

First Regular Session  
Sixty-sixth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 07-0268.01 Duane Gall

SENATE BILL 07-203

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SENATE SPONSORSHIP

Groff, and Kester

HOUSE SPONSORSHIP

Marshall,

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Senate Committees

State, Veterans & Military Affairs

State, Veterans & Military Affairs

House Committees

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A BILL FOR AN ACT

101 CONCERNING THE REGULATION OF PERSONS PARTICIPATING IN  
102 MORTGAGE LOAN TRANSACTIONS, AND, IN CONNECTION  
103 THEREWITH, REQUIRING MORTGAGE BROKERS TO BE LICENSED  
104 AND SPECIFYING PROHIBITED ACTS AND GROUNDS FOR  
105 DISCIPLINE OF LICENSEES.

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Bill Summary

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

Changes the regulatory framework for mortgage brokers from registration to licensing. Requires mortgage brokers to maintain errors and omissions insurance coverage. Defines the grounds for denial,

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.*

revocation, or suspension of a license. Authorizes the director of the division of real estate (director) to impose fines and issue letters of admonition. Defines the procedure for administrative hearings, including the issuance of subpoenas by the director or an administrative law judge. Allows the director to seek and obtain injunctions in a court of law.

Where a mortgage broker is employed by a brokerage firm, makes the firm liable for the employee's wrongful acts only if the firm knew of the wrongful acts or was negligent in supervising the employee.

Requires all documents relating to a mortgage loan on residential real estate to be provided to the borrower at least 2 business days before closing. Gives the borrower a qualified right to rescind the transaction if any material term of the transaction is misstated or restated in such documents. Prohibits any attempt to waive a borrower's homestead rights in the subject property. In a refinancing transaction, prohibits any attempt to give a mortgage broker or other person connected with the transaction a quitclaim deed to the subject property or a power of attorney.

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

2           **SECTION 1.** The introductory portion to 12-61-905 (7) (b),  
3 Colorado Revised Statutes, as enacted by Senate Bill 07-085, enacted at  
4 the First Regular Session of the Sixty-sixth General Assembly, is  
5 amended to read:

6           **12-61-905. Powers and duties of the director.** (7) (b) The  
7 director, upon his or her own motion may, and, upon the complaint in  
8 writing of any person, shall, investigate the activities of any ~~registrant~~  
9 LICENSEE or any person who assumes to act in such capacity within the  
10 state. In addition to any other penalty ~~which~~ THAT may be imposed  
11 pursuant to this part 9, any person violating any provision of this part 9  
12 or any rules promulgated pursuant to this article may be fined upon a  
13 finding of misconduct by the director as follows:

14           **SECTION 2.** 12-61-910.3, Colorado Revised Statutes, as enacted  
15 by Senate Bill 07-085, enacted at the First Regular Session of the  
16 Sixty-sixth General Assembly, is amended to read:

1           **12-61-910.3. Rule-making authority.** The director may  
2 ~~establish, and from time to time amend, such~~ ADOPT reasonable rules as  
3 ~~are~~ necessary to enable the director to carry out the director's duties under  
4 this part 9.

5           **SECTION 3.** 12-61-901, Colorado Revised Statutes, is amended  
6 to read:

7           **12-61-901. Short title.** This part 9 shall be known and may be  
8 cited as the "Mortgage Broker ~~Registration~~ LICENSING Act".

9           **SECTION 4.** 12-61-903, Colorado Revised Statutes, is amended  
10 to read:

11           **12-61-903. License required.** (1) (a) On or after January 1, ~~2007~~  
12 2008, unless ~~registered with the director~~ LICENSED BY THE DIRECTOR, a  
13 person shall not broker a mortgage, offer to broker a mortgage, act as a  
14 mortgage broker, or offer to act as a mortgage broker.

15           (b) A ~~registered~~ LICENSED mortgage broker shall apply for  
16 ~~registration~~ LICENSE RENEWAL in accordance with subsection ~~(2)~~ (3) of  
17 this section every three years.

18           (2) An applicant for ~~registration~~ INITIAL LICENSING shall submit  
19 to the director the following:

20           (a) A criminal history ~~background~~ RECORD check in compliance  
21 with subsection ~~(3)~~ (4) of this section;

22           (b) A disclosure of all administrative discipline taken against the  
23 applicant concerning the categories listed in section 12-61-905 (1) (c);  
24 and

25           (c) The application fee established by the director in accordance  
26 with section 12-61-908.

27           (3) AN APPLICANT FOR LICENSE RENEWAL SHALL SUBMIT TO THE

1 DIRECTOR THE FOLLOWING:

2 (a) A DISCLOSURE OF ALL ADMINISTRATIVE DISCIPLINE TAKEN  
3 AGAINST THE APPLICANT CONCERNING THE CATEGORIES LISTED IN SECTION  
4 12-61-905 (1) (c); AND

5 (b) THE RENEWAL FEE ESTABLISHED BY THE DIRECTOR IN  
6 ACCORDANCE WITH SECTION 12-61-908.

7 ~~(3)~~ (4) Prior to submitting an application for ~~registration~~ A  
8 LICENSE, an applicant shall submit a set of fingerprints to the Colorado  
9 bureau of investigation. Upon receipt of the applicant's fingerprints, the  
10 Colorado bureau of investigation shall use the fingerprints to conduct a  
11 state and national criminal history record check using records of the  
12 Colorado bureau of investigation and the federal bureau of investigation.  
13 All costs arising from such criminal history record check shall be borne  
14 by the applicant and shall be paid when the set of fingerprints is  
15 submitted. Upon completion of the criminal history record check, the  
16 bureau shall forward the results to the director.

17 ~~(4)~~ (5) Before ~~registering~~ GRANTING A LICENSE TO an applicant,  
18 the director shall require the applicant to post a bond as required by  
19 section 12-61-907.

20 ~~(5)~~ (6) The director shall issue or deny a ~~registration~~ LICENSE  
21 within twenty-one days after receiving the completed criminal history  
22 record check, completed application, application fee, and proof of the  
23 posting of the surety bond.

