

First Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 07-0895.01 Duane Gall

SENATE BILL 07-249

SENATE SPONSORSHIP

Veiga, Groff, Isgar, Keller, Kester, Penry, Schwartz, Tapia, Taylor, and Tochtrop

HOUSE SPONSORSHIP

Rice,

Senate Committees

Business, Labor and Technology
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE APPLICATION OF EXISTING REGULATIONS TO**
102 **PERSONS PERFORMING SERVICES IN CONNECTION WITH REAL**
103 **ESTATE TRANSACTIONS, AND, IN CONNECTION THEREWITH,**
104 **PROVIDING FOR THE LICENSING OF PERSONS PROVIDING**
105 **SETTLEMENT SERVICES WITH THE DIVISION OF REAL ESTATE,**
106 **ESTABLISHING A FUND TO INCREASE CONSUMER PROTECTION**
107 **WITH REGARD TO THE ACTIVITIES OF TITLE ENTITIES, _____**
108 **REQUIRING PERIODIC EXAMINATIONS OF TITLE ENTITIES, AND**
109 **MAKING AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

SENATE
3rd Reading Unamended
April 26, 2007

SENATE
Amended 2nd Reading
April 25, 2007

adopted.)

Establishes a cash fund from which appropriations will be made to the division of insurance to enhance enforcement of existing statutes and rules governing title entities to further protect the interests of consumers purchasing real estate in Colorado. Directs the division to collect and publish information relating to licensed title entities and to conduct periodic examinations of title entities, in accordance with rules adopted by the insurance commissioner. Requires the division to conduct a study of current practices in the title insurance industry, using all investigatory powers granted by existing statutes, and to refer suspected violations to the attorney general for further enforcement action when appropriate. Funds the additional enforcement activities through assessment of a fee on each title insurance policy issued.

Recognizes a new category of persons providing real estate settlement services separately rather than as part of the practice of real estate or title insurance. Defines this category as "settlement service providers". Requires settlement service providers to register with the director of the division of real estate under provisions similar to those adopted in 2006 for the registration of mortgage brokers. Directs the division of real estate to undertake a study of the efficacy of registration and to report its findings, together with legislative recommendations, to the general assembly by March 15, 2009.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds, determines, and declares that:

4 (a) Real estate brokers, mortgage brokers, and title insurance
5 companies are all subject to licensing or registration by state agencies,
6 and therefore they practice "regulated professions or occupations" within
7 the accepted meaning of that term;

8 (b) Real estate closing and settlement services, including the
9 handling of escrow accounts and the preparation of closing documents,
10 have traditionally constituted a distinct but closely related part of the
11 practice of these regulated professionals and have been offered only in
12 connection with the other services offered by these professionals;

1 (c) Closing and settlement services are provided when the money
2 of those purchasing real estate, the money to be used to pay off an
3 existing mortgage, the money to pay the previously agreed-upon fees of
4 licensed professionals, and other transaction costs are handled by a
5 settlement service provider whose responsibility it is to disburse such
6 funds and in whose name funds are made payable;

7 (d) Certain individuals and entities have begun offering real estate
8 closing and settlement services on an independent basis, thus splitting off
9 these services into an unregulated market that is not subject to oversight
10 by any regulatory agency;

11 (e) These independent vendors are entrusted with large sums of
12 money; and

13 (f) It is appropriate to once again regulate the providers of closing
14 and settlement services.

15 (2) Accordingly, the general assembly finds that the extension of
16 existing regulatory requirements for the closing and settlement service
17 functions provided through existing comprehensive services of licensed
18 entities, so as to cover the identical services provided by independent
19 vendors, does not constitute the regulation of a previously unregulated
20 profession or occupation, and therefore no sunrise review is necessary
21 before such reregulation can proceed.

22 **SECTION 2. 6-1-105 (1), Colorado Revised Statutes, is amended**
23 **BY THE ADDITION OF A NEW PARAGRAPH to read:**

24 **6-1-105. Deceptive trade practices.** (1) A person engages in a
25 deceptive trade practice when, in the course of such person's business,
26 vocation, or occupation, such person:

27 (yy) KNOWINGLY VIOLATES SECTION 10-11-108 (1) (c) OR (1) (d)

1 OR 10-11-124, C.R.S., OR ANY RULE OF THE INSURANCE COMMISSIONER IN
2 FURTHERANCE OF SUCH SECTIONS, INCLUDING A KNOWING VIOLATION
3 THROUGH THE CREATION OR OPERATION OF AN IMPROPER AFFILIATED
4 BUSINESS ARRANGEMENT.

5 SECTION 3. 10-3-1104 (1) (ee), Colorado Revised Statutes, is
6 amended to read:

7 10-3-1104. Unfair methods of competition and unfair or
8 deceptive acts or practices. (1) The following are defined as unfair
9 methods of competition and unfair or deceptive acts or practices in the
10 business of insurance:

11 (ee) Willfully or repeatedly violating section 10-11-108 (1)(c) or
12 (1) (d) OR 10-11-124, OR ANY RULE OF THE INSURANCE COMMISSIONER IN
13 FURTHERANCE OF SUCH SECTIONS, including a willful or repeated
14 violation through the creation or operation of an improper affiliated
15 business arrangement.

