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An Act

HOUSE BILL 07-1322

BY REPRESENTATIVE(S) Marshall, Massey, Garcia, Buescher, Butcher, Carroll T., Casso, Gallegos, Green, Jahn, Kerr A., Labuda, Madden, McFadyen, McGihon, Romanoff, Soper, and Todd;
also SENATOR(S) Groff, Boyd, Fitz-Gerald, Isgar, Romer, Shaffer, Tupa, Veiga, and Williams.

CONCERNING MEASURES TO PREVENT MORTGAGE FRAUD, AND, IN CONNECTION THEREWITH, EXTENDING THE PROHIBITION AGAINST CERTAIN ACTS TO INCLUDE MORTGAGE LENDERS, MORTGAGE LOAN APPLICANTS, REAL ESTATE BROKERS, REAL ESTATE AGENTS, REAL ESTATE APPRAISERS, AND CLOSING AGENTS; PROHIBITING CERTAIN PRACTICES; CHANGING THE MENTAL STATE REQUIRED TO BE PROVEN AS AN ELEMENT OF A VIOLATION; AND MAKING AN APPROPRIATION.

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

SECTION 1. 12-61-902 (5), the introductory portion to 12-61-902 (6), and 12-61-902 (7), Colorado Revised Statutes, are amended, and the said 12-61-902 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

12-61-902. Definitions. As used in this part 9, unless the context otherwise requires:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(1.5) "BORROWER" MEANS ANY PERSON WHO CONSULTS WITH OR RETAINS A MORTGAGE BROKER IN AN EFFORT TO OBTAIN OR SEEK ADVICE OR INFORMATION ON OBTAINING OR APPLYING TO OBTAIN A RESIDENTIAL MORTGAGE LOAN FOR HIMSELF, HERSELF, OR PERSONS INCLUDING HIMSELF OR HERSELF, REGARDLESS OF WHETHER THE PERSON ACTUALLY OBTAINS SUCH A LOAN.

(5) "Mortgage broker" means an individual who negotiates, originates, or offers or attempts to negotiate or originate for a borrower, and for a commission or other thing of value, a RESIDENTIAL MORTGAGE loan to be consummated and funded by a mortgage lender.

(6) "Mortgage lender" means a lender who is in the business of making RESIDENTIAL mortgage loans if:

(7) "Originate" means to submit an application or documentation to a MORTGAGE lender or underwriter in an attempt to obtain a RESIDENTIAL MORTGAGE loan.

(8) "RESIDENTIAL MORTGAGE LOAN" MEANS A LOAN THAT IS PRIMARILY FOR PERSONAL, FAMILY, OR HOUSEHOLD USE AND THAT IS SECURED BY A MORTGAGE OR DEED OF TRUST ON RESIDENTIAL REAL ESTATE UPON WHICH IS CONSTRUCTED OR INTENDED TO BE CONSTRUCTED A SINGLE-FAMILY DWELLING OR MULTIPLE-FAMILY DWELLING OF FOUR OR FEWER UNITS.

SECTION 2. The introductory portion to 12-61-904 (1) and 12-61-904 (1) (e), Colorado Revised Statutes, are amended to read:

12-61-904. Exemptions. (1) EXCEPT AS OTHERWISE PROVIDED IN SECTION 12-61-911, this part 9 shall not apply to the following:

(e) ~~A federal housing administration approved mortgagee or an appointed federal housing administration correspondent, acting through officers, partners, members, exclusive agents, contractors, or employees of such entities when making or brokering any mortgage loan; or~~

SECTION 3. Part 9 of article 61 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

12-61-904.5. Broker's relationship to borrower - rules. (1) A MORTGAGE BROKER SHALL HAVE A DUTY OF GOOD FAITH AND FAIR DEALING IN ALL COMMUNICATIONS AND TRANSACTIONS WITH A BORROWER. SUCH DUTY INCLUDES, BUT IS NOT LIMITED TO:

(a) THE DUTY TO NOT RECOMMEND OR INDUCE THE BORROWER TO ENTER INTO A TRANSACTION THAT DOES NOT HAVE A REASONABLE, TANGIBLE NET BENEFIT TO THE BORROWER, CONSIDERING ALL OF THE CIRCUMSTANCES, INCLUDING THE TERMS OF A LOAN, THE COST OF A LOAN, AND THE BORROWER'S CIRCUMSTANCES;

(b) THE DUTY TO MAKE A REASONABLE INQUIRY CONCERNING THE BORROWER'S CURRENT AND PROSPECTIVE INCOME, EXISTING DEBTS AND OTHER OBLIGATIONS, AND ANY OTHER INFORMATION KNOWN TO THE MORTGAGE BROKER AND, AFTER MAKING SUCH INQUIRY, TO MAKE HIS OR HER BEST EFFORTS TO RECOMMEND, BROKER, OR ORIGINATE A RESIDENTIAL MORTGAGE LOAN THAT TAKES INTO CONSIDERATION THE INFORMATION SUBMITTED BY THE BORROWER; AND

(c) THE DUTY NOT TO COMMIT ANY UNCONSCIONABLE ACT OR PRACTICE LISTED IN SECTION 38-40-105 (1.7), C.R.S.

