

**Second Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO**

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 10-0413.01 Bart Miller

**HOUSE BILL 10-1141**

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**HOUSE SPONSORSHIP**

**Carroll T.,**

**SENATE SPONSORSHIP**

**Tochtrop,**

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**House Committees**

Business Affairs and Labor

**Senate Committees**

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**A BILL FOR AN ACT**

101 **CONCERNING A REQUIREMENT FOR MORTGAGE COMPANIES TO BE**  
102 **REGISTERED BY THE DIVISION OF REAL ESTATE.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)*

**Section 3** of the bill requires mortgage companies to register with and be regulated by the division of real estate under the "Mortgage Loan Originator Licensing and Mortgage Company Registration Act". **Section 6** sets standards for mortgage companies to be registered, including that they be registered on the nationwide mortgage licensing

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.*

system and registry created pursuant to the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008". **Section 7** specifies grounds for disciplinary action against mortgage companies. **Sections 11 to 13** delay the scheduled sunset of this regulatory program of July 1, 2011, to July 1, 2014.

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

2 **SECTION 1.** 12-61-901, Colorado Revised Statutes, is amended  
3 to read:

4 **12-61-901. Short title.** This part 9 shall be known and may be  
5 cited as the "Mortgage Loan Originator Licensing AND MORTGAGE  
6 COMPANY REGISTRATION Act".

7 **SECTION 2.** 12-61-902 (5), Colorado Revised Statutes, is  
8 amended, and the said 12-61-902 is further amended BY THE  
9 ADDITION OF A NEW SUBSECTION, to read:

10 **12-61-902. Definitions.** As used in this part 9, unless the context  
11 otherwise requires:

12 (5) ~~"Mortgage lender" means a lender who is in the business of~~  
13 ~~making residential mortgage loans if:~~

14 ~~(a) The lender is the payee on the promissory note evidencing the~~  
15 ~~loan; and~~

16 ~~(b) The loan proceeds are obtained by the lender from its own~~  
17 ~~funds or from a line of credit made available to the lender from a bank or~~  
18 ~~other entity who regularly loans money to lenders for the purpose of~~  
19 ~~funding mortgage loans. "MORTGAGE COMPANY" MEANS A PERSON~~

20 ~~OTHER THAN AN INDIVIDUAL WHO, THROUGH EMPLOYEES OR OTHER~~  
21 ~~INDIVIDUALS, TAKES RESIDENTIAL LOAN APPLICATIONS OR OFFERS OR~~  
22 ~~NEGOTIATES TERMS OF A RESIDENTIAL MORTGAGE LOAN.~~

23 (5.5) "MORTGAGE LENDER" MEANS A LENDER WHO IS IN THE

1 BUSINESS OF MAKING RESIDENTIAL MORTGAGE LOANS IF:

2 (a) THE LENDER IS THE PAYEE ON THE PROMISSORY NOTE  
3 EVIDENCING THE LOAN; AND

4 (b) THE LOAN PROCEEDS ARE OBTAINED BY THE LENDER FROM ITS  
5 OWN FUNDS OR FROM A LINE OF CREDIT MADE AVAILABLE TO THE LENDER  
6 FROM A BANK OR OTHER ENTITY THAT REGULARLY LOANS MONEY TO  
7 LENDERS FOR THE PURPOSE OF FUNDING MORTGAGE LOANS.

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

11 **12-61-903.1. Registration required - rules.** (1) EACH  
12 MORTGAGE COMPANY SHALL REGISTER WITH THE NATIONWIDE MORTGAGE  
13 LICENSING SYSTEM AND REGISTRY, UNLESS EXEMPTED BY RULE BY THE  
14 DIRECTOR, AND SHALL RENEW SUCH REGISTRATION EACH CALENDAR YEAR  
15 BASED ON THE FOLLOWING CRITERIA:

16 (a) (I) THE MORTGAGE COMPANY IS LEGALLY OPERATING IN THE  
17 STATE OF COLORADO IN ACCORDANCE WITH STANDARDS DETERMINED AND  
18 ADMINISTERED BY THE COLORADO SECRETARY OF STATE; AND

19 (II) THE MORTGAGE COMPANY IS NOT LEGALLY BARRED FROM  
20 OPERATING IN COLORADO.