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

27 **12-61-903.5. Errors and omissions insurance - duties of the**

1 **director - certificate of coverage - when required - group plan made**  
2 **available - effect - rules.** (1) EVERY LICENSEE UNDER THIS PART 9,  
3 EXCEPT AN INACTIVE MORTGAGE BROKER OR AN ATTORNEY LICENSEE WHO  
4 MAINTAINS A POLICY OF PROFESSIONAL MALPRACTICE INSURANCE THAT  
5 PROVIDES COVERAGE FOR ERRORS AND OMISSIONS FOR ACTIVITIES AS A  
6 LICENSEE UNDER THIS PART 9, SHALL MAINTAIN ERRORS AND OMISSIONS  
7 INSURANCE TO COVER ALL ACTIVITIES CONTEMPLATED UNDER THIS PART  
8 9.

9 (2) THE DIRECTOR SHALL DETERMINE THE TERMS AND CONDITIONS  
10 OF COVERAGE REQUIRED UNDER THIS SECTION, INCLUDING THE MINIMUM  
11 LIMITS OF COVERAGE, THE PERMISSIBLE DEDUCTIBLE, AND PERMISSIBLE  
12 EXEMPTIONS. EACH LICENSEE SHALL MAINTAIN EVIDENCE OF COVERAGE,  
13 IN A MANNER SATISFACTORY TO THE DIRECTOR, DEMONSTRATING  
14 CONTINUING COMPLIANCE WITH THE REQUIRED TERMS.

15 **SECTION 6.** 12-61-904 (1) (e), (1) (f) (I), and (1) (f) (III),  
16 Colorado Revised Statutes, are amended to read:

17 **12-61-904. Exemptions.** (1) This part 9 shall not apply to the  
18 following:

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

23 (f) A person who:

24 (I) Funds a residential mortgage loan that has been originated and  
25 processed by a ~~registered~~ LICENSED person or by an exempt person;

26 (III) Does not participate in the negotiation of residential  
27 mortgage loans with the borrower, except for setting the terms under

1 which a person may buy or fund a residential mortgage loan originated by  
2 a ~~registered~~ LICENSED or exempt person.

3 **SECTION 7.** The introductory portion to 12-61-905 (1) and  
4 12-61-905 (2), (3), (5), and (8), Colorado Revised Statutes, are amended  
5 to read:

6 **12-61-905. Powers and duties of the director.** (1) The director  
7 shall deny, refuse to renew, or revoke the ~~registration~~ LICENSE of an  
8 applicant who has:

9 (2) The director may investigate the activities of a ~~registrant~~  
10 LICENSEE or other person that present grounds for disciplinary action  
11 under this part 9 or that violate section 12-61-910 (1).

12 (3) (a) If the director has reasonable grounds to believe that a  
13 mortgage broker is no longer qualified under subsection (1) of this  
14 section, the director may summarily suspend the mortgage broker's  
15 ~~registration~~ LICENSE pending a hearing to revoke the ~~registration~~ LICENSE.  
16 A summary suspension shall conform to article 4 of title 24, C.R.S.

17 (b) The director shall suspend the ~~registration~~ LICENSE of a  
18 MORTGAGE broker who fails to maintain the bond required by section  
19 12-61-907 until the ~~registrant~~ LICENSEE complies with such section.

20 (5) (a) Except as provided in paragraph (b) of this subsection (5),  
21 a person whose ~~registration~~ LICENSE has been revoked shall not be  
22 eligible for ~~registration~~ LICENSURE for two years after the effective date  
23 of the revocation.

24 (b) If the director or an administrative law judge determines that  
25 an application contained a misstatement of fact or omitted a required  
26 disclosure due to an unintentional error, the director shall allow the  
27 applicant to correct the application. Upon receipt of the corrected and

1 completed application, the director or administrative law judge shall not  
2 bar the applicant from being ~~registered~~ LICENSED on the basis of the  
3 unintentional misstatement or omission.

4 (8) The director shall keep records of the persons ~~registered~~  
5 LICENSED as mortgage brokers and of disciplinary proceedings. The  
6 records kept by the director shall be open to public inspection in a  
7 reasonable time and manner determined by the director.

8 **SECTION 8.** Part 9 of article 61 of title 12, Colorado Revised  
9 Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW  
10 SECTIONS to read:

11 **12-61-905.5. Disciplinary actions - grounds - procedures -**  
12 **rules.** (1) THE DIRECTOR, UPON HIS OR HER OWN MOTION, MAY, AND,  
13 UPON THE COMPLAINT IN WRITING OF ANY PERSON, SHALL, INVESTIGATE  
14 THE ACTIVITIES OF ANY MORTGAGE BROKER, AND THE DIRECTOR HAS THE  
15 POWER TO IMPOSE AN ADMINISTRATIVE FINE NOT TO EXCEED ONE  
16 THOUSAND DOLLARS FOR EACH SEPARATE OFFENSE AND TO CENSURE A  
17 LICENSEE, TO PLACE THE LICENSEE ON PROBATION AND TO SET THE TERMS  
18 OF PROBATION, OR TO TEMPORARILY SUSPEND OR PERMANENTLY REVOKE  
19 A LICENSE WHEN THE DIRECTOR FINDS THAT THE LICENSEE HAS  
20 PERFORMED, IS PERFORMING, OR IS ATTEMPTING TO PERFORM ANY OF THE  
21 FOLLOWING ACTS:

22 (a) KNOWINGLY MAKING ANY MISREPRESENTATION OR  
23 KNOWINGLY MAKING USE OF ANY FALSE OR MISLEADING ADVERTISING;

24 (b) MAKING ANY PROMISE OF A CHARACTER THAT INFLUENCES,  
25 PERSUADES, OR INDUCES ANOTHER PERSON TO DETRIMENTALLY RELY ON  
26 SUCH PROMISE WHEN THE LICENSEE COULD NOT OR DID NOT INTEND TO  
27 KEEP SUCH PROMISE;

1 (c) KNOWINGLY MISREPRESENTING OR MAKING FALSE PROMISES  
2 THROUGH AGENTS, SALESPERSONS, ADVERTISING, OR OTHERWISE;