(2) FOR PURPOSES OF IMPLEMENTING SUBSECTION (1) OF THIS SECTION, THE DIRECTOR MAY ADOPT RULES DEFINING WHAT CONSTITUTES A REASONABLE, TANGIBLE NET BENEFIT TO THE BORROWER.

(3) A VIOLATION OF THIS SECTION CONSTITUTES A DECEPTIVE TRADE PRACTICE UNDER THE "COLORADO CONSUMER PROTECTION ACT", ARTICLE 1 OF TITLE 6, C.R.S.

SECTION 4. The introductory portion to 12-61-905 (1) (c) and 12-61-905 (7), Colorado Revised Statutes, are amended, and the said 12-61-905 (1) is further amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS, to read:

12-61-905. Powers and duties of the director. (1) The director shall deny, refuse to renew, or revoke the registration of an applicant who has:

(c) WITHIN THE LAST FIVE YEARS, had a license, registration, or

certification issued by Colorado or another state revoked or suspended for fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty, and such discipline denied the person authorization to practice as:

(d) BEEN ENJOINED WITHIN THE IMMEDIATELY PRECEDING FIVE YEARS UNDER THE LAWS OF THIS OR ANY OTHER STATE OR OF THE UNITED STATES FROM ENGAGING IN DECEPTIVE CONDUCT RELATING TO THE BROKERING OF A MORTGAGE LOAN;

(f) BEEN FOUND TO HAVE VIOLATED THE PROVISIONS OF SECTION 12-61-911.

(7) (a) If the director has reasonable cause to believe that a person is violating this part 9, including but not limited to section 12-61-910 (1), the director may enter an order requiring such person to cease and desist such violations.

(b) THE DIRECTOR, UPON HIS OR HER OWN MOTION MAY, AND, UPON THE COMPLAINT IN WRITING OF ANY PERSON, SHALL, INVESTIGATE THE ACTIVITIES OF ANY REGISTRANT OR LICENSEE OR ANY PERSON WHO ASSUMES TO ACT IN SUCH CAPACITY WITHIN THE STATE. IN ADDITION TO ANY OTHER PENALTY WHICH MAY BE IMPOSED PURSUANT TO THIS PART 9, ANY PERSON VIOLATING ANY PROVISION OF THIS PART 9 OR ANY RULES PROMULGATED PURSUANT TO THIS ARTICLE MAY BE FINED UPON A FINDING OF MISCONDUCT BY THE DIRECTOR AS FOLLOWS:

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

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

(c) ALL FINES COLLECTED PURSUANT TO THIS SUBSECTION (7) SHALL BE TRANSFERRED TO THE STATE TREASURER, WHO SHALL CREDIT SUCH MONEYS TO THE MORTGAGE BROKER LICENSING CASH FUND CREATED IN SECTION 12-61-908.

SECTION 5. Part 9 of article 61 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

12-61-910.3. Rule-making authority. THE DIRECTOR SHALL HAVE AUTHORITY TO PROMULGATE RULES AS NECESSARY TO ENABLE THE DIRECTOR TO CARRY OUT THE DIRECTOR'S DUTIES UNDER THIS PART 9.

SECTION 6. 12-61-911, Colorado Revised Statutes, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

12-61-911. Prohibited conduct - fraud - misrepresentation - conflict of interest - rules. (1) A MORTGAGE BROKER, INCLUDING A MORTGAGE BROKER OTHERWISE EXEMPTED FROM THIS PART 9 BY SECTION 12-61-904 (1) (b) OR (1) (c), SHALL NOT:

(a) DIRECTLY OR INDIRECTLY EMPLOY ANY SCHEME, DEVICE, OR ARTIFICE TO DEFRAUD OR MISLEAD BORROWERS OR LENDERS OR TO DEFRAUD ANY PERSON;

