

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 06-0001.01 Jery Payne

HOUSE BILL 06-1161

HOUSE SPONSORSHIP

Vigil and Massey,

SENATE SPONSORSHIP

(None),

House Committees

Business Affairs and Labor
Appropriations

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE REGULATION OF MORTGAGE BROKERS, AND, IN
102 CONNECTION THEREWITH, 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 adopted.)

Creates the "Mortgage Broker Registration Act" (act).

Requires a mortgage broker to register every 3 years with the director of the division of real estate (director). Requires an applicant for registration to undergo a criminal background check, disclose relevant administrative discipline taken against the applicant, and post a bond of \$100,000. Authorizes a broker to maintain malpractice insurance in lieu of such bond. Exempts the following:

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.

Employees of a governmental entity;
The owner of real property who offers credit secured by the property;
A bank, savings and loan association, or credit union;
An attorney in the course of practice;
A person who funds a loan originated by a registered broker; and
An underwriter.

Authorizes the director to investigate and to deny the registration of or discipline a registrant who has:

Filed an application containing material misstatements;
Been convicted within the last 5 years of a crime concerning fraud, deceit, material misrepresentation, theft, or the breach of a fiduciary duty; or
Had a license, registration, or certification related to real estate, insurance, law, or investments revoked or suspended.

Authorizes the director or an administrative law judge to conduct disciplinary hearings, administer oaths, take affirmations of witnesses, and issue subpoenas. Authorizes the district court to issue an order compelling compliance with a subpoena or process. Allows the director to issue a cease and desist order.

Requires the director to keep records of registrants and disciplinary proceedings and open them to public inspection.

Grants witnesses and persons filing complaints legal immunity if they act in good faith.

Allows the director to set and impose fees for registration that offset the direct and indirect costs of administering the act. Creates the mortgage broker cash fund, subject to appropriation, to administer the act. Clarifies that the fees in the fund shall only be used to administer the act and shall not revert to the general fund.

Grants the attorney general jurisdiction to prosecute suspected violations of the law by mortgage brokers.

Declares brokering a mortgage or practicing as a mortgage broker without a registration a class 1 misdemeanor. Authorizes the director to forward information of suspected law violations to the attorney general, a district attorney, or a state or federal law enforcement agency. Authorizes injunctive actions to restrain violations. Makes a loan that was brokered by a mortgage broker voidable if the lender failed to verify that the broker was registered.

Directs the director to make a report to the general assembly.

Makes conforming amendments.

Makes an appropriation.

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

2 **SECTION 1.** Article 61 of title 12, Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW PART to read:

4 **PART 9**
5 **MORTGAGE BROKERS**

6 **12-61-901. Short title.** THIS PART 9 SHALL BE KNOWN AND MAY
7 BE CITED AS THE "MORTGAGE BROKER REGISTRATION ACT".

8 **12-61-902. Definitions.** AS USED IN THIS PART 9, UNLESS THE
9 CONTEXT OTHERWISE REQUIRES:

10 (1) "BROKER A MORTGAGE" MEANS TO DIRECTLY OR INDIRECTLY
11 SOLICIT, PROCESS, PLACE, NEGOTIATE, OR ORIGINATE A MORTGAGE LOAN
12 FOR A BORROWER, OR OFFER SUCH SERVICES TO A POTENTIAL BORROWER.
13 "BROKER A MORTGAGE" DOES NOT MEAN THE ACTIVITIES OF AN EMPLOYEE
14 THAT ARE MERELY MINISTERIAL AND CLERICAL, WHICH MAY INCLUDE, BUT
15 SHALL NOT BE LIMITED TO, QUOTING AVAILABLE INTEREST RATES OR LOAN
16 TERMS AND CONDITIONS.

17 (2) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION OF REAL
18 ESTATE.

19 (3) "DIVISION" MEANS THE DIVISION OF REAL ESTATE.

20 (4) "MORTGAGE BROKER" MEANS A NATURAL PERSON WHO, FOR
21 COMPENSATION OR IN THE EXPECTATION OF COMPENSATION, BROKERS A
22 MORTGAGE.