16 SECTION 4. 10-11-102, Colorado Revised Statutes, is amended
17 BY THE ADDITION OF A NEW SUBSECTION to read:

18 10-11-102. Definitions. As used in this article, unless the context
19 otherwise requires:

20 (7.5) "TITLE ENTITY" MEANS A TITLE INSURANCE AGENCY AND A
21 TITLE INSURANCE COMPANY. EXCEPT AS OTHERWISE PROVIDED IN
22 SECTION 10-11-127, "TITLE ENTITY" DOES NOT INCLUDE AN INDIVIDUAL.

23 SECTION 5. Article 11 of title 10, Colorado Revised Statutes, is
24 amended BY THE ADDITION OF THE FOLLOWING NEW
25 SECTIONS to read:

26 10-11-127. Periodic examinations - public disclosures - rules
27 - coordination with attorney general - definitions - repeal. (1) As

1 USED IN THIS SECTION, "TITLE ENTITY" INCLUDES A TITLE INSURANCE
2 COMPANY OR AGENCY AND ANY AGENT OR AGENCY THAT WORKS FOR OR
3 IN ASSOCIATION WITH, OR HAS A CONTRACTUAL RELATIONSHIP WITH, SUCH
4 TITLE INSURANCE COMPANY OR AGENCY.

5 (2) IN ACCORDANCE WITH RULES OF THE COMMISSIONER,
6 PROMULGATED THROUGH RULE-MAKING HEARINGS COMMENCED ON OR
7 BEFORE AUGUST 1, 2007, THE DIVISION SHALL:

8 _____
9 (a) ON AND AFTER JANUARY 1, 2008, CREATE AND IMPLEMENT A
10 PLAN OF PERIODIC EXAMINATIONS OF TITLE ENTITIES THAT IS BASED ON
11 STANDARDS OF THE NATIONAL ASSOCIATION OF INSURANCE
12 COMMISSIONERS, OR ITS SUCCESSOR ORGANIZATION, APPLICABLE TO TITLE
13 INSURANCE MARKET CONDUCT EXAMINATIONS;

14 (b) ENSURE THAT ALL NEWLY LICENSED TITLE ENTITIES WILL HAVE
15 AN APPROPRIATE EXAMINATION NO SOONER THAN TWELVE MONTHS AFTER
16 INITIAL LICENSURE AND NO LATER THAN TWENTY-FOUR MONTHS AFTER
17 INITIAL LICENSURE. A TITLE ENTITY EXAMINED UNDER THIS PARAGRAPH

18 (b) SHALL NOT BE SUBJECT TO FURTHER EXAMINATION FOR AT LEAST
19 THREE YEARS UNLESS IT IS IDENTIFIED AS POTENTIALLY NOT IN
20 COMPLIANCE WITH THIS ARTICLE OR RULES ADOPTED PURSUANT TO THIS
21 ARTICLE, OR IS ENGAGED IN CONDUCT THAT MAY LEAD TO SUCH
22 NONCOMPLIANCE, AS A RESULT OF A PERIODIC EXAMINATION CONDUCTED
23 PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2).

24 (c) BEGINNING JANUARY 1, 2008:

25 (I) REQUIRE EACH TITLE ENTITY TO FILE AN ANNUAL REPORT WITH
26 THE DIVISION CONTAINING CURRENT INFORMATION AS REQUIRED BY THE
27 DIVISION FOR ANNUAL REPORTS, TOGETHER WITH ANY OTHER

1 INFORMATION THAT THE DIVISION DETERMINES TO BE REASONABLE AND
2 NECESSARY FOR THE PURPOSES OF THIS SECTION, BASED UPON THE
3 STANDARDS OF THE NATIONAL ASSOCIATION OF INSURANCE
4 COMMISSIONERS OR ITS SUCCESSOR ORGANIZATION APPLICABLE TO TITLE
5 INSURANCE, INCLUDING, WITHOUT LIMITATION:

6 (A) VERIFICATION OF THE ENTITY'S CURRENT BUSINESS ADDRESS;

7 (B) VERIFICATION OF THE ENTITY'S STANDING AS A BUSINESS
8 ENTITY, AS SHOWN BY RECORDS ON FILE WITH THE SECRETARY OF STATE;

9 (C) VERIFICATION THAT ALL OF THE ENTITY'S PRODUCERS ARE
10 APPROPRIATELY LICENSED; AND

11 (D) VERIFICATION OF THE ENTITY'S COMPLIANCE WITH ANNUAL
12 LICENSING REQUIREMENTS;

13 (II) MAKE THE ANNUAL REPORTS AND OTHER INFORMATION
14 SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (C) PUBLICLY
15 ACCESSIBLE IN A MANNER THAT ALLOWS READY IDENTIFICATION OF THE
16 THE INFORMATION COLLECTED. IN DETERMINING THE FORM AND METHODS
17 FOR DISPLAY OF SUCH INFORMATION, THE DIVISION IS ENCOURAGED TO USE
18 SAMPLE FORMATS DEVELOPED BY OTHER STATES, INCLUDING, WITHOUT
19 LIMITATION, THOSE USED BY THE STATE OF UTAH AS OF MARCH 30, 2007.

