5,000 for the first violation and not to exceed \$10,000 for each subsequent violation.

(2) The department may issue an order:

(a) requiring restitution; to borrowers and

(b) requiring reimbursement of the department's cost in bringing the administrative action; ~~and in addition, the department may issue an order~~

(c) revoking, conditioning, or suspending the right of the person or licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee or to engage in the mortgage broker, mortgage lender, mortgage servicer, or mortgage loan origination business.

~~(3) All notices, hearing schedules, and orders must be mailed to the person or licensee by certified mail to the address for which the license was issued or in the case of an unlicensed business to the last-known address of record. Any person who directly or indirectly controls an entity liable under subsection (1), any partner, officer, director, or person occupying a similar status or performing similar functions of the entity, and any person who participates or materially aids in the violation is liable jointly and severally with and to the same extent as the person committing the violation. In addition, each person committing the violation or aiding in the violation is jointly and severally liable if the person committing the violation or aiding in the violation knew or in the exercise of reasonable care should have known of the existence of the facts by reason of which the liability is alleged to exist. There must be contribution between or among the severally liable persons.~~

(4) The fines must be deposited in the department's account in the state special revenue fund and used to administer the provisions of this part.

~~(5) In addition to the penalties in subsection (1), a person practicing as a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan originator without being licensed as required under subsection (1) is guilty of a misdemeanor and may be punished by a fine of not less than \$250 or more than \$1,000, by imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the~~

provisions of subsection (1) constitutes a separate offense. (See compiler's comment regarding contingent suspension.)"

Section 25. Section 32-9-150, MCA, is amended to read:

"32-9-150. Unique identifier for mortgage brokers, mortgage lenders, mortgage servicers, mortgage loan originators, and registered mortgage loan originators. (1) Each licensed mortgage broker, mortgage lender, mortgage servicer, and mortgage loan originator shall post the mortgage broker's, mortgage lender's, mortgage servicer's, or mortgage loan originator's unique identifier in a conspicuous place within the office where the licensee principally transacts business.

(2) The department shall provide a link to the consumer access portion of the ~~nationalwide mortgage licensing system and registry~~ NMLS on the department's website. (See compiler's comment regarding contingent suspension.)"

Section 26. Section 32-9-151, MCA, is amended to read:

"32-9-151. Mortgage call reports. (1) Each licensee shall submit to the ~~nationalwide mortgage licensing system and registry~~ NMLS reports of condition, which must be in the form and must contain information that the ~~nationalwide mortgage licensing system and registry~~ NMLS may require.

(2) Each mortgage loan originator shall ensure that all residential mortgage loans that close as a result of the mortgage loan originator's loan origination activities are included in the report of condition submitted to the ~~nationalwide mortgage licensing system and registry~~ NMLS. (See compiler's comment regarding contingent suspension.)"

Section 27. Section 32-9-155, MCA, is amended to read:

"32-9-155. Nationwide mortgage licensing system and registry information challenge process. The department shall establish a process under which mortgage brokers, mortgage lenders, mortgage servicers, and mortgage loan originators may challenge information entered into the ~~nationalwide mortgage licensing system and registry~~ NMLS by the department. (See compiler's comment regarding contingent suspension.)"

Section 28. Section 32-9-160, MCA, is amended to read:

"32-9-160. Confidentiality. (1) (a) Except as otherwise provided in section 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289, the requirements under federal law, the Montana constitution, or Montana law regarding the privacy or confidentiality of any information or material provided to the ~~nationwide mortgage licensing system and registry~~ NMLS and any privilege arising under federal or state law, including the rules of a federal or state court, pertaining to the information or material continue to apply to the information or material after the information or material has been disclosed to the ~~nationwide mortgage licensing system and registry~~ NMLS.

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

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

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

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

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

(4) Montana law relating to the disclosure of confidential supervisory information or information or material described in subsection (1) that is inconsistent with subsection (1) is superseded by the requirements of section 1512 of the Secure and Fair Enforcement for Mortgage Licensing Act, Title V of the Housing and Economic Recovery Act of 2008, Public Law 110-289.