(b) ENGAGE IN ANY UNFAIR OR DECEPTIVE PRACTICE TOWARD ANY PERSON;

(c) OBTAIN PROPERTY BY FRAUD OR MISREPRESENTATION;

(d) SOLICIT OR ENTER INTO A CONTRACT WITH A BORROWER THAT PROVIDES IN SUBSTANCE THAT THE MORTGAGE BROKER MAY EARN A FEE OR COMMISSION THROUGH THE MORTGAGE BROKER'S "BEST EFFORTS" TO OBTAIN A LOAN EVEN THOUGH NO LOAN IS ACTUALLY OBTAINED FOR THE BORROWER;

(e) SOLICIT, ADVERTISE, OR ENTER INTO A CONTRACT FOR SPECIFIC INTEREST RATES, POINTS, OR OTHER FINANCING TERMS UNLESS THE TERMS ARE ACTUALLY AVAILABLE AT THE TIME OF SOLICITING, ADVERTISING, OR CONTRACTING FROM A LENDER WITH WHOM THE MORTGAGE BROKER MAINTAINS A WRITTEN CORRESPONDENT OR LOAN BROKER AGREEMENT UNDER SECTION 12-61-913;

(f) FAIL TO MAKE A DISCLOSURE TO A LOAN APPLICANT OR A NONINSTITUTIONAL INVESTOR AS REQUIRED BY SECTION 12-61-914 AND ANY OTHER APPLICABLE STATE OR FEDERAL LAW;

(g) MAKE, IN ANY MANNER, ANY FALSE OR DECEPTIVE STATEMENT OR REPRESENTATION WITH REGARD TO THE RATES, POINTS, OR OTHER

FINANCING TERMS OR CONDITIONS FOR A RESIDENTIAL MORTGAGE LOAN OR ENGAGE IN "BAIT AND SWITCH" ADVERTISING;

(h) NEGLIGENTLY MAKE ANY FALSE STATEMENT OR KNOWINGLY AND WILLFULLY MAKE ANY OMISSION OF MATERIAL FACT IN CONNECTION WITH ANY REPORTS FILED BY A MORTGAGE BROKER OR IN CONNECTION WITH ANY INVESTIGATION CONDUCTED BY THE DIVISION;

(i) ADVERTISE ANY RATE OF INTEREST WITHOUT CONSPICUOUSLY DISCLOSING THE ANNUAL PERCENTAGE RATE IMPLIED BY SUCH RATE OF INTEREST;

(j) FAIL TO COMPLY WITH ANY REQUIREMENT OF THE FEDERAL "TRUTH IN LENDING ACT", 15 U.S.C. SEC. 1601 AND REGULATION Z, 12 CFR 226; THE "REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974", 12 U.S.C. SEC. 2601 AND REGULATION X, 24 CFR 3500; THE "EQUAL CREDIT OPPORTUNITY ACT", 15 U.S.C. SEC. 1691 AND REGULATION B, CFR 202.9, 202.11, AND 202.12; TITLE V, SUBTITLE A OF THE FINANCIAL MODERNIZATION ACT OF 1999 (KNOWN AS THE "GRAMM-LEACH-BLILEY ACT"), 12 U.S.C. SECS. 6801-6809; THE FEDERAL TRADE COMMISSION'S PRIVACY RULES, 16 CFR 313-314, MANDATED BY THE "GRAMM-LEACH-BLILEY ACT"; THE "HOME MORTGAGE DISCLOSURE ACT OF 1975", 12 U.S.C. SEC. 2801 ET SEQ. AND REGULATION C, HOME MORTGAGE DISCLOSURE; THE "FEDERAL TRADE COMMISSION ACT", 12 CFR 203, 15 U.S.C. SEC. 45(a); THE "TELEMARKETING AND CONSUMER FRAUD AND ABUSE PREVENTION ACT", 15 U.S.C. SECS. 6101 TO 6108; AND THE FEDERAL TRADE COMMISSION TELEPHONE SALES RULE, 16 CFR 310, AS AMENDED, IN ANY ADVERTISING OF RESIDENTIAL MORTGAGE LOANS OR ANY OTHER APPLICABLE MORTGAGE BROKER ACTIVITIES COVERED BY THE ACTS. THE DIRECTOR MAY ADOPT RULES REQUIRING MORTGAGE BROKERS TO COMPLY WITH OTHER APPLICABLE FEDERAL STATUTES AND REGULATIONS IN ANY ADVERTISING OF RESIDENTIAL MORTGAGE LOANS, OR ANY OTHER MORTGAGE BROKER ACTIVITY.