3 (d) VIOLATING ANY PROVISION OF THE "COLORADO CONSUMER  
4 PROTECTION ACT", ARTICLE 1 OF TITLE 6, C.R.S., AND, IF THE LICENSEE  
5 HAS BEEN ASSESSED A CIVIL OR CRIMINAL PENALTY OR BEEN SUBJECT TO  
6 AN INJUNCTION UNDER SAID ACT, THE DIRECTOR SHALL REVOKE THE  
7 LICENSEE'S LICENSE;

8 (e) ACTING FOR MORE THAN ONE PARTY IN A TRANSACTION  
9 WITHOUT THE KNOWLEDGE OF ALL PARTIES THERETO;

10 (f) REPRESENTING OR ATTEMPTING TO REPRESENT A MORTGAGE  
11 BROKER OTHER THAN THE LICENSEE'S EMPLOYER WITHOUT THE EXPRESS  
12 KNOWLEDGE AND CONSENT OF THAT EMPLOYER;

13 (g) IN THE CASE OF A LICENSEE IN THE EMPLOY OF ANOTHER  
14 MORTGAGE BROKER, FAILING TO PLACE, AS SOON AFTER RECEIPT AS IS  
15 PRACTICABLY POSSIBLE, IN THE CUSTODY OF THAT LICENSED MORTGAGE  
16 BROKER-EMPLOYER ANY DEPOSIT MONEY OR OTHER MONEY OR FUND  
17 ENTRUSTED TO THE EMPLOYEE BY ANY PERSON DEALING WITH THE  
18 EMPLOYEE AS THE REPRESENTATIVE OF THAT LICENSED MORTGAGE  
19 BROKER-EMPLOYER;

20 (h) FAILING TO ACCOUNT FOR OR TO REMIT, WITHIN A REASONABLE  
21 TIME, ANY MONEYS COMING INTO HIS OR HER POSSESSION THAT BELONG  
22 TO OTHERS, WHETHER ACTING AS A MORTGAGE BROKER, REAL ESTATE  
23 BROKER, SALESPERSON, OR OTHERWISE, AND FAILING TO KEEP RECORDS  
24 RELATIVE TO SAID MONEYS, WHICH RECORDS SHALL CONTAIN SUCH  
25 INFORMATION AS MAY BE PRESCRIBED BY THE RULES OF THE DIRECTOR  
26 RELATIVE THERETO AND SHALL BE SUBJECT TO AUDIT BY THE DIRECTOR;

27 (i) CONVERTING FUNDS OF OTHERS, DIVERTING FUNDS OF OTHERS

1 WITHOUT PROPER AUTHORIZATION, COMMINGLING FUNDS OF OTHERS WITH  
2 THE LICENSEE'S OWN FUNDS, OR FAILING TO KEEP SUCH FUNDS OF OTHERS  
3 IN AN ESCROW OR A TRUSTEE ACCOUNT WITH A BANK OR RECOGNIZED  
4 DEPOSITORY IN THIS STATE, WHICH ACCOUNT MAY BE ANY TYPE OF  
5 CHECKING, DEMAND, PASSBOOK, OR STATEMENT ACCOUNT INSURED BY AN  
6 AGENCY OF THE UNITED STATES GOVERNMENT, AND TO SO KEEP RECORDS  
7 RELATIVE TO THE DEPOSIT THAT CONTAIN SUCH INFORMATION AS MAY BE  
8 PRESCRIBED BY THE RULES OF THE DIRECTOR RELATIVE THERETO, WHICH  
9 RECORDS SHALL BE SUBJECT TO AUDIT BY THE DIRECTOR;

10 (j) FAILING TO PROVIDE THE PARTIES TO A RESIDENTIAL MORTGAGE  
11 LOAN TRANSACTION WITH SUCH INFORMATION AS MAY BE PRESCRIBED BY  
12 THE RULES OF THE DIRECTOR;

13 (k) FAILING TO MAINTAIN POSSESSION, FOR FUTURE USE OR  
14 INSPECTION BY AN AUTHORIZED REPRESENTATIVE OF THE DIRECTOR, FOR  
15 A PERIOD OF FOUR YEARS, OF THE DOCUMENTS OR RECORDS PRESCRIBED  
16 BY THE RULES OF THE DIRECTOR OR TO PRODUCE SUCH DOCUMENTS OR  
17 RECORDS UPON REASONABLE REQUEST BY THE DIRECTOR OR BY AN  
18 AUTHORIZED REPRESENTATIVE OF THE DIRECTOR;

19 (l) PAYING A COMMISSION OR VALUABLE CONSIDERATION FOR  
20 PERFORMING ANY OF THE FUNCTIONS OF A MORTGAGE BROKER, AS  
21 DESCRIBED IN THIS PART 9, TO ANY PERSON NOT LICENSED UNDER THIS  
22 PART 9; EXCEPT THAT A LICENSED MORTGAGE BROKER MAY PAY A  
23 FINDER'S FEE OR A SHARE OF ANY COMMISSION ON A COOPERATIVE SALE  
24 WHEN SUCH PAYMENT IS MADE TO A MORTGAGE BROKER LICENSED IN  
25 ANOTHER STATE OR COUNTRY. IF SUCH STATE OR COUNTRY DOES NOT  
26 LICENSE MORTGAGE BROKERS, THEN THE PAYEE SHALL BE A CITIZEN OR  
27 RESIDENT OF SAID STATE OR COUNTRY AND REPRESENT THAT THE PAYEE

1 IS IN THE MORTGAGE BROKERAGE BUSINESS IN SAID STATE OR COUNTRY.

2 (m) DISREGARDING OR VIOLATING ANY PROVISION OF THIS PART  
3 9; VIOLATING ANY REASONABLE RULE PROMULGATED BY THE DIRECTOR  
4 IN THE INTERESTS OF THE PUBLIC AND IN CONFORMANCE WITH THIS PART  
5 9; VIOLATING ANY LAWFUL ORDERS OF THE DIRECTOR; OR AIDING AND  
6 ABETTING A VIOLATION OF ANY RULE, ORDER OF THE DIRECTOR, OR  
7 PROVISION OF THIS PART 9;