21 (b) SOLE PROPRIETORS, GENERAL PARTNERSHIPS, AND OTHER  
22 MORTGAGE COMPANIES NOT OTHERWISE REQUIRED TO REGISTER WITH THE  
23 SECRETARY OF STATE SHALL REGISTER USING A TRADE NAME.

24 **SECTION 4.** 12-61-904 (1) (a), (1) (b), (1) (c), and (1) (d),  
25 Colorado Revised Statutes, are amended to read:

26 **12-61-904. Exemptions.** (1) Except as otherwise provided in  
27 section 12-61-911, this part 9 shall not apply to the following:

1           (a) ~~Employees of an agency of the federal government, of the~~  
2 ~~Colorado government, or of any of Colorado's political subdivisions;~~

3           (b) ~~An owner of real property who offers credit secured by a~~  
4 ~~mortgage or deed of trust on the property sold~~ AN INDIVIDUAL WHO ONLY  
5 OFFERS OR NEGOTIATES TERMS OF A RESIDENTIAL MORTGAGE LOAN  
6 SECURED BY A DWELLING THAT SERVED AS THE INDIVIDUAL'S RESIDENCE;

7           (c) ~~A bank, savings bank, savings and loan association, building~~  
8 ~~and loan association, industrial bank, industrial loan company, credit~~  
9 ~~union, or bank or savings association holding company organized under~~  
10 ~~the laws of any state, the District of Columbia, a territory or protectorate~~  
11 ~~of the United States, or the United States, subject to regulation and~~  
12 ~~supervision by a federal banking agency, or an operating subsidiary or~~  
13 ~~employee or exclusive agent of any of such entities, including, without~~  
14 ~~limitation, a subsidiary that is owned or controlled by a depository~~  
15 ~~institution~~ A BANK AND A SAVINGS ASSOCIATION AS THESE TERMS ARE  
16 DEFINED IN THE "FEDERAL DEPOSIT INSURANCE ACT", A SUBSIDIARY THAT  
17 IS OWNED AND CONTROLLED BY A BANK OR SAVINGS ASSOCIATION,  
18 EMPLOYEES OF A BANK OR SAVINGS ASSOCIATION, EMPLOYEES OF A  
19 SUBSIDIARY THAT IS OWNED AND CONTROLLED BY A BANK OR SAVINGS  
20 ASSOCIATION, CREDIT UNIONS, AND EMPLOYEES OF CREDIT UNIONS;

21           (d) ~~An attorney who renders services in the course of practice,~~  
22 ~~who is licensed in Colorado, and who is not primarily engaged in the~~  
23 ~~business of negotiating residential mortgage loans~~ A COLORADO  
24 LICENSED ATTORNEY WHO ONLY NEGOTIATES THE TERMS OF A  
25 RESIDENTIAL MORTGAGE LOAN ON BEHALF OF A CLIENT AS AN ANCILLARY  
26 MATTER TO THE ATTORNEY'S REPRESENTATION OF THE CLIENT, UNLESS  
27 THE DIRECTOR BY RULE DETERMINES ADDITIONAL CRITERIA PROHIBITING

1 EXEMPTION;

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

4 **12-61-905. Powers and duties of the director.** (1) The director  
5 may deny an application for a license, refuse to renew, or revoke the  
6 license of an applicant or licensee who has:

7 (g) Had a mortgage loan originator license or similar license  
8 revoked in any ~~other~~ jurisdiction; except that a revocation that was  
9 subsequently formally nullified shall not be deemed a revocation for  
10 purposes of this section;

11 (4) The director or an administrative law judge appointed pursuant  
12 to part 10 of article 30 of title 24, C.R.S., shall conduct disciplinary  
13 hearings concerning mortgage loan originators AND MORTGAGE  
14 COMPANIES. Such hearings shall conform to article 4 of title 24, C.R.S.