20 (3) WHEN CONDUCTING AN EXAMINATION OF A TITLE ENTITY
21 PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE DIVISION SHALL
22 APPLY A TYPE AND METHOD OF EXAMINATION THAT:

23 (a) BALANCES THE NEED FOR INFORMATION TO ASSESS THE TITLE
24 ENTITY'S COMPLIANCE AGAINST THE DANGER OF IMPOSING AN UNDUE
25 FINANCIAL BURDEN UPON THE TITLE ENTITY. A TITLE ENTITY SUBJECT TO
26 A PENDING EXAMINATION SHALL BE GIVEN THE OPPORTUNITY TO REQUEST
27 A CHANGE IN THE TYPE OF EXAMINATION TO BE APPLIED. THE DIVISION

1 SHALL DETERMINE ANY SUCH REQUEST BASED UPON EVIDENCE, ADDUCED
2 AT A PUBLIC HEARING, TENDING TO INDICATE THAT THE TITLE ENTITY
3 WOULD SUFFER IRREPARABLE FINANCIAL HARDSHIP UNLESS THE REQUEST
4 FOR A CHANGE WERE GRANTED.

5 (b) CONSERVES, TO THE EXTENT POSSIBLE, THE RESOURCES IN THE
6 TITLE INSURANCE ENFORCEMENT CASH FUND CREATED IN SUBSECTION (6)
7 OF THIS SECTION WITHOUT COMPROMISING THE EFFICACY OF THE
8 EXAMINATION.

9 (4) THE DIVISION SHALL COOPERATE WITH THE DEPARTMENT OF
10 LAW AND THE DIVISION OF REAL ESTATE IN INVESTIGATING AND
11 REFERRING FOR ENFORCEMENT ACTION BY THE ATTORNEY GENERAL,
12 WHERE APPROPRIATE, ANY SUSPECTED VIOLATIONS OF THIS ARTICLE OR OF
13 THE "COLORADO CONSUMER PROTECTION ACT", ARTICLE 1 OF TITLE 6,
14 C.R.S. IN ADDITION, THE COMMISSIONER SHALL HAVE THE POWER AND
15 DUTY TO ASSIST IN THE COLLECTION OF INFORMATION AND THE
16 INVESTIGATION AND PROSECUTION OF VIOLATIONS USING ALL AUTHORITY
17 GRANTED TO THE COMMISSIONER UNDER SECTION 10-1-108 AND PART 2 OF
18 THIS ARTICLE.

19 (5) (a) THE COSTS INCURRED BY THE DIVISION AND THE
20 DEPARTMENT OF LAW IN CONNECTION WITH THE IMPLEMENTATION OF THIS
21 SECTION AND SECTION 6-1-105 (1)(yy) C.R.S., INCLUDING EXAMINATIONS
22 AND ENFORCEMENT ACTIONS AND THE CREATION OF THE REPORTS
23 REQUIRED BY SECTION 10-11-128, SHALL BE RECOVERED THROUGH THE
24 ASSESSMENT OF A SURCHARGE UPON PERSONS LICENSED UNDER THIS
25 ARTICLE, CALCULATED AS A PRO RATA SHARE OF THE TOTAL PREMIUMS
26 DERIVED FROM THEIR TITLE INSURANCE BUSINESS CONDUCTED IN
27 COLORADO FOR THE YEAR IMMEDIATELY PRECEDING THE ASSESSMENT.

1 THE AMOUNT AND MANNER OF COLLECTION OF SUCH SURCHARGE SHALL
2 BE ESTABLISHED BY THE COMMISSIONER, SUBJECT TO SECTION 24-75-402,
3 C.R.S.; EXCEPT THAT THE TOTAL AMOUNT COLLECTED FROM ALL TITLE
4 ENTITIES UNDER THIS SUBSECTION (5) SHALL NOT EXCEED FIVE HUNDRED
5 THOUSAND DOLLARS PER FISCAL YEAR.

6 (b) (I) FOR THE PURPOSE OF COVERING STARTUP COSTS FOR THE
7 IMPLEMENTATION OF THIS SECTION AND TO FUND ENFORCEMENT
8 ACTIVITIES UNDERTAKEN BETWEEN JULY 1, 2007, AND MARCH 1, 2008,
9 THE COMMISSIONER SHALL ASSESS A ONE-TIME SURCHARGE UPON ALL
10 TITLE ENTITIES, CALCULATED AS A PRO RATA SHARE OF THE TOTAL
11 PREMIUMS DERIVED FROM THEIR TITLE INSURANCE BUSINESS CONDUCTED
12 IN COLORADO, THAT WERE SUBJECT TO SECTION 10-3-207 ON OR AFTER
13 MARCH 1, 2007. THE SURCHARGE SHALL BE PAYABLE ON OR BEFORE
14 SEPTEMBER 1, 2007, AND CALCULATED SO AS TO GENERATE TWO
15 HUNDRED FIFTY THOUSAND DOLLARS IN REVENUE.

16 (II) THIS PARAGRAPH (b) IS REPEALED, EFFECTIVE JULY 1, 2008.

17 (6) NOTWITHSTANDING ANY PROVISION OF SECTION 10-1-103 OR
18 10-1-108 (9) TO THE CONTRARY, ALL FEES AND SURCHARGES COLLECTED
19 PURSUANT TO THIS SECTION SHALL BE TRANSMITTED TO THE STATE
20 TREASURER, WHO SHALL DEPOSIT THE SAME IN THE DIVISION OF
21 INSURANCE CASH FUND CREATED IN SECTION 10-1-103, AND SHALL BE
22 SUBJECT TO ANNUAL APPROPRIATION TO THE DIVISION AND TO THE
23 DEPARTMENT OF LAW FOR THE PURPOSES SET FORTH IN THIS SECTION AND
24 SECTION 10-11-128.