8 (n) CONVICTION OF, ENTERING A PLEA OF GUILTY TO, OR ENTERING  
9 A PLEA OF NOLO CONTENDERE TO ANY CRIME IN ARTICLE 3 OF TITLE 18,  
10 C.R.S., IN PARTS 1 TO 4 OF ARTICLE 4 OF TITLE 18, C.R.S., IN PARTS 1 TO  
11 8 OF ARTICLE 5 OF TITLE 18, C.R.S., IN PART 3 OF ARTICLE 8 OF TITLE 18,  
12 C.R.S., IN ARTICLE 15 OF TITLE 18, C.R.S., IN ARTICLE 17 OF TITLE 18,  
13 C.R.S., OR ANY OTHER LIKE CRIME UNDER COLORADO LAW, FEDERAL LAW,  
14 OR THE LAWS OF OTHER STATES. A CERTIFIED COPY OF THE JUDGMENT OF  
15 A COURT OF COMPETENT JURISDICTION OF SUCH CONVICTION OR OTHER  
16 OFFICIAL RECORD INDICATING THAT SUCH PLEA WAS ENTERED SHALL BE  
17 CONCLUSIVE EVIDENCE OF SUCH CONVICTION OR PLEA IN ANY HEARING  
18 UNDER THIS PART 9.

19 (o) VIOLATING OR AIDING AND ABETTING IN THE VIOLATION OF THE  
20 COLORADO OR FEDERAL FAIR HOUSING LAWS;

21 (p) FAILING TO IMMEDIATELY NOTIFY THE DIRECTOR IN WRITING  
22 OF A CONVICTION, PLEA, OR VIOLATION PURSUANT TO PARAGRAPH (n) OR  
23 (o) OF THIS SUBSECTION (1);

24 (q) HAVING DEMONSTRATED UNWORTHINESS OR INCOMPETENCY  
25 TO ACT AS A MORTGAGE BROKER OR LOAN ORIGINATOR BY CONDUCTING  
26 BUSINESS IN SUCH A MANNER AS TO ENDANGER THE INTEREST OF THE  
27 PUBLIC;

1 (r) FAILING TO EXERCISE REASONABLE SUPERVISION OVER THE  
2 ACTIVITIES OF LICENSED EMPLOYEES;

3 (s) PROCURING, OR ATTEMPTING TO PROCURE, A MORTGAGE  
4 BROKER'S LICENSE OR RENEWING, REINSTATING, OR REACTIVATING, OR  
5 ATTEMPTING TO RENEW, REINSTATE, OR REACTIVATE, A MORTGAGE  
6 BROKER'S LICENSE BY FRAUD, MISREPRESENTATION, OR DECEIT OR BY  
7 MAKING A MATERIAL MISSTATEMENT OF FACT IN AN APPLICATION FOR  
8 SUCH LICENSE;

9 (t) CLAIMING, ARRANGING FOR, OR TAKING ANY SECRET OR  
10 UNDISCLOSED AMOUNT OF COMPENSATION, COMMISSION, OR PROFIT OR  
11 FAILING TO REVEAL TO THE LICENSEE'S PRINCIPAL OR EMPLOYER THE FULL  
12 AMOUNT OF SUCH LICENSEE'S COMPENSATION, COMMISSION, OR PROFIT IN  
13 CONNECTION WITH ANY ACTS FOR WHICH A LICENSE IS REQUIRED UNDER  
14 THIS PART 9;

15 (u) EXERCISING AN OPTION TO PURCHASE IN ANY AGREEMENT  
16 AUTHORIZING OR EMPLOYING SUCH LICENSEE TO SELL, BUY, OR EXCHANGE  
17 REAL ESTATE FOR COMPENSATION OR COMMISSION EXCEPT WHEN SUCH  
18 LICENSEE, PRIOR TO OR COINCIDENT WITH ELECTION TO EXERCISE SUCH  
19 OPTION TO PURCHASE, REVEALS IN WRITING TO THE LICENSEE'S PRINCIPAL  
20 OR EMPLOYER THE FULL AMOUNT OF THE LICENSEE'S PROFIT AND OBTAINS  
21 THE WRITTEN CONSENT OF SUCH PRINCIPAL OR EMPLOYER APPROVING THE  
22 AMOUNT OF SUCH PROFIT;

23 (v) FRAUD, MISREPRESENTATION, DECEIT, OR CONVERSION OF  
24 TRUST FUNDS THAT RESULTS IN THE PAYMENT OF ANY CLAIM PURSUANT  
25 TO THIS PART 9 OR THAT RESULTS IN THE ENTRY OF A CIVIL JUDGMENT FOR  
26 DAMAGES;

27 (w) ANY OTHER CONDUCT, WHETHER OF THE SAME OR A

1 DIFFERENT CHARACTER THAN SPECIFIED IN THIS SUBSECTION (1), THAT  
2 CONSTITUTES DISHONEST DEALING;

3 (x) HAVING HAD A MORTGAGE BROKER'S LICENSE SUSPENDED OR  
4 REVOKED IN ANY JURISDICTION, OR HAVING HAD ANY DISCIPLINARY  
5 ACTION TAKEN AGAINST THE MORTGAGE BROKER IN ANY OTHER  
6 JURISDICTION, IF THE MORTGAGE BROKER'S ACTION WOULD CONSTITUTE  
7 A VIOLATION OF THIS SUBSECTION (1). A CERTIFIED COPY OF THE ORDER  
8 OF DISCIPLINARY ACTION SHALL BE PRIMA FACIE EVIDENCE OF SUCH  
9 DISCIPLINARY ACTION.

10 (2) IF A FIRM, PARTNERSHIP, LIMITED LIABILITY COMPANY,  
11 ASSOCIATION, OR CORPORATION OPERATING UNDER THE LICENSE OF A  
12 MORTGAGE BROKER DESIGNATED AND LICENSED AS A REPRESENTATIVE OF  
13 SAID FIRM, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, OR  
14 CORPORATION IS GUILTY OF ANY OF THE ACTS SET OUT IN SUBSECTION (1)  
15 OF THIS SECTION, THE DIRECTOR MAY SUSPEND OR REVOKE THE RIGHT OF  
16 THE FIRM, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, OR  
17 CORPORATION TO CONDUCT ITS BUSINESS UNDER THE LICENSE OF SAID  
18 MORTGAGE BROKER, WHETHER OR NOT THE DESIGNATED MORTGAGE  
19 BROKER HAD PERSONAL KNOWLEDGE THEREOF AND WHETHER OR NOT THE  
20 DIRECTOR SUSPENDS OR REVOKES THE INDIVIDUAL LICENSE OF SAID  
21 MORTGAGE BROKER.

