

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule)	NOTICE OF PUBLIC HEARING
I pertaining to service of process and the)	ON PROPOSED ADOPTION AND
amendment of ARM 2.59.301, 2.59.302,)	AMENDMENT
2.59.303, 2.59.304, 2.59.305, and)	
2.59.306 pertaining to advertising, fee)	
disclosures and computation of interest,)	
credit insurance, fees to public officials,)	
receipt form, and licensee records)	
affecting consumer loan licensees)	

TO: All Concerned Persons

1. On January 17, 2014, at 10:00 a.m., the Department of Administration will hold a public hearing in Room 342 of 301 South Park, at Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on January 9, 2014, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to banking@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I SERVICE OF PROCESS (1) The written notice required under 32-5-207(1), MCA, constitutes process under the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA. The mailing of the notice to a person by certified mail under 32-5-207(2), MCA, constitutes effective "service of process" if a return receipt signed by the recipient, who need not be the same person as the addressee, has been returned to and retained by the department as proof of service.

(2) If a certified mail item mailed to a person other than an individual is returned to the department marked "unclaimed" after two notices to claim the item have been given by the United States Postal Service in accordance with established procedures for certified mail, the department shall have a sheriff or other process server attempt personal service upon the person at the same address for which the certified mail item went unclaimed. If that is unsuccessful, the department may, but is not required to, attempt personal service at any other address at which the department reasonably believes the person may be found. If personal service fails, the person is deemed to have been effectively served by operation of law under 32-5-207, MCA.

(3) If a certified mail item mailed to an individual is returned to the department marked "unclaimed," then the department may attempt service on the individual at the same address by regular mail with enclosed notice and acknowledgment of service under Rule 4(d)(3), Montana Rules of Civil Procedure (M.R.Civ.P.)

(4) If a certified mail item mailed to a person is returned to the department marked "undeliverable," "left no forwarding address," "forwarding address expired," or similar basis for nondelivery, the department shall use best efforts to locate another address for the person to be served and attempt service by certified mail there. If the certified mail item mailed to a person other than an individual is returned marked "unclaimed," the procedures in (2) apply. If a certified mail item mailed to an individual is returned marked "unclaimed," the procedures in (3) apply. If the certified mail item to a person other than an individual or a certified mail item to an individual is returned marked "undeliverable," "left no forwarding address," "forwarding address expired," or similar basis for nondelivery, the person or individual is deemed to have been effectively served by operation of law under 32-5-207, MCA.

(5) For purposes of this rule, "best efforts" means efforts that are reasonable under the totality of circumstances, i.e., reasonably calculated to give actual notice to the person being served. The term does not mean that heroic or extraordinary efforts must be made or that only actual notice by perfected Rule 4, M.R.Civ.P. service must ultimately be accomplished.

(6) Where there is no proof of perfected service under this rule, the department shall consider the following circumstances in determining whether to enter a person's default:

- (a) what attempts were made to perfect service;
- (b) whether and to what extent perfected service is practical in any given case;
- (c) whether any attempts were made to contact the person by telephone or means other than by mail;
- (d) whether the department knows that the person is located at a particular place other than the address(es) at which attempted service was made; and
- (e) whether the person has actual or imputed knowledge of the notice or the process or pendency of the administrative action without service having been perfected.

AUTH: 2-4-106, 32-5-401, MCA

IMP: 2-4-106, 32-5-207, MCA

STATEMENT OF REASONABLE NECESSITY: Section 2-4-106, MCA, states that except where a statute expressly provides to the contrary, service in all agency proceedings shall be as provided in the Montana Rules of Civil Procedure. The department has always deemed and interpreted the mailing of a notice of charges by certified mail under 32-5-207, MCA, to constitute service of process. A hearing examiner in one of the department's contested cases ruled that because the language in a statute very similar to 32-5-207, MCA, did not expressly state that mailing the notice of charges by certified mail constitutes "service of process," it did

not, therefore, constitute service of process. The hearing examiner ruled that personal service of the notice of charges under (4)(d)(2), M.R.Civ.P. was required to perfect service upon unlicensed persons that the department was prosecuting for allegedly making unlawful Internet payday loans in Montana. This rule is intended to give effect to the express provisions of 32-5-207, MCA, and the department's long-standing interpretation of that statute to the effect that sending a notice of charges by certified mail in contested cases arising under the Montana Consumer Loan Act is effective service of process.