25 **10-11-128. Analysis - biennial reports - repeal.** (1) THE
26 DIVISION SHALL CONDUCT AN ANALYSIS OF MARKET TRENDS, THE DATA
27 COLLECTED AS REQUIRED BY SECTION 10-11-127, REGULATORY

1 ENFORCEMENT ACTIONS, AND CONSUMER COMPLAINTS RELATED TO TITLE
2 INSURANCE IN COLORADO. THE ANALYSIS SHALL EVALUATE DATA
3 COLLECTED FROM JANUARY 1, 2008, THROUGH DECEMBER 31, 2008, AND
4 FOR EVERY TWO-YEAR PERIOD THEREAFTER, BEGINNING JANUARY 1, 2009,
5 INCLUDING DATA COLLECTED PURSUANT TO SECTION 10-11-127 AND, TO
6 THE EXTENT PERMISSIBLE BY LAW, INFORMATION ON ANY PENDING
7 INVESTIGATIONS OR REGULATORY ACTIONS. THE DIVISION SHALL REPORT
8 ITS FINDINGS BASED ON SUCH ANALYSIS, INCLUDING THE DIVISION'S
9 RECOMMENDATIONS, IF ANY, FOR LEGISLATION DEALING WITH THE
10 REGULATION OF TITLE ENTITIES, TO THE BUSINESS AFFAIRS AND LABOR
11 COMMITTEE OF THE HOUSE OF REPRESENTATIVES AND THE BUSINESS,
12 LABOR, AND TECHNOLOGY COMMITTEE OF THE SENATE, OR ANY
13 SUCCESSOR COMMITTEES, ON OR BEFORE MARCH 15, 2009, AND ON OR
14 BEFORE MARCH 15 OF EACH ODD-NUMBERED YEAR THEREAFTER.

15 (2) TO THE EXTENT FEASIBLE AND APPROPRIATE, THE DIVISION
16 SHALL INCORPORATE IN ITS ANALYSIS AND REPORT ANY INFORMATION
17 GATHERED BY THE REAL ESTATE COMMISSION THROUGH INVESTIGATIONS
18 PURSUANT TO SECTION 12-61-113.2, C.R.S., AND ANY INFORMATION
19 GATHERED BY THE DIVISION OR THE DEPARTMENT OF LAW THROUGH
20 EXAMINATIONS AND INVESTIGATIONS PURSUANT TO SECTION 10-11-127.

21 (3) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2015.

22 SECTION 6. Article 11 of title 10, Colorado Revised Statutes, is
23 amended BY THE ADDITION OF A NEW PART to read:

24 PART 2
25 INDEPENDENT CLOSING/SETTLEMENT
26 SERVICE PROVIDERS

27 10-11-201. Short title. THIS PART 2 SHALL BE KNOWN AND MAY

1 BE CITED AS THE "CLOSING/SETTLEMENT SERVICE PROVIDER LICENSING
2 ACT".

3 **10-11-202. Definitions.** AS USED IN THIS PART 2, UNLESS THE
4 CONTEXT OTHERWISE REQUIRES:

5 (1) "CLOSING AND SETTLEMENT SERVICES" MEANS SERVICES
6 PROVIDED FOR THE BENEFIT OF ALL NECESSARY PARTIES IN CONNECTION
7 WITH SELLING, LEASING, ENCUMBERING, MORTGAGING, OR CREATING A
8 SECURED INTEREST IN AND TO REAL PROPERTY AND THE RECEIPT AND
9 DISBURSEMENT OF MONEY IN CONNECTION WITH ANY SALE, LEASE,
10 ENCUMBRANCE, OR MORTGAGE OF, OR DEED OF TRUST TO, SUCH
11 PROPERTY.

12 (2) "CLOSING/SETTLEMENT SERVICE PROVIDER" MEANS AN ENTITY
13 THAT IS ENGAGED IN THE BUSINESS OF PROVIDING CLOSING AND
14 SETTLEMENT SERVICES.

15 **10-11-203. License required.** (1) (a) ON OR AFTER JULY 1, 2007,
16 UNLESS DULY LICENSED UNDER THIS PART 2, A PERSON SHALL NOT ACT OR
17 OFFER TO ACT AS A CLOSING/SETTLEMENT SERVICE PROVIDER.

18 (b) A CLOSING/SETTLEMENT SERVICE PROVIDER SHALL APPLY FOR
19 LICENSING IN SUBSTANTIALLY THE MANNER PROVIDED FOR THE LICENSING
20 OF INSURANCE PRODUCERS UNDER PART 4 OF ARTICLE 2 OF THIS TITLE.

21 **10-11-204. Exemptions.** (1) THIS PART 2 SHALL NOT APPLY TO:

22 (a) (I) AN INDIVIDUAL OR ENTITY THAT IS LICENSED AS A REAL
23 ESTATE BROKER, MORTGAGE BROKER, ATTORNEY, BANK, TITLE ENTITY, OR
24 OTHER PRACTITIONER OF A REGULATED PROFESSION OR OCCUPATION THAT
25 PROVIDES CLOSING AND SETTLEMENT SERVICES AS PART OF ITS PRACTICE
26 OF THAT REGULATED PROFESSION OR OCCUPATION.