22 (3) UPON REQUEST OF THE DIRECTOR, WHEN ANY MORTGAGE  
23 BROKER IS A PARTY TO ANY SUIT OR PROCEEDING, EITHER CIVIL OR  
24 CRIMINAL, ARISING OUT OF ANY TRANSACTION INVOLVING A RESIDENTIAL  
25 MORTGAGE LOAN AND WHEN SUCH MORTGAGE BROKER PARTICIPATED IN  
26 SUCH TRANSACTION IN HIS OR HER CAPACITY AS A LICENSED MORTGAGE  
27 BROKER, IT SHALL BE THE DUTY OF SUCH MORTGAGE BROKER TO SUPPLY

1 TO THE DIRECTOR A COPY OF THE COMPLAINT, INDICTMENT, INFORMATION,  
2 OR OTHER INITIATING PLEADING AND THE ANSWER FILED, IF ANY, AND TO  
3 ADVISE THE DIRECTOR OF THE DISPOSITION OF THE CASE AND OF THE  
4 NATURE AND AMOUNT OF ANY JUDGMENT, VERDICT, FINDING, OR  
5 SENTENCE THAT MAY BE MADE, ENTERED, OR IMPOSED THEREIN.

6 (4) THIS PART 9 SHALL NOT BE CONSTRUED TO RELIEVE ANY  
7 PERSON FROM CIVIL LIABILITY OR CRIMINAL PROSECUTION UNDER THE  
8 LAWS OF THIS STATE.

9 (5) COMPLAINTS OF RECORD IN THE OFFICE OF THE DIRECTOR AND  
10 THE RESULTS OF STAFF INVESTIGATIONS MAY, IN THE DISCRETION OF THE  
11 DIRECTOR, BE CLOSED TO PUBLIC INSPECTION, EXCEPT AS PROVIDED BY  
12 COURT ORDER, DURING THE INVESTIGATORY PERIOD AND UNTIL DISMISSED  
13 OR UNTIL NOTICE OF HEARING AND CHARGES ARE SERVED ON A LICENSEE.

14 (6) WHEN A COMPLAINT OR AN INVESTIGATION DISCLOSES AN  
15 INSTANCE OF MISCONDUCT THAT, IN THE OPINION OF THE DIRECTOR, DOES  
16 NOT WARRANT FORMAL ACTION BY THE DIRECTOR BUT THAT SHOULD NOT  
17 BE DISMISSED AS BEING WITHOUT MERIT, THE DIRECTOR MAY SEND A  
18 LETTER OF ADMONITION BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED,  
19 TO THE LICENSEE AGAINST WHOM A COMPLAINT WAS MADE AND A COPY  
20 THEREOF TO THE PERSON MAKING THE COMPLAINT, BUT THE LETTER SHALL  
21 ADVISE THE LICENSEE THAT THE LICENSEE HAS THE RIGHT TO REQUEST IN  
22 WRITING, WITHIN TWENTY DAYS AFTER PROVEN RECEIPT, THAT FORMAL  
23 DISCIPLINARY PROCEEDINGS BE INITIATED TO ADJUDICATE THE PROPRIETY  
24 OF THE CONDUCT UPON WHICH THE LETTER OF ADMONITION IS BASED. IF  
25 SUCH REQUEST IS TIMELY MADE, THE LETTER OF ADMONITION SHALL BE  
26 DEEMED VACATED, AND THE MATTER SHALL BE PROCESSED BY MEANS OF  
27 FORMAL DISCIPLINARY PROCEEDINGS.

1 (7) ALL ADMINISTRATIVE FINES COLLECTED PURSUANT TO THIS  
2 SECTION SHALL BE TRANSMITTED TO THE STATE TREASURER, WHO SHALL  
3 CREDIT THE SAME TO THE MORTGAGE BROKER LICENSING CASH FUND  
4 CREATED IN SECTION 12-61-908.

5 (8) (a) THE DIRECTOR SHALL NOT CONSIDER AN APPLICATION FOR  
6 LICENSURE FROM A PERSON WHOSE LICENSE HAS BEEN REVOKED UNTIL  
7 TWO YEARS AFTER THE DATE OF REVOCATION.

8 (b) IF A PERSON'S LICENSE WAS SUSPENDED OR REVOKED DUE TO  
9 CONDUCT THAT RESULTED IN FINANCIAL LOSS TO ANOTHER PERSON, NO  
10 NEW LICENSE SHALL BE GRANTED, NOR SHALL A SUSPENDED LICENSE BE  
11 REINSTATED, UNTIL FULL RESTITUTION HAS BEEN MADE TO THE PERSON  
12 SUFFERING SUCH FINANCIAL LOSS. THE AMOUNT OF RESTITUTION SHALL  
13 INCLUDE INTEREST, REASONABLE ATTORNEY FEES, AND COSTS OF ANY SUIT  
14 OR OTHER PROCEEDING UNDERTAKEN IN AN EFFORT TO RECOVER THE  
15 LOSS.

16 (9) WHEN THE DIRECTOR OR THE DIVISION BECOMES AWARE OF  
17 FACTS OR CIRCUMSTANCES THAT FALL WITHIN THE JURISDICTION OF A  
18 CRIMINAL JUSTICE OR OTHER LAW ENFORCEMENT AUTHORITY UPON  
19 INVESTIGATION OF THE ACTIVITIES OF A LICENSEE, THE DIRECTOR OR  
20 DIVISION SHALL, IN ADDITION TO THE EXERCISE OF ITS AUTHORITY UNDER  
21 THIS PART 9, REFER AND TRANSMIT SUCH INFORMATION, WHICH MAY  
22 INCLUDE ORIGINALS OR COPIES OF DOCUMENTS AND MATERIALS, TO ONE  
23 OR MORE CRIMINAL JUSTICE OR OTHER LAW ENFORCEMENT AUTHORITIES  
24 FOR INVESTIGATION AND PROSECUTION AS AUTHORIZED BY LAW.

