

1 HOUSE BILL NO. 470

2 INTRODUCED BY T. FALK

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO MORTGAGES AND FALSE AND
5 DECEPTIVE ADVERTISING BY PROHIBITING THE USE OF TRIGGER LEADS; DEFINING "TRIGGER
6 LEAD"; PROVIDING AUTHORITY OF THE BANKING COMMISSIONER TO REGULATE TRIGGER LEADS;
7 AND AMENDING SECTIONS 32-9-103 AND 32-9-149, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 NEW SECTION. **Section 1. False or deceptive advertising -- trigger leads.** In order to prevent or
12 mitigate identity theft, in addition to practices identified by the commissioner in rule under 32-9-149, false and
13 deceptive advertising includes the use of a trigger lead as defined in 32-9-103.

14
15 **Section 2.** Section 32-9-103, MCA, is amended to read:

16 **"32-9-103. Definitions.** As used in this part, the following definitions apply:

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

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

23 (3) "Application" means a request, in any form, for an offer of residential mortgage loan terms or a
24 response to a solicitation of an offer of residential mortgage loan terms and includes the information about the
25 borrower that is customary or necessary in a decision on whether to make such an offer.

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

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

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

1 (a) maintains tax-exempt status under section 501(c)(3) or 501(c)(4) of the Internal Revenue Code,
2 26 U.S.C. 501(c)(3) or 501(c)(4);

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

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

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

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

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

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

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

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

22 (9) (a) "Branch office" means a location at which a licensee conducts business other than a
23 licensee's principal place of business.

24 (b) The location is considered a branch office if:

25 (i) the address of the location appears on business cards, stationery, or advertising used by the
26 entity;

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

28 (iii) the location is held out to the public as a licensee's place of business due to the actions of an

- 1 employee or independent contractor of the entity; or
- 2 (iv) the location is controlled directly or indirectly by the entity.
- 3 (c) A mortgage loan originator working from a remote location is not a branch office if the
- 4 requirements of 32-9-122 and 32-9-173 are fully met.
- 5 (10) (a) "Clerical or support duties" includes:
- 6 (i) the receipt, collection, distribution, and analysis of information common for the processing or
- 7 underwriting of a residential mortgage loan; and
- 8 (ii) communicating with a consumer to obtain the information necessary for the processing or
- 9 underwriting of a residential mortgage loan to the extent that the communication does not include offering or
- 10 negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.
- 11 (b) The term does not include:
- 12 (i) taking a residential mortgage loan application; or
- 13 (ii) offering or negotiating the terms of a residential mortgage loan.
- 14 (11) "Commercial context" means that an individual who acts as a mortgage loan originator does so
- 15 for the purpose of obtaining profit for an entity or individual for which the individual acts, including a sole
- 16 proprietorship or other entity that includes only the individual, rather than exclusively for public, charitable, or
- 17 family purposes.
- 18 (12) "Confidential supervisory information" means:
- 19 (a) reports of examination, inspection, and visitation; nonpublic operating, condition, and
- 20 compliance reports; supervisory letters; or similar documents, and any information contained in, derived from,
- 21 used to create, or related to the documents;
- 22 (b) any documents, materials, or records, including reports of examination, prepared by, or on
- 23 behalf of, or for the use of the department or any state or federal financial services regulatory agency in the
- 24 exercise of supervisory authority over a supervised entity, and any information derived from or used to prepare
- 25 the documents, materials, or records;
- 26 (c) any communications between the department and a supervised entity or a state or federal
- 27 financial services regulatory agency related to the department's supervision of the entity;
- 28 (d) any information received or generated by the department pursuant to 32-9-130;

- 1 (e) confidential criminal justice information, as defined in 44-5-103;
- 2 (f) personal information protected by an individual privacy interest; and
- 3 (g) information that is exempt from disclosure pursuant to 12 U.S.C. 5111.
- 4 (13) (a) "Control" means the power, directly or indirectly, to direct the management or policies of an
- 5 entity, whether through ownership of securities, by contract, or otherwise.
- 6 (b) A person is presumed to control an entity if that person:
- 7 (i) is a director, general partner, or executive officer or is an individual that occupies a similar
- 8 position or performs a similar function;
- 9 (ii) directly or indirectly has the right to vote 10% or more of a class of a voting security or has the
- 10 power to sell or direct the sale of 10% or more of a class of voting securities;
- 11 (iii) in the case of a limited liability company, is a managing member; or
- 12 (iv) in the case of a partnership, has the right to receive upon dissolution or has contributed 10% or
- 13 more of the capital.
- 14 (14) "Department" means the department of administration provided for in 2-15-1001, acting through
- 15 its division of banking and financial institutions.
- 16 (15) "Depository institution" has the meaning provided in section 3 of the Federal Deposit Insurance
- 17 Act, 12 U.S.C. 1813(c), and includes any credit union.
- 18 (16) "Designated manager" means a mortgage loan originator with at least 3 years of experience as
- 19 a mortgage loan originator or registered mortgage loan originator who is designated by an entity as the
- 20 individual responsible for the operation of a particular location that is under the designated manager's full
- 21 management, supervision, and control.
- 22 (17) "Dwelling" has the meaning provided in 15 U.S.C. 1602(w).
- 23 (18) "Entity" means a business organization, including a sole proprietorship.
- 24 (19) "Escrow account" means a depository account with a financial institution that provides deposit
- 25 insurance and that is separate and distinct from any personal, business, or other account of the mortgage
- 26 lender or mortgage servicer and is maintained solely for the holding and payment of escrow funds.
- 27 (20) "Escrow funds" means funds entrusted to a mortgage lender or mortgage servicer by a
- 28 borrower for payment of taxes, insurance, or other payments to be made in connection with the servicing of a

1 loan.