27 (II) AS USED IN THIS PARAGRAPH (a), "BANK" MEANS ANY BANK,

1 SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, BUILDING AND LOAN
2 ASSOCIATION, OR CREDIT UNION AND ANY BANK OR SAVINGS ASSOCIATION
3 HOLDING COMPANY, BANK HOLDING COMPANY ORGANIZED UNDER THE
4 LAWS OF THE UNITED STATES, ANY STATE, THE DISTRICT OF COLUMBIA,
5 OR ANY TERRITORY OR PROTECTORATE OF THE UNITED _____ STATES,
6 SUBJECT TO REGULATION AND SUPERVISORY BY A STATE OR FEDERAL
7 AGENCY, AND ANY OPERATING SUBSIDIARY, AFFILIATE, EMPLOYEE, OR
8 EXCLUSIVE AGENT THEREOF.

9 (b) AN AFFILIATE OR ANY OFFICER, EMPLOYEE, OR INDEPENDENT
10 CONTRACTOR OF ANY ENTITY LISTED IN PARAGRAPH (a) OF THIS
11 SUBSECTION (1) WHILE ACTING WITHIN THE SCOPE OF HIS OR HER
12 EMPLOYMENT;

13 (c) AN EMPLOYEE OF A REAL ESTATE DEVELOPMENT ENTITY
14 REGISTERED AND IN GOOD STANDING WITH THE SECRETARY OF STATE;

15 (d) A COMMISSIONED COLORADO NOTARY PUBLIC WHOSE ACTIONS
16 ARE LIMITED TO PRESENTING DOCUMENTS FOR EXECUTION OR WITNESSING
17 EXECUTION OF SUCH DOCUMENTS; EXCEPT THAT THIS EXEMPTION SHALL
18 NOT APPLY TO A NOTARY PUBLIC WHO DISBURSES SETTLEMENT FUNDS
19 UNLESS OTHERWISE EXEMPTED IN ACCORDANCE WITH PARAGRAPH (a) OF
20 THIS SUBSECTION (1);

21 (e) AN INDIVIDUAL OR ENTITY THAT IS PROVIDING CLOSING AND
22 SETTLEMENT SERVICES IN CONNECTION WITH A TRANSACTION INVOLVING
23 OIL, GAS, OR OTHER MINERALS AND ANY ASSOCIATED EASEMENTS, RIGHTS
24 OF WAY, OR SURFACE USES.

25 (2) THE EXEMPTIONS IN SUBSECTION (1) OF THIS SECTION SHALL
26 NOT APPLY TO PERSONS ACTING BEYOND THE SCOPE OF SUCH EXEMPTIONS.

27 **10-11-205. Enforcement - cease and desist orders - fines.**

1 (1) (a) IF THE COMMISSIONER HAS REASONABLE CAUSE TO BELIEVE THAT
2 A PERSON IS VIOLATING OR HAS VIOLATED THIS PART 2, THE
3 COMMISSIONER MAY ENTER AN ORDER REQUIRING SUCH PERSON TO CEASE
4 AND DESIST SUCH VIOLATIONS.

5 (b) THE COMMISSIONER, UPON HIS OR HER OWN MOTION OR UPON
6 THE COMPLAINT IN WRITING OF ANY PERSON, MAY INVESTIGATE THE
7 ACTIVITIES OF ANY LICENSEE OR ANY PERSON WHO ASSUMES TO ACT IN
8 SUCH CAPACITY WITHIN THE STATE. IN ADDITION TO ANY OTHER PENALTY
9 THAT MAY BE IMPOSED PURSUANT TO THIS PART 2, A PERSON VIOLATING
10 ANY PROVISION OF THIS PART 2 OR ANY RULES PROMULGATED PURSUANT
11 TO THIS ARTICLE MAY BE FINED UPON A FINDING OF MISCONDUCT BY THE
12 COMMISSIONER AS FOLLOWS:

13 (I) IN THE FIRST ADMINISTRATIVE PROCEEDING, A FINE NOT IN
14 EXCESS OF ONE THOUSAND DOLLARS PER ACT OR OCCURRENCE;

15 (II) IN A SECOND OR SUBSEQUENT ADMINISTRATIVE PROCEEDING,
16 A FINE NOT LESS THAN ONE THOUSAND DOLLARS NOR IN EXCESS OF TWO
17 THOUSAND DOLLARS PER ACT OR OCCURRENCE.

18 (c) ALL FINES COLLECTED PURSUANT TO THIS PART 2 SHALL BE
19 TRANSFERRED TO THE STATE TREASURER, WHO SHALL CREDIT THE SAME
20 TO THE DIVISION OF INSURANCE CASH FUND CREATED IN SECTION
21 10-1-103.

22 (2) THE COMMISSIONER SHALL KEEP RECORDS OF THE PERSONS
23 LICENSED AS CLOSING/SETTLEMENT SERVICE PROVIDERS AND OF
24 DISCIPLINARY PROCEEDINGS. THE RECORDS KEPT BY THE COMMISSIONER
25 SHALL BE OPEN TO PUBLIC INSPECTION IN A REASONABLE TIME AND
26 MANNER DETERMINED BY THE COMMISSIONER.

27 (3) (a) THE COMMISSIONER SHALL MAINTAIN A SYSTEM, WHICH

1 MAY INCLUDE, WITHOUT LIMITATION, A HOTLINE OR WEB SITE, THAT GIVES
2 CONSUMERS A REASONABLY EASY METHOD FOR MAKING COMPLAINTS
3 ABOUT A CLOSING/SETTLEMENT SERVICE PROVIDER.

4 (b) THE COMMISSIONER MAY REVIEW THE COMPLAINTS ANNUALLY
5 AND PREPARE A REPORT TO BE ISSUED TO THE COMMITTEE OF THE
6 GENERAL ASSEMBLY THAT HAS OVERSIGHT OF CLOSING/SETTLEMENT
7 SERVICE PROVIDERS. SUCH REPORT SHALL CONTAIN THE TRENDS IN
8 COMPLAINTS AND INVESTIGATIONS UNDER THIS PART 2.