In addition, the department believes that the law allows use of best efforts by administrative agencies to cause process to reach the person to be served, even if the certified mail item is returned as undeliverable as described in the rule. Under 32-5-207, MCA, the mailing of a notice by certified mail necessarily was intended to constitute service of process. If that were not true, then the requirement for mailing the notice of charges by certified mail under 32-5-207, MCA, would be an idle act because the notice (process) would already have been served under Rule (4)(d), M.R.Civ.P. if service under that rule were required. The law neither does nor requires idle acts. Section 1-3-223, MCA. Neither the Montana Consumer Loan Act nor the Montana Administrative Procedure Act states that if service by certified mail as provided in statute fails, service under Rule 4, M.R.Civ.P. is required. "Best efforts" service described in this rule is authorized in administrative cases by U.S. Supreme Court precedent. See, for example, *Dusenbery v. United States*, 534 U.S. 161, 122 S.Ct. 694, 151 L.Ed.2d 597 and *Jones v. Flowers*, 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415, 2006 U.S. LEXIS 3451. This rule further identifies factors to be considered in determining whether a person's default may be taken where there is no evidence of perfected service but only "best efforts" that proved unsuccessful. The factors set out in this rule were adapted from those promulgated by an administrative agency in the state of Tennessee. *Johnson v. Tennessee Board of Nursing*, 2007 Tenn. App. LEXIS 116.

Based on the department's experience with unlawful Internet deferred deposit loans, businesses that make consumer loans via the Internet to Montanans without a license are also very unlikely to be successfully served by certified mail or by personal service. However, the department deems it important to take action to enforce Montana laws for the deterrent effect of doing so and to create a record of the unlawful activity and the persons engaged in it. All states are experiencing the same problems with respect to unlawful Internet lending and violations of state laws including but not limited to licensing laws. Not all Internet lending is unlawful, of course. Those Internet lenders meeting qualifications for licensure will be licensed and will be subject to examination by the department.

4. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

2.59.301 ADVERTISING (1) "Advertising" or "advertisement" means any written or oral statement or depiction that includes terms or availability of loans or that is designed to create interest in a consumer loan product and is conveyed in any manner or medium including but not limited to radio, television, telemarketing script and materials, on-hold script, upsell script, infomercials, the Internet, web

pages, cellular network, film, slide, audio program transmitted over a telephone system, label, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, letter, catalogue, poster, chart, billboard display, and promotional materials and items.

~~(1)~~(2) A licensee Licensees shall maintain a file of all copies or images of all of the licensee's advertising, (written, printed, radio, television, etc.) as defined in (1) for a period of at least 12 months after the last date of its the advertisement's use or until an examination of the licensee, including review of the advertising, has been accomplished by the Montana Consumer Loan Commissioner department, whichever occurs first. Advertising may be maintained in an electronic format that is capable of being reproduced in or converted to hard copy form. All advertising copy records must have the following information noted thereon:

(a) ~~All advertising copy shall have noted thereon~~ the name or names of all advertising media used and the dates when ~~such~~ the advertising publicly appeared; and

(b) the full text of audio and video ~~radio or television~~ advertising shall be retained.

~~(2) Licensees shall not use any advertising which is false, misleading or deceptive.~~

(3) ~~A licensee may~~ Licensees shall not use so-called blind advertisements as, for example, an advertisement giving only a telephone number, post office box or newspaper box number, or a name other than that of the licensee.

(4) ~~A licensee may~~ Licensees shall not use any advertising which is inconsistent with the ~~Federal or~~ Montana Unfair Trade Practices and Montana Consumer Protection Acts Act, Title 30, chapter 14, parts 1 and 2, MCA, or with federal laws including 15 USC 45(a)(1) or 15 USC 5(a)(1) or the regulations rules promulgated thereunder governing advertising.

(5) An unlicensed person may not directly or indirectly advertise terms or availability of consumer loans targeted at deriving profits from Montana markets. The prohibition against advertising by unlicensed persons is not dependent upon whether a loan application is submitted or whether a consumer loan is consummated as a result of the advertising. This section does not apply to media outlets and may not be construed to impose a duty on media outlets to verify licensure of advertisers.