23 (5) "ORIGINATE" MEANS TO SUBMIT AN APPLICATION OR
24 DOCUMENTATION TO A LENDER OR UNDERWRITER IN AN ATTEMPT TO
25 OBTAIN A LOAN.

26 **12-61-903. Registration required.** (1) (a) ON OR AFTER
27 JANUARY 1, 2007, UNLESS REGISTERED WITH THE DIRECTOR, A PERSON

1 SHALL NOT BROKER A MORTGAGE, OFFER TO BROKER A MORTGAGE, ACT
2 AS A MORTGAGE BROKER, OR OFFER TO ACT AS A MORTGAGE BROKER.

3 (b) A REGISTERED MORTGAGE BROKER SHALL APPLY FOR
4 REGISTRATION IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION
5 EVERY THREE YEARS.

6 (2) AN APPLICANT FOR REGISTRATION SHALL SUBMIT TO THE
7 DIRECTOR THE FOLLOWING:

8 (a) A CRIMINAL HISTORY BACKGROUND CHECK IN COMPLIANCE
9 WITH SUBSECTION (3) OF THIS SECTION;

10 (b) A DISCLOSURE OF ALL ADMINISTRATIVE DISCIPLINE TAKEN
11 AGAINST THE APPLICANT CONCERNING THE CATEGORIES LISTED IN SECTION
12 12-61-905 (1) (c); AND

13 (c) THE APPLICATION FEE ESTABLISHED BY THE DIRECTOR IN
14 ACCORDANCE WITH SECTION 12-61-908.

15 (3) PRIOR TO SUBMITTING AN APPLICATION FOR A LICENSE, AN
16 APPLICANT SHALL SUBMIT A SET OF FINGERPRINTS TO THE COLORADO
17 BUREAU OF INVESTIGATION. UPON RECEIPT OF THE APPLICANT'S
18 FINGERPRINTS, THE COLORADO BUREAU OF INVESTIGATION SHALL USE THE
19 FINGERPRINTS TO CONDUCT A STATE AND NATIONAL CRIMINAL HISTORY
20 RECORD CHECK USING RECORDS OF THE COLORADO BUREAU OF
21 INVESTIGATION AND THE FEDERAL BUREAU OF INVESTIGATION. ALL COSTS
22 ARISING FROM SUCH CRIMINAL HISTORY RECORD CHECK SHALL BE BORNE
23 BY THE APPLICANT AND SHALL BE PAID WHEN THE SET OF FINGERPRINTS IS
24 SUBMITTED. UPON COMPLETION OF THE CRIMINAL HISTORY RECORD
25 CHECK, THE BUREAU SHALL FORWARD THE RESULTS TO THE DIRECTOR.

26 (4) BEFORE REGISTERING AN APPLICANT, THE DIRECTOR SHALL
27 REQUIRE THE APPLICANT TO POST A BOND AS REQUIRED BY SECTION

1 12-61-907.

2 **12-61-904. Exemptions.** (1) THIS PART 9 SHALL NOT APPLY TO
3 THE FOLLOWING:

4 (a) EMPLOYEES OF AN AGENCY OF THE FEDERAL GOVERNMENT, OF
5 THE COLORADO GOVERNMENT, OR OF ANY OF COLORADO'S POLITICAL
6 SUBDIVISIONS;

7 (b) AN OWNER OF REAL PROPERTY WHO OFFERS CREDIT SECURED
8 BY A MORTGAGE OR DEED OF TRUST ON THE PROPERTY SOLD;