25 **12-61-905.6. Hearing - administrative law judge - review -**  
26 **rules.** (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, ALL  
27 PROCEEDINGS BEFORE THE DIRECTOR WITH RESPECT TO DISCIPLINARY

1 ACTIONS AND DENIAL OF LICENSURE UNDER THIS PART 9, AT THE  
2 DISCRETION OF THE DIRECTOR, MAY BE CONDUCTED BY AN  
3 ADMINISTRATIVE LAW JUDGE PURSUANT TO SECTIONS 24-4-104 AND  
4 24-4-105, C.R.S.

5 (2) PROCEEDINGS SHALL BE HELD IN THE COUNTY WHERE THE  
6 DIRECTOR HAS HIS OR HER OFFICE OR IN SUCH OTHER PLACE AS THE  
7 DIRECTOR MAY DESIGNATE. IF THE LICENSEE IS EMPLOYED BY ANOTHER  
8 LICENSED MORTGAGE BROKER OR BY A REAL ESTATE BROKER, THE  
9 DIRECTOR SHALL ALSO NOTIFY THE LICENSEE'S EMPLOYER BY MAILING, BY  
10 FIRST-CLASS MAIL, A COPY OF THE WRITTEN NOTICE REQUIRED UNDER  
11 SECTION 24-4-104 (3), C.R.S., TO THE EMPLOYER'S LAST-KNOWN BUSINESS  
12 ADDRESS.

13 (3) AN ADMINISTRATIVE LAW JUDGE SHALL CONDUCT ALL  
14 HEARINGS FOR DENYING, SUSPENDING, OR REVOKING A LICENSE OR  
15 CERTIFICATE ON BEHALF OF THE DIRECTOR, SUBJECT TO APPROPRIATIONS  
16 MADE TO THE DEPARTMENT OF PERSONNEL. EACH ADMINISTRATIVE LAW  
17 JUDGE SHALL BE APPOINTED PURSUANT TO PART 10 OF ARTICLE 30 OF  
18 TITLE 24, C.R.S. THE ADMINISTRATIVE LAW JUDGE SHALL CONDUCT THE  
19 HEARING IN ACCORDANCE WITH SECTIONS 24-4-104 AND 24-4-105, C.R.S.  
20 NO LICENSE SHALL BE DENIED, SUSPENDED, OR REVOKED UNTIL THE  
21 DIRECTOR HAS MADE HIS OR HER DECISION.

22 (4) THE DECISION OF THE DIRECTOR IN ANY DISCIPLINARY ACTION  
23 OR DENIAL OF LICENSURE UNDER THIS SECTION IS SUBJECT TO JUDICIAL  
24 REVIEW UNDER SECTION 24-4-106, C.R.S. IN ORDER TO EFFECTUATE THE  
25 PURPOSES OF THIS PART 9, THE DIRECTOR HAS THE POWER TO PROMULGATE  
26 RULES PURSUANT TO ARTICLE 4 OF TITLE 24, C.R.S. THE DIRECTOR MAY  
27 APPEAR IN COURT THROUGH AN ATTORNEY.

1           (5) IN A JUDICIAL REVIEW PROCEEDING, THE COURT MAY STAY THE  
2 EXECUTION OR EFFECT OF ANY FINAL ORDER OF THE DIRECTOR; BUT A  
3 HEARING SHALL BE HELD AFFORDING THE PARTIES AN OPPORTUNITY TO BE  
4 HEARD FOR THE PURPOSE OF DETERMINING WHETHER THE PUBLIC HEALTH,  
5 SAFETY, AND WELFARE WOULD BE ENDANGERED BY STAYING THE  
6 DIRECTOR'S ORDER. IF THE COURT DETERMINES THAT THE ORDER SHOULD  
7 BE STAYED, IT SHALL ALSO DETERMINE AT THE HEARING THE AMOUNT OF  
8 THE BOND AND ADEQUACY OF THE SURETY, WHICH BOND SHALL BE  
9 CONDITIONED UPON THE FAITHFUL PERFORMANCE BY SUCH PETITIONER OF  
10 ALL OBLIGATIONS AS A MORTGAGE BROKER AND UPON THE PROMPT  
11 PAYMENT OF ALL DAMAGES ARISING FROM OR CAUSED BY THE DELAY IN  
12 THE TAKING EFFECT OF OR ENFORCEMENT OF THE ORDER COMPLAINED OF  
13 AND FOR ALL COSTS THAT MAY BE ASSESSED OR REQUIRED TO BE PAID IN  
14 CONNECTION WITH SUCH PROCEEDINGS.

15           (6) IN ANY HEARING CONDUCTED BY THE DIRECTOR IN WHICH  
16 THERE IS A POSSIBILITY OF THE DENIAL, SUSPENSION, OR REVOCATION OF  
17 A LICENSE BECAUSE OF THE CONVICTION OF A FELONY OR OF A CRIME  
18 INVOLVING MORAL TURPITUDE, THE DIRECTOR SHALL BE GOVERNED BY  
19 SECTION 24-5-101, C.R.S.

20           **12-61-905.7. Subpoena - misdemeanor.** (1) THE DIRECTOR OR  
21 THE ADMINISTRATIVE LAW JUDGE APPOINTED FOR HEARINGS MAY ISSUE A  
22 SUBPOENA COMPELLING THE ATTENDANCE AND TESTIMONY OF WITNESSES  
23 AND THE PRODUCTION OF BOOKS, PAPERS, OR RECORDS PURSUANT TO AN  
24 INVESTIGATION OR HEARING OF THE DIRECTOR. SUCH SUBPOENAS SHALL  
25 BE SERVED IN THE SAME MANNER AS SUBPOENAS ISSUED BY DISTRICT  
26 COURTS AND SHALL BE ISSUED WITHOUT DISCRIMINATION BETWEEN  
27 PUBLIC OR PRIVATE PARTIES REQUIRING THE ATTENDANCE OF WITNESSES

1 AND THE PRODUCTION OF DOCUMENTS AT HEARINGS. IF A PERSON FAILS  
2 OR REFUSES TO OBEY A SUBPOENA ISSUED BY THE DIRECTOR OR THE  
3 APPOINTED ADMINISTRATIVE LAW JUDGE, THE DIRECTOR MAY PETITION  
4 THE DISTRICT COURT HAVING JURISDICTION FOR ISSUANCE OF A SUBPOENA  
5 IN THE PREMISES, AND THE COURT SHALL, IN A PROPER CASE, ISSUE ITS  
6 SUBPOENA.