AUTH: 32-5-401, MCA

IMP: ~~32-5-404~~ 32-5-309, MCA

STATEMENT OF REASONABLE NECESSITY: There is a need to update the rule to list by example modern forms of media that are currently used for advertising and are intended to be covered within the scope of the rule and to establish that electronically maintained advertising records are acceptable under the conditions identified in the rule. Section (2) is being deleted because it unnecessarily duplicates 32-5-309, MCA. The reference in (4) to the Federal Consumer Protection Act is being deleted because although there are many federal consumer protection laws and regulations, there is no federal act by that name. As a result, (4) does not put licensees on notice of what advertising practices may run afoul of federal law and, by extension, of this rule. Reference to the Federal

Consumer Protection Act is being replaced with citations to applicable federal law. The department believes that advertising the terms or availability of consumer loans by unlicensed persons must be proscribed in the same manner as consumer lending by unlicensed persons is proscribed. The department believes there is no reason for an unlicensed person to directly or indirectly advertise terms and availability of consumer loans targeted at Montana markets except to generate loan business for the unlicensed person. The amendments are also intended to curb Internet consumer loans being offered or made to Montana residents by unlicensed persons. The department believes that advertising targeted to Montana markets is an important factor in establishing the department's personal jurisdiction over unlicensed persons offering or making consumer loans to Montana residents. The implementation citation for this rule is being amended because 32-5-309, MCA, rather than 32-5-401, MCA, is the statute being implemented. Section 32-5-401, MCA, grants general rulemaking authority to the department and so it is properly cited as the authority for this rule. The remaining changes are needed to comply with rule drafting guidelines.

2.59.302 SCHEDULE OF CHARGES FEE DISCLOSURES – COMPUTATION OF INTEREST (1) At the time of filing an application for initial license or a renewal license Every applicant for license under the Montana Consumer Loan Act, the applicant shall file with the commissioner in duplicate, department a fee disclosure statement and a failure- or inability-to-pay disclosure statement, collectively referred to as "disclosure statements," unless otherwise specified. at the time of filing an application for a license, a full and accurate schedule of all charges, fees, and rate(s) of interest to be exacted in connection with any and all loans to be made by the applicant and the method of computing the same.

(a) The fee disclosure statement must contain:

(i) the interest rate or range of interest rates that the licensee charges for each type of loan product offered not to exceed the maximum allowed under 32-5-301(1), MCA;

(ii) known third-party fees and reasonable estimates of unknown third-party fees allowed under 32-5-301, MCA. Consumers may not be charged more than the third party's actual fee; and

(iii) examples of the total cost to the consumer for each type of loan product offered as follows:

(A) an example using the lowest available interest rate for the loan type including all third-party fees typically charged for that loan type; and

(B) an example using the highest interest rate chargeable for the loan type including all third-party fees typically charged for that loan type.

(b) The failure- or inability-to-pay disclosure statement must contain information about fees that may be charged during the term of the loan and afterwards arising from the consumer's failure or inability to pay as agreed under the terms of the loan agreement. The fee information that must be disclosed is:

(i) insufficient funds/dishonored check or check equivalent fee under 32-5-407, MCA;

(ii) past-due fee under 32-5-301, MCA, if provided for in the contract;

(iii) deferral/extension fee under 32-5-301, MCA, if provided for in the contract; and

(iv) reasonable attorney fees under 32-5-407, MCA, if provided for in the contract and if the licensee sues the consumer in a judicial action on the loan agreement and wins.

(2) The disclosure statements must be printed in black letters and numbers on a white background using a font style and size, type face, or similar graphics to call the consumer's attention to the information.

(3) The disclosure statements may, but need not, be combined in one document.