9 **10-11-206. Immunity.** A PERSON PARTICIPATING IN GOOD FAITH
10 IN THE FILING OF A COMPLAINT OR REPORT OR PARTICIPATING IN AN
11 INVESTIGATION OR HEARING BEFORE THE COMMISSIONER OR AN
12 ADMINISTRATIVE LAW JUDGE PURSUANT TO THIS PART 2 SHALL BE IMMUNE
13 FROM ANY CIVIL LIABILITY THAT OTHERWISE MIGHT RESULT BY REASON OF
14 SUCH ACTION.

15 **10-11-207. Fees - closing/settlement service provider licensing**
16 **cash fund - creation.** (1) THE COMMISSIONER MAY SET THE FEE FOR
17 LICENSES UNDER THIS PART 2. THE FEE SHALL BE SET IN AN AMOUNT
18 SUFFICIENT TO OFFSET THE DIRECT AND INDIRECT COSTS OF IMPLEMENTING
19 THIS PART 2. THE MONEYS COLLECTED PURSUANT TO THIS SECTION SHALL
20 BE TRANSFERRED TO THE STATE TREASURER, WHO SHALL CREDIT THE
21 SAME TO THE CLOSING/SETTLEMENT SERVICE PROVIDER LICENSING CASH
22 FUND.

23 (2) THERE IS HEREBY CREATED IN THE STATE TREASURY THE
24 CLOSING/SETTLEMENT SERVICE PROVIDER LICENSING CASH FUND.
25 MONEYS IN THE FUND, INCLUDING INTEREST DERIVED FROM THE
26 INVESTMENT OF REVENUES IN THE FUND, SHALL BE SPENT ONLY TO
27 IMPLEMENT THIS PART 2 AND SHALL NOT REVERT TO THE GENERAL FUND

1 AT THE END OF THE FISCAL YEAR. THE FUND SHALL BE SUBJECT TO
2 ANNUAL APPROPRIATION BY THE GENERAL ASSEMBLY.

3 **10-11-208. Attorney general - district attorney - jurisdiction.**

4 THE ATTORNEY GENERAL SHALL HAVE CONCURRENT JURISDICTION WITH
5 THE DISTRICT ATTORNEYS OF THIS STATE TO INVESTIGATE AND PROSECUTE
6 ALLEGATIONS OF CRIMINAL VIOLATIONS OF THIS PART 2.

7 **10-11-209. Violations - injunctions.** (1) (a) ANY NATURAL
8 PERSON, FIRM, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR
9 ASSOCIATION OR ANY CORPORATION VIOLATING THIS PART 2 BY ACTING AS
10 A CLOSING/SETTLEMENT SERVICE PROVIDER IN THIS STATE WITHOUT
11 HAVING BEEN LICENSED OR BY ACTING AS A CLOSING/SETTLEMENT
12 SERVICE PROVIDER AFTER THAT PERSON'S OR ENTITY'S LICENSE HAS BEEN
13 REVOKED OR DURING ANY PERIOD FOR WHICH SAID LICENSE MAY HAVE
14 BEEN SUSPENDED IS GUILTY OF A CLASS 1 MISDEMEANOR AND SHALL BE
15 PUNISHED AS PROVIDED IN SECTION 18-1.3-501, C.R.S.; EXCEPT THAT, IF
16 THE VIOLATOR IS NOT A NATURAL PERSON, THE VIOLATOR SHALL BE
17 PUNISHED BY A FINE OF NOT MORE THAN FIVE THOUSAND DOLLARS.

18 (b) EACH CLOSING AND SETTLEMENT SERVICE PROVIDED BY AN
19 UNLICENSED PERSON SHALL BE A SEPARATE VIOLATION OF THIS
20 SUBSECTION (1).

21 (2) THE COMMISSIONER MAY FORWARD INFORMATION
22 CONCERNING POSSIBLE VIOLATIONS OF THE LAW COMMITTED BY OR
23 COMPLAINTS FILED AGAINST A CLOSING/SETTLEMENT SERVICE PROVIDER
24 TO THE ATTORNEY GENERAL, A DISTRICT ATTORNEY, OR A STATE OR
25 FEDERAL LAW ENFORCEMENT AGENCY.

26 (3) THE COMMISSIONER MAY REQUEST THAT AN ACTION BE
27 BROUGHT IN THE NAME OF THE PEOPLE OF THE STATE OF COLORADO BY

1 THE ATTORNEY GENERAL OR THE DISTRICT ATTORNEY OF THE DISTRICT IN
2 WHICH THE VIOLATION IS ALLEGED TO HAVE OCCURRED TO ENJOIN A
3 PERSON FROM ENGAGING IN OR CONTINUING THE VIOLATION OR FROM
4 DOING ANY ACT THAT FURTHERS THE VIOLATION. IN SUCH AN ACTION, AN
5 ORDER OR JUDGMENT MAY BE ENTERED AWARDING SUCH PRELIMINARY OR
6 FINAL INJUNCTION AS IS DEEMED PROPER BY THE COURT. THE NOTICE,
7 HEARING, OR DURATION OF AN INJUNCTION OR RESTRAINING ORDER SHALL
8 BE MADE IN ACCORDANCE WITH THE COLORADO RULES OF CIVIL
9 PROCEDURE.