9 (c) IF SUBJECT TO REGULATION AND SUPERVISION BY A FEDERAL
10 BANKING AGENCY, A BANK, SAVINGS BANK, SAVINGS AND LOAN
11 ASSOCIATION, BUILDING AND LOAN ASSOCIATION, INDUSTRIAL BANK,
12 INDUSTRIAL LOAN COMPANY, CREDIT UNION, OR BANK OR SAVINGS
13 ASSOCIATION HOLDING COMPANY ORGANIZED UNDER THE LAWS OF ANY
14 STATE, THE DISTRICT OF COLUMBIA, A TERRITORY OR PROTECTORATE OF
15 THE UNITED STATES, OR THE UNITED STATES AND AN OPERATING
16 SUBSIDIARY, AFFILIATE, EMPLOYEE, OR EXCLUSIVE AGENT OF ANY OF THE
17 MENTIONED ENTITIES;

18 (d) AN ATTORNEY WHO RENDERS SERVICES IN THE COURSE OF
19 PRACTICE, WHO IS LICENSED IN COLORADO, AND WHO IS NOT PRIMARILY
20 ENGAGED IN THE BUSINESS OF NEGOTIATING RESIDENTIAL MORTGAGE
21 LOANS; OR

22 (e) A PERSON WHO:

23 (I) FUNDS A RESIDENTIAL MORTGAGE LOAN THAT HAS BEEN
24 ORIGINATED AND PROCESSED BY A REGISTERED PERSON OR BY AN EXEMPT
25 PERSON;

26 (II) DOES NOT SOLICIT BORROWERS IN COLORADO FOR THE
27 PURPOSE OF MAKING RESIDENTIAL MORTGAGE LOANS; AND

1 (III) DOES NOT PARTICIPATE IN THE NEGOTIATION OF RESIDENTIAL
2 MORTGAGE LOANS WITH THE BORROWER, EXCEPT FOR SETTING THE TERMS
3 UNDER WHICH A PERSON MAY BUY OR FUND A RESIDENTIAL MORTGAGE
4 LOAN ORIGINATED BY A REGISTERED OR EXEMPT PERSON.

5 **12-61-905. Powers and duties of the division.** (1) THE
6 DIRECTOR SHALL DENY, REFUSE TO RENEW, OR REVOKE THE REGISTRATION
7 OF AN APPLICANT WHO HAS:

8 (a) FILED AN APPLICATION WITH THE DIRECTOR CONTAINING
9 MATERIAL MISSTATEMENTS OF FACT OR OMITTED ANY DISCLOSURE
10 REQUIRED BY THIS PART 9;

11 (b) WITHIN THE LAST FIVE YEARS, BEEN CONVICTED OF OR PLED
12 GUILTY OR NOLO CONTENDERE TO A CRIME INVOLVING FRAUD, DECEIT,
13 MATERIAL MISREPRESENTATION, THEFT, OR THE BREACH OF A FIDUCIARY
14 DUTY; OR

15 (c) HAD A LICENSE, REGISTRATION, OR CERTIFICATION ISSUED BY
16 COLORADO OR ANOTHER STATE REVOKED OR SUSPENDED FOR FRAUD,
17 DECEIT, MATERIAL MISREPRESENTATION, THEFT, OR THE BREACH OF A
18 FIDUCIARY DUTY, AND SUCH DISCIPLINE DENIED THE PERSON
19 AUTHORIZATION TO PRACTICE AS:

20 (I) A MORTGAGE BROKER;

21 (II) A REAL ESTATE BROKER, AS DEFINED BY SECTION 12-61-101
22 (2);

23 (III) A REAL ESTATE SALESPERSON, AS DEFINED BY SECTION
24 12-61-101 (3);

25 (IV) A REAL ESTATE APPRAISER, AS DEFINED BY SECTION
26 12-61-702 (5);

27 (V) AN INSURANCE PRODUCER, AS DEFINED BY SECTION 10-2-103

1 (6), C.R.S.;

2 (VI) AN ATTORNEY;

3 (VII) A SECURITIES BROKER-DEALER, AS DEFINED BY SECTION

4 11-51-201 (2), C.R.S.;

5 (VIII) A SECURITIES SALES REPRESENTATIVE, AS DEFINED BY

6 SECTION 11-51-201 (14), C.R.S.;

7 (IX) AN INVESTMENT ADVISOR, AS DEFINED BY SECTION 11-51-201

8 (9.5), C.R.S.; OR

9 (X) AN INVESTMENT ADVISOR REPRESENTATIVE, AS DEFINED BY

10 SECTION 11-51-201 (9.6), C.R.S.

11 (2) THE DIRECTOR MAY INVESTIGATE THE ACTIVITIES OF A

12 REGISTRANT OR OTHER PERSON THAT PRESENT GROUNDS FOR

13 DISCIPLINARY ACTION UNDER THIS PART 9 OR THAT VIOLATE SECTION

14 12-61-910 (1).