(2)(4) A licensee Licensees shall thereafter maintain on file with the commissioner department in duplicate a current schedule of all charges, fees, and rate(s) of interest to be exacted in connection with all loans to be made by the licensee current disclosure statement(s) and shall not exact charges, charge fees, or rate(s) of interest in excess of those contained in the schedule disclosure statements on file with the department or in excess of those authorized under Title 32, chapter 5, MCA. Currently dated, amended disclosure statements may be filed with the department at any time. Amended disclosure statements have only prospective application from the date of filing with the department. The disclosure statements in effect at the time a loan is made remain in effect for that loan until termination of the loan agreement unless:

(a) the loan is refinanced; or

(b) an express provision allowing modification of interest rate or fees during the term of the loan is contained in the loan agreement and authorized by law.

(3)(5) A licensee Licensees shall conspicuously display the schedule licensee's current disclosure statements at its business location(s) where loans to persons residing in Montana are negotiated or made, so as to be readily visible to prospective loan applicants before completion of a loan application begins, which shall include examples of principal, rate(s) of interest, monthly payments, and the contract period covered, prominently in each licensed place of business where loans are made or negotiated so as to be easily readable by borrowers and prospective borrowers.

(6) If a licensee conducts business through the Internet, the following information must be displayed to all online loan applicants residing in Montana on a web page that cannot be circumvented and must be viewed before completion of the loan application can begin:

(a) the licensee's name and license number (sometimes referred to as credential number or unique ID) exactly as they appear on the license; and

(b) the current disclosure statements that are filed with the department as required under this rule.

(4) Licensees may not make loans without having the schedule displayed.

(5) Licensees operating more than one licensed location in Montana shall advise the commissioner at which location or locations each schedule is to be used, if there is more than one schedule.

(6)(7) A licensee Licensees shall observe the following procedures in computing interest:

(a) interest shall must be computed at the applicable rate on the balance of the loan from the date of the previous payment to the date of the following payment; and

(b) ~~licensees shall compute~~ interest must be computed using a 365-day year, or in the case of a leap year a 366-day year, and by counting the actual number of days from one payment to the next.

~~(7) Licensees shall not fix the due date of the first installment on any loan contract providing for monthly installments, for a term exceeding 45 actual days from the date of loan.~~

(8) For purposes of implementing 32-5-301, MCA, Licensees shall interpret 32-5-301(2), MCA, of the Act "only once" to mean the phrase "only once" means on the same default; i.e., a. A borrower who defaults in one or more installment payments may be subject to a penalty one past-due fee as specified in 32-5-301(2), MCA, for each installment payment in default on which the borrower defaulted.

~~(9) Licensees shall not add to the amount of any balance, which remains after the terminal date of a loan contract, including extensions or charges for payments in default, interest or charges which in the aggregate exceed the legal rate authorized by 31-1-106, MCA.~~

AUTH: 32-5-401, MCA

IMP: ~~31-1-106~~, 32-5-301, MCA

STATEMENT OF REASONABLE NECESSITY: It is necessary to replace the term "commissioner" in this rule with the term "department" because the term "department" is defined in 32-5-102, MCA, and used throughout the Montana Consumer Loan Act in reference to the agency with responsibility for administering the Act. Consistent use of terminology will eliminate ambiguity. Section (2) is being added and section (5) is being amended to ensure that the disclosures are conspicuous, readily accessible to and identifiable by consumers who might comparison shop for loan products offered by multiple lenders. Section (4) is being amended so that licensees are on notice of what disclosure statements govern individual loans and so the department's examiners can verify that the fees being charged on loans are consistent with the fee disclosures in effect when the loan was made except as provided in that section. The required schedule of charges is being amended to include more detail and examples to assist consumers to better understand the costs of credit and ensure that the information is available to the consumer whether they do business with a licensee at its brick-and-mortar place of business or through the Internet as described in (6). The schedule of charges is being renamed to more closely reflect the rule content because the fee disclosures contain more information than a list of fees. The examples that must be included in the fee disclosures allow consumers to see the interplay of interest rates and fees in the context of available loan products which may assist them to better understand the actual cost of credit. The department believes the disclosures provide the information needed by consumers to make informed credit decisions and enable them to compare the loan products and fees available from various lenders. Section (7) is being deleted because it duplicates statute. In (8) the term "penalty" is being replaced with the term "past-due fee" because the latter term is used in 32-5-301,

MCA. Section (9) is being deleted because the intent of and need for the section is unclear and it is no longer consistent with applicable statutes. Section 31-1-106, MCA, is being removed from the implementation citations for this rule because 31-1-106, MCA, is no longer consistent with the Montana Consumer Loan Act, Title 32, chapter 5, MCA. The rule does not implement 31-1-106, MCA. The remaining amendments to this rule are needed for housekeeping and clarity purposes.