(k) FAIL TO PAY A THIRD-PARTY PROVIDER, NO LATER THAN THIRTY DAYS AFTER THE RECORDING OF THE LOAN CLOSING DOCUMENTS OR NINETY DAYS AFTER COMPLETION OF THE THIRD-PARTY SERVICE, WHICHEVER COMES FIRST, UNLESS OTHERWISE AGREED OR UNLESS THE THIRD-PARTY SERVICE PROVIDER HAS BEEN NOTIFIED IN WRITING THAT A BONA FIDE DISPUTE EXISTS REGARDING THE PERFORMANCE OR QUALITY OF THE THIRD-PARTY SERVICE;

(l) COLLECT, CHARGE, ATTEMPT TO COLLECT OR CHARGE, OR USE OR PROPOSE ANY AGREEMENT PURPORTING TO COLLECT OR CHARGE ANY FEE PROHIBITED BY SECTION 12-61-914 OR 12-61-915; OR

(m) FAIL TO COMPLY WITH ANY PROVISION OF THIS PART 9 OR ANY RULE ADOPTED PURSUANT TO THIS PART 9.

SECTION 7. Part 9 of article 61 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW SECTIONS to read:

12-61-912. Dual status as real estate broker or salesperson - requirements. (1) UNLESS A MORTGAGE BROKER COMPLIES WITH BOTH SUBSECTIONS (2) AND (3) OF THIS SECTION, HE OR SHE SHALL NOT ACT AS A LOAN ORIGINATOR IN ANY TRANSACTION IN WHICH:

(a) THE MORTGAGE BROKER ACTS OR HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON; OR

(b) ANOTHER PERSON DOING BUSINESS UNDER THE SAME LICENSED REAL ESTATE BROKER ACTS OR HAS ACTED AS A REAL ESTATE BROKER OR SALESPERSON.

(2) BEFORE PROVIDING MORTGAGE SERVICES TO THE BORROWER, A MORTGAGE BROKER SHALL MAKE A FULL AND FAIR DISCLOSURE TO THE BORROWER, IN ADDITION TO ANY OTHER DISCLOSURES REQUIRED BY THIS PART 9 OR OTHER LAWS, OF ALL MATERIAL FEATURES OF THE LOAN PRODUCT AND ALL FACTS MATERIAL TO THE TRANSACTION.

(3) (a) A REAL ESTATE BROKER OR SALESPERSON LICENSED UNDER PART 1 OF THIS ARTICLE WHO ALSO ACTS AS A MORTGAGE BROKER SHALL CARRY ON SUCH MORTGAGE BROKER BUSINESS ACTIVITIES AND SHALL MAINTAIN SUCH PERSON'S MORTGAGE BROKER BUSINESS RECORDS SEPARATE AND APART FROM THE REAL ESTATE BROKER ACTIVITIES CONDUCTED PURSUANT TO PART 1 OF THIS ARTICLE. SUCH ACTIVITIES SHALL BE DEEMED SEPARATE AND APART EVEN IF THEY ARE CONDUCTED AT AN OFFICE LOCATION WITH A COMMON ENTRANCE AND MAILING ADDRESS IF:

(I) EACH BUSINESS IS CLEARLY IDENTIFIED BY A SIGN VISIBLE TO THE PUBLIC;

(II) EACH BUSINESS IS PHYSICALLY SEPARATED WITHIN THE OFFICE FACILITY; AND

(III) NO DECEPTION OF THE PUBLIC AS TO THE SEPARATE IDENTITIES OF THE BROKER BUSINESS FIRMS RESULTS.

(b) THIS SUBSECTION (3) SHALL NOT REQUIRE A REAL ESTATE BROKER OR SALESPERSON LICENSED UNDER PART 1 OF THIS ARTICLE WHO ALSO ACTS AS A MORTGAGE BROKER TO MAINTAIN A PHYSICAL SEPARATION WITHIN THE OFFICE FACILITY FOR THE CONDUCT OF ITS REAL ESTATE AND MORTGAGE BROKER ACTIVITIES IF THE DIRECTOR DETERMINES THAT MAINTAINING SUCH PHYSICAL SEPARATION WOULD CONSTITUTE AN UNDUE FINANCIAL HARDSHIP UPON THE MORTGAGE BROKER AND IS UNNECESSARY FOR THE PROTECTION OF THE PUBLIC.

12-61-913. Written contract required - effect. (1) EVERY CONTRACT BETWEEN A MORTGAGE BROKER AND A BORROWER SHALL BE IN WRITING AND SHALL CONTAIN THE ENTIRE AGREEMENT OF THE PARTIES.