15 (3) (a) IF THE DIRECTOR HAS REASONABLE GROUNDS TO BELIEVE

16 THAT A MORTGAGE BROKER IS NO LONGER QUALIFIED UNDER SUBSECTION

17 (1) OF THIS SECTION, THE DIRECTOR MAY SUMMARILY SUSPEND THE

18 MORTGAGE BROKER'S REGISTRATION PENDING A HEARING TO REVOKE THE

19 REGISTRATION. A SUMMARY SUSPENSION SHALL CONFORM TO ARTICLE 4

20 OF TITLE 24, C.R.S.

21 (b) THE DIRECTOR SHALL SUSPEND THE REGISTRATION OF A

22 BROKER WHO FAILS TO MAINTAIN THE BOND REQUIRED BY SECTION

23 12-61-907 UNTIL THE REGISTRANT COMPLIES WITH SUCH SECTION.

24 (4) THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE APPOINTED

25 PURSUANT TO PART 10 OF ARTICLE 30 OF TITLE 24, C.R.S., SHALL

26 CONDUCT DISCIPLINARY HEARINGS CONCERNING MORTGAGE BROKERS.

27 SUCH HEARINGS SHALL CONFORM TO ARTICLE 4 OF TITLE 24, C.R.S.

1 (5) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS
2 SUBSECTION (5), A PERSON WHOSE REGISTRATION HAS BEEN REVOKED
3 SHALL NOT BE ELIGIBLE FOR REGISTRATION FOR TWO YEARS AFTER THE
4 EFFECTIVE DATE OF THE REVOCATION.

5 (b) IF THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE
6 DETERMINES THAT AN APPLICATION CONTAINED A MISSTATEMENT OF FACT
7 OR OMITTED A REQUIRED DISCLOSURE DUE TO AN UNINTENTIONAL ERROR,
8 THE DIRECTOR SHALL ALLOW THE APPLICANT TO CORRECT THE
9 APPLICATION. UPON RECEIPT OF THE CORRECTED AND COMPLETED
10 APPLICATION, THE DIRECTOR OR ADMINISTRATIVE LAW JUDGE SHALL NOT
11 BAR THE APPLICANT FROM BEING REGISTERED ON THE BASIS OF THE
12 UNINTENTIONAL MISSTATEMENT OR OMISSION.

13 (6) (a) THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE MAY
14 ADMINISTER OATHS, TAKE AFFIRMATIONS OF WITNESSES, AND ISSUE
15 SUBPOENAS TO COMPEL THE ATTENDANCE OF WITNESSES AND THE
16 PRODUCTION OF ALL RELEVANT PAPERS, BOOKS, RECORDS, DOCUMENTARY
17 EVIDENCE, AND MATERIALS IN ANY HEARING OR INVESTIGATION
18 CONDUCTED BY THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE.

19 (b) UPON FAILURE OF A WITNESS TO COMPLY WITH A SUBPOENA OR
20 PROCESS, THE DISTRICT COURT OF THE COUNTY IN WHICH THE
21 SUBPOENAED WITNESS RESIDES OR CONDUCTS BUSINESS MAY ISSUE AN
22 ORDER REQUIRING THE WITNESS TO APPEAR BEFORE THE DIRECTOR OR
23 ADMINISTRATIVE LAW JUDGE AND PRODUCE THE RELEVANT PAPERS,
24 BOOKS, RECORDS, DOCUMENTARY EVIDENCE, TESTIMONY, OR MATERIALS
25 IN QUESTION. FAILURE TO OBEY THE ORDER OF THE COURT MAY BE
26 PUNISHED AS A CONTEMPT OF COURT. THE DIRECTOR OR AN
27 ADMINISTRATIVE LAW JUDGE MAY APPLY FOR SUCH ORDER.