2.59.303 CREDIT LIFE INSURANCE (1) ~~Licensee shall not place credit life insurance nor credit disability insurance for its borrowers unless all applicable requirements of the Montana Insurance Code (Title 33, MCA) concerning licensing of agents are complied with. Any license acquired from the Commissioner of Insurance of the state of Montana must be conspicuously displayed in the office of licensee. A consumer loan licensee may not sell, solicit, or negotiate insurance or act as an insurance producer or insurance agency in this state unless licensed under Title 33, chapter 17, MCA. A consumer loan licensee holding an insurance producer or insurance agency license shall conspicuously display the insurance license in its main consumer loan office and shall comply with all applicable provisions of the Montana Insurance Code, Title 33, MCA.~~

~~(2) Licensee shall not place any credit life or disability insurance with an insurer who has not been authorized to transact such insurance in this state under the provision of the Montana Insurance Code.~~

~~(3)(2) A licensee may~~ Licensee shall not require any borrower or prospective borrower to purchase or contract for credit life insurance, or credit disability insurance, or loss of income insurance as a condition precedent to granting any loan.

~~(4)(3) A licensee~~ Licensee may advise borrowers or prospective borrowers or advertise generally and publicly that such insurance is credit life insurance, credit disability insurance, and loss of income insurance are available at additional cost to the borrower on loans meeting the requirements of (4).

~~(5) Licensee may advertise generally and publicly that credit life insurance and/or credit disability insurance is available to borrowers on loans of more than \$300 in principal amount exclusive of charges for insurance premiums.~~

(6) remains the same, but is renumbered (4).

~~(7) Licensee shall not make any loan including amounts advanced for insurance premiums that exceeds \$1,000 in total amount advanced. A licensee who has been issued a supplementary license shall not make any loan including amounts advanced for insurance premiums that exceeds \$2,500 in total amount advanced.~~

(8) remains the same, but is renumbered (5).

~~(9)(6) The individual insurance policy, the certificate of group insurance, the copy of the application for insurance, or the notice of proposed insurance, must be delivered to the borrower at the time the indebtedness is incurred, in accordance with the provisions of 33-21-204, MCA, and all the provisions of this law relative to and statements concerning the coverage provided must be strictly complied~~ comply with 33-21-204, MCA.

~~(10)(7) A licensee~~ Licensee must have on file for each credit life insurance, and credit disability insurance, and loss of income insurance transaction a signed statement from the borrower that procurement of such the insurance was not made

a condition precedent to the granting of the loan. ~~Such~~ The statement may be a part of the loan statement, certificate of group insurance, or application for insurance, if ~~such the~~ the document is ~~to be~~ retained in the borrower's loan file for the ~~two years~~ two-year period required by 32-5-307, MCA. If a separate signed statement is used, ~~such the~~ the statement must be retained in the borrower's loan file for the same period.

~~(11)~~(8) Refunds of unearned premiums for credit life insurance, and credit disability insurance, and loss of income insurance shall be computed must be made in accordance with the Montana Insurance Code (32-21-206, MCA) ~~and regulations issued by the Commissioner of Insurance of the state of Montana.~~

(12) remains the same, but is renumbered (9).

~~(13)~~(10) Before any credit life insurance ~~or, credit disability insurance, or loss of income insurance~~ premium is placed by a consumer loan licensee on any loan contract, the licensee must file with the ~~Consumer Loan Commissioner~~ department a statement containing the following information:

(a) remains the same.

(b) the rate of charge for premiums on ~~such the~~ the insurance to be collected from the borrower, expressed in terms of dollars and cents per month (or per year) per one hundred dollars of original balance of the loan;

(c) borrower eligibility criteria for credit life insurance, credit disability insurance, and loss of income insurance ~~these borrowers who do not qualify for credit life or disability insurance because of advanced age or other stipulated reasons; and~~

(d) the basis or schedule upon which refunds to borrowers of unearned premiums are to be computed consistent with the refund formula filed with and approved by the Commissioner of Insurance under 33-21-206(2), MCA.