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

4 (22) "Federal banking agency" means the board of governors of the federal reserve system, the
5 comptroller of the currency, the national credit union administration, or the federal deposit insurance
6 corporation.

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

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

12 (25) "Independent contractor entity" means an entity that offers or provides clerical or support duties
13 for another person.

14 (26) "Individual" means a natural person.

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

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

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

23 (b) For the purposes of subsection (29)(a), "origination of a residential mortgage loan" means all
24 activities related to a residential mortgage loan from the taking of a residential mortgage loan application
25 through the completion of all required loan closing documents and funding of the residential mortgage loan.

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

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

4 (b) For purposes of this subsection (31), attempting to obtain or assisting in obtaining a mortgage
5 loan includes referring a borrower to a mortgage lender or mortgage broker, soliciting or offering to solicit a
6 mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a
7 mortgage loan with a mortgage lender on behalf of a borrower.

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

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

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

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

15 (b) The term includes an individual who represents to the public that the individual can or will
16 perform the services described in subsection (33)(a).

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

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

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

21 (34) "Mortgage servicer" means an entity that:

22 (a) for forward mortgages:

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

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

28 (iii) holds out to the public that the entity is able to comply with subsection (34)(a)(i) or (34)(a)(ii);

(b) for a home equity conversion mortgage or a reverse mortgage, makes or holds out to the public that the entity can make a payment to the borrower.

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

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

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

(38) "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 (38)(a) through (38)(d).

(39) "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 wholly owned and controlled by a depository institution and regulated by a federal banking agency; or

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

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

3 (40) "Regularly engage" means that a person:

4 (a) has engaged in the business of a mortgage broker, mortgage lender, mortgage servicer, or
5 mortgage loan originator on more than five residential mortgage loans in the previous calendar year or expects
6 to engage in the business of a mortgage broker, mortgage lender, mortgage servicer, or mortgage loan
7 originator on more than five residential mortgage loans in the current calendar year; or

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

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

15 (42) "Residential real estate" means any real property located in the state of Montana upon which is
16 constructed a dwelling or upon which a dwelling is intended to be built within a 2-year period, subject to 24 CFR
17 3500.5(b)(4). The borrower's intent to construct a dwelling is presumed unless the borrower has submitted a
18 written, signed statement to the contrary.

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

23 (44) (a) "Service provider" means a person who performs activities relating to the business of
24 mortgage origination, lending, or servicing on behalf of a licensee.

25 (b) Activities relating to the business of mortgage origination, lending, or servicing include:

26 (i) providing data processing services;

27 (ii) performing activities in the support of residential mortgage origination, lending, or servicing;

28 and

(iii) providing internet-related services, including web services, processing electronic borrower payments, developing and maintaining mobile applications, system and software development and maintenance, and security monitoring.

(c) Activities relating to the business of mortgage origination, lending, or servicing do not include providing an interactive computer service or a general audience internet or communications platform, except to the extent that the service or platform is specially designed or adapted for the business of mortgage origination, lending, or servicing.

(d) Activities relating to the business of mortgage origination, lending, or servicing performed by a mortgage loan originator, lender, or servicer on its own behalf or as part of mortgage loan originating, lending, or servicing are considered mortgage loan originating, lending, or servicing.

(45) (a) "Trigger lead" means information relating to a consumer's credit worthiness compiled by a credit reporting agency obtained in accordance with the Fair Credit Reporting Act, 15 U.S.C. 1681b(c)(1)(B), that is not initiated by the consumer but is triggered instead by an inquiry to a consumer reporting agency in response to an application for credit initiated by the consumer in a separate transaction.

(b) The term does not include a consumer report obtained by a mortgage entity licensed by the department in response to an application for credit made by a consumer with that mortgage entity or that is otherwise authorized by the consumer.

~~(45)~~(46)"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.

~~(46)~~(47)"Unique identifier" means a number or other identifier assigned by protocols established by the NMLS. (See part compiler's comment regarding contingent suspension.)"

Section 3. Section 32-9-149, MCA, is amended to read:

"32-9-149. 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.

1 (2) A licensee may not:

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

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

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

12 (d) engage in false, deceptive, or misleading advertising, including [section 1]; or

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

14 (3) The department may adopt rules to define false, deceptive, or misleading advertising.

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

17 (a) a name and unique identifier for a mortgage loan originator advertising as an individual; or

18 (b) the name and unique identifier only of the licensed entity when the licensed entity is advertising
19 on its own behalf or as an entity with one or more mortgage loan originators listed.

20 (5) The department may adopt rules to establish requirements for licensee advertising using the
21 internet or any electronic format."

22
23 NEW SECTION. Section 4. Codification instruction. [Section 1] is intended to be codified as an
24 integral part of Title 32, chapter 9, part 1, and the provisions of Title 32, chapter 9, part 1, apply to [section 1].

25
26 NEW SECTION. Section 5. Severability. If a part of [this act] is invalid, all valid parts that are
27 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
28 the part remains in effect in all valid applications that are severable from the invalid applications.

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- END -