10 (4) A VIOLATION OF THIS PART 2 SHALL NOT AFFECT THE VALIDITY
11 OR ENFORCEABILITY OF ANY REAL ESTATE CONTRACT, MORTGAGE, OR
12 DEED.

13 (5) AN UNLAWFUL ACT OR VIOLATION OF THIS PART 2 ON THE PART
14 OF AN EMPLOYEE, OFFICER, OR MEMBER OF A LICENSED
15 CLOSING/SETTLEMENT SERVICE PROVIDER SHALL NOT BE CAUSE FOR
16 DISCIPLINARY ACTION AGAINST A CLOSING/SETTLEMENT SERVICE
17 PROVIDER UNLESS IT APPEARS THAT THE CLOSING/SETTLEMENT SERVICE
18 PROVIDER KNEW OR SHOULD HAVE KNOWN OF THE UNLAWFUL ACT OR
19 VIOLATION OR HAD BEEN NEGLIGENT IN THE SUPERVISION OF THE
20 EMPLOYEE.

21 **10-11-210. Repeal of part.** (1) THE PROVISIONS OF SECTION
22 24-34-104, C.R.S., CONCERNING THE TERMINATION SCHEDULE FOR
23 REGULATORY BODIES OF THE STATE UNLESS EXTENDED, APPLY TO THE
24 LICENSING OF CLOSING/SETTLEMENT SERVICE PROVIDERS UNDER THIS
25 PART 2.

26 (2) THE SUNSET REVIEW PERFORMED PURSUANT TO SECTION
27 24-34-104, C.R.S., SHALL INCLUDE AN ANALYSIS OF THE NUMBER AND

1 TYPES OF COMPLAINTS AND WHETHER THE LICENSING OF
2 CLOSING/SETTLEMENT SERVICE PROVIDERS CORRELATES WITH THE PUBLIC
3 BEING PROTECTED FROM FRAUDULENT ACTIVITIES.

4 (3) THIS PART 2 IS REPEALED, EFFECTIVE JULY 1, 2017.

5 SECTION 7. 10-11-108 (1), Colorado Revised Statutes, is
6 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

7 **10-11-108. Prohibitions.** (1) A title insurance company or title
8 insurance agent ENTITY shall not:

9 (e) EMPLOY, OR USE THE SERVICES OF, AN INDEPENDENT
10 CLOSING/SETTLEMENT SERVICE PROVIDER THAT IS NOT LICENSED AS
11 REQUIRED BY PART 2 OF THIS ARTICLE.

12 SECTION 8. Part 3 of article 105 of title 11, Colorado Revised
13 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
14 read:

15 **11-105-306. Mortgage loans - closing and settlement services**
16 **- use of unlicensed closing/settlement service provider prohibited. In**
17 CONNECTION WITH THE CLOSING OF A REAL ESTATE TRANSACTION, A
18 STATE BANK SHALL NOT EMPLOY, OR USE THE SERVICES OF, A
19 CLOSING/SETTLEMENT SERVICE PROVIDER THAT IS NOT LICENSED AS
20 REQUIRED BY PART 2 OF ARTICLE 11 OF TITLE 10, C.R.S.

21 SECTION 9. 12-61-113 (1), Colorado Revised Statutes, is
22 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

23 **12-61-113. Investigation - revocation - actions against licensee**
24 **- repeal.** (1) The commission, upon its own motion, may, and, upon the
25 complaint in writing of any person, shall, investigate the activities of any
26 licensee or any person who assumes to act in such capacity within the
27 state, and the commission, after the holding of a hearing pursuant to

1 section 12-61-114, has the power to impose an administrative fine not to
2 exceed two thousand five hundred dollars for each separate offense and
3 to censure a licensee, to place the licensee on probation and to set the
4 terms of probation, or to temporarily suspend or permanently revoke a
5 license when the licensee has performed, is performing, or is attempting
6 to perform any of the following acts and is guilty of:

7 (y) EMPLOYING, OR USING THE SERVICES OF, A
8 CLOSING/SETTLEMENT SERVICE PROVIDER THAT IS NOT LICENSED AS
9 REQUIRED BY PART 2 OF ARTICLE 11 OF TITLE 10, C.R.S.

10 **SECTION 10.** 12-61-905.5 (1), Colorado Revised Statutes, as
11 enacted by Senate Bill 07-203, enacted at the first regular session of the
12 sixty-sixth general assembly, is amended BY THE ADDITION OF A
13 NEW PARAGRAPH to read:

14 **12-61-905.5. Disciplinary actions - grounds - procedures -**
15 **rules.** (1) The commissioner, upon his or her own motion, may, and,
16 upon the complaint in writing of any person, shall, investigate the
17 activities of any mortgage broker, and the commissioner has the power to
18 impose an administrative fine in accordance with section 12-61-905 and
19 to censure a licensee, to place the licensee on probation and to set the
20 terms of probation, or to suspend or revoke a license when the
21 commissioner finds that the licensee has performed, is performing, or is
22 attempting to perform any of the following acts:

23 (y) EMPLOYING, OR USING THE SERVICES OF, A
24 CLOSING/SETTLEMENT SERVICE PROVIDER THAT IS NOT LICENSED AS
25 REQUIRED BY PART 2 OF ARTICLE 11 OF TITLE 10, C.R.S.