(14) remains the same, but is renumbered (11).

AUTH: ~~32-5-308~~ 32-5-401, MCA

IMP: ~~32-5-401~~ 32-5-306, 32-5-307, 32-5-308, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is being amended to delete (2) and (5) because those sections unnecessarily duplicate 32-5-306(2) and (4), MCA, respectively. Newly numbered (3) is being amended to preserve the advertising clause that was contained in deleted (5). In addition, loss of income insurance is being added throughout the rule as a type of credit insurance that a borrower may purchase in connection with certain consumer loans. Section 32-5-306, MCA, was previously amended to add loss of income insurance to the other types of credit insurances authorized under the statute. The amendment to the rule is necessary to make the rule consistent with statute. Section (7) is being deleted because it is no longer consistent with statute. The former cap on the dollar amount of a consumer loan and the availability of supplementary licenses for licensees wishing to make larger loans were previously deleted from 32-5-201, MCA. In 2010, ARM 2.59.307 pertaining to dollar amounts of loans to which consumer loan rates applied was repealed, but (7) of this rule containing requirements that are dependent upon loan amounts and supplemental licenses was not deleted at that time. In (9) the term "strict compliance" is being replaced by the term "compliance." The department believes there is no difference between strict compliance and

compliance and that the extraneous term "strict" may wrongly imply a heightened duty that could be unclear to licensees. The term "Consumer Loan Commissioner" in (13) is being replaced by the term "department," which is defined in 32-5-102(3), MCA, and used consistently throughout the Montana Consumer Loan Act. The requirement in (13)(c) for reporting information concerning borrower eligibility criteria for credit life or credit disability insurance is being amended to make the provision more general in scope. Subsection (13)(d) is being amended to be consistent with 33-21-206(2), MCA. The citation to 32-5-308, MCA, is being removed as authority for this rule and replaced by 32-5-401, MCA. Section 32-5-401, MCA, grants the department general rulemaking authority and it alone provides the authority for this rule. Section 32-5-401, MCA, is not being implemented by the rule. Accordingly, it is being removed from the implementation citations for the rule. Sections 32-5-306, 32-5-307, and 32-5-308, MCA, are being added to the implementation citations because each is implemented by the rule.

2.59.304 FEES PAID TO PUBLIC OFFICIALS (1) A licensee ~~Licensees who collect fees of any kind~~ collects a fee to be paid to a public official for filing or recording any instrument used to secure a loan; shall file or record the security instrument. A licensee who has filed or recorded a security instrument shall assume responsibility for releasing such ~~release the security~~ instrument from the public record within ten business days after when the obligation has been satisfied whether or not a fee was collected for the filing or recording of the security instrument in the first instance or for the filing or recording of the release.

(2) Licensees shall record on the borrower's ledger card or electronic payment record each amount collected as a fee for recording, filing, or releasing any instrument executed by a borrower to secure a loan. The electronic record must be capable of being reproduced in or converted to hard copy form.

(3) Licensees ~~shall~~ may not collect ~~charge a fee to notarize any notary fee required in connection with~~ any instrument tendered by a borrower as security for any the consumer loan. The prohibition does not affect the authority of a licensee to finance the fee charged by a third party for notary services under 32-5-301(2), MCA.

AUTH: 32-5-401, MCA

IMP: ~~32-5-401~~ 32-5-301, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed amendment sets what the department believes is a reasonable time period within which a licensee shall release a security interest of record after the obligation is satisfied and clarifies that the responsibility to do so is not dependent upon whether the borrower was charged a fee for the filing or recording of a security instrument or for the release of the security instrument. Ten business days was chosen because any longer period would be unreasonable if the borrower were attempting to sell the collateral free of all encumbrances, or to use the collateral as security for another loan, or in other pressing circumstances. The amendment places the burden on the licensee to act promptly to release a security instrument and removes the potential burden on the borrower to cause the licensee to act. The department occasionally receives calls from frustrated borrowers attempting to locate former licensees to

obtain lien releases years after the subject loans were paid in full. Section (3) is being amended to distinguish between notary fees that third parties may charge and that may be financed by consumer loan licensees and notary fees that a licensee may not charge. In the department's experience that distinction has not always been clear to licensees. The implementation citation 32-5-401, MCA, is being replaced by 32-5-301, MCA, because the rule implements 32-5-301, MCA, rather than 32-5-401, MCA. Section 32-5-401, MCA, is the statute that gives the department its general rulemaking authority and it is properly cited as the authority for this rule.