1 (7) IF THE DIRECTOR HAS REASONABLE CAUSE TO BELIEVE THAT A
2 PERSON IS VIOLATING THIS PART 9, INCLUDING BUT NOT LIMITED TO
3 SECTION 12-61-910 (1), THE DIRECTOR MAY ENTER AN ORDER REQUIRING
4 SUCH PERSON TO CEASE AND DESIST SUCH VIOLATIONS.

5 (8) THE DIRECTOR SHALL KEEP RECORDS OF THE PERSONS
6 REGISTERED AS MORTGAGE BROKERS AND OF DISCIPLINARY PROCEEDINGS.
7 THE RECORDS KEPT BY THE DIRECTOR SHALL BE OPEN TO PUBLIC
8 INSPECTION IN A REASONABLE TIME AND MANNER DETERMINED BY THE
9 DIRECTOR.

10 (9) (a) THE DIRECTOR SHALL MAINTAIN A SYSTEM, WHICH MAY
11 INCLUDE, WITHOUT LIMITATION, A HOTLINE OR WEB SITE, THAT GIVES
12 CONSUMERS A REASONABLY EASY METHOD FOR MAKING COMPLAINTS
13 ABOUT A MORTGAGE BROKER.

14 (b) THE DIRECTOR SHALL REVIEW THE COMPLAINTS ANNUALLY
15 AND PREPARE A REPORT TO BE ISSUED TO THE COMMITTEE OF THE
16 GENERAL ASSEMBLY THAT HAS OVERSIGHT OF MORTGAGE BROKERS. SUCH
17 REPORT SHALL CONTAIN THE TRENDS IN COMPLAINTS AND INVESTIGATIONS
18 UNDER THIS PART 9.

19 **12-61-906. Immunity.** A PERSON PARTICIPATING IN GOOD FAITH
20 IN THE FILING OF A COMPLAINT OR REPORT OR PARTICIPATING IN AN
21 INVESTIGATION OR HEARING BEFORE THE DIRECTOR OR AN
22 ADMINISTRATIVE LAW JUDGE PURSUANT TO THIS PART 9 SHALL BE IMMUNE
23 FROM ANY LIABILITY, CIVIL OR CRIMINAL, THAT OTHERWISE MIGHT RESULT
24 BY REASON OF SUCH ACTION.

25 **12-61-907. Bond required.** (1) (a) EXCEPT AS PROVIDED IN
26 PARAGRAPH (b) OF THIS SUBSECTION (1), PRIOR TO REGISTRATION, AN
27 APPLICANT FOR REGISTRATION SHALL POST WITH THE DIRECTOR A SURETY

1 BOND, OR AN ALTERNATIVE AUTHORIZED BY ARTICLE 35 OF TITLE 11,
2 C.R.S., OF ONE HUNDRED THOUSAND DOLLARS. EXCEPT AS PROVIDED IN
3 PARAGRAPH (b) OF THIS SUBSECTION (1), A REGISTERED MORTGAGE
4 BROKER SHALL MAINTAIN SUCH BOND AT ALL TIMES.

5 (b) A MORTGAGE BROKER MAY ELECT TO MAINTAIN, IN LIEU OF
6 POSTING A BOND, A POLICY OF PROFESSIONAL MALPRACTICE INSURANCE
7 THAT PROVIDES COVERAGE FOR ERRORS AND OMISSIONS COVERING
8 MORTGAGE BROKER ACTIVITIES. IF A MORTGAGE BROKER ELECTS TO
9 MAINTAIN SUCH INSURANCE AND MAINTAINS SUCH INSURANCE AT ALL
10 TIMES, THE MORTGAGE BROKER SHALL NOT BE REQUIRED TO POST A BOND
11 UNDER THIS PART 9.