(2) A MORTGAGE BROKER SHALL HAVE A WRITTEN CORRESPONDENT OR LOAN BROKER AGREEMENT WITH A LENDER BEFORE ANY SOLICITATION OF, OR CONTRACTING WITH, ANY MEMBER OF THE PUBLIC.

12-61-914. Written disclosure of fees and costs - contents - limits on fees - lock-in agreement terms - rules. (1) WITHIN THREE BUSINESS DAYS AFTER RECEIPT OF A LOAN APPLICATION OR ANY MONEYS FROM A BORROWER, A MORTGAGE BROKER SHALL PROVIDE TO EACH BORROWER A FULL WRITTEN DISCLOSURE CONTAINING AN ITEMIZATION AND EXPLANATION OF ALL FEES AND COSTS THAT THE BORROWER IS REQUIRED TO PAY IN CONNECTION WITH OBTAINING A RESIDENTIAL MORTGAGE LOAN, AND SPECIFYING THE FEE OR FEES THAT INURE TO THE BENEFIT OF THE MORTGAGE BROKER. A GOOD-FAITH ESTIMATE OF A FEE OR COST SHALL BE PROVIDED IF THE EXACT AMOUNT OF THE FEE OR COST IS NOT DETERMINABLE. EXCEPT AS REQUIRED BY PARAGRAPH (c) OF SUBSECTION (2) OF THIS SECTION, THIS SUBSECTION (1) SHALL NOT BE CONSTRUED TO REQUIRE DISCLOSURE OF THE DISTRIBUTION OR BREAKDOWN OF LOAN FEES, DISCOUNTS, OR POINTS BETWEEN THE MORTGAGE BROKER AND ANY LENDER OR INVESTOR.

(2) THE WRITTEN DISCLOSURE SHALL CONTAIN THE FOLLOWING INFORMATION:

(a) THE ANNUAL PERCENTAGE RATE, FINANCE CHARGE, AMOUNT FINANCED, TOTAL AMOUNT OF ALL PAYMENTS, NUMBER OF PAYMENTS, AMOUNT OF EACH PAYMENT, AMOUNT OF POINTS OR PREPAID INTEREST, AND THE CONDITIONS AND TERMS UNDER WHICH ANY LOAN TERMS MAY CHANGE BETWEEN THE TIME OF DISCLOSURE AND CLOSING OF THE LOAN. IF THE INTEREST RATE IS VARIABLE, THE WRITTEN DISCLOSURE SHALL CLEARLY DESCRIBE THE CIRCUMSTANCES UNDER WHICH THE RATE MAY INCREASE, ANY LIMITATION ON THE INCREASE, THE EFFECT OF AN INCREASE, AND AN EXAMPLE OF THE PAYMENT TERMS RESULTING FROM AN INCREASE.

(b) THE ITEMIZED COSTS OF ANY CREDIT REPORT, APPRAISAL, TITLE REPORT, TITLE INSURANCE POLICY, MORTGAGE INSURANCE, ESCROW FEE, PROPERTY TAX, INSURANCE, STRUCTURAL OR PEST INSPECTION, AND ANY OTHER THIRD-PARTY PROVIDER'S COSTS ASSOCIATED WITH THE RESIDENTIAL MORTGAGE LOAN;

(c) IF APPLICABLE, THE AMOUNT OF ANY COMMISSION OR OTHER COMPENSATION TO BE PAID TO THE MORTGAGE BROKER, INCLUDING THE MANNER IN WHICH SUCH COMMISSION OR OTHER COMPENSATION IS CALCULATED AND THE RELATIONSHIP OF SUCH COMMISSION OR OTHER COMPENSATION TO THE COST OF THE LOAN RECEIVED BY THE BORROWER;

(d) IF APPLICABLE, THE COST, TERMS, DURATION, AND CONDITIONS OF A LOCK-IN AGREEMENT AND WHETHER A LOCK-IN AGREEMENT HAS BEEN ENTERED, WHETHER THE LOCK-IN AGREEMENT IS GUARANTEED BY THE MORTGAGE BROKER OR LENDER, AND, IF A LOCK-IN AGREEMENT HAS NOT BEEN ENTERED, DISCLOSURE IN A FORM ACCEPTABLE TO THE DIRECTOR THAT THE DISCLOSED INTEREST RATE AND TERMS ARE SUBJECT TO CHANGE;