2.59.305 RECEIPT FORM (1) Licensees shall give to the borrower or mail to ~~him at his address of record~~ the borrower's address a plain and complete receipt for each payment made.

(2) through (2)(b) remain the same.

(c) amount and date of installment payment;

(d) ~~penalty collection~~ past-due amount collected, if any;

(e) and (f) remain the same.

(3) Licensees shall indelibly record on the borrower's loan card, or electronically maintain, as separate items the amount of each installment payment, refund, or collection. An electronic record must be capable of being reproduced in or converted to hard copy form.

AUTH: 32-5-401, MCA

IMP: ~~32-5-401~~ 32-5-304, 32-5-307, MCA

STATEMENT OF REASONABLE NECESSITY: The amendment of (1) is needed to make the rule gender neutral. The amendment of (2)(c) is needed for clarity purposes because not all payments collected will be regular installment payments. Some payments might be deferral fees or past-due fees authorized under 32-5-301(3) and (4), MCA, respectively, or NSF fees authorized under 32-5-407, MCA. Subsection (2)(d) is being amended to use the same terminology that is used in statute. The fee authorized for a past-due amount is not referred to as a penalty in 32-5-301(4), MCA. The amendment of (3) is needed to clarify the section generally and to clarify that electronic records are acceptable alternatives to paper loan cards which consumer lenders rarely use any longer because technology provides more efficient means of recordkeeping. Section 32-5-401, MCA, is being removed from the implementation citations because the rule does not implement 32-5-401, MCA. The rule implements 32-5-304, MCA, and 32-5-307, MCA, both of which are being added to the implementation citations for the rule.

2.59.306 RECORDS OF LICENSEE (1) Each licensee shall continuously maintain a record of the current total of Montana consumer loan notes receivable that were originated at or from each of the licensee's licensed business locations. The original source documents supporting the total must be available for examination by the department at that licensed business location or submitted to the department at the department's direction. On and after January 1, 1960, each licensee shall establish and maintain in current condition a general ledger, located in the place of business maintained in this state for contracting consumer loans.

~~(2) Each general ledger shall contain as a minimum the following accounts appropriate to the licensed organization:~~

Assets	Liabilities and Capital
cash on hand	capital
cash in bank	surplus
notes receivable	net worth
real estate	notes payable
furniture and fixtures	due parent company
expenses	income
other assets	other liabilities

~~(3) Please bear in mind that the foregoing list is intended as a minimum guide only. Any reasonable change in title or additional breakdown of information will be satisfactory.~~

~~(4) The general ledger of each licensee shall be sufficiently complete to show all assets, liabilities, income and expense. Every ledger entry shall be supported by original source documents, which must be available for examination.~~

AUTH: 32-5-401, MCA

IMP: ~~32-5-401~~, 32-5-307, 32-5-403, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is being amended because a general ledger of the type described in the rule is no longer needed by the department to perform its duties. The department only needs each licensed location at which Montana consumer loans are originated to maintain a total of Montana notes receivable that can be reconciled with the supporting loan files to ensure that all Montana loans have been disclosed to the department. Sections 32-5-307, MCA, and 32-5-403, MCA, are being added to the implementation citations for this rule because the rule implements those statutes. The rule does not implement 32-5-401, MCA, and so that citation is being deleted from the implementation citations for the rule. Section 32-5-401, MCA, gives the department general rule making authority and is properly included only as the citation of authority for the rule.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Lorraine Schneider, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov; and must be received no later than 5:00 p.m., January 29, 2014.

6. Lorraine Schneider, Department of Administration, has been designated to preside over and conduct this hearing.

7. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall

make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp.x>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that this new rule and the proposed rule amendments will not significantly and directly affect small businesses.

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State December 16, 2013.