15 (7) (c) All fines collected pursuant to this subsection (7) shall be  
16 transferred to the state treasurer, who shall credit such moneys to the  
17 mortgage COMPANY AND loan originator licensing cash fund created in  
18 section 12-61-908.

19 **SECTION 6.** Part 9 of article 61 of title 12, Colorado Revised  
20 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
21 read:

22 **12-61-905.1. Powers and duties of the director over mortgage**  
23 **companies - fines - rules.** (1) WITH RESPECT TO MORTGAGE COMPANIES,  
24 THE DIRECTOR MAY DENY AN APPLICATION FOR REGISTRATION; REFUSE TO  
25 RENEW, SUSPEND, OR REVOKE THE REGISTRATION; ENTER  
26 CEASE-AND-DESIST ORDERS; AND IMPOSE FINES AS SET FORTH IN THIS  
27 SECTION AS FOLLOWS:

1 (a) IF THE DIRECTOR HAS REASONABLE CAUSE TO BELIEVE A  
2 PERSON IS ACTING WITHOUT A LICENSE OR REGISTRATION;

3 (b) IF THE MORTGAGE COMPANY FAILS TO MAINTAIN POSSESSION,  
4 FOR FUTURE USE OR INSPECTION BY AN AUTHORIZED REPRESENTATIVE OF  
5 THE DIRECTOR, FOR A PERIOD OF FOUR YEARS, OF THE DOCUMENTS OR  
6 RECORDS PRESCRIBED BY THE RULES OF THE DIRECTOR OR TO PRODUCE  
7 SUCH DOCUMENTS OR RECORDS UPON REASONABLE REQUEST BY THE  
8 DIRECTOR OR BY AN AUTHORIZED REPRESENTATIVE OF THE DIRECTOR;

9 (c) IF THE MORTGAGE COMPANY EMPLOYS OR ACTS THROUGH  
10 INDIVIDUALS SUBJECT TO ITS CONTROL WHO ARE UNLICENSED AT THE TIME  
11 OF HIRE AND NOT IN THE PROCESS OF BECOMING LICENSED, WHO ARE  
12 REQUIRED TO BE LICENSED PURSUANT TO THIS PART 9, OR IF THE  
13 MORTGAGE COMPANY, AFTER NOTICE, CONTINUES TO EMPLOY OR ACT  
14 THROUGH INDIVIDUALS SUBJECT TO ITS CONTROL WHOSE REQUIRED  
15 LICENSES ARE NOT VALID; OR

16 (d) IF THE MORTGAGE COMPANY DIRECTS, MAKES, OR CAUSES TO  
17 BE MADE, IN ANY MANNER, A FALSE OR DECEPTIVE STATEMENT OR  
18 REPRESENTATION WITH REGARD TO THE RATES, POINTS, OR OTHER  
19 FINANCING TERMS OR CONDITIONS FOR A RESIDENTIAL MORTGAGE LOAN,  
20 ENGAGES IN BAIT AND SWITCH ADVERTISING AS THAT TERM IS USED IN  
21 SECTION 6-1-105 (1) (n), C.R.S., OR VIOLATES ANY RULE OF THE DIRECTOR  
22 THAT DIRECTLY OR INDIRECTLY ADDRESSES ADVERTISING REQUIREMENTS.

23 (2) (a) THE DIRECTOR UPON HIS OR HER OWN MOTION OR UPON THE  
24 COMPLAINT IN WRITING OF ANY PERSON MAY INVESTIGATE THE ACTIVITIES  
25 OF ANY REGISTERED MORTGAGE COMPANY OR ANY MORTGAGE COMPANY  
26 THAT IS ACTING IN A CAPACITY THAT REQUIRES REGISTRATION PURSUANT  
27 TO THIS PART 9.