(e) A STATEMENT THAT IF THE BORROWER IS UNABLE TO OBTAIN A LOAN FOR ANY REASON, THE MORTGAGE BROKER MUST, WITHIN FIVE DAYS AFTER A WRITTEN REQUEST BY THE BORROWER, GIVE COPIES OF EACH APPRAISAL, TITLE REPORT, AND CREDIT REPORT PAID FOR BY THE BORROWER TO THE BORROWER, AND TRANSMIT THE APPRAISAL, TITLE REPORT, OR CREDIT REPORT TO ANY OTHER MORTGAGE BROKER OR LENDER TO WHOM THE BORROWER DIRECTS THE DOCUMENTS TO BE SENT;

(f) WHETHER AND UNDER WHAT CONDITIONS ANY LOCK-IN FEES ARE REFUNDABLE TO THE BORROWER; AND

(g) A STATEMENT PROVIDING THAT MONEYS PAID BY THE BORROWER TO THE MORTGAGE BROKER FOR THIRD-PARTY PROVIDER SERVICES ARE HELD IN A TRUST ACCOUNT AND ANY MONEYS REMAINING AFTER PAYMENT TO THIRD-PARTY PROVIDERS WILL BE REFUNDED.

(3) IF, AFTER THE WRITTEN DISCLOSURE IS PROVIDED UNDER THIS SECTION, A MORTGAGE BROKER ENTERS INTO A LOCK-IN AGREEMENT WITH A BORROWER OR REPRESENTS TO THE BORROWER THAT THE BORROWER HAS ENTERED INTO A LOCK-IN AGREEMENT, THEN NO LESS THAN THREE BUSINESS DAYS THEREAFTER, INCLUDING SATURDAYS, THE MORTGAGE BROKER SHALL DELIVER OR SEND BY FIRST-CLASS MAIL TO THE BORROWER A WRITTEN CONFIRMATION OF THE TERMS OF THE LOCK-IN AGREEMENT, WHICH SHALL INCLUDE A COPY OF THE DISCLOSURE MADE UNDER PARAGRAPH (d) OF SUBSECTION (2) OF THIS SECTION.

(4) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (4), A MORTGAGE BROKER SHALL NOT CHARGE ANY FEE THAT INURES TO THE BENEFIT OF THE MORTGAGE BROKER AND THAT EXCEEDS THE FEE DISCLOSED ON THE WRITTEN DISCLOSURE PURSUANT TO THIS SECTION UNLESS:

(I) THE NEED TO CHARGE THE FEE WAS NOT REASONABLY FORESEEABLE AT THE TIME THE WRITTEN DISCLOSURE WAS PROVIDED; AND

(II) THE MORTGAGE BROKER HAS PROVIDED TO THE BORROWER, NO LESS THAN THREE BUSINESS DAYS PRIOR TO THE SIGNING OF THE LOAN CLOSING DOCUMENTS, A CLEAR WRITTEN EXPLANATION OF THE FEE AND THE REASON FOR CHARGING A FEE EXCEEDING THAT WHICH WAS PREVIOUSLY DISCLOSED.

(b) IF THE BORROWER'S CLOSING COSTS ON THE FINAL SETTLEMENT STATEMENT, EXCLUDING PREPAID ESCROWED COSTS OF OWNERSHIP AS DEFINED BY THE DIRECTOR BY RULE, DO NOT EXCEED THE TOTAL CLOSING COSTS IN THE MOST RECENT GOOD-FAITH ESTIMATE, EXCLUDING PREPAID ESCROWED COSTS OF OWNERSHIP, NO OTHER DISCLOSURES SHALL BE REQUIRED BY THIS SUBSECTION (4).

12-61-915. Fee, commission, or compensation - when permitted - amount. (1) EXCEPT AS OTHERWISE PERMITTED BY SUBSECTION (2) OR (3) OF THIS SECTION, A MORTGAGE BROKER SHALL NOT RECEIVE A FEE,

COMMISSION, OR COMPENSATION OF ANY KIND IN CONNECTION WITH THE PREPARATION, NEGOTIATION, OR BROKERING OF A RESIDENTIAL MORTGAGE LOAN UNLESS A BORROWER ACTUALLY OBTAINS A LOAN FROM A LENDER ON THE TERMS AND CONDITIONS AGREED TO BY THE BORROWER AND MORTGAGE BROKER.