7 (2) ANY PERSON WHO WILLFULLY FAILS OR NEGLECTS TO APPEAR  
8 AND TESTIFY OR TO PRODUCE BOOKS, PAPERS, OR RECORDS REQUIRED BY  
9 SUBPOENA, DULY SERVED UPON HIM OR HER IN ANY MATTER CONDUCTED  
10 UNDER THIS PART 9, IS GUILTY OF A MISDEMEANOR AND, UPON  
11 CONVICTION THEREOF, SHALL BE PUNISHED BY A FINE OF ONE HUNDRED  
12 DOLLARS, OR IMPRISONMENT IN THE COUNTY JAIL FOR NOT MORE THAN  
13 THIRTY DAYS FOR EACH SUCH OFFENSE, OR BY BOTH SUCH FINE AND  
14 IMPRISONMENT. EACH DAY SUCH PERSON SO REFUSES OR NEGLECTS  
15 CONSTITUTES A SEPARATE OFFENSE.

16 **SECTION 9.** 12-61-907 (1), Colorado Revised Statutes, is  
17 amended to read:

18 **12-61-907. Bond required.** (1) ~~Prior to registration~~ BEFORE  
19 RECEIVING A LICENSE, an applicant ~~for registration~~ shall post with the  
20 director a surety bond, or an alternative authorized by article 35 of title  
21 11, C.R.S., of twenty-five thousand dollars. A ~~registered~~ LICENSED  
22 mortgage broker shall maintain such bond at all times.

23 **SECTION 10.** 12-61-908, Colorado Revised Statutes, is amended  
24 to read:

25 **12-61-908. Fees.** (1) The director may set the ~~fee~~ FEES for  
26 ~~registration~~ ISSUANCE AND RENEWAL OF LICENSES under this part 9. The  
27 ~~fee~~ FEES shall be set in ~~an amount, not to exceed two hundred dollars,~~

1 AMOUNTS that ~~offsets~~ OFFSET the direct and indirect costs of  
2 implementing this part 9. The moneys collected pursuant to this section  
3 shall be transferred to the state treasurer, who shall credit them to the  
4 mortgage broker ~~registration~~ LICENSING cash fund.

5 (2) There is hereby created in the state treasury the mortgage  
6 broker ~~registration~~ LICENSING cash fund. Moneys in the fund shall be  
7 spent only to implement this part 9 and shall not revert to the general fund  
8 at the end of the fiscal year. The fund shall be subject to annual  
9 appropriation by the general assembly.

10 **SECTION 11.** 12-61-910 (1), (2), and (3), Colorado Revised  
11 Statutes, are amended to read:

12 **12-61-910. Violations - injunctions.** (1) (a) ~~Brokering a~~  
13 ~~mortgage or practicing as a mortgage broker without registering under~~  
14 ~~this part 9 shall be~~ ANY NATURAL PERSON, FIRM, PARTNERSHIP, LIMITED  
15 LIABILITY COMPANY, OR ASSOCIATION OR ANY CORPORATION VIOLATING  
16 THIS PART 9 BY ACTING AS A MORTGAGE BROKER IN THIS STATE WITHOUT  
17 HAVING OBTAINED A LICENSE OR BY ACTING AS A MORTGAGE BROKER  
18 AFTER THAT PERSON'S LICENSE HAS BEEN REVOKED OR DURING ANY  
19 PERIOD FOR WHICH SAID LICENSE MAY HAVE BEEN SUSPENDED IS GUILTY  
20 OF a class 1 misdemeanor and shall be punished as provided in section  
21 18-1.3-501, C.R.S.; EXCEPT THAT, IF THE VIOLATOR IS NOT A NATURAL  
22 PERSON, THE VIOLATOR SHALL BE PUNISHED BY A FINE OF NOT MORE THAN  
23 FIVE THOUSAND DOLLARS.

24 (b) Each mortgage brokered by an ~~unregistered~~ UNLICENSED  
25 person shall be a separate violation of this subsection (1).

26 (2) ~~The director may forward information concerning possible~~  
27 ~~violations of the law committed by or complaints filed against a mortgage~~

1 ~~broker to the attorney general, a district attorney, or a state or federal law~~  
2 ~~enforcement agency.~~

3 (3) THE DIRECTOR MAY APPLY TO A COURT OF COMPETENT  
4 JURISDICTION FOR AN ORDER ENJOINING ANY ACT OR PRACTICE THAT  
5 CONSTITUTES A VIOLATION OF THIS PART 9, AND, UPON A SHOWING THAT  
6 A PERSON IS ENGAGING OR INTENDS TO ENGAGE IN ANY SUCH ACT OR  
7 PRACTICE, AN INJUNCTION, RESTRAINING ORDER, OR OTHER APPROPRIATE  
8 ORDER SHALL BE GRANTED BY THE COURT REGARDLESS OF THE EXISTENCE  
9 OF ANOTHER REMEDY THEREFOR. ALTERNATIVELY, the director may  
10 request that an action be brought in the name of the people of the state of  
11 Colorado by the attorney general or the district attorney of the district in  
12 which the violation is alleged to have occurred to enjoin a person from  
13 engaging in or continuing the violation or from doing any act that furthers  
14 the violation. In such an action, an order or judgment may be entered  
15 awarding such preliminary or final injunction as is deemed proper by the  
16 court. The notice, hearing, or duration of an injunction or restraining  
17 order shall be made in accordance with the Colorado rules of civil  
18 procedure.

19 **SECTION 12.** 12-61-911 (1) and (2), Colorado Revised Statutes,  
20 are amended to read:

21 **12-61-911. Repeal.** (1) The provisions of section 24-34-104,  
22 C.R.S., concerning the termination schedule for regulatory bodies of the  
23 state unless extended, apply to the ~~registration~~ LICENSING of mortgage  
24 brokers under this part 9.