(5) Examination reports, information contained in examination reports, and examiners' work papers are confidential material that retain their status as trade secrets or confidential proprietary information of the entities that are the subject of the reports despite having been compelled to be produced to the state for examination purposes. Confidential material is not subject to public inspection, subpoena, or discovery. To the extent that

examination reports, work papers, and other confidential material contain personal financial information and personal identification information of individuals, those individuals retain a reasonable expectation of privacy in their personal financial or personal identification information, and although filed with the department as provided in this part, that information is not subject to public inspection, subpoena, or discovery except as directed by a court of law.

(6) This section does not apply to information or material relating to the employment history of and publicly adjudicated disciplinary and enforcement actions against mortgage brokers, mortgage lenders, mortgage servicers, ~~mortgage brokers~~, and mortgage loan originators included in the ~~nationwide mortgage licensing system and registry~~ NMLS that is available for public access. (See compiler's comment regarding contingent suspension.)"

Section 29. Section 32-9-165, MCA, is amended to read:

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

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

~~(3) A licensee-owned mortgage broker license may be issued to an entity that meets the requirements of subsection (2) and is owned by a Montana-licensed mortgage loan originator.~~

~~(4)~~(3) A mortgage lender license may be issued to an entity that meets the requirements of 32-9-112, 32-9-113, 32-9-116, 32-9-117, 32-9-122, and 32-9-123 and employs at least one Montana-licensed mortgage loan originator.

~~(5)~~(4) A mortgage servicer license may be issued to an entity that meets the requirements of 32-9-112, 32-9-113, 32-9-117, and 32-9-123.

~~(6)~~(5) A mortgage loan originator license may be issued to an individual who meets the requirements of 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 mortgage broker or mortgage lender.

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

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

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

~~(7)~~(9) A Montana-licensed entity may have one or more branch offices if the entity meets the requirements of 32-9-122 and has paid the fee required under 32-9-117.

~~(8)~~(10) Licenses under this part may not be assigned or transferred."

Section 30. Section 32-9-167, MCA, is amended to read:

"32-9-167. Change of control. (1) Without the prior approval of the department, it is unlawful for an action to be taken that results in a change of control of an entity licensed under this part. Prior to a change of control of a licensed entity, a person seeking to acquire control shall apply for an amendment to the license or a new license as required by the nationwide mortgage licensing system NMLS and pay all applicable fees.

(2) The department shall approve or disapprove the application for an amendment or new license in accordance with the provisions of this part."

Section 31. Section 32-9-170, MCA, is amended to read:

"32-9-170. Mortgage servicer duties. In addition to any duties imposed by ~~other statutes~~ federal law or regulations or the common law, a mortgage servicer shall:

- (1) safeguard and account for any money handled for the borrower;
- (2) follow reasonable and lawful instructions from the borrower;
- (3) act with reasonable skill, care, and diligence;
- (4) file with the department a complete, current schedule of the ranges of costs and fees the mortgage servicer charges borrowers for servicing-related activities with the mortgage servicer's application and renewal and with any supplemental filings made from time to time;
- (5) file with the department upon request a report in a form and format ~~acceptable to~~ set forth by the department by rule detailing the mortgage servicer's activities in this state, including:

- ~~_____ (a) the number of mortgage loans the mortgage servicer is servicing;~~
- ~~_____ (b) the type and characteristics of the loans in this state;~~
- ~~_____ (c) the number of serviced loans in default, along with the breakdown of 30-day, 60-day, and 90-day~~

delinquencies;

~~— (d) information on loss mitigation activities, including details on workout arrangements undertaken; and~~

~~— (e) information on foreclosures in this state;~~

(6) at the time the mortgage servicer accepts assignment of servicing rights for a mortgage loan, disclose to the borrower:

(a) any notice required under federal law or regulation; and

(b) a schedule of the ranges and categories of the mortgage servicer's costs and fees for its servicing-related activities, which may not exceed those reported to the department; and

~~(c) a notice in the form and content acceptable to the department that the mortgage servicer is licensed in Montana and that complaints about the mortgage servicer may be submitted to the department; and~~

(7) in the event of a delinquency or other act of default on the part of the borrower, act in good faith to inform the borrower of the facts concerning the loan and the nature and extent of the delinquency or default and, if the borrower replies, negotiate with the borrower, subject to the mortgage servicer's duties and obligations under the mortgage servicing contract, if any, to attempt a resolution or workout pertaining to the delinquency or default."

Section 32. Section 37, Chapter 321, Laws of 2009, is amended to read:

"Section 37. Contingent suspension. If the ~~secretary of housing and urban development~~ director of the consumer financial protection bureau determines by guideline, interpretation, or rule that any part of [this act] is out of compliance with the Secure and Fair Enforcement for Mortgage Licensing Act, Public Law 110-289, the operation and effect of that part is suspended."

Section 33. Repealer. The following section of the Montana Code Annotated is repealed:

32-9-125. Trust accounts -- bona fide third-party fees.

Section 34. Codification instruction. [Sections 12, 13, and 19] are intended to be codified as an integral part of Title 32, chapter 9, part 1, and the provisions of Title 32, chapter 9, part 1, apply to [sections 12, 13, and 19].

- END -

I hereby certify that the within bill,
SB 0093, originated in the Senate.

Secretary of the Senate

President of the Senate

Signed this _____ day
of _____, 2013.

Speaker of the House

Signed this _____ day
of _____, 2013.

SENATE BILL NO. 93
INTRODUCED BY G. VUCKOVICH
BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

AN ACT GENERALLY REVISING THE MONTANA MORTGAGE ACT; REVISING THE ACT TO COMPLY WITH FEDERAL RULES; PROHIBITING A MORTGAGE BROKER OR MORTGAGE LENDER FROM EMPLOYING OR CONTRACTING WITH UNLICENSED PERSONS; REVISING DEFINITIONS; REVISING PROVISIONS RELATING TO EXEMPTIONS; REVISING LICENSING REQUIREMENTS; PROVIDING FOR RESTRICTIONS AND CONDITIONS ON ADVERTISING; REVISING CONTINUING EDUCATION REQUIREMENTS; REVISING OFFICE REQUIREMENTS; PROVIDING THAT BROKERS AND MANAGERS ARE RESPONSIBLE FOR ALL EMPLOYEES; REVISING RECORDKEEPING REQUIREMENTS; PROVIDING THAT CERTAIN ELECTRONIC DOCUMENTS MUST BE TREATED AS ORIGINAL DOCUMENTS; ALLOWING MORTGAGE SERVICERS TO CHARGE FEES THAT ARE UNKNOWN AT CLOSING; REVISING SURETY BOND PROVISIONS; REVISING ENFORCEMENT RULES; PROVIDING JOINT AND SEVERAL LIABILITY FOR CONTROL PERSONS AND OFFICERS AND DIRECTORS; EXPANDING THE DEPARTMENT OF ADMINISTRATION'S RULEMAKING AUTHORITY; AMENDING SECTIONS 32-9-101, 32-9-102, 32-9-103, 32-9-104, 32-9-105, 32-9-107, 32-9-109, 32-9-110, 32-9-112, 32-9-116, 32-9-117, 32-9-118, 32-9-120, 32-9-121, 32-9-122, 32-9-123, 32-9-124, 32-9-126, 32-9-129, 32-9-130, 32-9-133, 32-9-150, 32-9-151, 32-9-155, 32-9-160, 32-9-165, 32-9-167, AND 32-9-170, MCA; AMENDING SECTION 37, CHAPTER 321, LAWS OF 2009; AND REPEALING SECTION 32-9-125, MCA.