12 (2) THE SURETY SHALL NOT BE REQUIRED TO PAY A PERSON
13 MAKING A CLAIM UPON THE BOND UNTIL A FINAL DETERMINATION OF
14 FRAUD, FORGERY, CRIMINAL IMPERSONATION, OR FRAUDULENT
15 REPRESENTATION HAS BEEN MADE BY A COURT WITH JURISDICTION.

16 (3) THE SURETY BOND SHALL REQUIRE THE SURETY TO PROVIDE
17 NOTICE TO THE DIRECTOR WITHIN THIRTY DAYS IF PAYMENT IS MADE FROM
18 THE SURETY BOND OR IF THE BOND IS CANCELLED.

19 **12-61-908. Fees.** (1) THE DIRECTOR MAY SET THE FEE FOR
20 REGISTRATION UNDER THIS PART 9. THE FEE SHALL BE SET IN AN AMOUNT
21 THAT OFFSETS THE DIRECT AND INDIRECT COSTS OF IMPLEMENTING THIS
22 PART 9. THE MONEYS COLLECTED PURSUANT TO THIS SECTION SHALL BE
23 TRANSFERRED TO THE STATE TREASURER, WHO SHALL CREDIT THEM TO
24 THE MORTGAGE BROKER REGISTRATION CASH FUND.

25 (2) THERE IS HEREBY CREATED IN THE STATE TREASURY THE
26 MORTGAGE BROKER REGISTRATION CASH FUND. MONEYS IN THE FUND
27 SHALL BE SPENT ONLY TO IMPLEMENT THIS PART 9 AND SHALL NOT REVERT

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

3 **12-61-909. Attorney general - jurisdiction.** (1) THE DIRECTOR
4 OR AN ADMINISTRATIVE LAW JUDGE SHALL REFER TO THE ATTORNEY
5 GENERAL DISCIPLINARY ACTIONS OR SUSPECTED VIOLATIONS OF THE LAW
6 COMMITTED BY A MORTGAGE BROKER.

7 (2) THE ATTORNEY GENERAL SHALL HAVE JURISDICTION TO
8 PROSECUTE CRIMES THAT ARE COMMITTED BY A MORTGAGE BROKER AND
9 THAT CONCERN BROKERING A MORTGAGE OR THE PRACTICE OF A
10 MORTGAGE BROKER.

11 (3) THIS SECTION SHALL NOT BE CONSTRUED TO LIMIT OR DENY TO
12 A DISTRICT ATTORNEY JURISDICTION TO PROSECUTE A CRIME COMMITTED
13 BY A MORTGAGE BROKER.

14 **12-61-910. Violations - injunctions.** (1) (a) BROKERING A
15 MORTGAGE OR PRACTICING AS A MORTGAGE BROKER WITHOUT
16 REGISTERING UNDER THIS PART 9 SHALL BE A CLASS 1 MISDEMEANOR AND
17 SHALL BE PUNISHED AS PROVIDED IN SECTION 18-1.3-501, C.R.S.

18 (b) EACH MORTGAGE BROKERED BY AN UNREGISTERED PERSON
19 SHALL BE A SEPARATE VIOLATION OF THIS SUBSECTION (1).

20 (c) A MORTGAGE THAT IS SECURED BY REAL PROPERTY WITHIN
21 COLORADO AND BROKERED BY A MORTGAGE BROKER WHO IS NOT
22 REGISTERED IN VIOLATION OF THIS PART 9 SHALL BE VOIDABLE BY THE
23 BORROWER IF, AT THE TIME THE MORTGAGE WAS BROKERED, THE LENDER
24 FAILED TO REASONABLY VERIFY THAT THE MORTGAGE BROKER WAS
25 REGISTERED PURSUANT TO SECTION 12-61-903.