25 (2) The sunset review, performed pursuant to section 24-34-104,  
26 C.R.S., shall include an analysis of the number and types of complaints  
27 and whether the ~~registration~~ LICENSING of mortgage brokers correlates

1 with the public being protected from fraudulent activities.

2 **SECTION 13.** Part 9 of article 61 of title 12, Colorado Revised  
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
4 read:

5 **12-61-911.5. Acts of employee - mortgage broker's liability.**

6 AN UNLAWFUL ACT OR VIOLATION OF THIS PART 9 UPON THE PART OF AN  
7 EMPLOYEE, OFFICER, OR MEMBER OF A LICENSED MORTGAGE BROKER  
8 SHALL NOT BE CAUSE FOR DISCIPLINARY ACTION AGAINST A MORTGAGE  
9 BROKER UNLESS IT APPEARS TO THE SATISFACTION OF THE DIRECTOR THAT  
10 THE MORTGAGE BROKER HAD ACTUAL KNOWLEDGE OF THE UNLAWFUL ACT  
11 OR VIOLATION OR HAD BEEN NEGLIGENT IN THE SUPERVISION OF THE  
12 EMPLOYEE.

13 **SECTION 14.** 38-40-105 (1), Colorado Revised Statutes, is  
14 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

15 **38-40-105. Prohibited acts by originators of certain mortgage**  
16 **loans.** (1) The following acts by any mortgage broker or mortgage  
17 originator with respect to any loan that is secured by a first or subordinate  
18 mortgage or deed or trust lien against a dwelling are prohibited:

19 (e) TO KNOWINGLY FACILITATE THE CONSUMMATION OF A  
20 MORTGAGE LOAN TRANSACTION THAT VIOLATES, OR THAT IS CONNECTED  
21 WITH A VIOLATION OF, SUBSECTION (1.5) OF THIS SECTION.

22 **SECTION 15.** 38-40-105, Colorado Revised Statutes, is amended  
23 BY THE ADDITION OF A NEW SUBSECTION to read:

24 **38-40-105. Prohibited acts by originators of certain mortgage**  
25 **loans.** (1.5) (a) A MORTGAGE BROKER OR THE BROKER'S AGENT SHALL  
26 PROVIDE THE BORROWER WITH THE FINAL VERSION OF THE MORTGAGE  
27 LOAN AGREEMENT AND ALL OTHER DOCUMENTS MATERIAL TO THE

1 TRANSACTION, INCLUDING WITHOUT LIMITATION THE DEED AND TITLE  
2 DOCUMENTS, AT LEAST TWO BUSINESS DAYS BEFORE CLOSING. THERE  
3 SHALL BE NO BLANK SPACES REMAINING ON THE AGREEMENT FORM AND  
4 NO CHANGE TO ANY TERM OF THE AGREEMENT OR OF ANY ACCOMPANYING  
5 DOCUMENT DURING THIS TIME. ANY FILLING IN OF BLANKS OR CHANGES  
6 IN TERMS PRIOR TO CLOSING SHALL INITIATE A NEW TWO-DAY PERIOD,  
7 DURING WHICH THE BORROWER SHALL HAVE AN UNFETTERED RIGHT OF  
8 RESCISSION EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF THIS  
9 SUBSECTION (1.5).

10 (b) IF THE TRANSACTION INVOLVES THE PURCHASE AND SALE OF  
11 RESIDENTIAL REAL PROPERTY AND THE BORROWER HAS PAID EARNEST  
12 MONEY TO THE SELLER, RESCISSION UNDER PARAGRAPH (a) OF THIS  
13 SUBSECTION (1.5) SHALL NOT ENTITLE THE BORROWER TO A REFUND OF  
14 THE EARNEST MONEY UNLESS THE SELLER KNEW OR REASONABLY SHOULD  
15 HAVE KNOWN OF A MATERIAL OMISSION, MISSTATEMENT, OR DEFECT IN  
16 THE DOCUMENTS PROVIDED TO THE BORROWER.

17 (c) THE MORTGAGE LOAN AGREEMENT AND ALL DOCUMENTS  
18 RELATING TO THE MORTGAGE LOAN TRANSACTION SHALL BE IN PLAIN  
19 LANGUAGE, WITH ALL MATERIAL TERMS CONSPICUOUSLY DISCLOSED.

20 (d) NEITHER A MORTGAGE LOAN AGREEMENT NOR ANY OTHER  
21 DOCUMENT RELATING TO A MORTGAGE LOAN TRANSACTION SHALL  
22 PURPORT TO WAIVE THE BORROWER'S HOMESTEAD EXEMPTION OR ANY  
23 OTHER RIGHT OF THE BORROWER UNDER PART 2 OF ARTICLE 41 OF THIS  
24 TITLE. ANY SUCH PURPORTED WAIVER IS HEREBY DECLARED CONTRARY  
25 TO PUBLIC POLICY AND SHALL BE UNENFORCEABLE.

26 (e) A REFINANCING OF AN EXISTING RESIDENTIAL MORTGAGE LOAN  
27 SHALL NOT INCLUDE OR BE ACCOMPANIED BY:

1           (I) A TRANSFER OF THE BORROWER'S EQUITY IN THE SUBJECT  
2 PROPERTY TO THE MORTGAGE BROKER, MORTGAGE ORIGINATOR, LENDER,  
3 OR ANY OTHER PERSON, WHETHER BY QUITCLAIM DEED OR OTHERWISE; OR

4           (II) A GRANT BY THE BORROWER OF A POWER OF ATTORNEY TO  
5 THE MORTGAGE BROKER, MORTGAGE ORIGINATOR, LENDER, OR ANY OTHER  
6 PERSON.

7           **SECTION 16. Effective date - applicability.** (1) This act shall  
8 take effect upon passage; except that sections 1 and 2 of this act shall take  
9 effect only if Senate Bill 07-085 is enacted at the First Regular Session  
10 of the Sixty-sixth General Assembly and becomes law.

11           (2) This act shall apply to acts or omissions occurring, and  
12 mortgage broker licenses issued or renewed, on or after the effective date  
13 of this act.

14           **SECTION 17. Safety clause.** The general assembly hereby finds,  
15 determines, and declares that this act is necessary for the immediate  
16 preservation of the public peace, health, and safety.