1 (b) THE DIRECTOR MAY FINE A MORTGAGE COMPANY THAT HAS  
2 VIOLATED THIS SECTION OR ANY RULES PROMULGATED PURSUANT TO THIS  
3 SECTION AS FOLLOWS:

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

6 (II) IN A SECOND OR SUBSEQUENT ADMINISTRATIVE PROCEEDING,  
7 A FINE NOT IN EXCESS OF TWO THOUSAND DOLLARS PER ACT OR  
8 OCCURRENCE.

9 (c) ALL FINES COLLECTED PURSUANT TO THIS SECTION SHALL BE  
10 TRANSMITTED TO THE STATE TREASURER, WHO SHALL CREDIT SUCH  
11 MONEYS TO THE MORTGAGE COMPANY AND LOAN ORIGINATOR LICENSING  
12 CASH FUND CREATED IN SECTION 12-61-908.

13 (3) THE DIRECTOR MAY ADOPT REASONABLE RULES FOR  
14 IMPLEMENTING THIS SECTION.

15 (4) NOTHING IN THIS SECTION AUTOMATICALLY IMPUTES A  
16 VIOLATION TO THE MORTGAGE COMPANY IF A LICENSED AGENT OR  
17 EMPLOYEE, OR AN INDIVIDUAL AGENT OR EMPLOYEE WHO IS REQUIRED TO  
18 BE LICENSED, VIOLATES ANY OTHER PROVISION OF THIS PART 9.

19 **SECTION 7.** The introductory portion to 12-61-905.5 (1) and  
20 12-61-905.5 (1) (k) and (7), Colorado Revised Statutes, are amended to  
21 read:

22 **12-61-905.5. Disciplinary actions - grounds - procedures -**  
23 **rules.** (1) The director, upon his or her own motion ~~may, and,~~ OR upon  
24 the complaint in writing of any person, ~~shall~~ MAY investigate the activities  
25 of any mortgage loan originator. The director has the power to impose an  
26 administrative fine in accordance with section 12-61-905, deny a license,  
27 censure a licensee, place the licensee on probation and set the terms of

1 probation, order restitution, order the payment of actual damages, or  
2 suspend or revoke a license when the director finds that the licensee or  
3 applicant has performed, is performing, or is attempting to perform any  
4 of the following acts:

5 (k) UNLESS AN EMPLOYEE OF A DULY REGISTERED MORTGAGE  
6 COMPANY, failing to maintain possession, for future use or inspection by  
7 an authorized representative of the director, for a period of four years, of  
8 the documents or records prescribed by the rules of the director or to  
9 produce such documents or records upon reasonable request by the  
10 director or by an authorized representative of the director;

11 (7) All administrative fines collected pursuant to this section shall  
12 be transmitted to the state treasurer, who shall credit the same to the  
13 mortgage COMPANY AND loan originator licensing cash fund created in  
14 section 12-61-908.

15 **SECTION 8.** 12-61-908, Colorado Revised Statutes, is amended  
16 to read:

17 **12-61-908. Fees - cash fund - created.** (1) The director may set  
18 the fees for issuance and renewal of licenses AND REGISTRATIONS under  
19 this part 9. The fees shall be set in amounts that offset the direct and  
20 indirect costs of implementing this part 9 and section 38-40-105, C.R.S.  
21 The moneys collected pursuant to this section shall be transferred to the  
22 state treasurer, who shall credit them to the mortgage COMPANY AND loan  
23 originator licensing cash fund.

24 (2) There is hereby created in the state treasury the mortgage  
25 COMPANY AND loan originator licensing cash fund. Moneys in the fund  
26 shall be spent only to implement this part 9 and section 38-40-105,  
27 C.R.S., and shall not revert to the general fund at the end of the fiscal



1 year. The fund shall be subject to annual appropriation by the general  
2 assembly.