26 (2) THE DIRECTOR MAY FORWARD INFORMATION CONCERNING
27 POSSIBLE VIOLATIONS OF THE LAW COMMITTED BY OR COMPLAINTS FILED

1 AGAINST A MORTGAGE BROKER TO THE ATTORNEY GENERAL, A DISTRICT
2 ATTORNEY, OR A STATE OR FEDERAL LAW ENFORCEMENT AGENCY.

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

13 **SECTION 2.** 11-35-101 (1), Colorado Revised Statutes, is
14 amended to read:

15 **11-35-101. Alternatives to surety bonds permitted -**
16 **requirements.** (1) The requirement of a surety bond as a condition to
17 licensure or authority to conduct business or perform duties in this state
18 provided in sections 12-5.5-202 (2) (b), 12-6-111, 12-6-112, 12-6-112.2,
19 12-11-101 (1) (d), 12-11-104, 12-11-106, 12-14-124 (1), 12-59-115 (1),
20 ~~12-60-509 (2.5) (b), 33-4-101 (1),~~ 12-60-509 (2.5) (b), 12-61-907,
21 33-4-101 (1), 33-12-104 (1), 35-33-403 (3), 35-55-104 (1), 37-91-107 (2)
22 and (3), 38-29-119 (2), 39-21-105 (4), 39-27-104 (2) (a), (2) (b), (2) (c),
23 (2) (d), (2) (e), (2.1) (a), (2.1) (b), (2.1) (c), (2.5) (a), and (2.5) (b),
24 39-28-105 (1), 42-6-115 (3), and 42-7-301 (6), C.R.S., may be satisfied
25 by a savings account or deposit in or a certificate of deposit issued by a
26 state or national bank doing business in this state or by a savings account
27 or deposit in or a certificate of deposit issued by a state or federal savings

1 and loan association doing business in this state. Such savings account,
2 deposit, or certificate of deposit shall be in the amount specified by
3 statute, if any, and shall be assigned to the appropriate state agency for the
4 use of the people of the state of Colorado. The aggregate liability of the
5 bank or savings and loan association shall in no event exceed the amount
6 of the deposit. For the purposes of the sections referred to in this section,
7 "bond" includes the savings account, deposit, or certificate of deposit
8 authorized by this section.

9 **SECTION 3.** 12-61-103.6 (1), Colorado Revised Statutes, is
10 amended to read:

11 **12-61-103.6. Errors and omissions insurance - duties of the**
12 **commission - certificate of coverage, when required - group plan**
13 **made available - effect - repeal.** (1) ~~Commencing January 1, 1998,~~
14 Every licensee under this part 1, except an inactive broker or salesperson
15 or an attorney licensee who maintains a policy of professional malpractice
16 insurance which provides coverage for errors and omissions for their
17 activities as a licensee under this part 1, shall maintain errors and
18 omissions insurance to cover all activities contemplated under PARTS 1 TO
19 8 OF this article. The commission shall make the errors and omissions
20 insurance available to all licensees by contracting with an insurer for a
21 group policy after a competitive bid process in accordance with article
22 103 of title 24, C.R.S. Any group policy obtained by the commission
23 shall be available to all licensees with no right on the part of the insurer
24 to cancel any licensee. Any licensee may obtain errors and omissions
25 insurance independently if the coverage complies with the minimum
26 requirements established by the commission.

27 **SECTION 4. Appropriation.** In addition to any other

1 appropriation, there is hereby appropriated, out of any moneys in the
2 mortgage broker cash fund created in section 12-61-908, Colorado
3 Revised Statutes, not otherwise appropriated, to the department of
4 regulatory agencies, for allocation to the director of the division of real
5 estate, for the fiscal year beginning July 1, 2006, the sum of dollars (\$)
6 and _____ FTE, or so much thereof as may be necessary, for the
7 implementation of this act.

8 **SECTION 5. Effective date - applicability.** This act shall take
9 effect July 1, 2006, and shall apply to acts committed and loans made on
10 or after said date.

11 **SECTION 6. Safety clause.** The general assembly hereby finds,
12 determines, and declares that this act is necessary for the immediate
13 preservation of the public peace, health, and safety.