26 **SECTION 11.** 24-34-104, Colorado Revised Statutes, is amended
27 BY THE ADDITION OF A NEW SUBSECTION to read:

1 **24-34-104. General assembly review of regulatory agencies**
2 **and functions for termination, continuation, or reestablishment.**

3 **(49) THE FOLLOWING AGENCIES, FUNCTIONS, OR BOTH, SHALL TERMINATE**
4 **ON JULY 1, 2018: THE LICENSING OF CLOSING/SETTLEMENT SERVICE**
5 **PROVIDERS BY THE DIVISION OF INSURANCE IN ACCORDANCE WITH PART 2**
6 **OF ARTICLE 11 OF TITLE 10, C.R.S.**

7 **SECTION 12.** 38-40-105 (1), Colorado Revised Statutes, is
8 **amended BY THE ADDITION OF A NEW PARAGRAPH to read:**

9 **38-40-105. Prohibited acts by originators of certain mortgage**
10 **loans.** (1) The following acts by any mortgage broker or mortgage
11 **originator with respect to any loan that is secured by a first or subordinate**
12 **mortgage or deed or trust lien against a dwelling are prohibited:**

13 **(e) TO EMPLOY, OR USE THE SERVICES OF, A CLOSING/SETTLEMENT**
14 **SERVICE PROVIDER THAT IS NOT LICENSED AS REQUIRED BY PART 2 OF**
15 **ARTICLE 11 OF TITLE 10, C.R.S.**

16 **SECTION 13.** 10-1-103 (3), Colorado Revised Statutes, is
17 **amended to read:**

18 **10-1-103. Division of insurance - subject to termination -**
19 **repeal of functions.** (3) All direct and indirect expenditures of the
20 **division shall be paid from the division of insurance cash fund, which**
21 **fund is hereby created in the state treasury. All fees collected pursuant to**
22 **sections 8-44-204 (7), C.R.S., 8-44-205 (6), C.R.S., 10-2-413, 10-3-108,**
23 **10-3-207, 10-3.5-104, 10-3.5-107, ~~10-12-106~~, 10-11-127, 10-12-106,**
24 **10-15-103, 10-16-110(1) and (2), 10-16-111 (1), 24-10-115.5 (5), C.R.S.,**
25 **and 29-13-102 (5), C.R.S., not including fees retained pursuant to**
26 **contracts entered into in accordance with section 10-2-402 (5) or**
27 **24-34-101, C.R.S., and all taxes collected pursuant to section 10-3-209**

1 (4) designated for the division of insurance, shall be transmitted to the
2 state treasurer, who shall credit the same to the division of insurance cash
3 fund. All moneys credited to the division of insurance cash fund shall be
4 used as provided in this section and in section 24-48.5-106, C.R.S., shall
5 not be deposited in or transferred to the general fund of this state or to any
6 other fund, and shall be subject to annual appropriation by the general
7 assembly for the purposes authorized in this title and as otherwise
8 authorized by law. In accordance with section 24-36-114, C.R.S., all
9 interest derived from the deposit and investment of moneys in the fund
10 shall be credited to the general fund.

11 **SECTION 14. Appropriation.** (1) (a) In addition to any other
12 appropriation, there is hereby appropriated, out of any moneys in the
13 division of insurance cash fund created in section 10-1-103 (3), Colorado
14 Revised Statutes, not otherwise appropriated, to the department of
15 regulatory agencies, executive director's office, for the purchase of legal
16 services, for the fiscal year beginning July 1, 2007, the sum of ten
17 thousand five hundred four dollars (\$10,504), cash funds, or so much
18 thereof as may be necessary, for the implementation of this act.

19 (b) In addition to any other appropriation, there is hereby
20 appropriated, out of any moneys in the division of insurance cash fund
21 created in section 10-1-103 (3), Colorado Revised Statutes, not otherwise
22 appropriated, for the fiscal year beginning July 1, 2007, to the department
23 of regulatory agencies, division of insurance, the sum of seven hundred
24 twenty-two thousand four hundred ten dollars (\$722,410), cash funds, and
25 11.1 FTE, or so much thereof as may be necessary, for the
26 implementation of this act.

27 (2) (a) In addition to any other appropriation, there is hereby

1 appropriated, to the department of law, for the fiscal year beginning July
2 1, 2007, the sum of ten thousand five hundred four dollars (\$10,504), or
3 so much thereof as may be necessary, for the provision of legal services
4 to the department of regulatory agencies related to the implementation of
5 this act. Said sum shall be from cash funds exempt received from the
6 department of regulatory agencies, executive director's office out of the
7 appropriation for legal services in subsection (1) (a) of this section.

8 (b) In addition to any other appropriation, there is hereby
9 appropriated, to the department of law, for allocation to the consumer
10 protection section, for the fiscal year beginning July 1, 2007, the sum of
11 one hundred two thousand four hundred eighty-seven dollars (\$102,487)
12 and 1.0 FTE, or so much thereof as may be necessary, for the
13 implementation of this act. Said sum shall be from cash funds exempt
14 received from the department of regulatory agencies, division of
15 insurance out of the appropriation to the division of insurance in
16 subsection (1) (b) of this section.

17 **SECTION 15. Effective date - applicability.** This act shall take
18 effect July 1, 2007, and shall apply to closing and settlement services
19 provided on or after said date; except that Section 10 of this act shall take
20 effect only if Senate Bill 07-203 is enacted and becomes law.

21 **SECTION 16. Safety clause.** The general assembly hereby finds,
22 determines, and declares that this act is necessary for the immediate
23 preservation of the public peace, health, and safety.