

Second Regular Session
Sixty-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 06-0061.02 Jery Payne

HOUSE BILL 06-1323

HOUSE SPONSORSHIP

Marshall, and Massey

SENATE SPONSORSHIP

Kester,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING FRAUD IN THE MORTGAGE LENDING PROCESS, AND, IN
102 CONNECTION THEREWITH, IMPOSING A MINIMUM FINE, LIMITING
103 PLEA BARGAINS, AND GIVING THE ATTORNEY GENERAL
104 CONCURRENT JURISDICTION.

Bill Summary

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

Imposes a mandatory minimum fine of \$75,000 for residential mortgage fraud. Prohibits a court from accepting a plea bargain unless it includes an order of restitution to the victim. Grants the attorney general concurrent jurisdiction to prosecute mortgage fraud.

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.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby determines that mortgage lending has a significant effect upon
4 Colorado's economy; an estimated two trillion five hundred billion dollars
5 in mortgage loans were made in the United States in 2005; an estimated
6 eighty percent of reported mortgage fraud involves collusion by industry
7 insiders; and Colorado's per capita incidents of mortgage fraud is one of
8 the ten highest in the nation.

9 (2) The general assembly hereby declares that the high rates of
10 mortgage fraud in Colorado are unacceptable and that residential
11 mortgage fraud shall not be tolerated. The general assembly further
12 declares that the goals of Colorado law are to deter residential mortgage
13 fraud and to make the victim whole.

14 **SECTION 2.** 18-1.3-401, Colorado Revised Statutes, is amended
15 BY THE ADDITION OF A NEW SUBSECTION to read:

16 **18-1.3-401. Felonies classified - presumptive penalties.**

17 (14) (a) IF A PERSON COMMITS THEFT BY DECEPTION AS DESCRIBED IN
18 SECTION 18-4-401 BY MAKING FALSE STATEMENTS, OR FILES OR
19 FACILITATES THE USE OF A DOCUMENT KNOWN TO CONTAIN A FALSE
20 STATEMENT OR MATERIAL OMISSION RELIED UPON BY ANOTHER PERSON IN
21 THE MORTGAGE LENDING PROCESS AS DEFINED BY SECTION 18-4-401 (9),
22 A MINIMUM FINE OF SEVENTY-FIVE THOUSAND DOLLARS SHALL BE
23 MANDATORY.

24 (b) A COURT SHALL NOT ACCEPT A PLEA OF GUILTY OR NOLO
25 CONTENDERE TO ANOTHER OFFENSE FROM A PERSON CHARGED WITH A
26 VIOLATION OF SECTION 18-4-401 SUBJECT TO PARAGRAPH (a) OF THIS

1 SUBSECTION (14) UNLESS THE PLEA AGREEMENT CONTAINS AN ORDER OF
2 RESTITUTION THAT ACCOUNTS FOR THE LOSS TO THE VICTIM AND ANY
3 COSTS TO THE VICTIM CAUSED BY THE OFFENSE.

4 **SECTION 3.** 18-4-401, Colorado Revised Statutes, is amended
5 BY THE ADDITION OF A NEW SUBSECTION to read:

6 **18-4-401. Theft.** (9) (a) THE DISTRICT ATTORNEYS AND THE
7 ATTORNEY GENERAL HAVE CONCURRENT JURISDICTION TO INVESTIGATE
8 AND PROSECUTE A VIOLATION OF THIS SECTION THAT INVOLVES MAKING
9 FALSE STATEMENTS, OR FILING OR FACILITATING THE USE OF A DOCUMENT
10 KNOWN TO CONTAIN A FALSE STATEMENT OR MATERIAL OMISSION RELIED
11 UPON BY ANOTHER PERSON IN THE MORTGAGE LENDING PROCESS.

12 (b) DOCUMENTS INVOLVED IN THE MORTGAGE LENDING PROCESS
13 INCLUDE, BUT ARE NOT LIMITED TO, UNIFORM RESIDENTIAL LOAN
14 APPLICATIONS OR OTHER LOAN APPLICATIONS; APPRAISAL REPORTS;
15 HUD-1 SETTLEMENT STATEMENTS; SUPPORTING PERSONAL
16 DOCUMENTATION FOR LOAN APPLICATIONS SUCH AS W-2 FORMS,
17 VERIFICATIONS OF INCOME AND EMPLOYMENT, BANK STATEMENTS, TAX
18 RETURNS, AND PAYROLL STUBS; AND ANY REQUIRED DISCLOSURES.

19 (c) FOR THE PURPOSES OF THIS SUBSECTION (9):

20 (I) "MORTGAGE LENDING PROCESS" MEANS THE PROCESS THROUGH
21 WHICH A PERSON SEEKS OR OBTAINS A RESIDENTIAL MORTGAGE LOAN,
22 INCLUDING, WITHOUT LIMITATION, SOLICITATION, APPLICATION, OR
23 ORIGINATION; NEGOTIATION OF TERMS; THIRD-PARTY PROVIDER SERVICES;
24 UNDERWRITING; SIGNING AND CLOSING; AND FUNDING OF THE LOAN.

25 (II) "RESIDENTIAL MORTGAGE LOAN" MEANS A LOAN OR
26 AGREEMENT TO EXTEND CREDIT, MADE TO A PERSON AND SECURED BY A
27 MORTGAGE OR LIEN ON RESIDENTIAL REAL PROPERTY, INCLUDING, BUT

1 NOT LIMITED TO, THE REFINANCING OR RENEWAL OF A LOAN SECURED BY
2 RESIDENTIAL REAL PROPERTY.

3 (III) "RESIDENTIAL REAL PROPERTY" MEANS REAL PROPERTY USED
4 AS A RESIDENCE AND CONTAINING NO MORE THAN FOUR FAMILIES HOUSED
5 SEPARATELY.

6 **SECTION 4. Effective date - applicability.** This act shall take
7 effect July 1, 2006, and shall apply to offenses committed on or after said
8 date.

9 **SECTION 5. Safety clause.** The general assembly hereby finds,
10 determines, and declares that this act is necessary for the immediate
11 preservation of the public peace, health, and safety.