(2) IF THE MORTGAGE BROKER HAS OBTAINED FOR THE BORROWER A WRITTEN COMMITMENT FROM A LENDER FOR A LOAN ON THE TERMS AND CONDITIONS AGREED TO BY THE BORROWER AND THE MORTGAGE BROKER, AND THE BORROWER FAILS TO CLOSE ON THE LOAN THROUGH NO FAULT OF THE MORTGAGE BROKER, THE MORTGAGE BROKER MAY CHARGE A FEE, NOT TO EXCEED THREE HUNDRED DOLLARS, FOR SERVICES RENDERED, PREPARATION OF DOCUMENTS, OR TRANSFER OF DOCUMENTS IN THE BORROWER'S FILE THAT WERE PREPARED OR PAID FOR BY THE BORROWER IF THE FEE IS NOT OTHERWISE PROHIBITED BY THE FEDERAL "TRUTH IN LENDING ACT", 15 U.S.C. SEC. 1601, AND REGULATION Z, 12 CFR 226, AS AMENDED.

(3) A MORTGAGE BROKER MAY SOLICIT OR RECEIVE FEES FOR THIRD-PARTY PROVIDER GOODS OR SERVICES IN ADVANCE. FEES FOR ANY GOODS OR SERVICES NOT PROVIDED SHALL BE REFUNDED TO THE BORROWER, AND THE MORTGAGE BROKER MAY NOT CHARGE MORE FOR THE GOODS AND SERVICES THAN THE ACTUAL COSTS OF THE GOODS OR SERVICES CHARGED BY THE THIRD-PARTY PROVIDER.

SECTION 8. The introductory portion to 38-40-105 (1) and 38-40-105 (1) (b), Colorado Revised Statutes, are amended, and the said 38-40-105 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

38-40-105. Prohibited acts by participants in certain mortgage loan transactions. (1) The following acts by any mortgage broker, or mortgage originator, MORTGAGE LENDER, MORTGAGE LOAN APPLICANT, REAL ESTATE APPRAISER, OR CLOSING AGENT, OTHER THAN A PERSON WHO PROVIDES CLOSING OR SETTLEMENT SERVICES SUBJECT TO REGULATION BY THE DIVISION OF INSURANCE, with respect to any loan that is secured by a first or subordinate mortgage or deed or trust lien against a dwelling are prohibited:

(b) To knowingly make a false promise or misrepresentation or

conceal an essential or material fact to entice either a borrower or a creditor to enter into a mortgage agreement WHEN, UNDER THE TERMS AND CIRCUMSTANCES OF THE TRANSACTION, HE OR SHE KNEW OR REASONABLY SHOULD HAVE KNOWN OF SUCH FALSITY, MISREPRESENTATION, OR CONCEALMENT;

(e) TO KNOWINGLY FACILITATE THE CONSUMMATION OF A MORTGAGE LOAN TRANSACTION THAT VIOLATES, OR THAT IS CONNECTED WITH A VIOLATION OF, SECTION 12-61-911, C.R.S.

SECTION 9. 38-40-105, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

38-40-105. Prohibited acts by participants in certain mortgage loan transactions. (6) THE FOLLOWING ACTS BY ANY REAL ESTATE AGENT OR REAL ESTATE BROKER, AS DEFINED IN SECTION 12-61-101, C.R.S., IN CONNECTION WITH ANY RESIDENTIAL MORTGAGE LOAN TRANSACTION, ARE PROHIBITED:

(a) IF DIRECTLY ENGAGED IN NEGOTIATING, ORIGINATING, OR OFFERING OR ATTEMPTING TO NEGOTIATE OR ORIGINATE FOR A BORROWER A RESIDENTIAL MORTGAGE LOAN TRANSACTION, THE REAL ESTATE AGENT OR REAL ESTATE BROKER SHALL NOT MAKE A FALSE PROMISE OR MISREPRESENTATION OR CONCEAL AN ESSENTIAL OR MATERIAL FACT TO ENTICE EITHER A BORROWER OR LENDER TO ENTER INTO A MORTGAGE LOAN AGREEMENT WHEN THE REAL ESTATE AGENT OR REAL ESTATE BROKER ACTUALLY KNEW OR, UNDER THE TERMS AND CIRCUMSTANCES OF THE TRANSACTION, REASONABLY SHOULD HAVE KNOWN OF SUCH FALSITY, MISREPRESENTATION, OR CONCEALMENT.