3 (3) For the 2009-10 fiscal year, the division is authorized to  
4 expend up to one hundred twelve thousand dollars or such other amount  
5 as may be appropriated by the general assembly from the mortgage  
6 COMPANY AND loan originator licensing cash fund for purposes of paying  
7 the development costs assessed by the conference of state bank  
8 supervisors, or its successor organization, for participating in the  
9 nationwide mortgage licensing system and registry. However, the  
10 director shall use his or her discretion in determining whether expenditure  
11 of these moneys is necessary for compliance with the federal "Secure and  
12 Fair Enforcement for Mortgage Licensing Act of 2008" or participation  
13 in the nationwide mortgage licensing system and registry.

14 **SECTION 9.** 12-61-917 (1), Colorado Revised Statutes, is  
15 amended to read:

16 **12-61-917. Mortgage call reports - reports of violations.**

17 (1) The director may require each licensee OR REGISTRANT to submit to  
18 the nationwide mortgage licensing system and registry mortgage call  
19 reports, which shall be in the form and contain the information required  
20 by the nationwide mortgage licensing system and registry.

21 **SECTION 10.** 12-61-918, Colorado Revised Statutes, is amended  
22 to read:

23 **12-61-918. Unique identifier - clearly displayed.** ~~Any licensee~~  
24 ~~originating a residential mortgage loan~~ EACH PERSON REQUIRED TO BE  
25 LICENSED OR REGISTERED shall show his or her OR THE ENTITY'S unique  
26 identifier clearly on all residential mortgage loan application forms  
27 ~~solicitations, or advertisements, including business cards or web sites, and~~

1 any other documents as specified by the director by rule or order.

2 **SECTION 11.** 12-61-919, Colorado Revised Statutes, is amended  
3 to read:

4 **12-61-919. Repeal of part.** (1) This part 9 is repealed, effective  
5 July 1, ~~2011~~ 2014.

6 (2) Prior to its repeal, the department of regulatory agencies shall  
7 review the licensing of mortgage loan originators AND THE REGISTRATION  
8 OF MORTGAGE COMPANIES in accordance with section 24-34-104, C.R.S.  
9 The department shall include in its review of mortgage loan originators  
10 AND MORTGAGE COMPANIES an analysis of the number and types of  
11 complaints made about mortgage loan originators AND MORTGAGE  
12 COMPANIES and whether the licensing of mortgage loan originators AND  
13 THE REGISTRATION OF MORTGAGE COMPANIES correlates with public  
14 protection from fraudulent activities in the residential mortgage loan  
15 industry.

16 **SECTION 12. Repeal.** 24-34-104 (42) (k), Colorado Revised  
17 Statutes, is repealed as follows:

18 **24-34-104. General assembly review of regulatory agencies  
19 and functions for termination, continuation, or reestablishment.**

20 (42) The following agencies, functions, or both, shall terminate on July  
21 1, 2011:

22 (k) ~~The licensing of mortgage loan originators pursuant to part 9  
23 of article 61 of title 12, C.R.S.;~~

24 **SECTION 13.** 24-34-104 (45), Colorado Revised Statutes, is  
25 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

26 **24-34-104. General assembly review of regulatory agencies  
27 and functions for termination, continuation, or reestablishment.**

1 (45) The following agencies, functions, or both, shall terminate on July  
2 1, 2014:

3 (i) THE LICENSING OF MORTGAGE LOAN ORIGINATORS AND THE  
4 REGISTRATION OF MORTGAGE COMPANIES PURSUANT TO PART 9 OF  
5 ARTICLE 61 OF TITLE 12, C.R.S.

6 **SECTION 14. Act subject to petition - effective date -**  
7 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day  
8 following the expiration of the ninety-day period after final adjournment  
9 of the general assembly (August 11, 2010, if adjournment sine die is on  
10 May 12, 2010); except that, if a referendum petition is filed pursuant to  
11 section 1 (3) of article V of the state constitution against this act or an  
12 item, section, or part of this act within such period, then the act, item,  
13 section, or part shall not take effect unless approved by the people at the  
14 general election to be held in November 2010 and shall take effect on the  
15 date of the official declaration of the vote thereon by the governor.

16 (2) The provisions of this act shall apply to acts occurring on or  
17 after the applicable effective date of this act.