(b) IF NOT DIRECTLY ENGAGED IN NEGOTIATING, ORIGINATING, OR OFFERING OR ATTEMPTING TO NEGOTIATE OR ORIGINATE FOR A BORROWER A RESIDENTIAL MORTGAGE LOAN TRANSACTION, THE REAL ESTATE AGENT OR REAL ESTATE BROKER SHALL NOT MAKE A FALSE PROMISE OR MISREPRESENTATION OR CONCEAL AN ESSENTIAL OR MATERIAL FACT TO ENTICE EITHER A BORROWER OR LENDER TO ENTER INTO A MORTGAGE LOAN AGREEMENT WHEN THE REAL ESTATE AGENT OR REAL ESTATE BROKER HAD ACTUAL KNOWLEDGE OF SUCH FALSITY, MISREPRESENTATION, OR CONCEALMENT.

SECTION 10. 6-1-105 (1), Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS to read:

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

(aaa) VIOLATES ANY PROVISION OF SECTION 12-61-904.5, C.R.S.;

(bbb) VIOLATES ANY PROVISION OF SECTION 12-61-911, C.R.S.

SECTION 11. 6-1-110 (3), Colorado Revised Statutes, is amended to read:

6-1-110. Restraining orders - injunctions - assurances of discontinuance. (3) When the attorney general or a district attorney shows by a preponderance of evidence that a mortgage broker, ~~or~~ mortgage originator, MORTGAGE LENDER, MORTGAGE LOAN APPLICANT, REAL ESTATE BROKER, REAL ESTATE AGENT, REAL ESTATE APPRAISER, OR CLOSING AGENT, OTHER THAN A PERSON WHO PROVIDES CLOSING OR SETTLEMENT SERVICES SUBJECT TO REGULATION BY THE DIVISION OF INSURANCE, has continued to ~~conduct the business of originating~~ PARTICIPATE IN THE ORIGINATION OF mortgage loans in violation of section 38-40-105, C.R.S., after having been previously enjoined from practices in violation of such section, the attorney general or district attorney may, in addition to any other remedies, apply for and obtain, in the court that has previously issued an injunction, a further injunction against continuing to participate in the business of originating mortgage loans for up to ~~two~~ FIVE years.

SECTION 12. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the mortgage broker registration cash fund created in Section 12-61-908 (2), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for the fiscal year beginning July 1, 2007, the sum of four hundred ninety-five thousand eighty-four dollars (\$495,084), cash funds, and 2.5 FTE, or so much thereof as may be necessary. Of said sum, one hundred eighteen thousand five hundred ninety-eight dollars (\$118,598) shall be allocated to the executive director's office for the purchase of legal services from the department of law and three hundred seventy-six thousand

four hundred eighty-six dollars (\$376,486) and 2.5 FTE shall be allocated to the division of real estate for the implementation of this act.

(2) (a) In addition to any other appropriation, there is hereby appropriated, to the department of law, for the fiscal year beginning July 1, 2007, the sum of one hundred eighteen thousand five hundred ninety-eight dollars (\$118,598) and 1.0 FTE, or so much thereof as may be necessary, for the provision of legal services to the department of regulatory agencies related to the implementation of this act. Said sum shall be from cash funds exempt received from the department of regulatory agencies, executive director's office out of the appropriation for legal services in subsection (1) of this section.

(b) In addition to any other appropriation, there is hereby appropriated, to the department of law, for consumer protection, for the fiscal year beginning July 1, 2007, the sum of two hundred sixty-four thousand six hundred eight dollars (\$264,608), cash funds exempt, and 3.0 FTE, or so much thereof as may be necessary, for the implementation of this act. Said sum shall be from cash funds exempt received from the department of regulatory agencies out of the appropriation to the division of real estate in subsection (1) of this section.

(3) (a) In addition to any other appropriation, there is hereby appropriated, to the department of public safety, for allocation to the Colorado bureau of investigation, for the processing of fingerprint-based criminal history checks for mortgage brokers, for the fiscal year beginning July 1, 2007, the sum of eighty-six thousand eighty-eight dollars (\$86,088), cash funds, and 1.7 FTE, or so much thereof as may be necessary, for the implementation of this act. Said sum shall be from fingerprint processing fees collected by the Colorado bureau of investigation.

(b) In addition to any other appropriation, there is hereby appropriated to the department of public safety, for the fiscal year beginning July 1, 2007, the sum of two hundred eleven thousand two hundred dollars (\$211,200), cash funds exempt, or so much thereof as may be necessary, for pass through to the federal bureau of investigation for fingerprint-based national criminal history checks for mortgage brokers related to the implementation of this act. Said sum shall be from fingerprint processing fees collected by the Colorado bureau of investigation.

SECTION 13. Applicability. This act shall apply to acts or omissions committed on or after the effective date of this act.

SECTION 14. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Andrew Romanoff
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Joan Fitz-Gerald
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO